



The European Commission

Administration or Government?

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PREFACE

I FIRST REPRESENTED THE UNITED KINGDOM in the Council of Ministers of the European Community in 1979. Over six years, in the Environment, Transport and the Employment (Social Affairs) Councils (including the period during which the UK held the Presidency in 1984), I observed at first hand the workings of the Community. During my time as Secretary of State for Northern Ireland and then for Defence, I was not directly involved in Council Meetings but was involved in the fraught discussions in the Thatcher and Major Cabinets on the approach to Maastricht. Thus it is from the standpoint of an active participant, and subsequently most interested observer, that I have viewed with increasing concern the developments in the European Community, particularly the changed role and conduct of the Commission. I believe that many of the present problems lie in the way that the Commission has developed as an institution.

Change is urgently needed and *now* is the time to start.

Tom King
August 1999

SUMMARY

1. The recent chaos in the Commission proves that changes need to be made in the way Europe works. The Byzantine power structures of the Community impede understanding and prevent real accountability.
2. The problems, however, also provide an opportunity to harness the enthusiasm for change. Scrutiny by the European Parliament of the new nominees for the Commission begins on 30 August. While MEPs will only be able to veto appointments *en bloc*, Romano Prodi, the new President of the Commission, has undertaken to withdraw the application of any potential Commissioner should “substantial evidence” emerge before September of that Commissioner’s unsuitability. MEPs should take this opportunity to ask whether each of the candidates is suitable. If they decide that any are not, then that should be accepted by Signor Prodi as evidence enough and the application withdrawn.
3. The essential reform is to alter the competition for political power between the Commission and the Council. With each body seeing itself as the political powerhouse of the Community, and jockeying for position, their other roles fail to receive the attention they deserve and require.
4. The Community’s power structure must be simplified: it must be made clear where political power lies, and it must make sure that what is done in the name of the Community is done

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properly. This means that the Council of Ministers should be allowed to play its natural *political* role, and the Commission should concentrate on its natural *administrative* role.

5. This change in roles will require a Treaty amendment, but it will also require much more than that: it will require a change in the psychology of the Commission. The only way to do this is to stop limiting the field to politicians, and put the job out to open competition. While these changes might be difficult, it must be accepted that the *status quo* is not an acceptable option.
6. The Commission's attempts to position itself as the political centre of the Community have meant that the good administration of the Community has been allowed to fall into serious disrepair. If the Commission's motto is "To do less but to do it better", then it is certainly failing on the latter count, to a great extent due to its failure on the former.
7. The Commission's historical roots, and its unprecedented array of powers have encouraged it to think of itself as a political body. From the first days of the foundation of the Commission, the influence of the French administrative culture has always tended to have much closer links with politics than, say, the British Civil Service.
8. The political predisposition of the Commission has been exacerbated by the nature of the people appointed as Commissioners. Over 90% of Commissioners have been active members of a political party. Including the new nominees, 80% have been either government ministers or politicians in a non-ministerial capacity. They might have plenty of *political* experience, but all too often they lack any real *administrative* experience. The politicisation of the Commission has been greatest since 1985: the following table shows that up to 1985, around two-thirds of the commissioners had been politicians. Since 1985, the proportion has increased to around 90%.
9. This table also shows how the number of Commissioners has increased since the Community was founded. This is largely a

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function of the increasing number of member states. With further enlargement under consideration, the link between the number of member states and the number of Commissioners must be broken, as must the system of national quotas.

	Number of Commissioners	% of whom had been politicians
1958-62	11	55%
1962-67	10	60%
1967-70	13	62%
1970-73	9	56%
1973-77	16	63%
1977-81	13	69%
1981-85	17	77%
1985-89	18	89%
1989-93	18	94%
1993-95	19	95%
1995-99	19	84%
1999 nominees	20	90%

Source: Centre for Policy Studies research. See Appendix A for a full list of Commissioners and their political experience.

10. Most Commissioners seem to end up getting the job either (a) as a reward for long service or good behaviour; or (b) to get them out of domestic politics; or (c) as a consolation for failure in domestic politics.
11. The current arrangements also severely restrict the pool of talent from which potential Commissioners can be drawn: when Jacques Santer was appointed as President of the Commission, the only people eligible for the job were senior Christian Democrat politicians from small member states.
12. It is difficult to believe that, in an open competition, without national quotas for Commissioners and without the job being used as a plaything of political patronage, all the same people would get the job. Given a properly worked-out job description, business leaders, top civil servants and diplomats, senior media figures, even those running major international non-governmental organisations (NGOs) might be much better qualified. The Community would be the real beneficiary.

CHAPTER 1

INTRODUCTION

The Community lays a requirement on us, the requirement to bring it to perfection.

*Walter Hallstein, First President of the European Commission*¹

IF THE RECENT EVENTS in the European Community have taught us anything, it is that it is not quite perfect. For all the good work it has done since 1957, it continues to polarise opinion, generate as much fear and dislike as it does admiration, and shoot itself in both feet just when it looks as if it might be able to stand on them.

