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Making the European Commission more accountable? Enhancing input legitimacy and its possible impact

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Abstract

The following article looks at several elements of both the current academic and public/political debate on how to solve the perceived legitimacy problem of the EU supranational component, embodied by the European Commission, by enhancing the input legitimacy; and at its criticism. It suggests that a combined approach of politicization and legitimacy by effectiveness, efficiency and credibility, represented by the decentralized agencies delivering regulatory policies, is underdeveloped in the debate.

After the 2009 European Parliament elections, further acceleration of the informal process of parliamentarization² of the European Commission can be expected with regard to the way the last European Commission under the leadership of José Barroso was appointed and what role the European Parliament played not only in this process but also later when deciding, for example, on two important single market directives³. In these clashes, the European

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² Inclusive to input legitimacy, parliamentarization generally suggests the democratic order at the European level should be based strongly on parliamentarism; in this case, it also carries the meaning that tying the Commission to the European Parliament by the investiture procedure and by decision-making procedure is gradually taking place. See also (Majone, 2002:383)

³ The committee of the European Parliament voted against the nomination of Rocco Buttiglione a JHA Commissioner and his nomination was withdrawn. The European Commission decided to withdraw the directive liberalizing port services in November 2005 after the opposition of the European Parliament and of the port workers. The Commission proposal of the service directive was watered down by the European Parliament. Some (Majone, 2006) see it, especially in the cases of the directives, rather as a “populism” of the European Parliament, not as result of political clashes. In this sense it is symptomatic that when asked what he would like to be remembered for as an EP President, Mr. Josep Borell answered: “It is a difficult question, but I would like to be remembered for the breakthrough in communication. I believe that the European Parliament has made a qualitative leap in its capacity to be heard and seen in the media. After the refusal to confirm Mr Buttiglione as Commissioner, the services directive, the demonstrations in front of the Parliament when we were deciding on the port services directive...our work is starting to be known. The other institutions take us into account, but the

Commission proved to be rather politically weak and submitted to the will of the European Parliament as well as other actors. Although no new institutional provisions are in place, which would accommodate explicitly a tendency towards further Commission's parliamentarization, the informal pressure to change the link between these two institutions is perceived by many⁴.

It has been also clear for some time that the functionalist strategy of promoting spillovers from one (economic) sector to another has failed and both the functionalist approach and the classic Community method, of which the Commission is the embodiment, are being questioned from the legitimacy standpoints. Instead of a steady progress towards a federal union, as Jean Monnet and other founding fathers had expected, and with the end of the permissive consensus of the member states' citizens, the European Integration process and EU institutions suffer from a lack of legitimacy (often and successfully pointed out by Eurosceptics) and no one seems to challenge the assumption that there is a growing gap between the elites and the citizens, which is a determinant to the future of EU development; the views on democratisation and democracy of the system, however, differs.

The debate on how to solve these problems is under way both in the academic and public sphere. The Commission itself tries to answer to those challenges by adopting the "Europe of results" approach, of which the proposal to cut the roaming prices can be an example, and by enhancing its communication efforts. Both remedies seem unable to deliver the desired outcomes due to different reasons. Despite the fact that a "Europe of results", or an effort to increase the output legitimacy⁵ of the EU, would conform to some proponents of such a solution in the public⁶ as well as, with some reservations, in the academic debate⁷, it seems the Commission is not able to deliver "the results" in satisfying numbers in order to be seen by the citizens as legitimate by its effectiveness and efficiency due to the constraints (or checks and balances) given by the decision-making process in the EU. In an effort to produce

public also knows that we are more than just the proverbial Tower of Babel." (Borrell: "Where there is no argument there is no participation", EP News, December 27, 2006, http://www.europarl.europa.eu/news/public/story_page/008-1648-352-12-51-901-20061219STO01647-2006-18-12-2006/default_en.htm)

⁴ (Majone, 2006); (Hix, 2006)

⁵ Under the output legitimacy, the reasoning by effectiveness and efficiency is understood. Effectiveness means the capacity of the political system to achieve the goals and to solve the problems of the citizens; efficiency refers to the political system being able to do so at a reasonable cost (Schimmelfennig, 1996:13).

