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Research Article

The Evolution of Frontex Governance: Shifting from Soft to Hard Law?

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Abstract

This article investigates the evolution of the governance of the Frontex agency by focusing on joint operations, the area of activity that has posed the greatest challenges in finding an appropriate distribution of tasks and responsibilities between the member states and the agency. Adopting insights from rational choice institutionalism, this article argues that successive reforms of the agency have led to the inclusion of hard law elements in an attempt to address the main shortcomings of a governance framework that was initially predominantly based on soft law. However, sovereignty issues and institutional constraints that characterise this area of cooperation have induced member states to retain some of the central features of the previous soft law architecture. As a consequence, the reform process has resulted in the adoption of a 'hybrid' system of governance that mixes hard and soft elements in an attempt to reconcile competing policy priorities.

Keywords

Frontex; border control; EU migration policy; EU governance

Since its creation in 2004, the Frontex agency has navigated the rough waters of EU migration policy, characterised by crisis-driven policy-making, shifting high-level priorities and fluctuating issue salience (Bossong 2007). In a context of strong politicisation, the agency has received repeated pressures to intervene from member states facing migration 'crises' at their borders (Carrera 2007; Nascimbene and Di Pascale 2011; Euractiv 2014). Against this backdrop, EU institutions have carried out a reform process aimed at extending the Frontex operational mandate, by revising the Frontex Regulation in 2007, 2011 and 2014 (Council/Parliament 2007; Council/Parliament 2011; Council/Parliament 2014). This article takes into consideration the main features of the governance framework established for deploying Frontex Joint Operations (JOs)¹ and tries to unveil the reasons that led actors at the EU level to revise that framework in the course of successive legislative amendments.

The governance of Frontex has already been addressed by several academic contributions. Whereas some authors have traced the institutional dynamics that led to the creation of Frontex using a principal-agent model or by combining new institutionalist assumptions (Leonard 2009; Ekelund 2014), other authors have questioned the value added provided by the Frontex 'formula', pointing to the limited results achieved by the agency in several areas of activity due to a lack of autonomy and governance weaknesses (Pollak and Slominski 2009; Wolff and Schout 2013). No in-depth study, however, has been produced to date that focuses on the governance of JOs and that enquires systematically about the evolution of that governance framework. A focus on JOs is justified for several reasons. First, JOs have been at the centre of public opinion and media attention, because

¹ JOs refer to border control activities coordinated by Frontex that take place at the external borders of the member states. JOs are usually hosted by one member state, whereas other member states may participate with equipment or personnel. Other operational activities carried out by the agency, such as joint return operations, are not addressed in this article because they involve modalities of cooperation that cannot be assimilated to those of border operations (for an overview of Frontex activities see the agency's website: <http://frontex.europa.eu/about-frontex/mission-and-tasks/>).

they have been deployed to tackle emergency situations at Europe's migration hotspots, such as in the Mediterranean or on the Greek-Turkish land border. The centrality of JOs in the work of Frontex is also testified to by the fact that this area of activity absorbs by far the largest part of the Frontex budget, approximately 47 per cent of the about 98 million EUR that made up the overall budget of the agency in 2014 (Frontex 2014). Finally, JOs are interesting due to the sovereignty and even constitutional issues that they raise: indeed, JOs require member states to give up part of their previously exclusive control over external borders and to recognise Frontex, and other member states involved in operational activities, as legitimate actors entitled to perform a range of border control tasks in their place. Thus, the JOs' governance impacts on the overall physiognomy of the integrated management system of external borders called for in Article 77(1)(c) of the TFEU (Treaty on the Functioning of the European Union) and fuels the related debate on the establishment of a European System of Border Guards as a possible long term evolution of that system (European Council 2014 and 2009).

The analysis developed in this article takes as a starting point the literature on new modes of governance, which has acquired increasing relevance in the field of EU studies (Héritier and Rhodes 2010). Although new modes of governance are associated with the use of non-binding instruments typical of soft law and in opposition to the classic binding instruments of EU law (regulations and directives), several studies have recognised that the choice between hard and soft law is not a binary one because 'hybrid constellations' have been created in several EU policy areas that include both hard and soft elements within the same policy framework (Trubek, Cottrell & Nance 2006: 67). Therefore, this article tries to understand the reasons for the choice of a specific set of governance instruments in the case of Frontex JOs adopting insights from Rational Choice Institutionalism, 'the most well developed literature on international institutions' (Abbott 2008: 10). More specifically, following arguments developed by Rational Choice Institutional contributions, the governance of JOs is framed in terms of a trade-off faced by EU actors when choosing between hard and soft instruments (Abbott and Snidal 2000).

The analysis will focus on a number of sources beyond official legislative documents. In particular, Impact Assessments (IAs) carried out by the Commission in 2008 and 2010 (Commission 2010a; Commission 2008a) are relevant sources due to the role they played in shaping the reform process of the Frontex Regulation. More specifically, the 2008 IA was instrumental in the launch of a broad reflection on the reform of the agency that took place at the EU level (Commission 2008b; Council 2008; European Parliament 2008). Subsequently, the 2010 IA formulated a set of policy options that were later included in the 2010 Commission Proposal in view of the 2011 reform of the agency (Commission 2010b: 3). Finally, semi-structured interviews were carried out with officials from Frontex, the European Commission, the European Parliament and member states' border management authorities (see the list of interviews at the end of the article).

CHOOSING BETWEEN HARD AND SOFT LAW

The emergence of new modes of governance (NMG) at the EU level has been associated with instruments that depart from the traditional Community method of legislating through regulations and directives. The Community method is usually conceived as based on 'hard law': this implies the use of binding instruments, uniform and precise rules, the imposition of sanctions in case of non-compliance and extensive delegation of competences to supranational institutions for the adoption and implementation of those rules. In antithesis to the Community method, NMG are conceived as based on soft law, which means that they are not legally binding, they do not foresee sanctions in case of non-compliance and do not even involve transfer of substantial competences to supranational actors. Accordingly, NMG have usually been associated with the Open Method of Coordination, a non-binding framework of cooperation based on peer review, benchmarking and

evaluation that has been applied extensively in the field of EU social, and healthcare policies (Trubek and Trubek 2005).

The previously described dichotomy between the ‘hardness’ of the Community Method and the ‘softness’ of NMG, however, has been questioned by several contributions, which have pointed to the ‘hybridity’ that characterises several areas of EU governance, where different combinations of hard and soft instruments have been developed to respond to the specific features and requirements of different policy fields (Trubek, Cottrell & Nance 2006). In this regard, the conceptualisation of hard and soft law elaborated by Abbott and Snidal (2000) at the crossroads between International Relations (IR) and International Law is of particular relevance also in the case of the EU. Abbott and Snidal have questioned the standard definition of hard and soft law as based on the distinction between ‘binding versus non-binding’ instruments, which still dominates the largest part of the debate on the issue (Trubek, Cottrell & Nance 2006: 69). In contrast with that narrow definition, the authors define hard law as ‘legally binding obligations that are precise and that delegate authority for interpreting and implementing the law’, whereas soft law begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision and delegation (Abbott and Snidal 2000: 421). The authors add that the proposed categorisation explicitly avoids a binary distinction between hard and soft law, pointing to the continuous gradations of hardness and softness that are experienced in real word instruments (Abbott and Snidal 2000: 424).

Cross-fertilisation with theorisation developed in the IR field is also helpful in understanding the rationale behind the adoption of hard and soft instruments at the EU level. Rational Choice Institutionalism (RCI), in particular, offers one of the most-well developed research agendas to the study of international institutions (Abbott 2008: 10). At its core, RCI assumes that actors (nation states) hold a fixed and consistent set of preferences and behave strategically in order to pursue them. RCI adopts a functionalist logic to the issue of institutional choice, arguing that institutions are designed to deliver rationally anticipated benefits to the actors that create them (Hall and Taylor 1996: 944). RCI accounts have also been applied to the study of the EU institutional framework. In particular, principal-agent models have been used to explain why and under what conditions member states (principals) delegate competences to supranational institutions, such as the European Commission (agents). Besides, the same accounts have also dealt with the post-delegation phase, showing how supranational agents, once granted autonomy and decision-making power, pursue their own policy preferences and contribute to shape subsequent policy outcomes (Pollack 2003: 34).

RCI literature has inquired specifically on the rationale for using hard and soft law instruments, which make it particularly suitable to address the objective of this article (Trubek, Cottrell & Nance 2006: 70-71).² The article by Abbott and Snidal mentioned before (2000) stands out as a ‘classic’ contribution on this topic, due to its attempt to systematise the terms of the trade-off between hard and soft law. Besides, the subsequent attempt by Trubek, Cottrell and Nance (2006) to apply the same conceptual approach to the study of EU policy-making is also relevant for the analysis developed in this article. In particular, the authors argue that the need to find a balance between the advantages of hard and soft law, which are summarised in the following part of this section, is a

² The choice to adopt a RCI account in article does not imply that normative, ideational and social factors such as those stressed by constructivist accounts are not important when explaining the genesis and functioning of governance systems (Abbott and Snidal 2000: 425; Trubek, Cottrell & Nance 2006: 70). However, as recognised by Trubek, Cottrell & Nance (2006: 91), rationalist accounts have been shown to be particularly suited to explain why governance systems are adopted in the first place, which is the primary objective of this article. On the other hand, it should be acknowledged that constructivist accounts have provided important insights to explain how governance mechanisms, especially those based on soft law, work to bring about change once established.

central element to explain the increasing hybrid character of governance systems at the EU level (Trubek, Cottrell & Nance 2006: 67).³

Starting with hard law, one of its main advantages lies in the possibility of establishing *credible commitments* among the parties, which directly stems from its binding character. This feature is particularly important when the benefits of cooperation are great but actors hold a rational incentive to adopt uncooperative strategies, such as in the case of collective action problems and 'prisoner dilemma' situations (Abbott and Snidal 2000: 426). Another central argument in favour of hard law is the reduction of *transaction costs* associated with policy-making. This type of cost is produced by interactions between actors that are required for the application and further elaboration of agreed rules, including during the implementation process. Accordingly, a law that specifies detailed implementing rules can avoid controversies regarding its application, whereas delegation of competences to supranational agents can improve the effectiveness of the decision-making process by providing policy-relevant expertise not directly available to decision-makers (Abbott and Snidal 2000: 430). Finally, delegation of adjudicative or executive powers to third party institutions is the way most commonly used to avoid problems of *incomplete contracting*. More specifically, those problems stem from the impossibility of laying down contracts that can anticipate all the possible contingencies and related obligations falling to the parties (Abbott and Snidal 2000: 433).

Although hard law permits benefiting from a series of advantages, it also bears costs and limitations that make it unsuitable under particular circumstances. This is the reason why policy-makers may prefer to frame cooperation on the basis of soft law instruments. First of all, soft law permits the reduction of the *negotiating costs* of an agreement, such as time spent in bargaining sessions, as non-binding norms lower the stakes for the parties involved (Abbott and Snidal 2000: 434; Trubek, Cottrell & Nance 2006: 73). Another central issue that can make soft law more suitable has to do with *sovereignty costs*. In those fields closely related to the core of national sovereignty, actors may thus be induced to avoid risks of unwanted sovereignty costs, favouring arrangements that are non-binding or do not delegate extensive powers to third party institutions (Abbott and Snidal 2000: 436; Trubek, Cottrell & Nance 2006: 74). Finally, *flexibility* is also a feature of soft law that is particularly relevant in those policy areas characterised by rapidly evolving conditions and divergent negotiating positions among the contracting parties. More specifically, soft law can accommodate diverse legal and institutional systems without imposing top-down uniform rules and can enable better coping with uncertainty, particularly by reducing the scale of unforeseen future costs associated with entering into an agreement (Abbott and Snidal 2000: 445; Trubek, Cottrell & Nance 2006: 74).

The previous review of arguments specifies the main terms of the trade-off that exists between hard and soft law from a RCI standpoint. In the following section, the trade-off will be adopted to single out the motivations that have determined the choice of the governance mechanisms introduced to regulate Frontex JOs during successive rounds of reform of the Frontex Regulation. In particular, the hybrid character assumed by the Frontex governance system will be explained as a result of the tension that exists between the two poles of the trade-off between hard and soft law and the ensuing attempts by actors to reconcile them. With regard to the latter, and in line with RCI theorisation, a specific focus will be put on the mediating role of the EU institutional framework in shaping relevant outcomes, paying particular attention to the preferences and negotiating positions

³ The review of arguments presented below largely draws on Abbott and Snidal's contribution (2000). It has to be acknowledged, however, that the theorisation of hard and soft law proposed by the authors is rooted in the broader rationalist strand of IR, and that arguments on the rationale for using hard and soft law have been broadly debated in the IR literature (Trubek, Cottrell & Nance 2006: 71-73).

not only of member states' representatives gathered in the Council of Ministers but also of other EU institutions, such as the European Commission and the European Parliament.

