

Pros and Cons of Proactive Political Leadership: A Review of the Legacy of the “Last Chance” Commission

by Claire Darmé

ABSTRACT

Jean-Claude Juncker has defined his approach to the presidency of the European Commission as political rather than technocratic. Among the greatest ambitions he has held is that of restoring trust between the EU and its citizens, which in his view requires a strong and proactive Commission. He has worked toward re-establishing the European Commission as a policy driver, adapting the existing structures to conduct key political initiatives. However, on a number of occasions this approach has proved less than effective, as Juncker has antagonised partners, diminished the political capital of the Commission and left unfinished business for his successor on key pressing issues.

European Commission | Decision-making | External trade | EU budget | Brexit | Hungary

keywords

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Introduction

Back in July 2014, while delivering his first speech in front of the European Parliament as the Commission’s presidential nominee, former Prime Minister of Luxembourg Jean-Claude Juncker gave his vision of what he called the “last chance” to reconcile the European Union with its citizens.¹ In doing so, he expressed a willingness to reshape the role of an institution whose influence had been described as being in decline for the previous fifteen years.²

After the dismissal *en masse* of the college of commissioners led by Jacques Santer in 1999 on allegations of corruption, the European Commission had indeed gone through an era of redefinition. Romano Prodi’s term (1999–2004) was marked by the need to rebuild the credibility of the institution and redefine the accountability of its administration, while paving the way for the Big Bang enlargement that would eventually bring eight Central European states plus Cyprus and Malta into the EU. José Manuel Barroso’s two terms as Commission president (2004–2014) were, in turn, expected to focus on the role and influence of the Commission following the 2004 enlargement.³ However, Barroso struggled to build a united institution and proved to have little appetite for a proactive approach to the Commission’s place within the European institutions.⁴ Juncker’s political vision therefore diverged

¹ Jean-Claude Juncker, *A New Start for Europe* (Speech/14/567), 15 July 2014, http://europa.eu/rapid/press-release_SPEECH-14-567_en.htm.

² Dermot Hodson, “The Little Engine That Wouldn’t: Supranational Entrepreneurship and the Barroso Commission”, in *Journal of European Integration*, Vol. 35, No. 3 (2013), p. 302.

³ Thomas Christiansen and Mark Gray, “The European Commission in a Period of Change: A New Administration for a New European Union?”, in *EIPAScope*, No. 3/2004, p. 24, <http://aei.pitt.edu/5937>.

⁴ Dermot Hodson, “The Little Engine That Wouldn’t”, cit., p. 305-307; Alexander Bürgin, “Intra- and

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from the prior institutional trajectory of the Commission, and showed a willingness to go back to a dynamic closer to that of the 1980s, when the institution was a leading actor of European integration.

Reactions to Juncker’s speech were mixed. Some observers responded positively to Juncker’s promise of a better-defined prioritisation of tasks and policies, while others were wary of the sustainability of a more “political” Commission.⁵ Juncker has indeed acted on both aspects, renewing the governance of the institution in a proactive manner. Where intergovernmentalism has proved to be ineffective, he has come up with proposals to expand the community method to new political domains.⁶ His initiatives have been fruitful in areas such as investment or environmental policy, whilst they have resulted in a more ambiguous outcome in the fields of migration, trade policy or budget planning. As Juncker’s term nears its end, the extent to which his proactive political leadership has benefitted the long-term institutional standing of the Commission can be evaluated.

1. Bending institutional path dependency

In the years before Juncker, the working of the European Commission had been characterised by a low propensity to initiate further integration and a limited level of policy proactiveness. Irrespective of whether this reserved approach to supranational entrepreneurship was the right political choice or not at the time,⁷ it impacted the relevance of the institution as an agent in the EU political scene, a situation that Juncker had a mind to change.

1.1 An unreserved politically driven leadership

In line with the Lisbon Treaty’s description of the selection process for the president of the European Commission, who is to be appointed by “taking into account the elections to the European Parliament” (art 17.7 TEU), a campaign was built in 2014 to have the president chosen from among a pool of so-called *Spitzenkandidaten* (German for “lead candidates”) representing European parties. The *Spitzenkandidat* of the party winning the election would be the only appointee the European Parliament would accept to vote into the position, thereby tying the hands of the European Council.

Inter-Institutional Leadership of the European Commission President: An Assessment of Juncker’s Organizational Reforms”, in *Journal of Common Market Studies*, Vol. 56, No.4 (May 2018), p. 837-838.

⁵ John Peterson, “Juncker’s Political European Commission and an EU in Crisis”, in *Journal of Common Market Studies*, Vol. 55, No. 2 (March 2017), p. 359-360.

⁶ Pierre Haroche, “Supranationalism Strikes Back: A Neofunctionalist Account of the European Defence Fund”, in *Journal of European Public Policy*, published online 26 April 2019, p. 4.

⁷ Dermot Hodson, “The Little Engine That Wouldn’t”, cit., p. 312.