⁶ See for example The Economist, "Existential Dreaming, Pro-Europeans have two broad and incompatible views about the future of the European Union", March 24, 2007.

⁷ See below

results and improve the lives of citizens, the Commission also tries to assert its regulatory will in numerous (new) areas, which are not only technical by its nature but to a large extent also political; the need for democratic control and the Commission's accountability thus arises with enhanced urgency. Lastly, it is not only the Commission that can claim "victory" in case a result is achieved, but the other institutions, especially the European Parliament. Until now, the enhanced Commission's communication strategy has not brought about the expected results; the citizens can still hardly identify the protagonists of the developments at the supranational level or to endorse their policies.

This paper aims at looking at several elements of both the current academic and public/political debate on how to solve the perceived legitimacy problem of the EU supranational component, embodied by the European Commission, by enhancing the input legitimacy, and at the criticism of these arguments. By input legitimacy, the principle that a democratic system of government achieves its legitimacy by the way decisions are made (not by the efficiency and effectiveness criterion), is understood. The legitimate rule then requires governors to be directly empowered and held accountable by the citizens, division of powers and the checks and balances to be imposed on executive power (Schimmelfennig, 1996:14). At the EU level, as the main remedy to the lack of legitimacy and accountability within this framework, politicization is usually suggested. This paper suggests that more attention in the debate should be given to the combined approach of politicization and legitimacy by effectiveness, efficiency and credibility, represented by decentralized agencies delivering regulatory policies in order to tackle the perceived Commission's legitimacy problem.

Enhancing the legislative powers of the European Parliament, and the parliamentarization of the system, had been seen for long-time as a means to face the EU democratic deficit. The reality showed the expectations were not met (the citizen's interest in European elections has been declining since 1979) probably due to constraints imposed on the European Parliament by the EU political system and especially for perceived lack of efficiency⁸. Therefore, politicization and more competitive politics within EU institutions started gaining ground in the debate as the way to tackle the input legitimacy problem. Assigning a significant role to the European Parliament in the Commission investiture and the reforms of its electing procedure are thus largely seen as opening the door to politics and political competition in the

⁸ See also (Majone, 2006:6)

process of Commission nomination,⁹ although still limited. Before the Maastricht Treaty was adopted, there was no provision on the Commission President's election; he was appointed as the rest of the Commissioners by a unanimity vote in the Council, although the backstage deliberations on his nomination took place long before that (the informal practice since Roy Jenkins election in 1976). The Maastricht Treaty also harmonized Commission's term in office with that of the European Parliament; the Parliament also got the right to consult the selection of the Commission's president nominee and interpreted this provision as granting members of European Parliament the right to vote on the candidate¹⁰. Since the Amsterdam Treaty, the Commission Presidents have been formally invested by a majority in the European Parliament (vote of approval). The Nice Treaty brought about further politicization of the election of European Commission President by replacing unanimity voting in the European Council by QMV voting, which allowed for an increasing number of nominees. However, the system of nominations is still rather consensual with too many actors taking part in it. The assumptions that on the basis of the election process reforms (and the hearings of the nominees in the European Parliament committees) the Commission shall have the same colour as the majority in the European Parliament is still rather feeble, with the case of the Barroso Commission considered to be rather a coincidence, although its process of investiture showed that a Commissioner cannot take the office against the will of the majority in the European Parliament. Also the Commission's accountability to the European Parliament is limited, the European Parliament can only impeach the whole Commission (by two thirds of its members) and there is no possibility of a no confidence vote as we know it from the member states' parliaments.

Although according to some, no Treaty change is necessary for further politicization and political contest when nominating the Commission,¹¹ we also look briefly at the last adjustments (reform) of the European Commission nomination and approval procedure, as suggested in the Constitutional Treaty¹². It established the Commission President to be elected by the European Parliament¹³ and the results of the European Parliamentary elections to be taken into account when nominating a candidate; however, it made the European Council obliged to nominate only one candidate for the vote in the European Parliament and the

⁹ (Majone, 2002); (Hix, 2006)

¹⁰ (Hix, 2006)

¹¹ (Hix, 2006)

¹² The Treaty Establishing the Constitution for Europe

provision on respecting the elected majority in the European Parliament was in no way binding for the European Council when selecting the candidate. On the other hand, the Constitutional Treaty envisaged a one month period for the European Council to put forward another candidate for the Commission President, had the first one been voted down in the European Parliament. The provision was designed to prevent the paralysis of EU institutions but also signalled the eventuality that the nominee is not elected is a real possible outcome; and this could have been regarded as a further door opening to the politicization of the European Commission.