THE GOVERNANCE OF FRONTEX JOINT OPERATIONS

The creation of Frontex should be put in the context of the new migration competences granted to the EU by the Treaty of Amsterdam in 1999, which integrated the Schengen acquis into EU law and further extended the scope of measures related to external border controls that could be adopted by the EU (Monar 2004). In its proposal on the establishment of the agency, the Commission expressed the need to overcome the limits of the intergovernmental framework in force at the time, which was organised around the SCIFA+, a special Council formation composed of the members of the SCIFA working group (Strategic Committee on Immigration, Frontiers and Asylum) plus the Heads of member states' border services (Wolff and Schout 2013: 311). The Commission pointed to previous evaluations of the activities implemented in the context of the SCIFA+, which had underlined the lack of suitable planning and preparation, central operational coordination, and an appropriate legal basis for carrying out common operations (Council 2003: 35). In June 2003, the Thessaloniki European Council had also invited the Commission to examine the necessity of creating 'new institutional mechanisms, including the possible creation of a Community operational structure, to enhance operational co-operation for the management of external borders' (European Council 2003: 4).

Though stressing the advantages that the establishment of an agency would bring about in terms of increased expertise, visibility and operational cooperation, the Commission clarified that, in line with the limited competences introduced by the Treaty of Amsterdam, the agency would simply ensure coordination of member states' actions in the field of border controls and that 'it will not be given any policy-making role' (Commission 2003: 4). In 2009 the Lisbon Treaty, by confirming the 'shared' nature of EU competence in the entire area of Justice and Home Affairs, sanctioned the primacy of member states in the field of border controls and set the legal boundaries within which the agency's mandate would be developed in the following years (Monar 2012: 74).

Although the positive role of Frontex in increasing cooperation on border-related issues was widely recognised, it soon appeared clear that the agency was still too dependent upon the member states for its functioning, particularly regarding the organisation and implementation of operational activities (interviews with COM 1 and MS 1; Council 2008; European Parliament 2008). A first attempt to address the shortcomings experienced by the agency in the field of operational cooperation was made in 2007 when the Frontex Regulation was amended to allow for the deployment of Rapid Border Intervention Teams (RABITs) and to lay down rules concerning tasks and responsibilities of guest officers taking part in JOs (Council/Parliament 2007). Subsequently, a comprehensive reform of the agency was completed in 2011. The 2011 amendments introduced several changes aimed at increasing Frontex operational capabilities and strengthening the monitoring and protection of fundamental rights during its activities (Council/Parliament 2011). Finally, another piece of legislation was adopted in 2014, which dealt with rules to be adopted during Frontex-coordinated sea operations (Council/Parliament 2014).

The following section of this article describes the changes introduced to the governance of JOs by the above-mentioned legislative amendments and points to the reasons for their introduction on the basis of the trade-off between hard and soft law outlined above. The analysis is organised around three aspects of the governance of JOs that have emerged as central in the negotiating process of legislative amendments. Those three aspects are as follows: i) the rules regulating the provision of technical equipment to the agency, ii) the rules regulating the provision of border guards to the

agency, and iii) the rules regarding the respective role and competencies of the agency and of the member states in the organisation and implementation of JOs.

Provision of Technical Equipment

A first point to consider when examining the governance of JOs is the mechanism that regulates provision of technical equipment to the agency. The 2004 Regulation stated in this regard that the agency shall manage a centralised record of technical equipment owned by the member states, 'which they, on a voluntary basis and upon request from another Member State, are willing to put at the disposal of that Member State for a temporary period' (Council 2004: Art. 7). The purported aim of the CRATE (Central Record of Available Technical Equipment) was to implement the principle of 'burden sharing' between member states and to enable Frontex to plan better for operations at external borders (COWI 2009: 53).

Several problems, however, were soon recognised in relation to the non-binding character of CRATE, in particular a lack of willingness on the part of member states effectively to contribute equipment listed in the Record (interviews with COM 1 and FRONTEX 2; European Parliament 2008). The use of technical equipment registered in the CRATE was improved by the signing of Memoranda of Understanding between Frontex and the member states, which specified the conditions for the use of the equipment and its financial implications, including the reimbursement of the costs on the part of the agency (Commission 2008a: 9). Nevertheless, the 2008 IA stressed that the use of such equipment in JOs had occurred only a few times and concluded that 'equipment is a 'missing link' for making semi-permanent operations a reality' (Commission 2008a: 10). This situation was confirmed by the 2010 IA, which pointed to the non-legally binding character of commitments made to CRATE as a major problem: 'While Member States are ready to list a large number of equipment [...] a very small share of that equipment is actually made available [...] In spite of repeated calls by the institutions the contribution of the Member States, based on the current voluntary system have only marginally increased' (Commission 2010a: 12).

The shortcomings associated with the non-binding character of CRATE were addressed in the reform of the agency that led to the 2011 amendment of the Frontex regulation. In particular, the Commission proposal advanced two policy options to improve provision of technical equipment to FRONTEX. The first option was to set up a technical equipment pool based on compulsory contributions from the member states, leaving unspecified, however, the exact functioning of this mechanism. The second option was the introduction of a clearer legal basis for the acquisition or leasing of technical equipment by Frontex, including provisions on the place of registration and use of equipment. This latter option was aimed to ease the acquisition of equipment by the agency, a possibility that, albeit legally feasible under the 2004 Regulation, had never been exploited up to that point (Commission 2010a: 22).

The two options proposed by the Commission were transposed in the 2011 Regulation. However, with regard to the first option, the Council amended the Commission proposal to clarify that compulsory provision of equipment would be based on annual bilateral negotiations and agreements between the agency and member states. Under this system, member states are not obliged to provide anything to the agency, but once they have made a pledge, they are obliged to fulfil their commitment, unless in the event of an exceptional situation occurring at their borders (interview with COM 2; Council and Parliament 2011: Art. 7(3)). On the basis of the second option advanced by the Commission, the 2011 Regulation also specified the rules allowing the agency to buy or lease technical equipment, including when an asset is co-owned by the agency and a member state (Art. 7(1)). In spite of this last amendment, it should be recalled that the necessary conditions for allowing Frontex to acquire its own equipment on a regular basis are still far from being

achieved: as noted by a Feasibility Study released in 2014, the current size of the Frontex budget does not permit the purchase of equipment, whereas co-ownership is complicated by issues concerning the place of registration and accountability during the use of the equipment (interview with FRONTEX 2; Unisys 2014: 99).

In terms of governance features, the above-mentioned changes introduced hard law elements in the system while preserving the principle of voluntarism on which the provision of equipment from member states to Frontex is based. Accordingly, the mechanism of 'binding pledges' obliges the member states to honour those commitments they have voluntarily decided to undertake (interview with COM 2). Likewise, the introduction of more detailed and clearer provisions that allow Frontex to acquire its own equipment was singled out as a medium or long term solution to reduce its dependency on member states' pledges (interview with COM 2; Commission 2010a: 23-24). In line with RCI theorisation, those amendments were thus aimed at ensuring that contracting parties abide by their commitments and, with specific regard to ownership rules, avoid transaction costs stemming from the transfer of equipment from member states to the agency. At the same time, the need to preserve member states' autonomy and guarantee the necessary flexibility in the planning of their own border management activities explains why, for example, a fully-fledged binding mechanism based on pre-determined shares of equipment for each member state was not considered as a suitable option.

Provision of Border Guards

The provision of border guards to Frontex was initially regulated by a non-binding system that experienced problems similar to those reported in the case of equipment. Accordingly, the agency had to make ad hoc requests to member states for each individual operation, a situation that created logistical and organisational problems (COWI 2009: 36; Commission 2010a: 13). The 2007 amendments to the Frontex Regulation had indeed provided for a mechanism of compulsory deployment of border guards but restricted it to situations of 'urgent and exceptional migration pressure' in the context of RABIT (Council/Parliament 2007). The RABIT mechanism was described by the Commission in the following way: once a member state declares its willingness to participate in the establishment of the teams, it 'shall make these officers available to the Agency for deployment at short notice to another Member State and for regular training and exercise purposes in accordance with an annual schedule' (Commission 2006: 5). The high threshold set for the deployment of RABITs in terms of what constitutes an emergency, however, meant that such an instrument was employed only once, on the Greek-Turkish border from November 2010 to March 2011, following a formal request issued by the Greek government (Frontex 2010: 24).

In its 2010 Proposal for amending the Frontex Regulation, the Commission suggested extending the same system in place for RABIT to regulate Frontex JOs by constituting a pool of border guards called 'Frontex Joint Support Teams' (FJST) based on a compulsory contribution from the member states. In the course of negotiations, the rationale of the Commission proposal was kept, but, following an amendment presented by the European Parliament (EP), it was decided to merge the Frontex Joint Support Teams and Rapid Intervention Teams in one single formation, called European Border Guard Teams (EBGT), to be deployed in all types of JOs, including pilot projects and rapid interventions. As explained in the EP Report, this proposal was designed to 'streamline the provisions of the regulation, increase transparency, avoid duplication and confusion of roles and most importantly, give a clearer European identity to the Agency's missions' (European Parliament 2011: 38). The same Report also referred to the EBGT as 'an embryonic structure which could, in future, be developed into a fully-fledged EU Border Guard Agency' (European Parliament 2011: 38). This statement is proof of a diffuse positive attitude among EP ranks regarding further EU integration on border management issues (interviews with EP1 and EP 2; Unisys 2014: 100). As in the case of equipment, it

was specified on request by the Council that contributions from member states should be decided on the basis of annual bilateral agreements and that pledges should be binding on them except in cases of exceptional situations at their borders (Council/Parliament 2011: Art. 3b (2)).

The additional option contained in the 2010 Commission proposal was to foresee the gradual creation of a pool of border guards on semi-permanent detachment from member states to Frontex for a maximum of six months in a twelve-month period (Commission 2010b: 22). Although recognising the value added by this option in improving the capacity to plan, initiate and implement operations, the 2010 IA had pointed to the difficulties associated with having completely independent border guards employed as temporary agents, mainly due to sovereignty and legal constraints associated with the delegation of public authority to non-national border guards in the member states (interview with COM 2; Commission 2010a: 27). For this reason, the Commission proposed to make this new typology of personnel subject to the same legal framework as other guest officers (i.e., border guards of member states participating in JOs) were subject to, which had been included in the 2007 amendments. In that circumstance, the Commission moved from the premise that a minimum level of harmonisation regarding the tasks assigned to guest officers was an indispensable condition for assuring the proper implementation of JOs (Commission 2006: 7). Consequently, Art. 6 of the 2007 Regulation provided that guest officers exercising their duty on the territory of a member state should be allowed to perform all tasks for border checks or border surveillance included in the Schengen Border Code except for refusal of entry and only in the presence and under the instructions of border guards of the host member state. Furthermore, the 2007 Regulation introduced provisions on service weapons, use of force, disciplinary measures and the civil and criminal liability frameworks under which guest officers should be placed (Council/Parliament 2007: Art. 6-11).

The creation of a pool of border guards on semi-permanent detachment was included in the 2011 Regulation. In line with the Commission's proposal, Seconded Guest Officers, as they are called, should be detached to the agency for a maximum of six months in a twelve-month period and contributed through the same mechanism of annual bilateral negotiations as for other border guards (Council/Parliament 2011: Art. 3b(3)). As emerged during interviews, this instrument has been welcomed favourably by the member states' authorities primarily due to the flexibility it guarantees and also because it allows the exchange of best practice and the harmonisation of border control procedures without imposing binding commitments and additional costs on their budgets (interviews with COM 2, FRONTEX 2, MS 2).

As stated at the beginning of this section, the non-binding character of commitments made by member states for the provision of border guards and the fact that the agency had to make ad hoc requests for each JO implied a process characterised by uncertainty and high transaction costs. Those weaknesses were addressed through the adoption of a quasi-binding mechanism for the provision of border guards, first in the context of the RABIT and then also for standard JOs, and through the establishment of a pool of Seconded Guest Officers detached on a semi-permanent basis to the agency. The features of these two mechanisms reflect the terms of the trade-off between hard and soft law instruments underlined by RCI: although those mechanisms introduced a 'harder' framework of cooperation, thus addressing some of the main shortcomings of the previous phase, they preserved the voluntary character of member states' contributions to the agency.

The Organisation and Implementation of Joint Operations

A last aspect of the reform process of Frontex to be considered regards the role of Frontex in the organisation and implementation of JOs. The 2004 Regulation remained silent on this point as well as on the obligation to issue an operational plan (OP) detailing the objectives and organisational

structure of JOs. Such a lack of clarity was recognised as an aspect preventing cooperation in the 2010 IA, which pointed to the fact that '[t]he Agency takes on a different role during different operations, depending on *ad hoc* arrangements. While the Agency does draw up an operational plan for each operation such a plan is not foreseen in the legal basis' (Commission 2010a: 13). The same point was stressed in the Management Board Recommendations addressed to the Commission on July 2009 (Frontex Management Board 2009: recommendation number 7), whereas the external evaluation of the agency completed the same year referred to the lack of coordination between member states participating in JOs as a major issue, pointing to delays, uncoordinated responses and different internal procedures as the main problems to be addressed (COWI 2009: 40-41).