A novel election campaign followed, with the main European parties (EPP, S&D, ALDE, Greens) appointing lead candidates via internal primaries. In the case of the EPP, Juncker was chosen with the support of German Chancellor Angela Merkel against former French Foreign Minister Michel Barnier by attendees at a Congress in Dublin on 7 March 2014.

Lead candidates from European parties had to defend a programme, take part in televised debates, and conduct on-site campaigning on several occasions. Despite the lack of porosity of national political scenes in regard to the process – few national parties mentioned the *Spitzenkandidaten* process, and few national TV channels broadcast the debates – the EPP win led to another campaign of the European Parliament meant to force the hand of the European Council, where strong reservations were held against Juncker.⁸ For the first time on such an issue, the European Council relied on qualified majority voting rather than consensus (as had hitherto been standard practice) to make its choice of Commission president. Then British Prime Minister David Cameron and his Hungarian counterpart, Viktor Orbán, opposed Juncker’s appointment to the point where the rest of the heads of state and government had to force it upon them. This showed two things: first, that at least within the EU’s first circle, Juncker could appeal to some degree of electoral legitimacy; and second, that his mandate could be strongly divisive.

When talking to the European Parliament, Juncker chose to adopt an unreservedly political approach, advocating a return to the community method and claiming that the “Commission is not a technical committee made up of civil servants who implement the instructions of another institution. The Commission is political. And I want it to be more political. Indeed, it will be highly political.”⁹ In contrast, Barroso did not pronounce the word “political” at all in his speech before the vote to approve his appointment as Commission president at the European Parliament in 2004.¹⁰

In addition to providing the Commission with a new channel for legitimacy, the *Spitzenkandidaten* process resulted in a solid relationship between the EP and the Commission leadership, which would prove a constant throughout Juncker’s term and reinforce the Commission’s position vis-à-vis the Council.¹¹ However, in order to make the Commission relevant as a political actor in the EU arena, Juncker needed to rethink the structure of the institution and restore a culture of cohesion in the works and aspirations of the commissioners.

⁸ Sara B. Hobolt, “A Vote for the President? The Role of Spitzenkandidaten in the 2014 European Parliament Elections”, in *Journal of European Public Policy*, Vol. 21, No. 10 (2014), p. 1528-1540.

⁹ Jean-Claude Juncker, *A New Start for Europe*, cit.

¹⁰ José Manuel Barroso, *Building a Partnership for Europe: Prosperity, Solidarity, Security* (Speech/04/375), 21 July 2004, http://europa.eu/rapid/press-release_SPEECH-04-375_en.htm.

¹¹ Alexander Bürgin, “Intra- and Inter-Institutional Leadership of the European Commission President”, cit., p. 846-847.

1.2 Seeking cohesion over diplomacy

Redesigning the structure of the Commission was an unavoidable step in Juncker’s attempt at renewing the supranational entrepreneurship of the institution. The size of the college of commissioners, the reciprocal isolation of the directorates-general from one another and the lack of oversight by the president’s office posed structural barriers to the development of the political that Commission Juncker was calling for.

The set-up of the Commission up to 2013 had favoured individual ambition of commissioners over the defence of an institutional political line. Most attempts at reform had resulted either in a strong reaffirmation of the link between national capitals and national commissioners or in a defence of the principle of equality among commissioners. Despite the theoretical role of the Commission as a supranational body, those reactions showed the symbolic importance national commissioners still hold to this day to their country of origin. In order to avoid political havoc, Juncker therefore had to find a way of both transforming the institution and presenting it in a way that would allow for member states to support his new setting.

Juncker’s effort to reshape the institution started without delay. He claims that he used his personal influence among heads of states and governments to suggest or refuse names of appointees.¹² In addition, he made the most of his competence as president to allocate portfolios to commissioners, creating a new internal organisation. Most notably, he created a first vice-president and six other vice-presidents, each responsible for a project along the lines of what the high representative (also one of the vice-presidents) was putting together in the field of foreign policy.¹³ A new horizontal dynamic followed, reaching higher levels of coordination among commissioners than in previous years.

The novelty of Juncker’s approach resided in the fact that commissioners became more interdependent in decision-making.¹⁴ After a direction had been agreed upon, a proposal from a commissioner would go through the approval of the responsible vice-president and of the first vice-president before being submitted to the whole college. This procedure was the main divergence from Barroso’s attempt at creating clusters and was efficient in developing a Commission line and make the institution more coherent.¹⁵

¹² David M. Herszenhorn, “Juncker Unplugged: Commission President Avoids Insults on Social Media”, in *Politico*, 11 June 2019, <https://www.politico.eu/article/juncker-commission-european-union-tusk>.

¹³ Josef Janning, “Dissecting Juncker’s Commission: Project Teams Are the Real Story”, in *ECFR Commentaries*, 11 September 2014, https://www.ecfr.eu/article/commentary_dissecting_junckers_commission_project_teams_are_the_real_sto310.

¹⁴ Hussein Kassim et al., “Managing the House: The Presidency, Agenda Control and Policy Activism in the European Commission”, in *Journal of European Public Policy*, Vol. 2, No. 5 (2017), p. 667-668.