The Academic debate

From debating the democratic deficit, the current academic debate shifted towards the issue of politicization¹⁴. Meanwhile in the debate on the democratic deficit its proponents argued within a framework of democracy reasoning, which tied closely the EU to the nation state (Hix, Folesdall), while the opponents (Majone, Moravcsik) denied its existence, arguing rather for a credibility crisis from the position that the EU is of a special nature (*sui generis* organization) with depoliticized structure and regulatory purposes, both main camps represented in the opened politicisation debate (Hix and Bartolini) are framing their arguments, as Magnette¹⁵ suggests, within the nation state archetype. Picking up this argument one has to ask how and whether it is possible to think out of the nation state box when elaborating on politicization at the EU level.

Generally, in the current academic debate, there are those who claim that democratization at the EU supranational level is neither possible nor desirable (Gabel)¹⁶, those defending the position that it is impossible but somehow desirable (Bartolini, Ferrera), those who argue that democratization is not only possible but also desirable (Hix) and those who suggest democratization is possible but somehow not desirable (Majone, Moravcsik). With the

¹³ The Treaty of Nice wording states that the Commission is subjected to the vote of approval by the European Parliament.

¹⁴ Paris-based think tank Notre Europe opened the room for the debate on politicization by inviting the leading academics to contribute to this issue.

¹⁵ (Magnette, 2006)

¹⁶ For the whole following typology see (Schäffer, 2006).

exception of the first approach, the positions mentioned above will be tackled here in connection to the politicization debate¹⁷.

For Hix¹⁸, politicization is inherent to the current state of the EU; the number of left-right political contestations of the agenda is growing with the gradual shift from the creation of the single market to the single market-governance. Further politicization is inevitable and it is not necessary to encourage it by further institutional provisions (Treaty change) since what is provided for in the existing Treaties, i.e. increased powers of the European Parliament, extended QMV voting in the Council and changes of the way the Commission is elected and appointed, is sufficient for keeping the tendency to politicize the institutions on course. Political contestations already exist in each of the EU institutions (although these are hidden in the case of the European Commission). The challenge Hix sees is how to link the political positions cross-institutionally in the EU and how to link the citizens' interest to it. He suggests the political stakes have to be increased (by allowing for the majority in the European Parliament to set its internal agenda, by opening up the legislative process in the Council and enlarging the room for Commission President competition) and the European leaders have to commit to more right-left politics to play a role in the EU day to day decision-making. Besides the ideal set of institutions for political contests, EU has, at the moment, also a good system of checks and balances.

In response, Bartolini¹⁹ states that although the left-right cleavage exists in the European Parliament, with the left-right political contestations in the Council and the Commission it is not the case. The EU works as a highly consensual political system. On the issue of cross-institutional political alliances, he adds that there are continual changes to the composition and political orientation of the Council resulting from national elections and, to a lesser extent in the Commission; as such the convergence of political majorities in the Commission, European Parliament and the Council for a longer time period is unlikely. He refuses injecting majoritarianism into the EU system; he argues it cannot bring the desired benefits in terms of legitimacy and citizens' interest. He questions especially Hix's assumption that European parties (political parties in the European Parliament) can be facilitators of politicization in the

¹⁷ This debate revolves largely around the policies inclusive to the 1st EU pillar. The debate on abandoning the pillar structure and its consequences is avoided here.

¹⁸ (Hix, 2006)

¹⁹ (Bartolini, 2006); Despite his scepticism towards politicization represented by Hix's position, Bartolini admits the change of the debate on the EU's democratic deficit by placing the accent on its political dimension rather than institutional reform is positive (Ricard-Nihoul, 2006).