The end of the Santer Commission *could*, and *should*, be a turning point for Europe: the Parliament has discovered its voice, the Commission obviously needs a major overhaul, and the Council has been forced into acknowledging the need for decisive action.

But it seems more likely that only cosmetic reform will be attempted, with little or nothing done to deal with the real structural problems of the Community. Already, the fact that the Santer Commission stayed in office for so long after its “resignation”, and the willingness to reappoint even some of those Commissioners most heavily criticised by MEPs, such as Erkki Liikanen,² and others with question marks over their backgrounds, must point to a reluctance to make swift and radical changes. Equally worrying is the attempt by the new President of the

¹ Hallstein, W., quoted in Janen, T., “Konrad Adenauer and Walter Hallstein – the Basis of Trust”, in Bond, M.; Smith, J.; & Wallace, W., *Eminent Europeans* (1996).

² See footnote 13 in this pamphlet.

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Commission, Romano Prodi, to turn the confirmation hearings of the newly-nominated commissioners into a vote of confidence in him personally. As Prodi's spokesman declared on 21 July 1999:

If MEPs think that he [Mr. Prodi] is not fit to appoint his commissioners, they should fire the entire commission and fire the president.³

This will not do. The crisis showed up some deep flaws in the very structure of the Community: a real lack of accountability, a Commission spending too much time on plans for Europe's future at the expense of its present administration, a ridiculously complex web of powers and roles which made it almost impossible for any of Europe's citizens to discern who was responsible for what. Is it surprising that the turnout in the June elections to the European Parliament was so worryingly low – when no one knows who does what, why should they care?

The Community has long described itself as *sui generis*, a unique experiment in co-operation. But its nature should not blind us to its flaws, which are all too traditional. Its Byzantine structures of power have impeded good decision making and accountability. This is particularly serious at a time when, given the ever greater areas of responsibility which are falling within the Community's ambit and the ambitions for expansion, both are particularly crucial. The flaw is the fact that the Community has two bodies vying for political leadership: the Commission and the Council. The battle for supremacy has many consequences. It wastes valuable time and energy; it takes the Commission's eye off the administrative ball; it has led to a bizarre array of legislative procedures which baffle the observer; and it impedes accountability and public understanding of the Community.

The Council is a naturally political body: it is formed from the ministers of the Member States, elected politicians who can be held to account in a manner which people understand in their

³ See *Daily Telegraph*, 22 July, 1999.

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national parliaments. The Commission, by contrast, is an unnaturally political body. It is without precedent in Western Europe since the days when Hegel idealised the rational government of the Prussian bureaucracy. It has no democratic mandate, and yet would be the political powerhouse of the European Union. Its roots in the grand visions of the founding fathers, the startling range of powers it possesses, and, perhaps above all, the political ambitions and mindsets of those appointed as Commissioners have led it to think of itself as a political body to match and rival the Council.

If it is this rivalry that is proving so damaging to the Community, then change must come soon: the European Commission, in the spirit of its own motto, “To do less, but to do it better”, should devote its attention to the running of the Community. The Council of Ministers should determine the terms on which it should be run.

Member states should stop sending ever more politicians to Brussels – politicians who often fail miserably to fit any genuine job description for the role of Commissioner – and allow open competition for the job. Top figures from industry, from the civil service, from the media, from NGOs, and from other international bodies may well be better qualified than the politicians who form the bulk of recent appointments. This reform would allow a change in the psychology of the Commission, a new focus on getting things done, and done well.

CHAPTER 2

THE STRUCTURE OF THE EUROPEAN COMMUNITY

The procedure for collective decisions [in the Community] is something quite new and, as far as I know, has no analogy in any traditional system.

*Jean Monnet, First President of ECSC High Authority*⁴

THE COMMUNITY LOOKS SIMPLE ENOUGH at first sight. The Parliament *looks* like a legislature; the Council *looks* like an executive; the Commission *looks* like a civil service; the Court of Justice *looks* like a judiciary. But it is far more complicated than that.

It is significant that the Community institutions have declined to refer to the traditional doctrine of the “separation of powers”, when speaking of themselves. The rather more nebulous “balance of institutions”⁵ has been their chosen phrase, but even this does not do justice to the myriad of procedures, understandings, powers and competences which bedevil the Community. The Parliament has an increasing role in legislation and scrutiny, but it remains secondary to Commission and Council. The Council is as much a legislature as it is an executive. The Commission possesses a remarkable melange of powers: administrative, legislative, executive, diplomatic, quasi-judicial. And the Court of Justice is a court with a very definite political agenda.

⁴ Monnet, J., *A Ferment of Change*, (1962) 1 JCMS 203.

⁵ See, for example, the Court of Justice in *Roquette Freres*.

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The range of legislative procedures begins to demonstrate the full complexity of the Community power structure. There are some six *main* procedures:

- commission acting alone;
- commission and Council;
- consultation;
- co-operation;
- co-decision;
- assent.