¹⁵ Alexander Bürgin, “Intra- and Inter-Institutional Leadership of the European Commission

The new structure was criticised for diminishing the readability of decision-making.¹⁶ Yet it also diminished the space available for the development of personal ambition and agenda of a given commissioner, and might have diluted the leverage member states had on “their” commissioner at the time of exercise. For the first time it was also clear that commissioners were to fulfil different roles.

In order to get this novel setting accepted by national capitals, Juncker acted strategically when distributing portfolios. All the vice-presidents except for the High Representative for Foreign Affairs and Security Policy, the Italian Federica Mogherini, were from smaller countries, and gestures of appeasement were made towards bigger states, especially those not led by an EPP government. The French commissioner Pierre Moscovici received the portfolio for Economic and Financial Affairs, Taxation and Customs while the country was in the midst of a dispute with the Commission over its national budget. The British commissioner Jonathan Hill was in charge of Financial Stability, Financial Services and Capital Markets Union, while the campaign on the Brexit referendum was already ongoing.

The new College was overall well-received in the member states, with negative reactions mainly occurring in Hungary where the leadership was unhappy with the Education, Culture, Youth and Sport portfolio it had been granted.¹⁷ The internal restructuring of the Commission was an essential step in allowing for a more coherent approach to and overarching frameworks for Commission-led policies.

1.3 A role-maker rather than a role-taker

All the foundation work laid by Juncker in establishing his renewed legitimacy and renovating the internal working of the Commission was meant to come into fruition in the implementation of the president’s Political Guidelines, which he laid out in front of the European Parliament in 2014.

It was unequivocal that in president Juncker’s view, the Commission was to be restored as an independent institution, able to define its role and priorities. In his own words:

The European Council proposes the President of the Commission. That does not mean he is its secretariat. [...] The President of the Commission is elected by your assembly. That does not mean he is at your beck and call; I’m not going to be the European Parliament’s lackey.¹⁸

President”, cit., p. 849.

¹⁶ Marine Borhardt, “A Political European Commission through a New Organisation ‘This Time It’s Different’. Really?”, in *Jacques Delors Institute Policy Papers*, No. 180 (December 2016), <https://institutdelors.eu/en/?p=14785>.

¹⁷ Cynthia Kroet, “National Media Reaction to Juncker’s Allocation of Portfolios”, in *Politico*, 11 September 2014, <https://www.politico.eu/article/member-states-reactions-to-junckers-allocation-of-portfolios>.

¹⁸ Jean-Claude Juncker, *A New Start for Europe*, cit.

Overall, the Juncker Commission has been evaluated as more focused, more top-down and better at prioritising than its predecessors.¹⁹ Its work has been marked by the production and follow-through of legislative materials coherent with the Political Guidelines, with some notable breakthroughs.²⁰

One example would be the definition of the framework for external action of the EU. Early on, Juncker and HRVP Mogherini decided to work closely together. The Commission internal working groups on external action were instrumental in supporting the drafting of the Strategic Review and the subsequent European Union Global Strategy (EUGS), presented by Mogherini in June 2015 and June 2016 respectively.²¹ The Global Strategy became a reference for the term of the high representative, and stands as the most encompassing set of political guidelines for external action the EU has ever produced. The example of foreign policy served as a precedent for coordination among key members of the college.²²

Juncker also defined, defended and implemented a new approach to fighting the lack of investment in the EU by proposing the Investment Plan for Europe, also known as the Juncker Plan. Announced already in July 2014 and active from September 2015 on, the plan aims at mobilising private investment around projects favourable to the European economy. Selected projects receive direct investment from the European Investment Bank, which acts as a magnet for private investment. Over five years, the plan well-exceeded its overall objective of 315 billion euro of mobilised investment and helped focus 408 billion euro of private investment around 200 projects in all 28 member states.²³ The scheme designed and led by Juncker is an example of successful leadership and its format is being broadened into the InvestEU programme for 2021–2027.²⁴ It has also been transposed to new political areas, such as development policy in the Eastern neighbourhood and Africa (the EU External Investment Plan).²⁵

¹⁹ Sophia Russack, “How Is Juncker’s ‘Last-Chance Commission’ Faring at Mid-term?”, in *European Policy Analysis*, No. 4/2017 (June 2017), <http://www.sieps.se/en/publications/2017/how-is-junckers-last-chance-commission-faring-at-mid-term-20174epa>.

²⁰ Étienne Bassot and Wolfgang Hiller, The Juncker Commission’s Ten Priorities. An End-of-Term Assessment, in *EPRS In-Depth Analysis*, May 2019, <https://doi.org/10.2861/618373>.

²¹ Nathalie Tocci, *Framing the EU Global Strategy. A Stronger Europe in a Fragile World*, Cham, Springer-Palgrave Macmillan, 2017, p. 43-44.

²² See for instance President Juncker’s Mission Letter to Frans Timmermans, 1 November 2014, <https://europa.eu/!Vq88tC>.