EU²⁰ since they lack the internal ideological coherence, and the introduction of ideological debate could fragment them. Also, if the current provisions stay in place, the Commission will always be a cross-party coalition rather than a homogeneous majority and to politicize the nomination procedure of the Commission President could only risk generating expectations that would necessarily be disappointed. Lastly, political contestation also requires open political debate (and common public sphere as Habermas²¹ puts it), which is not present in the EU, especially in the Commission and in the Council.

From another standpoint starts the argumentation of Majone²²; he sees the increasing level of politicization of the EU policy-making is unavoidable since Community competences are growing and require more political discretion. Commission's political responsibilities are being emphasized and also the demand for boosting European Parliament competences is understandable; however, the politicization brings about the risk of harming the credibility of the policies of the EU institutions, especially the Commission, effort to deliver. For Majone, effectiveness, efficiency and credibility are crucial and provide legitimacy to the Commission, unlike in the case of the European Parliament, which has another mode of legitimization; and these two principles should not mix. He sees the EU as the *sui generis* system (of limited competences) and objects to the legitimacy arguments based on an analogy to national institutions, which are being imposed on those EU elements, which are legitimate by efficiency and effectiveness. On the other hand, he admits that the Commission is not able to deliver credible (legitimizing) results; it suffers greatly from EU underperformance in the economic field, which is crucial for the whole European Integration process and thus feels the pressure to change (another factor is the enlargement) and it seems the functional mode of legitimacy is not sufficient any more. To focus on the output side (Barroso's Europe of results) is only a short-term solution, instead of proposing politicization as a remedy, Majone suggests from an efficiency and effectiveness position some areas and competencies should be re-nationalized, a barrier should be put to the continuous expansion of Community competences and a clear definition of competences division should be adopted. Suggesting a remedy inspired by majoritarian model he considers to be false, since it has never been

²⁰ According to some studies, the attitudes of voters towards the European Integration do not copy the left-right division but rather cluster around the new possibilities and increased mobility perceptions versus perceived costs to be paid for it. Also the political parties and their representation in the European Parliament cannot carry the political message since the parties themselves are more favourable towards the European integration than the electorate (Bartolini, 2006).

²¹ (Habermas, 1996)

²² (Majone, 1998); (Majone, 2002); (Majone, 2006)

considered a model for the European Community (European Union) and it is not even functioning in its pure form in any of the member states, including Great Britain (considered as a model of the majoritarian political system).

The Public debate

In public and political debate, the issue of European Commission politicization has so far not been developed much. In the member states, the political debates revolve mostly around the issue of the Commission's size. The public debate offers a broader spectrum of suggestions. Using a simplified division for public and political debate on the input legitimacy proposals, the terms "intergovernmental" politicization²³ and "federalist" politicization are suggested here; an "intergovernmental" politicization is represented mostly by the Eurosceptics who aim at watering down the Community method and do not try to solve the dilemma legitimacy vs. efficiency, effectiveness and credibility at the supranational level, claiming that democracy and legitimacy can be assured only at the nation state level. The representatives of "federalist" politicization, on the other hand, try to accommodate democracy and legitimacy at the EU supranational level.

In this view, the debate on the Commission's size, which got a new boost when the negotiations on the Constitutional Treaty were under way, and which is embodied in the clash of two well-known principles, i.e. "one member state - one commissioner" vs. "small and efficient Commission", can be probably read as follows (even though the link between the politicization and the issue of the Commission's size is not very strong): The principle "one member state – one commissioner" falls into intergovernmental politicization logic since it aims at keeping the influence of each member state over this body despite the neutrality of the Commission. A "Small and efficient Commission", on the other hand, follows the logic of federalist politicization despite the fact that the proponents of downsizing the Commission under the number of the member states reasoned for it by the fact that European Commission is an apolitical technocratic body.

²³ Understood also similarly to consensual interstate democracy (Schimmelfennig, 1996:8).