However, the numerous variations within these procedures means that there are in fact no less than *twenty-two* legislative procedures, all involving different combinations of the various bodies. The eminent European lawyer, Jean-Claude Piris, has pointed out that:

This proliferation of procedures and their complexity has transformed the Community into a veritable maze.⁶

It is no wonder that there is little understanding of the way the Community works, and no wonder that its organs seem to be so unaccountable.

However, the picture is confused even further by the multiple roles of the Commission. The Commission's own internet site complains about "popular misconceptions which greatly exaggerate the power of the Commission", but the Commission should not be so self-deprecating. Not only does it play an important part in legislation, as noted above, but it also gains political leverage from its multiplicity of other roles, particularly its power of initiative. Indeed, under Article 211,⁷ it possesses the

⁶ See, for example, "The Recent Evolution of the European Union", *Fordham International Law Journal*, volume 22, 1999.

⁷ Article 211 states that: "In order to ensure the proper functioning and development of the common market, the Commission shall...formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it so expressly provides *or if the Commission considers it necessary.*" (Author's italics).

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right to bring forward proposals outside the scope of the treaties. These roles ensure that it remains at the political heart of the Community, a genuine rival for the Council, and that its place in the Community scheme remains shrouded in mystery.

Moreover, the nature of the Council gives another opportunity for the Commission to take the lead. As John Laughland states in his history of the origins of the Community:

Because the actual membership of the Council varies (different Ministers attend it according to the matter in hand), the Commission's power of influence is proportionately very great.⁸

Its political role has been jealously guarded over the years and much used and abused.

But the Commission's political ambitions are not altogether surprising. Since its inception, the vast majority of the Commissioners have been politicians. The trend, indeed, has got stronger over the years, with the debate over appointments to the Prodi Commission dominated by the idea of appointing "heavyweight" political figures,⁹ and the eventual nomination of a group dominated by former government ministers.

There are other factors as well: the Commission's historical roots and its remarkable and diverse range of powers have both cemented the predisposition of the Commissioners to see themselves as natural inhabitants of the political realm.

⁸ Laughland, J., *The Tainted Source*, (1997).

⁹ See, e.g., *Daily Telegraph*, 13 May 1999.

CHAPTER 3

THE COMMISSIONERS

THE CENTRAL REASON for the Commission's political adventures and ambitions is the identity of the Commissioners down the years. From the first members of the High Authority to the Santer Commission, the vast majority have been politicians in their respective states, now either transferred or exiled to Brussels. It is hardly surprising that they view their new role as political rather than administrative, that this is the aspect of the Commission's work that receives their attention at the expense of more "mundane" areas such as administration.

90% of Commissioners since the Commission's birth have been members of a political party, and almost 80% have had experience of elected office of one kind or another.¹⁰ Analysis of the backgrounds of all the previous Commissioners and the new nominees tells a similar story: 80% have been either government ministers (66%) or politicians in a non-ministerial capacity (14%). This level of political involvement cannot have failed to influence the Commission in the discharge of its role. (See Appendix A for a full breakdown of past and present Commissioners).

Indeed the proportion of Commissioners with a political background has grown over the years. Between 1958 and 1967, of the thirteen Commissioners appointed, seven had been ministers of one kind or another before their appointment. The other six were variously civil servants, academics or experts. In the Jenkins

¹⁰ Page, E., *The People Who Run Europe* (1997).

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Commission, eight of the thirteen had been politicians, and another, Commissioner Cheysson, subsequently became the French Foreign Minister. The Thorn Commission included (in the sixteen who held office at one point or another) one ex-Prime Minister (Thorn himself), ten former ministers, and two other politicians.

By 1993, as the Delors era reached its climax, thirteen of the seventeen had previously been ministers (Delors, Christophersen, Marin, Bangemann, Brittan, Van den Broek, Schmidhuber, Scrivener, Millan, Steichen, Flynn, Paleokrassas, Pinheiro, and Ruberti). Another three had been politically active in other ways (Oreja Aguirre, Van Miert and Matutes), and only one had a non-political background, as a career diplomat (d'Archirafi).

In the Santer Commission, there were two former Prime ministers (Santer and Cresson), and eleven former government ministers (Brittan, Marin, Bangemann, Bjerregard, Pinheiro, Fischler, Flynn, Gradin, Liikanen, Oreja Aguirre, van den Broek). Four more had other political experience (Bonino, Kinnock, Papoutsis, Van Miert). Three (Monika Wulf-Mathies, Yves-Thibault de Silguy and Mario Monti) had non-political *curricula vitae*. Monti had spent his life as an academic, albeit one with considerable experience on government committees. But his administrative experience has been minimal, to say the least. The *c.v.* of Wulf-Mathies was actually not so different from her fellow Commissioners – her career as a trade union leader had been highly political. And de Silguy had followed a similar route – a civil servant with strong political connections and trade union links.