In the 2010 IA, the Commission evaluated two options to streamline the organisation and implementation of JOs. The first option proposed to award the agency the sole right of initiative for the launch of JOs and the sole lead in the establishment of the OP and in the implementation of JOs. The second option, broadly in line with the *modus operandi* already established by member states and the agency through practical cooperation, suggested granting Frontex a co-leading role with the host member state in the organisation of the operation: specifically, the responsibility to draw up the OP subject to the final agreement of the host member state, and a shared right of initiative for launching operations (Commission 2010a: 28). The Commission specified that both the options would enable the introduction of a legal basis for the establishment of the OP, but the impacts of the two options were recognised to be different. Regarding the first option, the Commission recognised its main strength in the possibility of organising JOs based exclusively on needs identified at the EU level with a predicted positive spill over in terms of harmonisation and efficiency. Nevertheless, the Commission also recognised important drawbacks associated with that option, namely a lack of flexibility in adapting to local conditions, the impossibility of the agency replacing the combined expertise of national border guards' authorities, and the likely resistance of member states on sovereignty grounds (Commission 2010a: 30). This last point was confirmed by interviews and empirical research, from which it clearly emerged that several member states oppose substantial delegation of border control competences to the agency in order to preserve the primacy of their national systems (interviews with FRONTEX 1, MS 1 and MS 2; Unisys 2014: 90). The second option was thus preferred by the Commission as a suitable compromise between the competing objectives of streamlining the implementation of JOs and the need to preserve member states' prerogatives (interview with COM 1; Commission 2010b: 4).

The 2011 Regulation kept the main points of the Commission proposal, in particular the obligation to draft an OP for each operation and a co-leading role between Frontex and the host member state in the organisation of JOs (Art. 3a). Specifically, the Regulation provided that the OP includes the objectives, duration, geographical area of interest, instructions to be given to guest officers, provisions on reporting and evaluation and specific rules for sea operations (Council/Parliament, 2011: Art. 3a(1)). A provision was also included upon request of the EP according to which the Executive Director of the agency shall suspend or terminate JOs when fundamental rights or international protection obligations have been violated (Art. 3(1a)). This amendment should be read in conjunction with other instruments introduced by the EP to reinforce the framework for the protection of fundamental rights during JOs, such as the establishment of a Consultative Forum and the appointment of a Fundamental Rights Officer (Art. 26a). The introduction of those provisions testifies to the relevance of fundamental rights issues on the agenda of the MEPs and also of the mounting concerns raised by NGOs, media and civil society on alleged misconduct of Frontex in the context of sea operations implemented in the Mediterranean (Slominski 2013; interviews with EP 1 and EP 2).

The rules and procedures to be followed in the course of JOs at sea had already been addressed through Decision 2010/252/EU, which also included non-binding guidelines for search and rescue (SAR) situations and disembarkation of rescued migrants (Commission 2013: 1). As explained by the

Commission, the central aim of the Decision was to overcome the situation of legal uncertainty determined by different rules and interpretations of International Maritime Law, which had hindered the effectiveness of sea operations and undermined efforts of EU solidarity (Commission 2013: 1). This is the case of SAR activities, which are conducted on the basis of rules and procedures set by international law, such as those included in the 1979 International Convention on Maritime Search and Rescue (SAR Convention). Nevertheless, several divergences have emerged among member states regarding their respective obligations, which is a circumstance that has often prevented the cooperation and coordination between SAR services of neighbouring countries (Trevisanut 2010).⁴

The Decision on sea operations, however, was annulled two years later on procedural grounds, following an action brought by the EP before the Court of Justice of the European Union (CJEU). In line with the substance of the EP complaint, the CJEU considered that provisions on interception, rescue and disembarkation are 'essential elements' of the Schengen Border Code and thus could not be adopted through the comitology procedure, as had been the case of the Decision.⁵

Following the verdict issued by the CJEU, in April 2013, the Commission reframed the rules on Frontex sea operations in the form of a Regulation (Commission 2013). In line with the CJEU judgement, the Commission specified that the new act was to be binding in entirety, including provisions on SAR and disembarkation. The proposed Regulation also strengthened the protection of fundamental rights and the respect of the principle of *non-refoulement*, taking into consideration concerns raised by the European Court of Human Rights in the 2012 ruling *Hirsi Jamaa and Others v. Italy* (Commission 2013: 5; Council/Parliament 2014: Art. 4). During negotiations, six member states (Cyprus, France, Greece, Italy, Malta and Spain) strongly opposed the introduction of rules on SAR and disembarkation into the Regulation; in particular, the five member states criticised those rules as an encroachment on their national sovereignty and added that rules included in the proposed act would have left participating states without the necessary flexibility to accommodate the specific nature and circumstances of each operation (Council 2013: 4). Finally, however, the urgency to finalise negotiations in the aftermath of the Lampedusa tragedy of 3 October 2013 and the pressures raised by the EP to keep the original extension of the Proposal forced the recalcitrant Member states to step back from their initial position, so that the articles on SAR and disembarkation were kept in the final text of the Regulation (interview with MS 2; Peers 2014).⁶

The arguments advanced by RCI provide a useful tool to account for the evolution of JOs governance in this last case. As described above, the 2011 reform introduced the obligation to issue an OP detailing the main organisational aspects of each operation, whereas the 2014 reform provided for a set of binding rules to be followed during Frontex-coordinated sea operations. A central rationale for

⁴ For example, Trevisanut (2010) refers to the frequent disputes that occurred between Italy and Malta as resulting from the refusal of the latter to accept responsibility for persons rescued within its SAR zone. Although Italy backed its argument on relevant rules included in the SAR Convention, Malta advanced an alternative interpretation of the concept of 'place of safety' therein included, stating that 'rescued persons should be disembarked in the nearest port to the place of rescue, regardless of whose [SAR] zone they are found in' (Trevisanut 2010: 532).

⁵ The Commission had chosen to adopt the rules on Frontex sea operations through the comitology procedure considering them as additional measures in the field of border surveillance and thus falling within the scope of Art. 12(5) of the Schengen Border Code (see Commission 2013: 1).

⁶ It has to be recalled here that, *strictu sensu*, SAR remains a competence of the member states and that the Regulation on sea operations only covers those SAR activities that are performed in the context of border surveillance operations coordinated by the agency. However, as testified by the practice of sea operations deployed in the Mediterranean in the last two years, such as the Italian *Mare Nostrum* operation and the Frontex-coordinated operation Triton, a clear cut distinction between the two activities is often difficult to hold in practice, because in the majority of cases the detection of a boat carrying migrants ends with a SAR operation (Carrera 2015; The Guardian 2015).

introducing those hard law elements in the framework of JOs was to clarify the rules of engagement and the *modus operandi* to be followed by the parties involved, thus reducing transaction costs stemming from member states' uncoordinated responses. Substantial delegation of power to Frontex, however, such as granting it the sole right of initiative for the launch of JOs and the sole responsibility for issuing the OP was discarded, as this option would have introduced an overly rigid framework of cooperation and was considered as incompatible with the preservation of national border control systems.

CONCLUSION

The starting point of this article was to recognise that hybridity is emerging as a central feature of the EU system of governance in an increasing number of domains, which are characterised by the simultaneous presence of 'hard' and 'soft' instruments. According to RCI theorisation, the choice of a particular governance framework should be considered in light of the trade-off faced by policy-makers between the advantages of hard and soft law. Although 'harder' solutions reduce the costs of operating within an institutional framework by assuring respect of commitments and reducing transaction costs, soft instruments are easier to reach, allow the parties to preserve their national prerogatives and can be flexibly adapted to different circumstances.

Frontex JOs present an interesting case for testing the explanatory power of the previously mentioned trade-off due to the complex inter-relationship between the agency and member states' prerogatives involved in that area of cooperation. First, it was shown that the Frontex founding Regulation set in place a system that was largely based on soft-law regarding all the three governance aspects considered in this article. Non-binding mechanisms were established to regulate provision of equipment and personnel to Frontex, whereas the precise role of the agency during JOs was left unspecified. The recognition of major shortcomings associated with that same framework, however, led to the adoption of legislative amendments in 2007, 2011 and 2014. As a result of those reforms, hard elements were included in the governance of JOs that increased the level of hybridity of the system.

Two major aspects addressed during the reform of Frontex were the mechanisms for the provision of equipment and border guards to the agency. Regarding equipment, a mechanism of 'binding pledges' was established to commit member states to provide equipment on a regular basis, whereas more detailed rules were introduced in order to facilitate the acquisition of equipment by the agency itself. A similar system of 'binding pledges' was also introduced to reinforce provision of border guards to the agency. For the same reason, a pool of border guards detached to the Frontex on a semi-permanent basis was also introduced. Another major issue that was subject to reform was the organisation and implementation of JOs. Here, the need to clarify and streamline procedures led legislators to introduce the obligation to draft an Operational Plan for each operation detailing organisational and procedural aspects to be followed by the officers taking part in the operations. Major issues raised by sea operations, including SAR and disembarkation, were also addressed by means of a specific set of binding rules. In line with the arguments advanced by RCI, the analysis developed in this article showed how the introduction of those mechanisms was motivated primarily by the need to assure mutual respect of commitments on the part of member states and to reduce transaction costs involved in the different phases of the organisation and implementation process. The analysis also pointed to the role that EU supranational institutions played in pushing forward solutions aimed at achieving those objectives, sometimes also in contrast with more conservative positions taken by the Council. Accordingly, the Commission was instrumental in highlighting the deficiencies of the previous phase of cooperation and in devising the governance mechanisms that were later on translated in the text of the Regulation. The EP also managed to take advantage of its role as a co-legislator to introduce amendments aimed at strengthening the effectiveness and

coherence of several procedural aspects, as well as to set in place a framework for guaranteeing respect of fundamental rights and asylum law during Frontex operations.

Although arguments for making the governance of JOs ‘harder’ played an important role in the legislative amendments taken into consideration, we should not underestimate the importance of the other side of the trade-off, which points to the advantages of soft law in shaping the reform process. In particular, the analysis demonstrated how sovereignty and institutional constraints have constantly made policy-making actors aware that reform in this field of border controls should necessarily be gradual and follow a step-by-step approach (Unisys 2014). Consequently, the system of ‘binding pledges’ described above was placed within a framework that remains based on voluntarism, which allows member states to retain a large degree of discretion when contributing both technical and human resources to the agency. In addition, from the beginning, substantial delegation of competences to Frontex for the organisation of JOs was written off from the reform project because it was considered too inflexible and incompatible with the preservation of member states’ national prerogatives.

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Table 1: List of Interviews

Interviewee	Interview Date	Interview code
Commission official (DG Home Affairs)	November 2013	COM 1
Commission official (DG Home Affairs)	May 2014	COM 2
Member of the European Parliament	November 2013	EP 1
Assistant to a Member of the European Parliament	November 2013	EP 2
Frontex official	July 2013	FRONTEX 1
Frontex official	January 2014	FRONTEX 2
Member state official (border control authority)	July 2013	MS 1
Member state official (border control authority)	October 2014	MS 2

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Research Article

Irrelevant player?

The Commission's role during the Eurozone crisis

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Abstract

Under the EU treaties, provisions for collective (or institutional) forms of political leadership prevail over those made for leadership performed by individuals. Thus, an important leadership input from the EU's institutions, namely the European Commission, would be expectable, particularly in times of crisis. Although not having the formal power of decision, the monopoly of initiative gives the Commission a considerable ability to influence the course of EU policymaking and overall the integration process. Moreover, the Commission has learned to maximize (and to create) windows of opportunity to act by cleverly using its resources (for example, its privileged access to information and expertise). However, during the current Eurozone crisis, the role of the Commission was overshadowed by the visibility and prominence of some national leaders and other institutions. What was the role of the Commission in the economic and financial crisis? Did the Commission influence the crisis responses agreed by the Member States? This article will answer these questions by analysing the European Commission's main crisis response activities between 2008-2013. The central hypothesis of this paper is that the Commission actually played an important role in crisis response.

Keywords

European Commission; Eurozone crisis; institutional leadership; economic governance

In the literature on European integration one of the major discussions focus on the role of the different actors in the policy-making process. In simple terms, the debate could be summarized between intergovernmentalist perspectives that stress the predominance of the member states in the decision-making process (Moravcsik 1994; 1998; 1999) and institutionalist approaches that emphasize the importance of the supranational institutions, namely the Commission. For the later, the Commission has frequently been the central political driver of the EU (Nugent 2000: 6; Drake 2000b: 235; Nugent 2001: 203; Cisotta 2013: 1).

Even though the Commission is well positioned to exercise a range of formal and informal roles with impact in the EU integration, in the literature on the financial and economic crisis the institution and its President came across as secondary players. The numerous meetings of the Heads of State and Government attracted media attention and there was an almost generalized perception that some national leaders (namely Chancellor Angela Merkel) captured political decisions. Accordingly, the main focus of the crisis literature has been on member states. The intergovernmental approach experienced a major comeback, namely in the form of the so-called "new intergovernmentalism" (Puetter 2011; Bickerton, Hodson and Puetter 2015). Several analyses confirmed that during the Eurozone crisis the European Council became the principal decision-maker and has assumed several roles that traditionally belonged to the Commission, namely agenda-setting, coordination and brokering deals (Ondarza 2011; Puetter 2012; Beach 2013; Fabbrini 2013, 2014; De Schoutheete and Micossi 2013). As a consequence, the Commission was relegated to an ancillary part.

