

Policy Brief

The Commission *is* political

Time to act upon this truth in the run-up to 2024

Dr. Thu Nguyen, Policy Fellow

27 July 2021

#EuropeanCommission
#Democracy
#RuleOfLaw

How ‘political’ can and should the European Commission be? This question is a long-standing one. On the one hand, European integration demands more and more political and distributive choices to be taken at European level. On the other hand, there is the fear that a political Commission would undermine its own role as the neutral, objective guardian of the Treaties. In this policy brief, Thu Nguyen revisits the concept of a ‘political Commission’ and argues for a reinforcement of its political character in the run-up to the 2024 European elections.

Introduction: The supposed *Spitzenkandidaten* dilemma

A key question put to EU citizens in the Conference on the Future of Europe concerns the *Spitzenkandidaten* process: Should the choice of European Commission president be linked to the European Parliament elections by institutionalising the nominations for the post from the ranks of the political parties’ own lead candidates? The answer seems straight-forward – yes, of course, in the name of democracy. But, in reality, it is linked to a much bigger question concerning the role of the European Commission within the EU’s institutional system, and one that might be harder to answer: How ‘political’ can and should the Commission be?

The fear that a ‘political Commission’ would undermine its own role as the neutral, objective guardian of the Treaties is long-standing. ‘Political’ is here understood as non-technocratic, based on value- or interest considerations (as opposed to expertise), subject to public approval. The notion of ‘political’ is intimately connected to that of democratic legitimacy. In democratic systems, political decisions usually imply responsiveness to the electorate’s expectations and party-political considerations whereas technocratic decision-making is much more grounded in expertise, shielded from electoral influences, let alone choices.

The *Spitzenkandidaten* procedure embodies this tension between the political and technocratic roles of the Commission: While it is by no means a prerequisite for a Commission to be ‘political’, a link between a ‘political Commission’ and the European Parliament election is at least desirable from a democratic standpoint. At the same time, it makes the

Commission president not just more political, but crucially also more partisan by explicitly linking her or him to the biggest party in the parliament. This argument is often [used against the Spitzenkandidaten procedure](#). Critics argue that a partisan Commission president would undermine her/his credibility when it comes to enforcing EU law in a neutral and equitable manner.

This policy brief revisits the tension between the Commission's twin roles in light of recent developments. It argues that we ought to accept and even reinforce the political character of the Commission, including when it comes to enacting its role as guardian of the Treaties.

The two conflicting roles of the European Commission

Why a 'political' Commission?

While the Commission's work has effectively been political for much longer, the term 'political Commission' was explicitly coined by Jean-Claude Juncker when he became president after the 2014 European elections. The concept was clear: European integration demands more and more political and distributive choices. The EU has also taken on more important political tasks that profoundly impact citizens' lives. From migration to social policy to the new EU recovery fund, there is an array of areas no longer defined by technocratic and regulatory decision-making but by genuine policy choices reached at European level: How to distribute refugees fairly across member states? Which reforms to push for in return for money from the recovery fund? These questions cannot be answered by deploying mere expertise – there is no 'right answer' – but entail political choices.

The Commission's own interpretation of its political role was based on two distinct but related points:

- 1. More democratic legitimacy:** Juncker's political Commission was the first to be able to claim a certain degree of democratic legitimacy by having been explicitly tied to the 2014 European Parliament elections. This was the first, and thus far only, election in which the choice of Commission president was determined by the electoral outcome by giving the top post to the presidential candidate – nominated by each political party in advance – of the strongest party in Parliament. This link between EU citizens' preferences and the Commission's political decisions is supposed to give the latter's actions greater democratic legitimacy. An added effect is that it also strengthens the Commission president's position vis-à-vis the member states, countering the connotation of the Commission as European Council 'secretariat', merely implementing the latter's policies/political choices.
- 2. More political prioritisation:** The fact that Juncker's political Commission was democratically legitimized through the *Spitzenkandidaten* procedure also laid the ground for its more overtly political working. Juncker introduced his [better regulation agenda](#), in essence a promise to introduce less but improved legislation by focussing on a list of political priorities. This prioritization led in turn to an internal reorganization of the Commission itself. Juncker clustered his College of Commissioners in different project teams, each dedicated to certain thematic political areas, and each headed by a vice president. He streamlined the college and effectively introduced a [political hierarchy](#) within the Commission through the VP system.

The limits of a political Commission

There are, however, [limits](#) to the Commission's political role. The first question raised is how far the Commission *can* drive European integration according to its own political priorities given that the scope of its actions is circumscribed by the Treaties. Equally, how far can the College of Commissioners be politically

responsive to European citizenry as a whole when its own composition depends entirely on the member states' governments rather than on the outcome of the EP elections.