The Prodi Commission looks to be taking this trend even further, with the new President and the leaders of the Member States expressing their wish for “political heavyweights” to be appointed to the Commission. The nominations to be put before the Parliament are a mixed bunch in terms of domestic seniority, but the theme that runs through it is a strongly political one. Witness, for example, the consternation as to its left-right balance – testament if testament were needed to its overwhelmingly political nature. The nominees comprise one former Prime Minister (Prodi);

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no less than fourteen former government ministers (Wallstrom, Nielsen, Vitorino, de Palacio, Patten, Diamantopoulou, Verheugen, Barnier, Solbes, Liikanen, Fischler, Bolkstein, Busquin and Byrne); and three politicians without national government experience (Kinnock, Reding and Schreyer). The other two are Mario Monti, (discussed above); and Pascal Lamy who, while never an elected politician, probably wielded more power than most as the head of Jacques Delors' cabinet. Moreover, he was no neutral civil servant – his role on the French Socialist Party Steering Committee between 1985 and 1994 shows what a political animal he was.

The Treaty is not particularly demanding in the criteria it sets for the appointment of Commissioners. Article 213 specifies only two criteria: that they possess “general competence” and that their “independence is beyond doubt”.¹¹

In the aftermath of the Santer/Cresson debacle, there came an overdue acknowledgement that the looseness of these criteria had been abused, that appointments in the past had been made on grounds other than merit: the politicians appointed were often not even very good politicians, never mind very good administrators. At long last, commented the *Daily Telegraph*:

Mr Blair and other EU leaders realised that the Commission could no longer be – or be seen to be – a dumping ground for ageing politicians. Nor could it continue to be a means of rewarding friends or a place to send awkward customers.¹²

This, though, is exactly the way the Commission has been used in the past: all too many Commissioners have been given the job either (a) as a reward for long service or good behaviour; or (b) to get them out of domestic politics; or (c) as a consolation for disappointment in domestic politics.

Category (a) includes former Secretary of State for Scotland, Millan, and Pothoff (a member of the ECSC High Authority).

¹¹ Article 211(1) states: “The Commission shall consist of 20 Members who shall be chosen on the grounds of their general competence, and whose independence is beyond doubt.” Treaty numbers in this pamphlet refer to the Treaty of Amsterdam.

¹² *Daily Telegraph*, 13 May 1999.

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Category (b) examples include, remarkably, two Presidents – Jenkins and Prodi. Indeed from Blucher on the ECSC High Authority, through Bjerregaard and Flynn in the Santer Commission, to Chris Patten in the current intake, the Commission has consistently been used as a means of moving those who may not be wanted on the domestic political scene.

Category (c) includes Britain's two most recent Commissioners – Kinnock and Brittan – as well as the disastrous Cresson, and Wallstrom and Vitorino from the new nominees. Some of these, such as Leon Brittan, have proved capable, but several have not – ending up as time-servers at best, and real problems at worst.

Even in the proposed new Commission, lessons still have not been learned. Questions have been asked even before their appointment about the competence and experience of at least three nominees – Viviane Reding, Michaele Schreyer and Michel Barnier, while the culture of the Delors era, which received such criticism in the light of subsequent events, finds a representative in his *chef du cabinet*, Pascal Lamy. Indeed, doubts over the integrity of four of the proposed team have been expressed – Vitorino, Liikanen, de Palacio and Reding.¹³

It is clear that many of the politicians who have been appointed to the Commission have been ill-equipped for the job they are given. It is not surprising that it so often ends in tears.

¹³ Antonio Vitorino, the proposed justice and home affairs commissioner, resigned as deputy prime minister of Portugal in 1997 after a tax scandal. Erkki Liikanen, a returning Finnish commissioner who is the proposed Commissioner for enterprise and information society, has not satisfactorily answered questions about why his wife received a £200,000 European Union research contract. He also led the persecution of Paul van Buitenen, the whistle blower whose revelations of sleaze and mismanagement led to the resignation of the old commission *en masse* in March 1999. First he had Van Buitenen suspended and then, when forced to reinstate him, put him in charge of furniture and car parking. Spain's Loyola de Palacio, nominated as a commission vice-president responsible for transport and energy, is embroiled in a scandal over wasted EU funding for a project to grow flax. Viviane Reding, nominated education and culture commissioner from Luxembourg, faces allegations about the tax affairs of her Greek husband, a shipping magnate. See *Sunday Times*, 11 July 1999 and *Scotland on Sunday*, 25 July 1999.

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THE HISTORICAL ROLE OF THE COMMISSION

THE GENESIS AND HISTORICAL ROLE OF THE COMMISSION

IF THESE EX-POLITICIANS were not given such a range of powers, and if the history of the Commission did not suggest such a political role, then there might not be such a problem. Some of the political appointees might even turn out to be talented at running the Community. However, both the genesis of the Commission and its historical role have given them the scope to concentrate on their political ambitions, usually at the expense of the administration of the Community.

The inspirational figure in the birth of the Community was Jean Monnet, the French businessman and administrator who had been instrumental in the declaration of “indissoluble union” between France and Britain at the start of the Second World War.