However, such an intergovernmental focus risks ignoring a potentially very important actor. In fact the Commission has the opportunity and arguably the responsibility to provide leadership and, expectably, it represents the Union as a whole. Indeed, the EU treaties assign the Commission different tasks and powers that include initiating, supervising and implementing EU policy. Being entrusted with the crucial duty of promoting the "general interest" of the EU, the Commission has a normative function that is particularly relevant to further integration, especially in times of crisis. There are, however, very few analyses focusing specifically on the Commission's role and its impact on the responses agreed to manage the crisis¹. This paper aims to fill this gap by asking what was

the role of the Commission in the economic and financial crisis. Did the Commission influence the solutions agreed by the member states? The central hypothesis of this paper is that the Commission actually played an important role in the crisis response.

METHODOLOGY

This article examines the European Commission's main activities to cope with the crisis (mainly between 2008 and 2013) and their input on the solutions actually agreed by member states. I am particularly interested in seeing whether the Commission was able to use its resources to help shaping crisis response, in a domain that is still chiefly intergovernmental. The focus of the study thus is the Commission's actions. However, the interplay with other actors is also considered.

In order to assess the Commission's role in the crisis response process I have focused on European institutions crisis-related official documents, namely proposals, conclusions of meetings, resolutions, and speeches from the Commission, the European Council, the Council, and the European Parliament (EP). Since the official documents of the different institutions normally are not *per se* indicative of their different positions, I also relied on press releases from the Commission and the Council. As regards specifically the Commission's documents I have tried to determine, among other aspects, when the Commission started to refer to the management of the crisis as a priority, what role the Commission attributed to itself in the crisis response, and what the proposed solutions were. In doing so I have taken into consideration not only the crisis-related content of the diverse documents, but also the regularity of the Commission's proposals, and how often these proposals were in fact requested by the other institutions.

I acknowledge the difficulties of analysing the Commission's influence. In fact, if providing an indicative list of the activities that the Commission is expected to perform in order to check which actions the institution actually performed is a relatively straightforward exercise, measuring the Commission's influence raises a number of methodological difficulties. The fact that the Commission could be (and has been at different times) an influential actor in the decision-making process is not in dispute. But, in a complex, multi-layered, multi-actor negotiation forum such as the EU who influences and who is influenced along the process is an idea always sharply challenged. My purpose though is not to establish which actor was more influent, but if and how the Commission was able to influence the crisis response.

In the next section I put forward a framework for the analysis of the Commission's role in the crisis response, by summarizing the expected Commission functions (emphasising the ones related to leadership) and the resources that the institution could use to influence decision-making. In the following section, I trace the Commission's activities in order to see if and how the Commission has used its resources in the crisis response. Although this analysis only focuses on the economic governance dimension, it is here important to note that the Commission's strategy to deal with the crisis, as presented in the institution's official documents, lied in fact in a two-tiered response: reinforced financial markets supervision and stronger economic policy coordination on the one hand, and the strengthening of the Single Market² to increase competitiveness and boost economic growth on the other.

THEORETICAL FRAMEWORK

The EU has become a polity in its own right (Peterson and Bomberg 1999; Hix 2005; 2008) with a complex multi-level system of governance, which means that it involves a cluster of actors all with an interest or stake in a given EU policy sector and with the capacity to influence the final

agreement. Thus, EU decision-making arises from *interinstitutional* bargaining (Peterson and Bomberg 1999: 8).

The literature on European Integration generally offers two alternative views of the Commission's role in the decision-making process: an intergovernmentalist one that portrays the Commission as an institution that serves the functional needs of member states (Moravcsik 1993; 1995; 1998; Hoffmann 1966; Grieco 1995); and a supranationalist one that acknowledges the Commission's ability to provide leadership and, therefore, to influence the course of European integration, namely by using its formal monopoly on the right of initiative (Coombes 1970; Lindberg and Scheingold 1970; Sandholtz and Stone Sweet 1998).

Arguably these two opposing positions encapsulate the ambiguity of the Commission's hybrid essence, being simultaneously a bureaucracy and a political body capable of wielding influence beyond the strict control of member states. Indeed, even though the Commission reveals many of the features of a "traditional bureaucracy", it is also intended to be a source of political leadership (Coombes 1970: 102). The Commission therefore performs several functions that are substantially different in type (ranging from the bureaucratic to the political), each granting the institution a considerable potential for influencing policy developments. In terms of the more political end of the continuum, one of the central roles of the Commission is formal agenda setting (fulfilled mainly through the proposal of legislative acts). Besides its formally assigned roles, several informal leadership roles enable the Commission to shape political and policy agendas, being also potentially relevant to crisis management. These include, among others, a mediation function, that entails brokering agreements, building consensus, identifying areas for possible collective action and defining the frameworks for that action (Nugent 2001: 203-204).

The Commission hence carries out primarily what Leon Lindberg and Stuart Scheingold (1970: 129) labelled "task-oriented leadership", it makes proposals for action, supplies organizational skills and facilitates intergovernmental bargaining. That is not to say that the Commission is a mere "facilitator" of decisions reflecting the preference of the others actors. Actually, it is precisely because the Commission dominates a number of activities that are related to leadership that the institution is frequently able to steer the decision-making process (Vahl 1997: 43) towards its own preferred outcomes. In order to perform these tasks effectively the Commission has several resources for influencing the behaviour of the governments, which result from its position at the centre of the EU governance system. But so as to play a decisive role the Commission must make "a creative use" of these resources (Lindberg and Scheingold 1970: 93).

A crucial resource of the Commission is the opportunity it holds to structure (or frame) decisions (Rhinar 2010). This involves setting the "tone" of the debate by defining the problems, goals and the preferred solutions, namely via the submission of working documents, memoranda, studies, reports and other documents. Through problem definition the Commission is able to purposefully "politicize" or "depoliticize" the issue on the table (Vahl 1997: 50-51). Often the Commission has managed to mask difficult political questions by using "apolitical terms" and focusing on "technical steps"³, which improves the acceptability of the institution's initiatives by the other stakeholders. In fact, in such cases the Commission's entrepreneurship is frequently demanded by the other institutions. But the Commission can also take the issue to the political level, for instance, by highlighting its consequences for the future of the European project (Vahl 1997: 50-51).

Thus, the initial framing of the debate has the potential to influence not only policy outcomes, but also the policy process itself. Frames affect the ways actors think about an issue, and the connections they make between the available information, new and past situations, preferred values and interests in the policy process. To link generic interests and values with specific policy alternatives (Rhinar 2010: 40) can be particularly relevant in times of crisis. Based on the

Commission resources and experience in structuring decision-making it is expectable that the Commission has an important contribution in the framing of the crisis response agenda.

Hypothesis 1: The Commission's initiatives structured the crisis response agenda, influencing other actors' preferences.

If hypothesis 1 is substantiated, one would expect evidence of:

- a) The Commission's efforts to set the tone of the debate in the early stages of the crisis;
 - b) The Commission's use of technical expertise to shape crisis responses;
 - c) A distinct contribution of the Commission in the overall crisis response.
-

The Commission has also a "special perspective and legitimacy", since it is the only EU institution that can claim to speak from a truly European point of view (Lindberg and Scheingold 1970: 129). Indeed, under article 17 of the TEU, 'The Commission shall promote the general interest of the Union and take appropriate initiatives to that end [...]'. One way the Commission is able to give direction to the EU's progress is through its (near) monopoly on legislative initiative. Based on this, it is possible to expect that the Commission is a dynamic force that pushes the integration process forward, namely by tabling legislative proposals aimed at broadening the supranational dimension of the EU. In doing so, the Commission must interpret and execute its responsibilities independently from individual member states. According to article 17, nº 3 of the TEU '[i]n carrying out its responsibilities, the Commission shall be completely independent... [and its members] shall neither seek nor take instructions from any Government or other institution, body, office, or entity'.

Indeed, as Coombes (1970: 239) observed, a reputation for fair-mindedness, and an image of impartiality and detachment combined with its negotiations skills and a full technical knowledge of the issues are essential power resources of the Commission. In fact, due to its position in the policy process the Commission has comparative informational advantages, substantive expertise (both in terms of process and content) and bargaining skills (Christiansen and Reh 2009: 105; Beach and Mazzucelli 2007: 11). The Commission is also familiar with the position that national governments hold in several issues and knows the state of play of the negotiations. All add up to the institution's leverage in the negotiations vis-à-vis other parties.

Based on the Commission's expertise and bargaining skills as well as on its historical memory I expect the Commission to use its power of legislative initiative to make legislative proposals that broaden the integration process. In doing that, the Commission is also expected to go beyond the lowest common denominator of Member States positions.

Hypothesis 2: The Commission used its power of legislative initiative to help shaping crisis solutions while strengthening the supranational dimension of the EU economic governance.

If hypothesis 2 is substantiated, one would expect evidence of:

- a) Commission's initiatives based primarily on its own preferences or goals;
 - b) An active and independent role played by the Commission in the negotiations;
 - c) New Commission's powers in the economic governance domain.
-

THE ROLE OF THE COMMISSION IN CRISIS RESPONSE

This section applies the analytical framework to the case of the Eurozone crisis to tease out if and how the Commission has influenced the crisis response. The results show that, although the hypotheses are not fully confirmed, in general the Commission played a more active and influential role than previously understood.

HYPOTHESIS 1: THE COMMISSION'S INITIATIVES STRUCTURED THE CRISIS RESPONSE AGENDA, INFLUENCING OTHER ACTORS' PREFERENCES.

1a When did the Commission start to address the crisis issue?

The Commission was committed to play an important role in crisis management since the beginning of the crisis. It started setting the tone of the debate at the end of the year 2008, through the speeches of the President of the Commission, José Manuel Durão Barroso, and the Commission's communications. Barroso recurrently stressed the seriousness of the crisis, "the greatest financial crisis since the Great Depression" (Barroso 2008b). Consistently, the crisis response was presented as one of the Commission's priorities (Barroso 2008a; 2011). Moreover, considering the exceptionality of the circumstances, Barroso repeatedly called for exceptional measures, emphasising the need for a *coordinated response* designed to reinforce the supervision in the single financial market at the EU level. In a press conference ahead the European Council (8 October 2008), he urged member states 'to make a real effort at coordination - to improve co-operation amongst themselves and with the European Institutions' (Barroso 2008a).

Four days later, at the emergency summit of October 12th, the Heads of State and Government of the Euro area countries issued a *Declaration on a concerted European Action Plan*, confirming their commitment 'to act together to restore confidence and proper functioning of the financial system'. They also agreed to coordinate measures to address the consequences of the financial crisis. The idea of a coordinated action was equally inscribed in the European Council Conclusions of 15-16 October 2008, 'the European Council affirms that it is determined to take coordinated and thorough action to restore the smooth running of the financial system'. Despite the explicit guarantee of the member states, Barroso took every opportunity to repeat the call for a joint action in managing the crisis. On the 14th October 2008, in a speech before the European Parliament of Enterprises, Barroso recalled the importance of coordination, 'The unprecedented nature of the crisis required an unprecedented level of coordination', and taking his argument further, he committed the Commission to act as the *coordinator* between national and European action, to present legislative proposals, and to defend the single market (Barroso 2008b).

Accordingly, the Commission's communication "From Financial Crisis to Recovery: a European Framework for Action" (29 October 2008) stated explicitly that it was sought to *coordinate* the actions of the member states of the EU designed to address the financial crisis. The document established three goals: a new financial market architecture at the EU level, focused on ensuring reinforced economic and financial regulation and supervision, and to establish new guidelines and rules for the banking sector; to encourage GDP growth, namely through a readjustment of the Lisbon strategy; and a reform of the Stability and Growth Pact in order to ensure both structural reforms and monetary stimulus. The plan, which included both short and long-term improvements of the financial system, was just the first contribution of the Commission for identifying areas for common action, while proposing solutions for tackling the fragilities of the European and Monetary Union (EMU).

On 7 November, during an informal European Council meeting, the Heads of State and Government reconfirmed the agreement on a coordinated response and therefore asked the Commission to make proposals for discussion at their December meeting. This request opened a window of opportunity of which the institution took advantage. Thus, on 26 November 2008 the Commission presented a comprehensive European Economic Recovery Plan (COM (2008)800 final) to strengthen the “platform for joint action” to respond to the economic crisis (European Commission 2008b, 2). The plan, with 10 concrete actions to address the crisis, was fully endorsed by the European Council at its 11-12 December meeting.

In the following years, the Commission continued its efforts to respond to the crisis by defining areas for intervention and proposals to address the major problems of the EU economic governance. The institution kept up a regular stream of documents setting objectives for the future, while assessing past achievements. Accordingly, the Commission urged the European leaders to take action⁴ and pushed forward new plans and recommendations. For example, on 25 September 2009 the Commission published a report, “Economic Crisis in Europe: Causes, Consequences and Responses”, that was a comprehensive technical document devising all the measures taken to date and envisaged solutions. Other examples include the publication of the Green Paper on the feasibility of introducing Stability Bonds (23 November 2011). In fact the aim of structuring the debate was clearly stated by the institution (MEMO/11/820, 23/11/2011), “Through this Green Paper, the Commission aims to *structure and better inform this important debate* [on the possible pooling of sovereign issuance in the euro area]” (European Commission 2011) [my emphasis].