As stated above, the “intergovernmental” politicization is usually represented by Eurosceptics and traditionally sovereignty-based Danish Euroscepticism²⁴ can give a good example of this reasoning. The proposal of Danish Eurosceptic Jens-Peter Bonde²⁵ argues for members of national parliaments to elect members of the European Commission in order to underline the sole legitimacy of the nation state institutions. It reads: “Every national parliament should elect its own member of the Commission. The Commissioner shall attend the European Scrutiny Committees of the national parliament concerned. National parliaments should also have the power to dismiss their Commissioner. The President of the Commission shall be elected unanimously by the European Council. National parliaments shall decide on the annual legislative programme and the Commission shall correspondingly act as a secretariat for the Council and the national parliaments.”²⁶ According to this proposal, the members of the European Commission would be tied with the majority in the member states’ parliaments and thus copy the composition of the Council at any given time, directly accountable to the national parliaments and highly political personalities defending the national interests in the Commission. Since the “Europe of Democracies”, as Bonde suggests, would be an intergovernmental international organisation, the problems with the Community method are redundant in this way of reasoning. What would then be the Commission’s role is not explained in the proposal.

The federalist politicization is represented here by two proposals. First, by the suggestions arising within the political debate, backed by some members of European Parliament and voiced mainly by the former president of the European Parliament José María Gil-Robles who advocated for European Commission composition and agenda to reflect the will of majority in the European Parliament²⁷. European Parliament’s influence would leave a clear print on both administrative and legislative activities of the European Commission. Secondly, by the proposal tabled within the public debate by a think-tanker Charles Grant from the Centre for European Reform²⁸, although his ideas fall somewhere between the suggested division since the legitimacy of the Commissioners would come from member states but the Commission would act in the EU interest. He suggests in his pamphlet the reform of the institutions is crucial for EU revival and presents the idea of a politicized smaller European Commission

²⁴ (Sørensen, 2006)

²⁵ Elected MEP (since 1979) for June Movement, Danish Eurosceptic party. He suggests establishing a “Europe of Democracies” (Bonde, 2002).

²⁶ (Bonde, 2002)

²⁷ Parliamentary Commission, see (Majone, 2002:383).

with commissioners elected directly by the citizens in the member states for non-renewable term. The European Parliament would then select the Commission President and EU foreign minister; the Commission President would select the rest of the commissioners and those elected but not selected would become (European Parliament) deputies. A part of the Commission would be turned into independent agencies, accountable to the European Parliament, working on regulatory policies for the Commission in a non-political way, with the Commission setting the objectives, drafting laws and analyzing the long term trends.

Charles Grant's proposal aims at increasing legitimacy of the Commission by the direct elections. To counter the argument of the Commissioners promoting the national interests when elected directly, he states that this is the case even now, although covertly, and that the citizens would start being interested in the EU, which would balance the tendency towards having a Commission as the field for national interests contestation. Also the way of the Commissioners selection would allow the Commission President, who would be tied with the majority in the European Parliament, to select a Commission of a particular political colour. However his vision of the Commission reform is open to academic criticism, Grant's futurology deserves attention in the way he connects the input legitimacy through politicization with the legitimacy by efficiency, effectiveness and credibility. Despite rejected by some (Majone, 2006), the option of regulatory decentralized agencies delivering results, in synergy with the (politicized) Commissions political guidance and leadership, should be explored further.

Is the politicization a remedy?

The elements of academic and public/political debate mentioned above suggest the pitfalls of proposals aiming at enhancing the input legitimacy of the EU institutions, especially of the Commission, by way of politicization. Politicizing the Commission would go, according to some, against the very logic of the role the institution should play. The Commission is depoliticized in order to reduce the conflicts among member states but it also reduces the clashes of competing political ideas and the Community method works since the member states believe the Commission is neutral (even though it does not have to the case in reality)²⁹.

²⁸ (Grant, 2007)

²⁹ The politicization also raises many further questions, which were not dealt with within the above listed account, like: if the Commission is legitimated by direct elections, what role will there be for the Council, shall it turn into the upper chamber of the European Parliament? Would the national leaders allow for such a

If Hix claims that most of the EU regulatory policies have also redistributive consequences, he does not suggest any other governance solution but the winner and loser logic of the majoritarian principle; and a strong point is made in the academic debate that the classic majoritarian system cannot function in the EU. If Majone argues for re-nationalization of certain domains, barriers to further competences transfers and horizontal network of national regulatory policies' agencies, he omits the fact that even if the EU regulatory policies follow a single purpose, they are usually cross-linked with other EU policies or agendas and thus vertical governance interventions are needed³⁰.