The original plans for the European Coal and Steel Community, the forerunner of the EEC, were quite remarkable in their vision of its institutional structure. It was to have no Council, no body on which the governments of the member states were to be represented. This was the natural result of Monnet’s fascination with supra-nationalism. Instead the whole thing was effectively to be run by an exceptionally high-powered and political bureaucracy – the grandiosely named High Authority. The High Authority was led by a mixture of technocrats and national politicians.

It was from these seeds that the European Commission grew. Even though the Benelux countries insisted on a Council with at least some power, the original vision and psychology of the ECSC

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High Authority could hardly fail to be a defining influence even to the present day. The grandeur of its title, the scope of its vision, the breadth of its powers, the political focus of its leaders – all of these encouraged the High Authority to see itself as the new political powerhouse of Europe.

Monnet was its first President, and the High Authority was formed in his image. As the political scientist Schmitt points out, Monnet was “visionary and planner rather than administrator”,¹⁴ and the High Authority was focussed accordingly. Additional influences on its nature included French administrative culture, which had much closer links with politics than the administrative culture of the UK ever did.¹⁵

So by the time of the formation of the European Commission, which later merged with the High Authority, a strong precedent was in place. The role and psychology of the new body had already been forged in its past lives.

The role of the Commission is, technically, outlined in Article 211 of the Treaty:

In order to ensure the proper functioning and development of the Common Market, the Commission shall:

- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied;
- formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary;
- have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty;
- exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.

¹⁴ Schmitt, H., *The Path to European Union* (1981).

¹⁵ See Meny, Y., *Government and Politics in Western Europe* (1993).

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This Article, in fact, gives little indication of the full extent of the powers which the Commissioners had at their disposal. In truth, the Commissioners managed to secure a remarkable range of powers which cross the entire spectrum of our understanding of the exercise of public power.

Diplomatic

The Commission represents the Union in all negotiations with third parties (see Articles 133 and 300).¹⁶ The President now plays a role in G8 summits, for example. It has general responsibility for “the maintenance of appropriate relations” with international bodies such as the WTO and UN. This is a crucial area of the Commission’s work, but it is one in which the Commission’s recent record has attracted considerable criticism. The recent “banana wars” with the US, in which the WTO ruled decisively in the US’s favour, must give one pause for thought as to the effectiveness of the Commission’s work in this area. It is difficult at times to avoid the view that the manner in which the Commissioners reacted to the banana problem – as politicians rather than as hard-headed administrators – rather exacerbated it.

The diplomatic role of the Commission will be confused further by the appointment of Javier Solana, currently secretary-general of NATO, as the new “high representative” of the EU, with responsibility for trying to establish a common foreign and security policy among member states – a role which cannot but bring him into conflict with Chris Patten, the man proposed to be in charge of the external relations portfolio.

¹⁶ Article 133(3) states that: “Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open necessary negotiations.” Article 300(1) states that: “Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.”

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Executive

It is the Commission which has the role of “guardian of the Treaties”: it supervises compliance by the Member States and brings them to book where appropriate. If necessary, it can take action before the Court of Justice against them. This is an immensely important and powerful tool, especially when allied to its other competences. As will be seen, the Commission has the power to make proposals, see them through the process of legislation and then ensure their enforcement. Taken out of this context, it is useful to have a body ensuring that the member states comply with whatever laws are made: a Community without the rule of law would be a pointless entity. Unfortunately, for a number of reasons, the Commission’s activities in this area have been haphazard and inconsistent. Some member state breaches have attracted prompt and firm Commission attention¹⁷ while others have been allowed to persist over long periods.

Quasi-Judicial

The Commission enjoys significant quasi-judicial power in a number of fields, most notably that of competition law and policy. Subject to the ultimate jurisdiction of the Court of Justice, it determines which agreements and actions are contrary to Articles 85.¹⁸ It enjoys a very wide discretion in this crucial area, though it is notoriously slow to take its decisions. Many commentators have been strongly critical of its delays, fearing that the Commission does not give this aspect of its work a high enough priority.

¹⁷ See e.g. the *Factortame* litigation against the UK.

¹⁸ Article 85 states: “The Commission shall ensure the application of the principles laid down in Articles 81 and 82 [i.e. those establishing the common market]. On application by a Member State *or on its own initiative*, and in co-operation with the competent authorities in the Member States, who shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.” (Author’s italics).

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Legislative/Political

The Commission has considerable power in this area. It has sole power to legislate in a small number of areas (e.g. under Article 86),¹⁹ and is given significant delegated power in other areas. More important, however, is its right of initiative. In the great web of legislative procedures, it is the Commission which comes up with the proposals which the various combinations of bodies then adopt. This contrasts with the other (currently much less significant) pillars of the European Union – Common Foreign and Security Policy, and Justice and Home Affairs – where the Commission’s powers of initiative are much less significant.