It must be noted that some authors refer to the Green Paper as evidence of the Commission’s unsuccessful role (Hodson 2013) in shaping crisis solutions. Actually, it was the EP that first requested a report on the possibility of introducing Euro-securities (as a part of the agreement between Parliament and the Council on the Six-Pack). Further, the Commission’s proposals on the subject were not fully endorsed neither by the EP nor by the Council. However, the fact that the Commission issued a green paper on a subject that clearly did not secured consensus among national governments (and had the clear opposition of Germany) constitutes reasonable evidence that the alleged Commission’s eagerness to please large member states is at least debatable. Moreover, the EP has considered the document ‘a useful starting point for further reflection’ (European Parliament 2011).

Additional example of a document aimed at devising solutions for the crisis was the “Road Map Towards a Banking Union” (COM (2012) 0510 final). The document issued on September 2012 proposed concrete steps for a deeper integration of the banking system. On the basis of the Commission’s roadmap it was agreed the creation of a Single Supervisory Mechanism (under which the ECB is responsible for supervising all banks within the banking union), and a Single Resolution Mechanism (which governs the resolution of banks and guarantees the protection of citizen’s deposits across the Eurozone). In November 2012 the Commission adopted a “Blueprint for a deep and genuine EMU” (COM(2012)777 final/2) that set up ‘the necessary elements and the steps towards a full banking, economic, fiscal and political union’. Again, the goal was leading towards new objectives and the structure of the debate. The latter was clearly stated this time in the communication subtitle, “Launching a European debate”.

In sum, during the first years of the crisis the Commission produced a continuous flow of documents with the clear goal of helping to define the problem, the goals, the solutions and their consequences. In several documents and especially in the interventions of the President the costs of inaction (or uncoordinated action) for the European project were highlighted: ‘The real test for European governments and institutions comes when faced with the most difficult of circumstances. [...] Europe will above all be judged on results [...] We sink or swim together [...] The particular contribution of the European Union is its ability to help partners work together’ (European

Commission 2008: 2). Therefore, the Commission was not afraid of taking the crisis issue to the political level. Through what Lindberg and Scheingold (1970: 93) called “goal articulation”, the Commission articulated long-term goals that in turn can be legitimated by the belief in a European common interest. However, the proposed solutions were presented in apolitical terms, consisting in a series of technical steps that maximized the need for technical expertise to put them in practice.

1b Have the Commission used its technical expertise to shape crisis responses?

Among the Commission’s most important power resources, there is both technical expertise and its “historical memory”. The use of external experts to present ground-breaking solutions is an expedient often used by the Commission. Technical reports or other similar documents (produced by its own staff or by groups of experts reporting to the Commission President) are an usual Commission’s instrument to define the problem and present concrete solutions that may go beyond the lowest common denominator of member states’ positions (Vahl 1997; Radaelli 1999; Rhinard 2010). These reports became frequently the basis of negotiation in the Council and in the European Council, so they also aim to narrow the room for discussion at these higher policy-making levels. Even if the “depoliticization” of the issue does not always succeed, there are clear examples when this strategy worked in favour of the Commission, as was the case of the 1992 Program, and the three stage plan for the EMU known as the “Delors Report” (Vahl 1997: 50).

However, the financial and economic crisis posed new challenges that demanded innovative responses and solutions, which were seldom reconcilable with standard operating procedures and past experience. A timely and appropriate response to this particular crisis would require a preparation for the “unknown”⁵ that the Commission (and in fact other EU institutions such as the ECB) apparently lacked. Arguably, in order to overcome this “shortage” of expertise the Commission established a High-Level Group (08 October 2008), chaired by Jacques de Larosière (former Director of the International Monetary Fund). The Group was entrusted with making recommendations to the Commission on strengthening European supervisory arrangements covering all financial sectors.

The Commission’s lack of expertise should not however be overstated. In fact, the use of the Commission’s technical expertise to set the tone of the debate is visible in several documents such as the technical Report on the crisis (September 2009) or the Green Paper on Stability Bonds (see above). Also, it is worthwhile noting that the Secretariat of the Larosière Group was provided by the DG Internal Market. Furthermore, the Commission was represented by commissioner Olli Rehn in the Task Force on economic governance set up by the European Council in March 2010. Besides, the use of external specialists to make proposals in a highly complex domain does not necessarily mean that the Commission lacks expertise. Indeed, it is an expedient often used by the Commission arguably to guarantee a comprehensive analysis of the issue (since the members of these groups are often individuals with both in-depth academic knowledge and solid professional experience in the subject); it also helps guarantee that the proposals are perceived as impartial, which facilitates their acceptance as the basis of the negotiation.

The High-Level group of experts delivered its report on February 2009. The document was divided in four major domains: causes of the financial crisis; policy and regulatory repair; EU supervisory repair; and global repair. Specifically, the Report presented proposals to a new regulatory agenda, a stronger coordinated supervision and effective crisis management mechanisms. Among other measures, the document recommended the creation of a European System of Financial Supervision (ESFS) as a decentralised network⁶. The report was generally considered an important contribution to providing a plan for the future global financial architecture. In particular there was a great acceptance of the report’s premise that more cross-border cooperation was needed.

The Commission endorsed the key principles of the Report on March 2009, followed by a public broad consultation on the recommended reforms of supervision for the financial services. Also in March, the Commission presented its communication to the Council “Driving European Recovery” (COM(2009)114 final), an action plan that, with the Ecofin roadmap for regulatory reform, was the ‘basis for strengthening the regulatory framework for the EU’ (European Commission 2009, 80). Specifically building on the proposals of the Larosière report, which according to the Commission offered a comprehensive set of concrete solutions for regulatory, supervisory and global repair action, the Commission proposed the creation of a new supervisory framework (through a new European body to oversee the stability and financial system as a whole and a new European financial supervision system), and new legislative instruments. The program also aimed to boost investment and to stimulate the creation of jobs.

The European Council (19-20 March) agreed that the Larosière Group report would be the basis for action (European Commission 2009, 81). Accordingly, on 27 May 2009 the Commission presented a Communication on European financial supervision (COM(2009)252 final), setting out in detail the proposed outline of the supervisory reform. The Ecofin subsequently endorsed the goals laid down in this document (European Commission 2009, 81). The proposals on financial supervision were given green light on June 2009 by the European Finance Ministers, and subsequently by the European Council 18-19 June 2009 (Lannoo 2009, 1). On 22 September 2010, following the agreement in the Council, the European Parliament also approved the creation of the ESFS. Arguably, this timeline constitute reasonable evidence that the Commission was able to successfully use expertise and knowledge (whether coming from its own staff or from external experts) to help shape the measures to deal with the crisis.

Regarding the Commission’s expertise, it is worthwhile noting that besides its importance for the tabling of writing initiatives (particularly the packs of legislative proposals), the Commission’s expertise was also used at various stages in the process of granting assistance through the European Stability mechanism (ESM), mostly along with the ECB and the IMF. Indeed, whenever a member state requested financial assistance, the Commission, as part of the so-called *troika*, was entrusted with assessing the risk to the overall financial stability, the sustainability of the applicant’s public debt and the actual or potential financing needs, negotiating a memorandum of understanding with the applicant state, and monitoring compliance with the memorandum of understanding (Bauer and Becker 2013: 7).

1c What was the impact of the Commission’s initial efforts?

An assessment of the Commission’s ability to get its own preferences and goals accepted by setting the agenda and determining the framework for debate leads to mixed conclusions. The statements of the President of the Commission helped to establish the need for a concerted action in order to address a particularly urgent problem, as proven by Barroso words, ‘A month ago, the Commission took the initiative to set out how decisive and coordinated action could respond to the economic crisis’ (European Commission 2008b: 2). Also, the Commission consistently introduced in the decision-making process several documents setting goals, proposing solutions and highlighting the consequences of inaction. The Commission expertise was also used to help shape the solutions for the crisis and was in fact asked by the other institutions.

However, it is not possible to capture the process of structuring the crisis agenda without considering the interplay between the different European institutions, which means that the Commission did not exclusively fix the terms of the debate. The European Council, that held an impressive number of meetings (between January 2008 and December 2013 the European Council held 39 meetings), where the crisis was at the top of the agenda, had an important role in shaping it.

Actually, the “summitization” (Martin Schulz cited in Dinan 2013: 89) caught media attention, amplifying the agenda-setting effect of the European Council conclusions.

Also, from 2010 onwards the role of other actors, such as the EP and the ECB, should be considered. For example, the EP ran a temporary *ad hoc* Committee on the financial and economic crisis (CRIS)⁷ with the intention of analysing the causes and impact of the crisis in the EU and its member states. The Committee proposed several measures to improve financial and economic supervision. Furthermore, the EP maintained a permanent dialogue with the President of the Eurogroup and with the ECB President (Schwarzer 2012, 33) regarding crisis solutions. As to the ECB, from 2010 onwards the statements of its President preceded resolutions of the European Council and decisions of the Ecofin. Arguably, considering the chronology of the events it appears that the ECB was able to influence political decisions regarding the Eurozone crisis (Camisã e Vila Maior 2014).

HYPOTHESIS 2: THE COMMISSION USED ITS POWER OF LEGISLATIVE INITIATIVE TO HELP SHAPING CRISIS SOLUTIONS WHILE STRENGTHENING THE SUPRANATIONAL DIMENSION OF THE EU ECONOMIC GOVERNANCE

2a Were the Commission's initiatives based on its own preferences or goals?

Aiming to “create piece-by-piece a sounder and more effective financial sector” (Commission MEMO/14/57, 2), since 2008 the Commission has proposed a substantial number of new rules to improve regulation, supervision and governance of the financial system. However, it was not until 2010 that the Commission presented the more salient legislative pieces – the Six-Pack, complemented in 2011 with the Two-pack. Both packs were secondary law, specifically eight legislative proposals (6+2) designed to strengthen economic governance in the Eurozone, therefore resulting from the community method. Accordingly, in both cases the formal initiative came from the Commission. Along with the Treaty on Stability, Coordination and Governance in the EMU (TSCG) they form the initial three building blocks of the new EU economic governance framework.

The ideas for the legislative pieces were presented on May and June 2010. In both documents (respectively, COM(2010)250 final, 15 May 2010 and COM(2010) 367/2, 30 June 2010) the Commission proposed concrete measures and timelines to strengthen economic policy coordination, namely via a reinforced compliance with the Stability and Growth Pact (SGP) and deeper fiscal policy coordination; a surveillance of macroeconomic imbalances and competitiveness developments; a robust framework for crisis management for euro-area member states; and the establishment of a European Semester for policy coordination. The creation of the “European Semester” was approved by the member states on 7 September 2010. The European Semester allows the EU and the Eurozone to coordinate *ex ante* their budgetary and economic policies, in line with both the SGP and the Europe 2020 strategy. Each cycle starts with the Annual Growth Survey and sets out an integrated approach to recovery and growth, concentrating on key measures (European Commission 2011). It is worthwhile noting that the definition of “timelines” for the completion of the proposed initiatives is often referred in the literature as a “strategic move” frequently used by the Commission to focus attention and influence the pace of decision-making (Vahl 1997: 52).

The first package of legislative proposals was submitted in September 2010. The so-called Six-Pack was composed of five regulations and a Directive⁸, which ‘underline the Commission's strong will to process diligently with the necessary reforms’ (European Commission 2010). Specifically, the policy proposals were aimed at strengthening the SGP and budgetary surveillance, while the other two focussed on monitoring and controlling macroeconomic imbalances. On the 23rd November 2011 the Commission proposed two additional regulations⁹ (known as Two-Pack) designed to introduce additional coordination and supervision of budgetary processes for the members of the Eurozone.

Thus, the Two-Pack amplified measures brought upon by the TSCG and the Six-Pack, particularly on what concerns *ex ante* coordination of fiscal policies and the monitoring of countries in financial difficulties (Bauer and Becker 2013: 11).

Even though the Commission's proposals reflected a wide agreement on the necessity to reform the economic governance and to reinforce financial supervision, they were not necessarily the "mirror" of member states' or other actors' preferences. With regard to the Six-Pack, considering the intense negotiation process (Prest, Geeroms, and Langenus 2012: 105) that preceded the adoption of the legislative pieces and the numerous amendments introduced by the Council and the EP, it seems fair to argue that the Commission's proposals were more than a mere lowest common denominator of what the governments or the EP originally wanted. Further, the member states established their "own" Task Force¹⁰ - mandated to propose measures to reach the objective of an improved crisis resolution framework and better budgetary discipline. Thus, member states' preferences were conveyed mainly by the European Council, and particularly by its Task Force, that actually ended up disputing with the Commission the agenda-setting role, '[A]genda-setting and policy formulation in the field of economic and fiscal surveillance has been hard-fought between the Commission and the van Rompuy Task Force' (Bauer and Becker 2013: 19).