²³ European Commission website: *Investment Plan Results, EU-wide Results as of July 2019*, https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/investment-plan-results_en.

²⁴ European Commission website: *What’s Next? The InvestEU Programme (2021-2027)*, https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/whats-next-investeu-programme-2021-2027_en.

²⁵ European Commission, *Factsheet - What Is the EU External Investment Plan*, May 2019, https://ec.europa.eu/commission/sites/beta-political/files/factsheet_eip_uk_def_web_hdd_may19.pdf.

Another important achievement of Juncker was the restoration of part of the EU’s global leadership on environment, which had been in steady decline for the last decade. In the wake of the negotiation of the 2015 Paris Agreement, the EU propelled by the Commission came together with the Asia, Caribbean and Pacific (ACP) countries in an unprecedented alliance in favour of the agreement. This network approach facilitated the adoption of the proposed text,²⁶ in contrast to previous failed attempts at negotiating a far-reaching framework to cope with climate change – for instance in Copenhagen in 2009. Regardless of the subsequent and unforeseeable US withdrawal from the agreement, the steps taken by the Commission were novel enough to leave a mark on the making of global policy on the issue.

However positive an overview can be made of Juncker’s presidency, some of his attempts at bending the traditional ways of European institutions landed either in a dead-end, such as the short-lived White Paper on the Future of Europe, or antagonised partners and jeopardised the Commission’s position.

2. The jeopardies of partisan political leadership

Throughout his term, Juncker’s tendency to defend polarising policies sometimes backfired. His willingness to pursue partisan choices on migration and trade antagonised partners within and outside the EU. Unfinished business, such as the Multiannual Financial Framework, the post-Cotonou negotiation with the African, Caribbean and Pacific group (ACP group) and Brexit will fall upon his successor.

2.1 Putting the Commission’s political capital at risk

Juncker pushed on some occasions for partisan choices that led to divisions among EU leaders or within the European civil society, with lasting consequences on the Commission’s institutional standing.

At the time of strong migratory pressure in 2015, Juncker drafted and defended a scheme of relocation (redistribution of asylum seekers among member states) and resettlement (admission of asylum seekers from third countries) to relieve Greece and Italy from the heavy workload of processing asylum applications. Although the principle of relocation was welcomed favourably by non-governmental organisations (NGOs) specialised in the field of asylum,²⁷ it caused huge political backlash as it was meant to create legal obligations for member states in the form

²⁶ Maurizio Carbone, “Purposefully Triggering Unintended Consequences: The European Commission and the Uncertain Future of the EU-ACP Partnership”, in *The International Spectator*, Vol. 54, No. 1 (March 2019), p. 52-53.

²⁷ Asylum Information Database (AIDA), “Relocation of Asylum Seekers in Europe. A View from Receiving Countries”, in *AIDA Legal Briefings*, May 2018, http://www.asylumineurope.org/sites/default/files/aida_brief_relocation.pdf.

of quotas.

The member states did commit to relocate detailed numbers of migrants at the Council of 25–26 June 2015. Even then, the Commission could not force them to comply with their pledges despite naming and shaming those who were lagging behind in regular reports and despite a ruling of the Court of Justice of the EU in the Commission’s favour.²⁸ The idea of imposing quotas for relocation was eventually abandoned, as less than 30 per cent of relocations from Greece and Italy had taken place when the programme ended in September 2017.²⁹ The Commission was more successful in its post-2017 resettlement initiatives, in particular due to an agreement with Turkey which was heavily criticised by civil society groups.³⁰ Altogether the history of migration policy under Juncker’s presidency has been divisive and has resulted in resentment from some national leaders towards the Commission, especially in Central and Eastern Europe. The quota proposal arguably contributed to the rise of anti-EU populist campaigns across Europe while failing to bring a solution to the migration crises. This policy was indeed used as a repellent to diminish the political capital of the European Commission among national audiences, which were often already inclined to criticise the institution for its proactive approach to trade negotiations.

One defining item of Juncker’s political agenda was indeed the signing of trade agreements between the EU and third partners. Figure 1 shows that with a total of thirty trade deals that took effect or were initiated during his term, Juncker’s team is the most active Commission in this regard in the institution’s history. While a cumulative effect occurred, as some trade deals were initiated during Barroso’s term (for instance with South Korea or with Bosnia and Herzegovina), Juncker decided to pursue trade deals that would create vast free trade areas. This caught the eye of a public not necessarily in agreement with Juncker’s economic choices.

The failure to conclude the most ambitious of such deals, the Transatlantic Trade and Investment Partnership (TTIP) with the United States, and the contestation of the Comprehensive Economic and Trade Agreement (CETA) with Canada are stains on the Juncker Commission’s trade record. Both provided occasions for strong campaigns against the Commission’s approach, if not against the idea of trade agreements as a whole. Changes that were made to the Commission’s communication strategy as a consequence of these protests were met with mixed results.³¹ However, Juncker did not renounce to his partisan choice of pursuing the

²⁸ Cases C-643/15 and C-647/15.