It is inevitable, however, that, where such a power is available, their political ambitions will lead them to make the fullest use of it, and that this often becomes their natural priority. Neither the Council nor the Parliament has any right to formally propose new initiatives or new directions for the Community. Through its plans of action for each year, the Commission is able to dominate the political agenda of the Community, and there is no doubt that it jealously guards its privileges in this area.

Administrative

While the Commission is more than the Community’s civil service, it is the institution which is, by and large, entrusted with this role.

The Commission performs all the usual tasks of a civil service: dealing with the Community budget, running the Community’s programmes and policies, such as the Common Agricultural Policy, Competition Policy, and so on. Unfortunately, recent events regarding the fraud and wastage within the administration, added to the notorious delays in getting the Commission to make any decision, underline the weakness in this area.



¹⁹ Article 86(3) states: “The Commission shall ensure the application of the provision of this Article and shall, where necessary, address appropriate directives or decisions to Member States.”

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This range of powers is remarkable for an unelected body like the Commission.

It crosses all the accepted boundaries which exist in national politics regarding the spread and separation of powers. It is often said that if the EU were a country applying to join the EU, it would be refused on the grounds that it is insufficiently democratic.

Moreover, this web of powers impedes public understanding of the role of the Commission, and of how the EU operates. It does not fit in with our understanding of how politics and government operate at either the national or the international levels. The lack of accountability which follows has, of course, been one of the Commission's most troubling faults in recent times.

The powers at its disposal also encourage the Commission to compete with the Council for the role of the political leadership of the Community. It is the effort expended on this competition which causes possibly the greatest problem of all: the fact that, having got possession of these powers, the Commissioners do not carry them out very well. There are faults in all areas of its responsibility, particularly in the simple but crucial task of just running the Community, of getting its existing work done efficiently and properly. The Commission has become a byword for inefficiency and delay. The *Sunday Business* newspaper claims, for example, to have uncovered a pool of £17 billion allocated to economic and social projects which no one was willing to take responsibility for and for which no one could say how it was being spent.²⁰ If the Commission's motto has been "To do less, but to do it better", it could start by jettisoning a few of its roles.

²⁰ *Sunday Business*, 11 July 1999.

THE DE-POLITICISATION OF THE COMMISSION

THE EUROPEAN COMMUNITY ISN'T WORKING. Or perhaps we should say that plenty of people work for the European Community, but it's still going embarrassingly wrong.

The Community has been burdened from the start with a structure that impeded good decision-making. Since then, political forces of the moment and, most crucially, the identity and ambitions of those appointed as Commissioners, have distorted the structures even further. The result is a Community in crisis: a crisis of identity, a crisis of accountability, a crisis of leadership.

There are two options.

The first is the easier. It is to go on as we have before, with a Commission run by politicians. Blair, Schroeder and Prodi seem to take the view that more of the same is the order of the day. In his speech to the European Parliament on 4 May 1999, Prodi agreed that the Commission needed to be reformed, but then said that the way to do this was "to increase the Commission's scope for political involvement". The team of Commissioners was to be even *more* political, and even more firm in its propagation of its chosen vision of Europe. His continued references to the Commission as the "government" of Europe bolster this impression.

Tony Blair has taken a similar line, particularly evident in his nomination of "political heavyweight", Chris Patten, in preference to the rather more low-key Sir Alastair Goodlad. Indeed rumours that Prodi sought to intervene in support of Patten's nomination, and that he opposed (unsuccessfully) the German Green Michaele

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Schreyer due to her lack of governmental experience,²¹ merely confirm the view that, from the top down, the Commission now has high politics in its sights.

But this is to invite only more of the same. The Commission and Council will continue to jostle for position. A Commission which even the heads of the governments of the major member states seem agree should be political is not one which is going to give ground. On the contrary, it is one which will pursue with ever greater vigour its own direction. The history of the Union shows that when the Commission and Council are both trying to drive the engine, the Community ends up going off the rails.

Therein lies the problem, of course. With two avowedly political and very powerful sources of leadership, the Community is torn. And as they battle, the running of the Community receives less and less attention.

The Blair-Prodi answer cannot be the best way forward. At a time of great public distrust of the Community, and particularly in the light of the power the Community institutions now wield in Euroland, it should be the priority for all Europe's governments to make the Community structure more efficient, streamlined, understandable and accessible. Perhaps the best conclusion to draw from the European election results from across the whole Community, is that the citizens of the Union do not want the Union to do more. Most of them probably are not desperately anxious that it should do less. They just want it to do it better.

And so we come to the second possibility, the painful option. It means a catharsis for the Community, and, in particular, for the Commission. It means the abandonment of the Commissioners' most cherished possession, the right of initiative. And it means a change in the very nature of the Commission and the Commissioners.

A Commission that concentrated on making sure what Europe already does is done properly would be something of a novelty. But

²¹ *Guardian*, 23 June 1999.

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that is what is needed. It should concentrate on the administration of the Community's activities, as decided by the Council.