As for the Two-Pack, whereas the EP submitted more than 500 amendments, the revisions putted forward by the Council only slightly modified the Commission proposal (Parra 2013: 14), indicating that member states' preferences were considered in the initial proposal. Actually, the Commission explicitly stated that its legislative proposals took into account the consultations the institution held with a broad range of stakeholders, including the 'Task Force on the Economic Governance chaired by President of the European Council' (European Commission 2010). Still, this fact is not *per se* telling that the Commission's proposals were just a reproduction of member states' preferences. Rather, this could be indicative that the Commission has succeeded in "operating optimally" since, as Lindberg and Scheingold (1970: 93) observed, in order to influence the behavior of member states, ideally the Commission should make proposals 'that are well designed technically, with both the common goals of all the members and the specific needs or problems of individual nations taken into account'.

If with regard to the legislative pieces it is not possible to identify a bias towards particular member states' positions, the same could not be said regarding the Commission's role in the management of the Rescue Programmes for the countries facing major sovereign debt crises. In this role, the Commission was sharply criticized by an apparent alignment with a German austerity model. Specifically, the Commission was accused of being a weak leader and of "partiality" towards the "rich" states. In a Report issued in April 2014 by the European Committee of the House of Lords, Simon Tilford (Deputy Director, Centre for European Reform), the Commission was accused of having become 'the advocate of creditor countries, with negative implications for the handling of the crisis' (House of Lords 2014: 18). By the same token, Phillippe Legrain (a former adviser to the President of the Commission) contends that the Commission has become an 'instrument for creditors to impose their will on debtor [...]. It's been a follower in the crisis rather than a leader'¹¹. This perception contributed to the idea that the Commission had lost ground of the EU's general interest, and it also putted into question the principle of independence. Still, this assessment is far from being extensive to all aspects of the Commission's crisis management. Indeed, the same Report notes that some of the experts heard praised the Commission's work in ensuring better governance¹². Also, the rationality that points the endorsement of the austerity programmes as a proof of the Commission's weakness is disputable. Actually, some make the case, rightfully in my opinion, that this move was not a result of the Commission's weakness, but was rather a strategic bid to enhance its powers¹³.

2b Did the Commission have an active and independent part in the negotiations?

The Commission managed to participate in the negotiations of the solutions, including some that are intergovernmental in nature, such as the negotiation of the TSCG. Being an intergovernmental treaty (in theory, created outside the EU legal framework under the intergovernmental method), the TSCG rules out the participation of supranational institutions (namely the Commission). Following informal conversations, the Heads of State and Government agreed on what the TSCG should include at the European Council summit on the 8-9 December 2011. But a decision on the exact details of the legal form was postponed. Subsequently, an *ad hoc* working group on Fiscal Stability was created in order to translate European Council's decisions into a legally binding agreement (Beach 2013: 119).

The text of the Treaty was thus negotiated during several meetings between national officials, legal experts from the Council and the Commission, and three MEPs. The participation in the *ad hoc* group opened a window of opportunity for the Commission to use its legal expertise and bargaining skills. The importance of the Commission's involvement in the negotiations is noted in some analyses (Emmanouilidis 2012: 7). Additionally, according to Derek Beach (2013: 121-122), the Commission 'fought strongly' (especially against the French position) to ensure that the enforcement and supervision of the "debt break rule" would follow the community method as much as possible. The goal was to avoid the creation of a mechanism that would grant too much discretion to the member states. In the end the Commission guaranteed a reinforced role in overseeing the debt break rule compliance and, more generally, in what regarded supervising and enforcing the new rules. Notwithstanding, there are other "supranational" actors (besides the Commission) whose "unexpected" role in the negotiations is worth being mentioned. For example, according to Cristina Fasone (2012: 9), the final version of the Treaty was in fact largely a result of the amendments proposed by the EP. Several EP's amendments were in fact considered. The EP's resolution of the 2nd February 2012 highlights the main modifications proposed by the institution that have been incorporated in the final text of the Treaty.

As to the ordinary legislative process, the Commission's first batch of legislative proposals - Six-Pack - was the basis of the negotiations, thus influencing the discussions on EMU throughout 2011. But this leverage was at risk and was in fact secured through a Commission's apparently deliberated strategic move. As noted above, in March 2010 the European Council set up a Task Force entrusted of devising proposals for better budgetary discipline and to explore possible reforms of the SGP. The "Task Force on Economic Governance" held six meetings and was due to present its final report to the European Council of 28 and 29 October 2010¹⁴. Strategically, the Commission managed to issue its legislative proposals in September 2010, just a few weeks before the presentation of the Task Force's final report. With this move, the Commission succeeded in surpassing Van Rompuy's efforts (Beach 2013: 114; Chang 2013: 6), therefore securing its agenda-setting power and enhancing its own position in the negotiations. As Chang (2013: 6) noted, despite the many similitudes between the proposals of the Van Rompuy Task Force and of the Commission, the Commission's proposals formed the basis of the discussions with the Council and the European Parliament. This is a clear example of the importance of "timing". Essentially, choosing the appropriate time for launching an initiative may be decisive to give power to the proponent in the negotiations.

The negotiation process was widely described in the media as "tough"¹⁵ and several analyses corroborate this perception (Parra 2013; Bowles 2014). One of the contentious issues in the context of the Six-Pack negotiations was the balance of power between the Council and the Commission (Bowles 2014: 1), confirming that the delegation of competences in the supranational institutions remains a delicate issue. Despite that, an agreement was reached in the first reading as preferred by the Commission¹⁶ and in a very reasonable timeframe (particularly considering the salience of the issue and the average length to reach an agreement under co-decision). The dialogue established

between the representatives of the Commission, Council and EP - “trialogue” - was crucial for this outcome. Even though this informal process is criticised for its lack of transparency and for leading to solutions that are rarely optimal in content, the fact is that the longer the negotiations for adopting a proposal, the more likely it is that the outcome will differ from the Commission’s initial proposal. So the trialogue process appears to have served the Commission’s interests.

With regard to the Two-Pack, the negotiations took more than one year, again with several amendments proposed in particular by the EP. However, as with the Six-Pack, the trialogue negotiations enabled an agreement at the first reading. The Commission’s promise to set up an expert group to analyse the issue of a redemption fund and the introduction of Eurobills (Parra 2013: 15) was important to broker the agreement. The pack was approved in March 2013 and again the Commission managed to guarantee an important role in the new economic framework. That being said, it is worthwhile noting that some of the Commission’s initial proposals were thwarted by the representatives of the member states in the Council, with the EP ending up to have a decisive role in securing important new powers envisaged for the Commission. Indeed, the EP’s influence in the final shape of the Six-Pack was praised by some analysts, namely in what concerns securing the “automaticity” of the new rules, that some member states attempted to weaken (Broin 2012: 1).

2c Was the Commission able to gain new powers in a particular intergovernmental domain?

The Lisbon Treaty established that the EP and the Council (under the ordinary legislative procedure) might adopt detailed rules for the multilateral surveillance procedure (article 121, nº 6 TFEU). Under articles 121, nº 4 and 126 nº 5 and nº 6 TFEU, the Commission has gained the right to address a warning about the deterioration of the fiscal situation of a member state and to make a formal proposal (instead of a simple recommendation) to the Council, who should act on it. However, the Treaty did not extend the Commission’s powers with regard to the proposal of actual measures, which should be taken by a country in order to correct an excessive deficit (Duff 2009: 130-131).

The reforms introduced during the Eurozone crisis further reinforced the Commission’s role in economic governance, namely through new powers in both the preventive and the corrective arms of the SGP, as well as in the new excessive macroeconomic imbalances procedure. Thus, the Commission was given an unparalleled power to intervene in member states’ economic and financial policies. Under the new rules, the Commission has the right to set the parameters for national governments, to assess whether national budgets’ drafts are in line with EU economic guidelines and rules on fiscal discipline and to recommend changes (even before they are adopted by national parliaments), and to make recommendations on spending and taxation to Eurozone member states (Vasconcelos 2014). The Commission has therefore an important part to play in the new procedures to steer national economic and financial policies. One crucial instrument is the “European Semester”, already in place since 2010. Under the European Semester, each year the Commission undertakes a detailed analysis of EU member states’ plans of economic and structural reforms and provides them with recommendations for the next 12-18 months. Subsequently, EU’s Heads of State and Government issue EU guidance for national policies on the basis of the Annual Growth Survey.

Besides the new preventive and corrective functions, the Commission gained powers in other related areas such as the financial stability support. Since the first Greek bailout¹⁷, the Commission was entrusted with the coordination and administration of loans, including their disbursement (Bauer and Becker 2013: 5). After the institutionalization of the ESM, the Commission expertise continued to be used at several stages of the process of granting assistance, even though the Commission’s prominence was shared with the ECB and the IMF (see above). As regards to how the power was distributed between the three actors, evidence suggests that the Commission has played

a significant role (Schwarzer 2012: 32; Bauer and Becker 2013: 7), which is confirmed by the IMF's dissatisfaction with some of the troika's decisions, and particularly with the Commission's stance in terms of austerity measures (IMF 2013).

CONCLUSION

Despite the evolution of the literature on European integration the role of the supranational institutions and in particular the role of the Commission remains controversial. The debate is between the intergovernmental view that stresses the predominance of the member states and the supranational approach that highlights the Commission's influence in the integration process. In the light of the events triggered by the economic and financial crisis, the intergovernmental literature has experienced a significant revival in the form of the so-called "new intergovernmentalism". Several analyses of the EU crisis management presume the dominance of the European Council (and of some national leaders acting within and outside the institution), and play down the role of the Commission.

However, a look at the crisis related reforms allow us to conclude that even under serious, high profile and politically sensitive crisis conditions the Commission was not an irrelevant player. This article built an analytical framework that helps shed light on the factors that are crucial to understand the Commission's role in crisis response in order to answer the following question: Did the Commission influence the crisis solutions agreed by the member states? Arguably a strong input in crisis management was expectable from the Commission. Thus, the central hypothesis of this research is that the Commission actually played an important role in the crisis response. Taking into consideration the functions of the Commission it was assumed that it contributed to structure the crisis agenda (H1) and that the Commission used its power of legislative initiative to help shape crisis solutions (H2). The hypotheses were in part validated, proving that there is more to EU high-level policy processes than intergovernmental perspectives assume.

The Commission's activities between 2008 and 2013 show that the Commission has in fact managed to be involved in the important phases of the process of reform. In the early stages of the crisis, the speeches from the President of the Commission and the Commission's documents helped to shape the agenda. The Commission continuously and consistently alerted for the necessity of taking timely measures, coordinated by the institution, to address an extremely serious crisis. A strong input in problem definition gave the Commission an important advantage. Through an early definition of the problem (and its urgency), goals and solutions, the Commission, was able to influence the way decision-makers thought about the crisis and the way they assessed the proposed solutions. Nonetheless it is clear that the Commission was not the sole responsible for setting the terms of the debate. The role played by other institutional and individual actors in this structuring activity (namely the European Council and its President, the Ecofin, and after 2010 the EP and the President of the ECB) has to be considered.

It is true that the Commission's role was sometimes limited, particularly when the intergovernmental method was preferred. Additionally, some problems posed by the crisis demanded innovative responses, diminishing the relevance of the Commission's experience and expertise (two important leadership resources). But the Commission's regular stream of documents (whether resulting from its own initiative or asked by the other institutions) helped to delineate political goals and to shape the solutions, even if sometimes the final agreements have fallen short when compared with the Commission's initial proposals. The Commission was also actively involved in the negotiation of the solutions. What is more, the Commission took the window of opportunity to increase substantially its own powers in a sensitive and chiefly intergovernmental domain.

Certainly, the Commission has now a central part to play in all the new procedures to steer national economic and financial policies. It is in charge of monitoring economic developments at the member state level, circulating regular analyses and forecasts of economic data, and publishing the Annual Growth Survey and the Alert Mechanism Report. Furthermore, by the new rules, it assesses the draft national budgets for the following year, analyses member states' planned structural reforms and makes specific policy recommendations; and has an active role in the preventive and corrective arms of the SGP, as well as in the new excessive Macroeconomic Imbalances Procedure.

However, if the agreed reforms have enhanced the Commission position in EU economic governance, its political dimension and status appeared at first sight to come out of this crisis weakened. The Commission is expected to be a promoter of the general interest, acting independently from the individual positions of the member states. Surprisingly thus the major criticisms concerning the Commission's response to the crisis were related to its perceived weakness and "partiality" towards the "rich" states. Still, as noted, this is far from being a consensual opinion. In fact, it seems not unreasonable to argue that the Commission's actions during the Eurozone crisis reveal a strategic pragmatism that allowed the institution to adjust to a particularly challenging environment. Over the years the Commission has learned to adapt to the growing powers of its interlocutors (Dehousse 2013: 3). The Commission's actions during the economic and financial crisis are arguably another evidence of this process of learning and adaptation.