Looking just at the EU economic governance, the policies that are not simply technical but highly political (free movement of services cannot be separated from the issues of social policy, etc.) need to be delivered. Therefore, adoption of EU law should be submitted to political contestation and debate, better reflecting EU citizens' concerns. Such a political debate should not take place in the nation states (as it was the case of the French debate on the services directive) but at the EU level, especially, in the Commission and in the European Parliament.

The politicization of the European Commission is possible under the condition that its powers and functions are reorganized. Whereas the college of Commissioners could be highly political (directly politically accountable to the European Parliament, for instance), the same is not needed for the Commission administrative (rather executive) services, represented by some of its DGs and units and by the agencies both regulatory (established by legislators) and executive (established by the Commission itself). The Commission as a political body could then provide for a policy guideline and deliver strategic and long-term orientations.

development? If the Commission President is nominated after the contestation between two candidates, he would have a mandate but does it mean the winner be appointed on the basis of his programme or rather again on the will of the European Council members? Would the public perceive such a mandate as strong enough? Would the further parliamentarization, with regard to the diminishing turnout in the EP elections, provide sufficient legitimacy to the Commission (and balance its legitimacy by efficiency and credibility)? If breaking the consensus-oriented ground of EU decision-making, would the current system of checks and balances be sufficient?

³⁰ He suggests that member states are no longer as dependent on central institutions as in the past and can coordinate their policies in an information-rich environment themselves. In his opinion, to investigate methods other than delegation to supranational institutions by which member states can credibly commit themselves to collective action is a solution. (Majone, 2002); (Majone, 2006)

There are issues that can be left to apolitical, unbiased and independent authorities. Even within the nation states, the role of independent authorities and agencies has increased over the last decades (including the central banks designing and implementing monetary policy³¹). Such a process increases the importance of expertise in policy-making. Concurrently, political power in various social-economic domains is limited by the impacts of globalized economy and the states are often obliged to make compromises with non-state actors and stakeholders (interest groups, unions, etc).

One argument for the apolitical status of the Commission is often raised and that is that the Commission directly decides on sensitive issues such as mergers, state aids, etc. It is true that the competition policy should not be executed by a political body, directly accountable to elected representatives. Accountability of such bodies should be based on effectiveness, expertise, credibility, transparency and neutrality. Even if the Commission is to be politicized, the neutrality of the antitrust rules enforcement has to be ensured. Why not then by the way of establishing an independent EU agency³²?

In the United States, the competition policy is executed by an independent agency (although depending formally on the US government). This agency (Federal Trade Commission) has the executive power in the domain, whereas law enforcement of the decisions it takes (in case of legal disputes) is provided by the Department of Justice. The same model could apply to the EU. An independent agency would run the EU competition policy but the DG Competition of the Commission would take care of the decisions law enforcement (with the national courts or in the Luxembourg court in case of actions for annulment).

Even though some argue³³ that the track record of establishing the decentralized agencies is rather poor in the EU (like in the case of EFSA - European Food Safety Authority), the idea of a politicized European Commission providing political guidance and working in synergy with

³¹ (Majone, 2002)

³² The Commission itself was recently the driving force of certain decentralization of the competition policy. As some experts suggest, the problem is that the Commission is preoccupied with its image *Vis a Vis* the EU citizens resulting from perceived lack of legitimacy. This preoccupation can encourage the Commission to prefer purely the consumer protection logic over the competition rules (even though these principles are rarely in contradiction with each other) and allowing for political concerns to win over competition policy execution; for example by allowing for antitrust practices or mergers, advocated by the member states as being of paramount political and strategic importance.

³³ (Majone, 2002); (Majone, 2006)

decentralized agencies delivering results on regulatory policies, should deserve further academic attention.

Conclusion

This paper looked at several elements of both the current academic and public/political debate on how to solve the perceived legitimacy problem of the EU supranational component, embodied by the European Commission, by enhancing the input legitimacy and at the criticism of these arguments. At the EU level, as the main remedy to the lack of legitimacy and accountability within this framework, politicization is usually proposed. This paper suggests that the idea of a politicized European Commission working in synergy with decentralized agencies delivering results on regulatory policies, and thus delivering legitimacy by effectiveness, efficiency and credibility, deserves further attention.

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