This would also facilitate another important reform: a reduction in the number of Commissioners. There are now more than twice as many Commissioners as there were 25 years ago. The cause for this growth in the number of portfolios is not just the increasing workload which the Commission has taken on: it is the system by which member states are allocated a set quota of positions. With further enlargement probable within the next five years, the number of Commissioners will increase unless the system of national quotas is scrapped. Nationality should not be the decisive qualification for a job at the expense of ability and integrity.

This is not, of course a simple step. It would require a revision of the Treaties, or a new Treaty altogether, to alter the Commission's remit and role. Its power of initiative should be returned to its natural political home with the Council. Its other roles in the legislative procedures should be cut back.

The obvious candidate to make these changes is the Council – indeed, only the Council could make the requisite Treaty alterations. But why should the Parliament not also take a role in this sea-change? It has so recently voiced its displeasure at the Commission's mechanisms and performance. The Parliament, furthermore, has the power to scrutinise and, if they so decide, to reject all of the proposed Commissioners prior to their appointment. It starts this task on 30 August. The President may have threatened to resign if the Commissioners are not confirmed *en bloc*. But the Parliament must be prepared to call Romano Prodi's bluff and refuse to endorse those proposed Commissioners who are either not up to the job or who have failed to convince the Parliament of their integrity. After all, Prodi has undertaken to withdraw the application of any potential Commissioner should "substantial evidence" emerge before September of that Commissioner's unsuitability. MEPs should take this opportunity to ask whether each of the candidates is suitable. If they decide that

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any are not, then that should be accepted by Signor Prodi as evidence enough and the application withdrawn.

This is the crux of the matter. Such a change cannot come about merely through Treaty alterations. A change in the psychology of the Commission is required. This cannot come about while politicians head the Commission. Try as they might, it is difficult to believe that they could view themselves as anything other than political animals. Even the best intentioned would go into the job with the mentality of a politician.

Moreover, they have little or no experience in administration, the skill for which the Community cries out. It is those well-versed in the ways of getting things done, and done properly, rather than thinking up what to do next, who are required. *The Times*, for example, recently criticised one of Britain's own nominees thus: "Whatever talents Mr Kinnock has are political, not organisational."²² The other nominee, Chris Patten, may be the rare exception here – a man with executive-cum-administrative experience from his time in Hong Kong. But he is very much the exception, especially in recent years.

It is difficult to believe that, in an open competition, many of the recent appointees would have been appointed, still less if the Commission's role was refined. It is obvious to any observer that the qualifications of several past appointees have been less than impressive: witness the appointment of Commissioner Millan, a spectacularly anonymous Scottish Secretary, Commissioner Matutes, whose main claim to fame was that he had been Mayor of Ibiza, and the current nomination of Michaele Schreyer, who appears to owe her position more to German domestic political horse-trading than ability for the job (her previous experience goes no higher than as a senator in the Länder).

An open competition for the job of Commissioners is exactly what is needed, with no national quotas, and no political arm-twisting. It is a nonsense, for example, that when Jacques Santer

²² *The Times*, 15 July 1999.

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was appointed as President, the choice had to be made from senior (i.e. prime ministerial) Christian Democrats from a small country. Politics has constricted the size of the pool, unnecessarily. This is no way to ensure that we get the very best people running Europe, however one views the Commission.

Indeed the idea of open competition amongst all Europe's citizens for these jobs should chime in very nicely with the Commission's ethos: treating all Europe as one big pool of talent rather than adopting a nation by nation approach.

Who should conduct the interviewing procedure? The current model for appointment could be adapted for use, with the Council making its selections subject to ratification by the Parliament. A nation-by-nation carve-up of the posts by the Council could be avoided by ensuring that the Parliament possessed strong powers in this area – not unlike the American system of Congressional hearings (where both George Bush's and Bill Clinton's nominees suffered) – particularly the power to veto individual nominations, rather than just the Commission as a whole.

It might well be that some of the existing appointees might still be considered the best qualified men and women for the job. But who is to say that business leaders or top civil servants might not be better suited to the job? The job description might actually be rather similar to that of a CEO. The demands will be heavy: the appointee would have to have a proven record as a decision-maker at the top level; he or she would ideally have some sort of international experience; they should have the capacity to act collegiately; and they should be good communicators (preferably in a number of languages). They would need to have experience of politics: certainly not necessarily as elected politicians, but in a role in which they dealt regularly with government. Crucially, they should have experience of running some sort of major entity, be it a multi-national business, a government department, another international body, a senior media position or even a major NGO. And they should have a record of proven success.

CHAPTER 6

CONCLUSION

There are no premature ideas, only opportunities for which one must learn to wait.

*Jean Monnet*²³

THE APPOINTMENT OF THE NEW COMMISSION is an opportunity for real change for Europe. It seems, though, that it is likely to be a missed opportunity. As *The Times* commented, the Prodi Commission represents “more of an airbrush than a new broom for Europe.”²⁴ The ideas for change are hardly premature – the Community has been calling out for them for years now – but the reluctance of Member State governments to think creatively seems likely to condemn Europe to more of the same for some time longer. Old habits seem to have led to the nomination of both large chunks of the Santer Commission and some new faces who, before they even start, are the subject of considerable doubt.