The second and more controversial question is whether the Commission *should* be political. Its role as guardian of the Treaties requires it to be or at least seem to be impartial. The tension between the political Commission and its neutral, technocratic role as enforcer of EU law can essentially come to pass along three lines:

- **Along member state lines:** One way in which its obviously political actions can become problematic is where the Commission is seen to favour certain member states. In almost any given area of EU law, the Commission has a certain degree of discretion in applying the rules, whether it is economic policy, competition law or the rule of law. But where the Commission uses this discretion to enforce rules against certain member states but not others, it undermines the principle of equality between member states – and effectively its own credibility as a neutral guardian of the Treaties at the same time. This could be witnessed when it came to enforcing the Stability and Growth Pact (SGP). A striking example came when Juncker (only half-jokingly) said, in relation to the Commission's decision not to enforce the 3% budget deficit rule against France in 2016, that it had been given leeway "[because it is France](#)", suggesting that big member states do not have to play by the same rules.
- **Along party-political lines:** Tension also arises when the Commission leadership appears to be partisan by favouring their own party-political group at member state level. A Commission president, who is chosen on grounds of her/his nomination as a party's presidential candidate, will inevitably have political preferences. The tension between democratic representation and neutrality became painstakingly clear when in summer 2020 Commission president Ursula von der Leyen published a [video](#) in support of the Croatian Democratic Union's lead candidate (a member of her own political family at European level, the EPP) during the Croatian election campaign. [Backlash](#) was imminent, a [complaint](#) was filed with the European Ombudsman (who did not find reason to open an inquiry). The Commission president and her team ended up [apologizing](#) for the 'mistake' but by then her preferences, surprise surprise, were out in the open.
- **Along institutional lines:** A third tension arises within the EU's institutional setting itself. This relates to the Commission's role as a political player in inter-institutional negotiations where it regularly faces trade-offs when it comes to enforcing the Treaties. This can, for instance, include holding off on infringement proceedings against a certain member state in return for its votes in the Council on a different legislative dossier. This tension could also be seen in the negotiation and enforcement of the [new rule of law mechanism foreseeing financial sanctions in cases where rule of law violations in member states can be linked to the EU's budget](#). The mechanism was negotiated as a package together with the EU's multiannual financial framework and the EU recovery fund. Faced with veto threats from Hungary and Poland and, indeed, arguably to save the recovery fund, the Commission agreed to a deal brokered by the German Council presidency that it would only trigger intervention after both countries had the chance to file complaints before the ECJ. This political trade-off was firmly criticized by many as undermining the Commission's task as safeguarding the core value of the rule of law.

These three sources of tension illustrate that the Commission engages in political trade-offs, including when enacting its role as guardian of the Treaties. They are most controversial when the Commission is seen to be partisan. The controversy is reflected in the repeated suspicion, for example, that the Commission's [diverging approaches](#) vis-à-vis Hungary and Poland on rule of law issues were

influenced by Orbán's shared EPP membership with president Juncker. This raises the question whether we can trust a Commission president with obvious party-political preferences to enforce issues such as the rule of law or unpopular budgetary restrictions against her/his own political family at member state level? The answer to this question is that we have no other choice.

Implications for the 2024 elections: Make it political

Considering the tensions described above, it might be easy to conclude that the best way forward would be to abandon the *Spitzenkandidaten* process so as to avoid a further politicization of the Commission in its role as the guardian of the Treaties. It would not be the first time the argument could be made that a 'political Commission' would lead to a "[destruction of perceived impartiality for nothing](#)", reducing its ability to deal with crises such as the current rule of law impasse by muddling the interests it represents.

However, there is no guarantee that a less political Commission would be more effective in enforcing the rule of law or balanced budgets within the member states. These decisions will continue to entail political choices and trade-offs. And the likes of Orbán would certainly still find reasons to accuse the Commission of double standards and political motives, accusations which the Polish justice minister has recently even [thrown at the European Court of Justice](#). As shown above, the Commission's political role is only partly tied to the *Spitzenkandidaten* procedure. Rather than de-politicizing the Commission, abandoning the procedure would raise renewed criticism of the Commission's lack of democratic legitimacy, in particular at a time in which citizens, not lastly through the EU's pandemic responses, are [highly aware of the EU's impact in their lives](#).

Instead of trying to depoliticize a political animal, Europe's political families should fully endorse the procedure in the run-up to the 2024 EP election. Their *Spitzenkandidaten* should run proper electoral campaigns and not just on the kind of policy projects they intend to initiate once in office. They should also make clear how they intend to use the margins of discretion given to the Commission in enforcing EU law and in what way, for example, the enforcement of budgetary rules will be prioritized, or which criteria will inform decisions on infringement proceedings so as to give citizens a real political choice.

Gefördert durch:



Hertie School gGmbH • Chairman of the Supervisory Board: Bernd Knobloch • Chairman of the Board of Trustees: Frank Mattern • Academic Director: Prof. Dr. Henrik Enderlein • Managing Director: Dr. Axel Baisch • Registered Office: Berlin • Trade Register: Local Court, Berlin-Charlottenburg HRB 97018 B • Hertie School – founded and supported by the non-profit Hertie Foundation