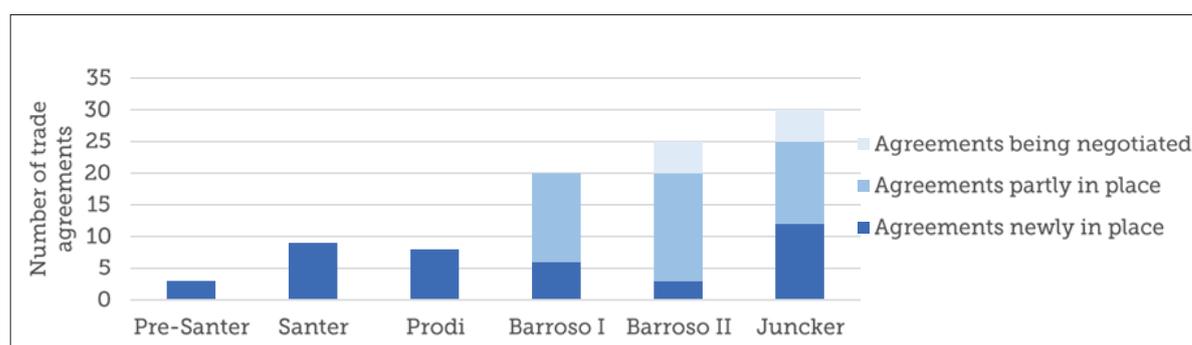
²⁹ European Commission, *Fifteenth Report on Relocation and Resettlement* (COM/2017/465), 6 September 2017, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52017DC0465>.

³⁰ Seçil Paçacı Elitok, “Three Years On: An Evaluation of the EU-Turkey Refugee Deal”, in MiReKoc Working Papers, April 2019, p. 6-10, http://mirekoc.ku.edu.tr/wp-content/uploads/2019/04/Mirekoc_Elitok_2019_Report_ThreeYearsOn-AnEvaluationOfTheEU-TurkeyRefugeeDeal.pdf.

³¹ Niels Gheyle and Ferdi De Ville, “How Much Is Enough? Explaining the Continuous Transparency Conflict in TTIP”, in *Politics and Governance*, Vol. 5, No. 3 (2017), p. 22-23, <http://dx.doi.org/10.17645/pag.v5i3.1024>.

ratification of more trade deals, as almost half of them were signed after 2016. Just before leaving office, Juncker made a personal case of finalising the negotiations with MERCOSUR, the free trade area comprising Argentina, Brazil, Paraguay and Uruguay, which triggered a new wave of negative reactions from civil society groups and among governments.³²

Figure 1 | New free trade agreements entered into force, partly entered into force or being negotiated per term of the Commission’s president



Data: European Commission website: *Negotiations and Agreements*, <https://europa.eu/!Vu46HW>.

After the 2015–2016 period, the political capital of the European Commission diminished both among the heads of state and government and in civil society. Eurobarometer shows that between May and November 2015 the percentage of people who did not trust the Commission rose from 40 to 45 per cent while those trusting the institution dropped from 40 to 35 per cent. It was not before May 2017 that the level of trust rebounded.³³

2.2 Forming deadlocks for the future: The unfinished business of the MFF

One of the regrets Juncker has expressed has to do with the unfinished state of the next Multi-Annual Financial Framework (MFF), the allocation of the EU’s budget resources for the 7-year period starting in 2021. His ambitious redefinition of the general setting of the MFF includes some highly political moves, such as the explicit link between “cohesion and values” (Heading 2 of the proposed MFF). This kind of innovation, together with the Common Agricultural Policy (CAP) reform and other components of the current draft might contribute to creating deadlock in the future.

Under Juncker’s stimulus, the Commission has for instance been working since 2016 to set up a European Defence Fund in order to pursue the objectives of the

³² Silvia Amaro, “The EU’s Long, Drawn-out Trade Deal with South America Is at Risk of Being Rejected”, in *CNBC*, 25 July 2019, <https://cnb.cx/2ybXBtK>.

³³ European Commission, *Standard Eurobarometer 87*, May 2017, <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2142>.

Global Strategy. A prototype, downscaled version of the initiative has been in place since 2017. The aim of the Fund is to develop European Union defence capacities, especially via the funding of research initiatives.³⁴ A combination of factors have increased the relevance of such a development. First, Brexit will bring about a substantial reduction in the aggregate defence spending in the EU. Second, under US President Donald Trump, trust in the US’s lingering commitment to Europe’s security has diminished considerably. Finally, threats have increased, such as the aggressive Russian policy in Eastern Europe, the multiplication of terrorists attacks on European soil or cyber-warfare.