In sum, the overall assessment of the Commission's actions might indicate that, in a time of resurgent intergovernmentalism, the Commission favoured a strategy of low profile and pragmatism over strong leadership. But, in the end, the agreed solutions have strengthened supranationalism, namely by reinforcing the powers of surveillance of the Commission. Therefore, the political role demanded of the Commission has not diminished, which contradicts the conclusions that hold a view of a reduced importance of the institution. In fact, the Commission's relevance may increase since the new economic framework offers several opportunities to exercise supranational influence. Future research must now focus on how the Commission will use its new powers to help protecting and furthering the European idea.

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¹ The role of the Commission is normally addressed as part of the broad institutional shift of the EU. Among the few studies focusing particularly on the Commission is Bauer and Becker's work. See, for example, Bauer, M. W., and Becker, S.

² On the Single Market tier see, for example, Isabel Camisã and Maria Helena Guimarães (2015). A Janus-faced Commission: on the Single Market and the Crisis. Paper prepared for the 5th EPSA Conference, 25-27 June, Vienna.

³ For example, this was the case of the 1992 Programme launched by the Commission to complete the internal market (Sandholtz and Zysman 1989: 15).

⁴ See, for example, "Commission calls on EU leaders to stay united against the crises, to move fast on financial market reform and show global leadership at G20", IP/09/351, http://europa.eu/rapid/press-release_IP-09-351_en.htm?locale=en.

⁵ For a broader and in depth discussion on the EU's preparedness for the "unknown" see Arjen Bojn, Magnus Ekengren and Mark Rhinard (2013). *The European Union as Crisis Manager: Patterns and Prospects*. Cambridge: Cambridge University Press.

⁶ Comprising three European Supervisory Authorities (ESAs) a European Banking Authority (EBA), a European Securities and Markets Authority (ESMA), and a European Insurance and Occupational Pensions Authority (EIOPA). Additionally the proposals included the establishment of the European Systemic Risk Board (ESRB).

⁷ The EP decided to establish this special committee on 7 October 2009. The CRIS committee carried on hearings and investigations until its dissolution on 30 July 2011 (Fasone 2012: 5-6).

⁸ Regulation (EU) No 1175/2011; Council Regulation (EU) No 1177/2011; Council Directive 2011/85/EU; Regulation (EU) No 1176/2011; Regulation (EU) No 1173/2011; and Regulation (EU) No 1174/2011.

⁹ Regulation (EU) No 473/2013; and Regulation (EU) No 472/2013.

¹⁰ The Task Force, chaired by the European Council President Herman Van Rompuy, was composed of the finance ministers of the 27 member states (with the participation of Commissioner Olli Rehn, the President of the ECB, Jean-Claude Trichet, and the President of the Eurogroup, Jean-Claude Juncker).

¹¹ See "Former adviser attacks European Commission over austerity", <http://www.ft.com/intl/cms/s/0/4da726e2-bdaf-11e3-a5ba-00144feabdc0.html#axzz32Af6L8yM> (Accessed 12 July 2014).

¹² This was the case of Erkki Liikanen, Governor of the Bank of Finland and former Chairman of the High-level Expert Group on European Bank Structural Reform. Likewise, Simon Tilford conceded that, at least initially, the Commission 'had started well by arguing for symmetrical adjustment' (House of Lords 2014: 18).

¹³ According to Legrain (2013), rather than being a side-lined actor, the Commission deliberately aligned with Germany's austerity positions, since it was seen 'a more influential role for itself if Berlin's emphasis on budget discipline prevailed'. See "Former adviser attacks European Commission over austerity", <http://www.ft.com/intl/cms/s/0/4da726e2-bdaf-11e3-a5ba-00144feabdc0.html#axzz32Af6L8yM>.

¹⁴ The Task Force issued its final report on 21 October 2010.

¹⁵ See for example <http://www.euinside.eu/en/news/the-ep-and-the-council-in-tough-talks-on-the-economic-governance>; <http://www.euinside.eu/en/news/the-european-parliament-approved-the-reform-of-the-eu-economic-governance> (Accessed 23 August 2014).

¹⁶ The President of the European Commission was particularly pleased with the agreement and stressed its importance for better EU economic governance. See for example "Barroso delight as Six Pack is endorsed" <http://gfsnews.com/article/3039/1/> (Accessed 24 November 2014).

¹⁷ This loan occurred before the institutionalization of the European Stability architecture, and therefore was still guaranteed by bilateral loans and financing from the International Monetary Fund.

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Commentary

EU–Russia Energy Relations, EU Energy Integration, and Energy Security: the State of the Art and a Roadmap for Future Research

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Abstract

The 2014 Ukrainian crisis has aggravated numerous gas-related disputes and highlighted the overall politicisation of energy issues between the EU and Russia. These tensions have unveiled a need to address the growing disarray in EU–Russia energy relations, to assess the role of EU integration in multilateral energy processes, and to classify various understandings of energy security across Europe. This commentary provides an overview of how scholarship has tackled these issues so far. Discussing the contributions and shortcomings of these studies, it offers a roadmap for a future research agenda.

Keywords

Energy security; European Union; Russia; energy relations; EU energy integration

Repeated gas disputes between Russia and Ukraine and the increasing politicisation of energy issues in Europe have enhanced the scholarship on EU–Russia energy relations and various facets of EU energy integration. Numerous academic studies have addressed the issues of energy security, multilateral energy governance, and the intricacies of EU–Russia energy rapprochement, however, few comprehensive literature reviews on the topic have been provided so far. The overview by Güllner (2008) of the scholarship on energy security with a particular focus on Russia is a rare example of a single review in the field.

A systematisation of studies is an indispensable step towards a clearer and more coherent research agenda for studying EU energy ‘actorness’ — both external, in relations with major energy suppliers, especially Russia, and internal, in the creation of the EU internal energy market. Such a review also highlights alternatives for pipeline politics and the concept of energy weaponry, strands that are already experiencing a resurgence in academic and policy-orientated studies in light of the 2014 Ukrainian crisis. Acknowledging the serious implications of this conflict for energy security in Europe and for EU–Russia relations in general, this review, however, warns against trapping energy issues in EU–Russia relations and the EU energy integration processes into traditional pipeline politics and a self-fulfilling securitisation. Some scholars have already pointed out that ‘a substantial number of politicians and foreign policy makers seem to be stuck in a Cold War paradigm’ and have highlighted mismatches between policy proposals during the Ukrainian crisis and gas market fundamentals (Goldthau & Boersma 2014).

This review article traces back how scholarship has addressed EU integration developments and their implications for bilateral and multilateral energy institutionalisation in Europe. It also distills debates about the nature of EU–Russia energy relations, the EU international energy ‘actorness’, and a broader role of energy resources in international relations. Analysing gaps in the literature, this commentary drafts a pilot roadmap for future research that encourages the study of the energy aspects of EU–Russia relations and EU integration to be developed in a more coherent and comprehensive fashion.

EU–RUSSIA ENERGY RELATIONS: STATE OF THE ART

A revival of energy issues in the research agenda of International Relations (IR) and European Studies became apparent at the beginning of the 2000s. First, globally changing patterns in energy demand and the emerging retreat from the neoliberal economic agenda of the 1990s towards greater resource nationalism required a thorough assessment. Second, domestic developments in the EU and Russian hydrocarbon sectors during the 2000s transformed energy into a highly politicised aspect of both EU–Russia relations and EU internal policy-making. Comparatively, during the 1990s, both the multilateral process of the Energy Charter Treaty (ECT) and negotiations of the EU–Russia Partnership and Cooperation Agreement (PCA) had been generally consistent with the EU-backed liberal framework, and the overall *modus operandi* of the gas trade in Europe remained largely undisputed.

Institutional differences between the EU and Russian gas market structures began to emerge in the 2000s: in Russia, reinforcement of state control became particularly apparent in the hydrocarbon sector; and in the EU, the Anglo-Saxon neoliberal model for the vertically-integrated network industries of gas and electricity, an agenda rather new to continental Europe, gradually developed into a new doctrine for the EU Internal Energy Market. The differences were further aggravated with the intricate gas crises between Ukraine and Russia in 2006 and 2009, and with the 2004 enlargement of the EU. The latter made the historical legacies of the Central and Eastern European gas markets part of the EU political and regulatory landscape and, as a result, an issue for inevitable deliberations with Russia. A complex combination of these events fuelled an unprecedented politicisation of energy, especially gas-related, issues in Europe. Since then, scholarship has consistently engaged in debates about the *momentum* for an EU common energy policy and the emergence of its strategic dimension, and about geopolitically-motivated alterations in Russia's energy policy-making.

So far, academic debates have predominantly focused on three broad areas of analysis. *First*, scholars have been interested in whether and to what extent the EU and Russia have managed to institutionalise their relations, approximate or harmonise their regulatory frameworks and create a common energy space, arguably well-needed under high interdependence (Hadfield 2008; Leal-Arcas 2009; Padgett 2011; Romanova 2012, 2014). Issues under discussion have included inter alia the EU–Russia Energy Dialogue (Romanova 2008); the intricacies of EU–Russia energy interdependence (Proedrou 2007); and the participation of the EU and Russia in multilateral initiatives (Hadfield & Amkhan-Bayno 2013).

Confirmed by most scholars, increasing inconsistencies in EU–Russia gas relations have been, however, attributed to various explanations. Scholarship has followed the general trend in IR to explain energy conflicts as *bellum omnium contra omnes* as a result of the unequal allocation of resources across the world and competition for them between energy producers and consumers (Umbach 2011). Some studies have consistently treated the politicisation of EU–Russia gas relations as a result of Russia's deviation from the liberal model of energy markets towards progressive resource nationalism (Newnham 2011). Moreover, ideational factors as explanatory variables have also acquired prominent positions in academic debates: a lack of trust between the EU and Russia (Ziegler 2013), their different visions of energy cooperation (Casier 2011), normative orders (Haukkala 2014), ideas about the organisation of energy markets (Kuzemko 2014), and energy discourses (Kratochvíl & Tichý 2013) have been argued to explain the deterioration of EU–Russia relations.

The *second* aspect scholarship has sought to address is the impact of EU integration on its relations with other actors, and, conversely, the impact of external events on the EU integration process. The deepening of EU gas markets' integration and *communitarisation* of national energy policies have

been largely studied in line with the supranational–intergovernmental debates (Birchfield & Duffield 2011; Eikeland 2011; Matlár 1997), with an emphasis on various approaches of member states towards Russia (Bozhilova & Hashimoto 2010; Schmidt-Felzmann 2011; Youngs 2009: 79-99). Recently, new insights into the analysis of ‘a work-in-progress’ in the EU internal gas market have emerged from International Political Economy (Fernandez & Palazuelos 2014), governance studies (Andersen & Sitter 2015), and the English School (Aalto & Korkmaz Temel 2014). The impact of EU integration on its neighbourhood has been majorly assessed as a (neofunctionalist) rule expansion within EU external governance (Prange-Gstöhl 2009; Renner 2009) and as a broader acceptance of EU energy acquis by other countries (Belyi 2012).

Third, scholarship has actively engaged in debates about energy security, with a particular focus on its political aspects (Bilgin 2009; Tekin & Williams 2009). Debates have been enriched by studies about the increasing securitisation of both EU–Russia energy relations (Belyi 2003; Kirchner & Berk 2010) and EU energy policies (Maltby 2013; Natorski & Herranz Surrallés 2008). Russia’s role in (pan-) European energy security has been studied predominately from the realist-driven perspective (Dellecker & Gomart 2011; Feklyunina 2012; Perovic 2009). Studies about Russia’s energy policy as a tool for coercion (Newnham 2011; Orttung & Overland 2011; Smith Stegen 2011) have coupled with analysis of domestic non-transparent relations between the Russian government and Gazprom (Bilgin 2011; Heinrich 2008; Kazantsev 2010).

CONTRIBUTION AND SHORTCOMINGS

The studies presented have touched upon the role of energy resources in the limitations of multilateral energy governance and have contributed to the research about EU international energy actorness and the role of energy in the EU integration process.

First, the most noteworthy contribution has arguably been provided to debates about the nature of the EU and Russia as energy actors. The differentiation between the EU and Russia (Finon & Locatelli 2008) has been majorly based on the seminal conceptualisation of energy actors as either the proponents of ‘Markets and Institutions’ or those of ‘Regions and Empire’ respectively by Correlje and van der Linde (2006). Yet, this straightforward understanding of energy resources either ‘as a commodity to be traded openly on world markets or as a resource to be projected politically for foreign policy power’ (Keating, Kuzemko, Belyi & Goldthau 2012: 1) has inevitably overlooked complex interrelationships between profit-based and political calculations in the hydrocarbon sector in both energy producing and importing countries. Recently, IPE research has attempted to fill this gap, providing a comprehensive overview of governance arrangements in the hydrocarbon sectors of both energy producers and consumers (Belyi & Talus 2015; Fernandez & Palazuelos 2014; Keating, Kuzemko, Belyi & Goldthau 2012).