But at a time when more people in Britain think that the Community has achieved little or nothing than think it has achieved even a “fair amount”,²⁵ changes need to be made so that Europe is properly managed and run, so that people can see that it is working, and that it is making a difference. The Community already has the capacity to make that difference, but due to a lack of good management, it is failing to achieve it. And if it cannot do

²³ Quoted in Bond, M.; Smith, J.; & Wallace, W., *Eminent Europeans* (1996)

²⁴ *The Times*, 15 July 1999.

²⁵ *Eurobarometer 50*, published March 1999.

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its job properly in fifteen countries, how can it possibly hope to do it in twenty or more, as it seems to hope?

A fundamentally different approach to the appointment of Commissioners gives the best hope of a radical and very necessary improvement in the performance of the Commission. That in turn will lead to a better managed Community – one which its citizens can understand and support, and one which is ready to accept new members.

With these proposals, the Commission might well end up doing less, but we can be sure that it would do it much better.

Does such an ambition have any chance of being realised? That is the question which the newly-elected European Parliament should ask during the confirmation hearings starting on 30 August 1999.

APPENDIX A

BACKGROUNDS OF INDIVIDUAL COMMISSIONERS SINCE 1958

1958-62

Government ministers

Hallstein
Rey
Caron
Malvestiti
Schaus
Mansholt

Other Politicians

None

Non-politicians

Von der Groeben
Lemaigen
Sandri
Petrilli
Marjolin

1962-67

Government ministers

Hallstein
Rey
Rochereau
Caron
Mansholt
Schaus

Other Politicians

None

Non-politicians

Sandri
Marjolin
Di Paliano
Von der Groeben

1967-70

Government ministers

Rey
Bodson
Coppé
Rochereau
Mansholt
Sassen

Other Politicians

Martino
Hellwig

Non-politicians

Barre
Sandri
Di Paliano
Deniau
Von der Groeben
Haferkamp

1970-73

Government ministers

Scarascia-Mugnozza
Coppé
Dahrendorf
Mansholt
Malfatti

Other Politicians

None

Non-politicians

Barre
Deniau
Spinelli
Borschette

APPENDIX A

1973-77

Government ministers

Ortoli
Hillery
Scarascia-Mugnozza
Simonet
Soames
Vouel
Dahrendorf
Lardinois
Thompson

Other Politicians

Brunner

Non-politicians

Haferkamp
Deniau
Cheysson
Spinelli
Guazzaroni
Gundelach

1977-81

Government ministers

Jenkins
Natali
Ortoli
Vredling
Burke
Giolitti
Vouel

Other Politicians

Tugendhat
Brunner

Non-politicians

Haferkamp
Gundelach
Davignon
Cheysson

1981-85

Government ministers

Thorn
Natali
Ortoli
Tugendhat
Andriessen
O'Kennedy
Burke
Pisani
Contogeorgis
Dalsager
Giolitti
Richard

Other Politicians

Narjes

Non-politicians

Davignon
Haferkamp
Cheysson
Gundelach

1985-89

Government ministers

Delors
Andriessen
Christophersen
Cockfield
Natali
Clinton Davis
De Clercq
Sutherland
Varfis
Marin
Cardoso E Cunha

Other Politicians

Mosar
Schmidhuber
Ripa di Meana
Matutes
Narjes

Non-politicians

Pfeiffer
Cheysson

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1989-93

Government ministers

Delors
Andriessen
Christophersen
Marin
Pandolfi
Bangemann
Brittan
Cardoso E Cunha
Millan
MacSharry
Papandreou
Scrivener

Other Politicians

Ripa di Meana
Matutes
Schmidhuber
Van Miert

Non-politicians

Dondclinger

1993-95

Government ministers

Delors
Christophersen
Marin
Bangemann
Brittan
Van den Broek
Millan
Steichen
Flynn
Paleokrassas
Pinheiro
Ruberti
Scrivener

Other Politicians

Matutes
Schmidhuber
Van Miert
Oreja Aguirre

Non-politicians

D'Archirafi

1995-99

Government ministers

Santer
Cresson
Brittan
Marin
Bangemann
Bjerrgard
Pinheiro
Fischler
Flynn
Gradin
Liikanen
Van den Broek

Other Politicians

Bonino
Kinnock
Papoutsis
Van Miert

Non-politicians

Monti
Wulf-Mathies
De Silguy

APPENDIX A

1999 NOMINEES

Government ministers

Prodi
De Palacio
Solbes
Nielsen
Wallstrom
Patten
Diamantopoulou
Barnier
Vitorino
Liikanen
Verheugen
Fischler
Bolkstein
Busquin
Byrne

Other Politicians

Kinnock
Reding
Schreyer

Non-politicians

Monti
Lamy

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