The European Commission has taken a difficult path by choosing to integrate the Defence Fund into the EU budget rather than making it an extra-budgetary instrument. The goal is to make sure the Commission would keep control of the fund and maintain its strategic potential to feed into the development of a Defence Union.³⁵ Yet, integration into the EU budget also plays with the limits of what can or cannot be financed via the EU spending. Opponents to the development of a Defence Union, especially from the far-left, denounced the move as a breach of article 41(2) of the Treaty on the European Union (TEU), which forbids the EU budget from financing operations with military and defence implications. Expressed in 2017,³⁶ the legal argument was reiterated in the late 2018³⁷ and was one of the points that fed into the difficulties the project encountered within the European Parliament. A partial deal was agreed upon by the EP on 18 April 2019,³⁸ however several aspects of the fund including its size are still to be finalised. The process will now be in the hands of the Council and an EP further divided by the May 2019 European elections results. Once the fund is fully operational the Commission will be responsible for its implementation, which is likely to cause further political disturbances if not legal challenges.

There are on the other hand items of the MFF which do not raise as much debate among EU policy-makers, but bear the potential for creating deadlocks for the next European Commission as well. The main case in point is the Neighbourhood, Development and International Cooperation Instrument (NDICI), a single unit which will merge external development funds under the EU budget. The proposal

³⁴ European Commission, *EU Budget: Stepping Up the EU’s Role as a Security and Defence Provider* (IP/18/4121), 13 June 2018, http://europa.eu/rapid/press-release_IP-18-4121_en.htm.

³⁵ Pierre Haroche, “Supranationalism Strikes Back”, cit., p. 6-14.

³⁶ Sabine Lösing and Jürgen Wagner, “A European Defence Budget in a Legal Vacuum”, in *Blogactiv The Guest Blog*, 13 November 2017, <https://guests.blogactiv.eu/?p=6443>.

³⁷ Andreas Fischer-Lescano, *Legal Issues Relating to the Establishment of a European Defence Fund (EDF)*, Expert Report for the GUE/NGL Parliamentary Group in the EP, 30 November 2018, <https://www.guengl.eu/issues/publications/legal-issues-relating-to-the-establishment-of-a-european-defence-fund>.

³⁸ European Parliament, *Legislative Train Schedule: MFF – Proposal for a Regulation Establishing the European Defence Fund*, as of 14 December 2018, <http://www.europarl.europa.eu/legislative-train/theme-new-boost-for-jobs-growth-and-investment/file-mff-european-defence-fund/12-2018>.

has worried external institutional partners,³⁹ in particular the ACP group. This organisation has been the main beneficiary of the European Development Fund, which was until this year managed by EU member states outside the EU budget and which the ACP group redistributed among its members. The European Development Fund is now to be brought under the EU budget and merged into the NDICI. The move worries the leadership of the ACP group, which fears it will lead to a diminution of its access to EU funding. The possibility of a downgrading of the its relationship with the EU further damages its leverage towards its members, feeding into the current fading of the ACP group’s internal cohesion.⁴⁰

However, a weakening of the ACP group as an organisation is not in the EU’s interest. The EU and the ACP group are currently negotiating a framework to take over the Cotonou agreement, which expires in 2020. The EU’s strategy in these talks is to conclude an overall agreement with the ACP group on core political values of the relationship post-2020 and three separate, tailor-made regional agreements with the African, Caribbean and Pacific sub-groups. A failure to come up with a general framework at the ACP level would put the EU in a difficult situation. The Economic Partnership Agreements which the EU signed over the last fifteen years with countries or groups of countries within the ACP region use the provisions of the Cotonou agreement when it comes to mechanisms for the defence of human rights in trade.⁴¹ It is necessary for the EU to make sure the negotiations result in a common framework to replace Cotonou in this regard, and avoid a legal vacuum post-2020, which would undermine the defence of human rights in the region⁴² and therefore go against the EU’s obligations in its relations with third parties.⁴³ For now, the post-Cotonou negotiations are falling behind⁴⁴ in part because of the unwillingness of countries from the ACP region to engage in the ACP group format. In order to defend its own interests the EU needs to reinforce the ACP group as a relevant actor in the region, which given the current MFF proposal would mean designing some concrete reinsurance as to its future access to EU funding.

³⁹ Mark Furness and Niels Keijzer, “Should the European Neighbourhood Instrument Be Included in the Proposed ‘Single Instrument’?”, in *ETTG Blogs: EU MFF*, 14 June 2018, <https://wp.me/p9qfAP-bX>; Niels Keijzer, Clare Castillejo and Mariella Di Ciommo, “The Proposed Single Instrument: Can It Be All Things to All People?”, in *ETTG Blogs: EU MFF*, 18 June 2018, <https://wp.me/p9qfAP-c3>.

⁴⁰ Maurizio Carbone, “Caught between the ACP and the AU: Africa’s Relations with the European Union in a Post-Cotonou Agreement Context”, in *South African Journal of International Affairs*, Vol. 25, No. 4 (2018), p. 481-496.

⁴¹ Maurizio Carbone, “Purposefully Triggering Unintended Consequences”, cit., p. 50-51.

⁴² Lorand Bartels, *Human Rights Provisions in Economic Partnership Agreements in Light of the Expiry of the Cotonou Agreement in 2020*, European Parliament, March 2017, p. 39, <https://doi.org/10.2861/47938>.

⁴³ Maurizio Carbone, “Purposefully Triggering Unintended Consequences”, cit., p. 51.

⁴⁴ Benjamin Fox, “EU-ACP Cotonou Successor Faces One Year Delay”, in *EURACTIV*, 17 May 2019, <https://www.euractiv.com/?p=1341601>.

2.3 EU cohesion at stake: The unequal defence of European values

The Juncker Commission has faced some of the harshest centripetal forces the European construction has had to cope with since its creation. A member state, the UK, voted to leave the bloc altogether, while the governments of Hungary and Poland have taken actions that have come under intense scrutiny because allegedly incompatible with EU standards on democracy and rule of law. The European Commission’s attempt at keeping the EU together has been met with only relative success.

Juncker has expressed regrets for complying with then British Prime Minister David Cameron’s request of non-interference from EU institutions in the Brexit referendum campaign. He believes he could have challenged the many inaccuracies that characterised the Leave campaign, such as the argument that the UK’s membership contribution was at the expense of the national health system, or that the then unpublished EUGS was a secret plan to set up an EU army.⁴⁵ The Commission might have indeed underestimated both the likelihood of a Leave vote and its consequences, as Juncker even seemed to doubt the British government would activate article 50 in the event of such an outcome.⁴⁶

After the victory of the Leave campaign, Juncker and the Commission Brexit negotiator Barnier were however extremely effective in keeping the rest of the EU together by preventing bilateral discussions between the UK and member states such as Ireland. Backed by the EU27, the Commission was adamant that the UK could not limit the free movement of EU citizens if it wanted frictionless access to the EU single market. With the British government of Theresa May eventually opting for exiting both the single market and the customs union, a temporary backstop preventing the re-establishment of a hard border between the UK and Ireland was included in the Withdrawal Agreement. The latter, however, was voted down in the House of Commons repeatedly, a foreseeable conclusion to the process given the division of British political parties on the issue and the fragmentation of the British parliament after the 2017 general election.

The process is still pending as the British government has been unable to come up with an alternative solution and the House of Commons, while rejecting May’s deal, couldn’t muster a majority behind any potential outcome to the Brexit process. In the meantime, the series of initiatives the EU was able to agree on not least due to British abstention – in particular the launch of the Permanent Structured Cooperation on defence projects and the European Defence Fund – have reinforced the division between the British Leavers and Remainers.

⁴⁵ Bruno Waterfield, “EU Army Plans Kept Secret from Voters”, in *The Times*, 27 May 2016.

⁴⁶ Robert Schuman Foundation, *Dialogue avec Jean-Claude Juncker* (video), Paris, 31 May 2016, <https://www.robert-schuman.eu/fr/breves/3551-dialogue-avec-jean-claude-juncker>.

Before the end of March 2019 and in the run-up to the two subsequent extensions to the Brexit deadline, Juncker and Barnier came out with strong statements. They called for short extensions conditioned by clarity on the UK's side that it would avoid a no-deal scenario.⁴⁷ However, since the initial Brexit date of 29 March 2019 has passed, the EU Brexit strategy has lost some of its coherence. The extraordinary European Council summit of 10 April 2019 resulted in a six-month extension that went beyond the European elections against the wishes of both May and Juncker, and that made little political sense other than the rationale of concluding the exit before the current Commission leaves office on 31 October 2019. Such an outcome showed that divisions are present between the European Commission and the European Council, and within the European Council, on the suitability of further extensions, creating further uncertainty around the issue. Given that negotiations over the post-Brexit EU–UK relationship have not even officially started, the Brexit drama is set to weigh on the agenda of the next Commission.

If neither Poland nor Hungary is contemplating leaving the EU, both countries have posed a serious challenge to the cohesion of the Union and more specifically to the enforcement of EU values as described in article 2 TEU, that is, “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights”. Reforms have been conducted in both countries limiting the rights of minorities, the independence of constitutional courts, as well as the freedom of the press and academic freedom, raising serious concern for the rule of law.⁴⁸ The expulsion of the Central European University from Budapest or the lowering of the age of retirement for Polish supreme court judges are but a sampling of the decisions which have ultimately led to the activation of article 7 TEU against both countries. However, Juncker lost time by spending a lot of his term trying to avoid using available procedures, then using them in a way that lead to accusations of double-standards, only to ultimately acknowledge their weakness and come up with a late proposal for an alternative.

Article 7 TEU foresees sanctions against EU member states that do not conform to EU values as mentioned in article 2 TEU. It consists of two phases and involves the European Commission, the European Parliament and the European Council. The first phase of the procedure (art. 7.1 TEU) can be activated by the Commission, the European Parliament or a third of member states. The Council is then to decide whether there is a risk of breach of EU values in the given country by a vote of four-fifths majority, and start monitoring the situation. The second part of the procedure (art. 7.2), which might lead to strict sanctions such as the loss of voting rights for the member states under scrutiny, requires a recommendation of the Commission or one third of the member states, the approval of the EP and the

⁴⁷ Maïa de la Baume, “Michel Barnier: Brexit Extension ‘For What?’”, in *Politico*, 13 March 2019, <https://www.politico.eu/article/eu-negotiator-michel-barnier-brexit-extension-for-what-no-deal>.

⁴⁸ Arch Puddington, *Breaking Down Democracy: Goals, Strategies, and Methods of Modern Authoritarians*, Washington/New York, Freedom House, June 2017, p. 35-40, <https://freedomhouse.org/node/49654>.

unanimity of the Council (except the member under art. 7 scrutiny).

At first, the European Commission attempted to avoid activating article 7. In the case of Poland, Juncker preferred to design a Rule of Law Framework, activated in 2016, which amounts to a series of dialogues with the incumbent government. However the Commission had to recognise that the Polish government remained indifferent to such political pressure,⁴⁹ forcing the activation of art. 7.1 in December 2017. Eventually the Commission resorted to bringing the country before the European Court of Justice in October 2018. As requested by art. 7.1, the Council started getting involved in the discussions between the Commission and Poland but did not hold a vote on the issue. Sanctions under article 7.2 TEU remain therefore extremely unlikely, also because Hungary has vowed to veto them.

In the case of Hungary, the first problematic reforms were implemented as early as 2010, with little to no reaction from then Commission President Barroso. When Juncker came into office, many controversial constitutional reforms had already been implemented, and the country was criticised for lack of freedom of the press and of association, and for lack of judicial independence.⁵⁰ As the Polish situation developed in parallel, Juncker was accused of double standards for not activating article 7 or at least applying the same Rule of Law framework to the case of Hungary. Theories were formed that either the Hungarian case was deemed already lost – that it was impossible to untangle the damage via political pressure – or that Prime Minister Orbán was benefitting from some special protection due to his party being part of Juncker’s political family, the European People’s Party (EPP).⁵¹

The first phase of art. 7 was however activated by the EP in September 2018, but once again landed in limbo at the level of the Council which limited itself to monitoring the dialogue between Hungary and the Commission. The situation started to worsen for Orbán as the EPP voted to suspend his Fidesz party’s membership in March 2019 after he ran a virulent anti-Juncker campaign at home. Faced with the inefficiency of the article 7 procedure, the Commission ultimately tried to build more direct leverage and started defending the idea of linking access to European funds to the respect of European values. The project could create actionable mechanisms for sanctions and was amended by the EP on 4 April 2019, but came in late and has still to be agreed upon by the Council. To date, the issue of the breach of rule of law by EU countries is anything but resolved.

⁴⁹ European Commission, *Proposal for a Council Decision on the Determination of a Clear Risk of a Serious Breach by the Republic of Poland of the Rule of Law* (COM/2017/835), 20 December 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017PC0835>.

⁵⁰ Arch Puddington, *Breaking Down Democracy*, cit.

⁵¹ Kim Lane Scheppele and Laurent Pech, “Why Poland and Not Hungary?”, in *Verfassungsblog*, 8 March 2018, <https://verfassungsblog.de/why-poland-and-not-hungary>.

Conclusion

Juncker’s proactive political leadership of the European Commission has shown that the latter could still be a driver for more intra-EU cooperation. However, his action on certain policy fields may have damaged the Commission’s ability to achieve consensus among internal and external stakeholders.

His successor, Ursula von der Leyen, will have a very different term as, even though she has received unanimous support from the European Council (which Juncker failed to get), the structural requirements favouring supranational entrepreneurship⁵² are not present. She does not hold the long and first-hand experience of EU institutions that Juncker possesses, and one of the consequences of the fact that she was not a *Spitzenkandidat* is that she cannot claim the political legitimacy for a daring political platform as Juncker did when he launched his agenda. In her first speech in front of the European Parliament, von der Leyen nonetheless showed willingness to pursue a dynamic in favour of the community method, reminiscent of Juncker’s approach.⁵³

The fact that the European Parliament’s vote resulted in the narrowest margin ever in favour of a Commission president nominee⁵⁴ shows that von der Leyen will not enjoy the same parliamentary support that has been a strong asset for Juncker’s initiatives. In the new interinstitutional game, it remains to be seen whether the European Commission will be successful in preserving the relevance and ambition that have defined the institution under Juncker’s leadership, or whether it will endure a backlash comparable to the previous era. In this regard, the internal structure of the institution will be a strong indicator; and the articulation of von der Leyen’s work with that of the next president of the European Council and the High Representative will be a defining parameter.

Updated 3 October 2019

⁵² Dermot Hodson, “The Little Engine That Wouldn’t”, cit., p. 302.

⁵³ European Commission, *Opening Statement in the European Parliament Plenary Session by Ursula Von der Leyen, Candidate for President of the European Commission* (Speech/19/4230), Strasbourg, 16 July 2019, https://europa.eu/rapid/press-release_SPEECH-19-4230_en.htm.

⁵⁴ Von der Leyen received little more than 51 per cent of the MEPs’ vote.

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