Moreover, discussion of EU energy actorness has transformed into a kind of sterile debate about a sharp division between norms and interests, explicitly or implicitly assumed — the thesis largely consistent with variations of the Normative Power Europe concept (Manners 2002). Conceptualisation of the EU as a market actor has remained rather ambiguous: it has often been left unclear whether a ‘market’ actor is one that guides its policy choices exclusively by the *laissez-faire* principle or whether it is one that promotes a certain model of the gas market, based on a complex web of principles of market liberalisation and the gradual reallocation of a regulatory framework from the national to the supranational level (see Damro 2015 on Market Power Europe). Moreover, the normativity of EU actorness has been increasingly questioned as a result of numerous concessions of democracy and human rights issues by the EU in relations with energy suppliers and

by the growing importance of the security dimension of the EU internal energy market (Youngs 2009).

So far, scholarship has largely neglected or addressed insufficiently institutional developments in both the EU's and Russia's hydrocarbon sectors, staying in the normative traps of either assuming a benign nature of the EU 'market' model or attributing the limited institutionalisation of EU–Russia relations to structural divergence between the interests of energy producers and consumers. Some studies, however, have made initial steps towards explaining failures in energy governance by studying domestic institutional developments in the EU and Russia (Belyi 2014; Boussena & Locatelli 2013) and discussing domestic institutional factors in Russia's external energy policy-making (Balmaceda 2011), as well as in the policies of post-Soviet states (Balmaceda 2008).

The second essential contribution has been provided to the scholarship on power in energy relations. Flourishing especially after the 2006 Russia–Ukraine gas dispute, studies about EU supply diversification and the use of energy as a foreign policy tool by Russia have explored in detail how Energy Power, the use of energy resources by one actor to force another actor to consent, can be applied to the case of EU–Russia relations. First, some studies have analysed how states viewed as unitary actors can promote their interests by means of energy resources (Orban 2008). The major flaw of this strand remains the tendency to equate power and resource ownership in a rather straightforward manner, assuming that resource-rich states have energy power by default. Second, others have advocated a more complex approach to study relations between energy-rich and energy-poor states. The major focus of these studies has become analysis of state, corporate and 'private interests-within-the corporation', an interplay of which has been argued to affect the relations of Russia with post-Soviet states (Balmaceda 2006, 2008). Constraints upon Russia as 'an energy political actor' have also been addressed in a framework on the basis of the social structurationist approaches (Aalto, Dusseault, Kennedy & Kivinen 2014).

Third, securitisation studies have contributed to the literature on energy security, having examined how energy issues are being framed as a threat and a matter of security in the EU-wide agenda, internalising tensions with Russia and reflecting the political entrepreneurship of the European Commission. At the same time, most studies have focused on the securitisation process instead of addressing the question of to what extent the securitised policy issues actually represent a threat.

AFTER THE 2014 UKRAINIAN CRISIS: LOOKING FOR NEW ROADMAPS

The 2014 Ukrainian crisis represents a crucial test for EU–Russia relations and EU international actorness. It has already invoked further enhancement of EU integration in energy—it is yet unclear whether and how the EU Energy Union (the new concept of the energy transition proposed by the European Commission in late 2014) is consistent with the model of the liberalised gas market, but this European Commission initiative surely represents a serious step towards 'speaking with a single voice' in energy and might lead to further securitisation of EU energy policies.

These shifts require a reassessment of the norms versus interests debates about EU energy actorness by borrowing from regulatory studies the analysis of how the EU gas market model might be developing (Ascari 2013; Glachant 2013). This will facilitate a bridging of debates about the EU as a market actor and a security-driven path of EU external energy policies. A more critical assessment of perceived and real threats to EU energy security is also welcome in light of ongoing large-scale spending on infrastructure projects within the EU — issues that have become something of a self-fulfilling prophecy in the energy strand of securitisation studies.

In relations of the EU with Russia and other suppliers in the European gas market, debates should be enriched with analysis of the role of domestic institutional factors in energy conflicts. The direction of bridging energy economics, energy law and IR, chosen by Aalto and Talus (2014) in the special issue of *Energy Policy*, is a welcome step and worth following up. Analysis of domestic institutions would allow for demonstrating how domestic institutional changes can bring certain inconsistencies in relations between states and overcome the deterministic antagonism between energy producers and consumers favoured by IR so far.

A discussion of institutional changes in the EU and Russian hydrocarbon sectors would also shed additional light on issues relating to energy security. Given a low formalisation of EU–Russia gas relations and the informal nature of gas trade international institutions, energy security also depends on common rules of the game and a shared understanding of what constitutes the *modus operandi* in energy markets. Triggered by domestic shifts in institutional structures of hydrocarbon sectors, these rules are also getting increasingly reassessed in negotiations between the European Commission and Russia.

There is also a need for a better grounded, both analytically and methodologically, concept of energy power. An actor's (self-) perceptions of being an energy power or being threatened by an energy power and the actual outcome of energy power should be clearly differentiated. Debates about power aspects in energy can also be expanded beyond the (neo-) realist framework of power as resource ownership and control over infrastructure and enriched with interdisciplinary discussions about power (Forsberg 2011). Thus, debates about energy power can be enriched by looking at the ability to set rules and legitimise the sense of appropriateness in energy markets. This research path can be enhanced with the analysis of paradigmatic shifts in the governance of international gas markets, including debates about an appropriate gas pricing mechanism. This will allow for the expansion of the framework for analysis of EU–Russia relations, as well as shedding additional light on EU energy actorness both in Europe and across the world.

CONCLUDING REMARKS

Scholarship has addressed several main issues in the field of EU–Russia energy relations and EU energy integration. First, some studies have emphasised pipeline politics in explaining EU–Russia energy relations. They have also attributed high importance to diversification strategies in ensuring EU energy security. Second, EU and Russia's separate energy actornesses have been dichotomised: EU market liberalisation was often assumed to be power-free and a priori benign, and the ability of Russia to use energy resources for political goals was viewed as a *fait accompli*. Third, many studies have focused on ideational factors as explanatory variables for dynamics of EU–Russia relations and the EU integration process. Energy security issues have been majorly addressed from the positions of securitisation and pipeline politics. Empirically, energy security, EU relations with Russia and the dynamics of the Internal Energy Market have constituted three major areas of research inquiries, which have been complemented with sporadic assessments of multilateral energy governance in Europe within the Energy Charter process.

This commentary on the state of the literature is a first step towards a serious theoretical and methodological reassessment of the field. It argues for looking into the detail of EU energy actorness, an interplay between domestic institutional factors and international energy cooperation, and the power aspects of energy relations.

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Commentary

Understanding Politics in the College of European Commissioners: Suggestions for a Research Agenda

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Abstract

This commentary discusses the state of the art in the academic literature on politics in the European Commission. We discuss scholarly advancements in the field and sketch out future research opportunities. We argue that principal-agent theory might serve as a useful theoretical device in this area and that more empirical work should focus on the dynamics between appointing Commissioners and the work they do while being in office. More specifically, we suggest analysing Commissioners' speeches with quantitative text analysis. This method is yet unused to extract Commissioners' positions.

Keywords

European Commissioners; principal-agent theory; quantitative text analysis.

Generally, the Commission as the European Union's (EU) executive is well researched. Recently, important contributions with substantial empirical work have been put forward (Ban 2013; Hartlapp, Metz, and Rauh 2014; Kassim et al. 2013; Wille 2013), also focusing on politics and position-formation in the Commission (Osnabrügge 2015; Smith 2014).

Different research questions have previously been addressed. The Commission's role in the policy-making process and its relations to other actors are well researched (see Bailer 2014; Bocquillon and Dobbels 2014; Egeberg, Gornitzka, and Trondal 2014; Egeberg, Trondal, and Vestlund 2014; Klüver 2011 for the most recent results). Very recently, the effects of the *Spitzenkandidaten* procedure in the 2014 European Parliament (EP) elections are coming into focus, although as yet without clear-cut results on the consequences for the Commission (Dinan 2015; Hobolt 2014). Also, the Commission services have been extensively analysed by scholars (Hooghe 2001, 2005; Kassim et al. 2013; Suvarierol 2008). In addition, substantial work focuses on the behaviour of other EU actors; examples are members of the EP (Hix 2001; Hix, Noury, and Roland 2006; Kreppel and Tsebelis 1999), national experts seconded to the Commission (Egeberg 1996; Trondal 2006; Trondal, Van Den Berg, and Suvarierol 2008), or Council officials and other national representatives (Beyers 2005; Juncos and Pomorska 2006; Lewis 2005).

However, research on some of the most influential actors in the EU polity, namely the individual European Commissioners themselves, has so far been rather scarce. This work will discuss the scholarly advancements made in this field and sketch out some future research opportunities.

THE COMMISSION IN THE EU POLITY

Christophe Crombez (1997) and Simon Hug (2003) have advanced spatial models of political competition in the EU to show to what extent preferences of agents depend on those of their principals. Crombez argues that member states only appoint Commissions with policy positions close to member states' preferences. Hug develops a model for the case of intergovernmental conferences. He finds that the Commission is a preference outlier only on some issues, since for most problems its position is inside the pareto-optimal space of member state preferences. Delegation of tasks to a supranational actor is regarded as comparatively easy if this actor's preferences are equal to those of her principal. A game theoretical analysis of the effects of treaty changes on Commission appointment and legislative policy-making reveals that the theoretically

possible more radical positions in the Commission are still constrained (Crombez and Hix 2011). That is why the Commission's legislative success still depends on member states rather than internal factors (Bailer 2014). None of these publications considers the preferences of individual Commissioners, but they support the claim that member states influence the positioning of the Commission.

Robert Thomson (2008) asks under what conditions policy positions in international organisations are closer to some member states' positions than to others. He compares the policy positions of EU member states with that of the Commission. Thomson bases his research on principal-agent theory and uses the *Decision Making in the European Union* data set. His finding is that under qualified majority voting, which gives more leeway to the Commission, the Commission position is closer to the position of the responsible Commissioner's country than under unanimity voting. While this indicates the relevance of national ties, Thomson does not demonstrate the causal effects of the nationality of the Commissioner on policy formulation. But his work shows that nationality matters in EU inter-institutional politics.

ON COMMISSIONERS' BEHAVIOUR

After some early contributions (MacMullen 1996, 1997; Page and Wouters 1994), more recently, there has been a developing focus on European Commissioners. Despite this progress, the decisive research question has not been answered: to what extent and under what circumstances do European Commissioners not behave in the European interest? This section explores this gap in research, while the next section suggests a way to contribute to its closing.

The appointment mechanism is a powerful tool for member states to influence the European Commission. Holger Döring (2007) focuses on the appointment procedures for Commissioners and attempts to show whether their party affiliation and their political importance matter when member states select Commissioners. His analysis is informed by principal-agent theory. He analyses the biographies of all Commissioners between 1958 and 2007 with respect to party affiliation and previous political position. Döring finds that over time previous political importance has become more salient as a selection criterion for member states, whereas party affiliation has not. Principal-agent theory does not serve well to explain the selection of Commissioners by all member states, since he finds substantial differences between countries. Some of these differences can be accounted for by different logics of selection, which an analysis of the Commissioners selected by old and new member states shows (Deckarm and Fietkau 2014). New member states tend to send more independent Commissioners in order to underline their credible commitment to the integration process.

Arndt Wonka (2007) deals with a similar question as Döring in trying to find out which aims governments pursue when selecting Commissioners. Based on a principal-agent understanding he compares the *inclusiveness* and *visibility* of Commissioners, testing for whether they were members of a government party and what kind of political position they held before being appointed. His argument is that the principal tends to select an agent with known and shared preferences. Again, like Döring, Wonka analyses the biographical data of Commissioners, but he reports slightly different results. While he finds that inclusiveness matters, the role of visibility grows over time. Member states thus select more and more high-ranking politicians. Wonka's explanation is that the increasing relevance of EU policies for member states has forced governments to send trusted agents.

The distribution of portfolios follows appointment: Fabio Franchino (2009) reports that the Commissioners' experience, their member states' resources and voting power matter for the portfolio distribution. This underlines the importance of Commissioners' origin, since it is not simply their personal competence which matters in the Commission. Eviola Prifti (2013) analyses whether the most recent version of the EU treaty (as amended by the Treaty of Lisbon) had an effect on the composition of the Commission. By distinguishing between Commissioners' political capital and their technical expertise, she diagnoses a growing politicisation of the Commission. This shows that the trends identified by Döring and Wonka continue and the college of Commissioners has been transformed from a technocratic body into a political one.

Influencing Commissioners' future careers is a way of exercising power. An analysis of Commissioners' post-Commission lobbying careers reveals that the age and portfolio of the Commissioner matter, as well as their party family (left-leaning Commissioners are less likely to lobby) and whether the Commissioner is subject to a code of conduct (Vaubel, Klingen, and Müller 2011). The authors find support both for their *reward* and their *human capital* hypothesis. The former hypothesised that lobby positions are rewards for Commissioners' behaviour, the latter links the accumulated knowledge and competencies to the future career. They do not consider non-lobby post-Commission activities and do not probe further into interactions with Commissioners' behaviour in office. Commissioners' behaviour in the college could thus not only be influenced by their governments, but also by their prospects of a future career in the private sector. Despite being relevant to discussions on the influence of business on European politics, this topic has so far not further been developed.

The analyses of Commissioners' *curricula vitae* thus provided some evidence that Commissioners might not only work in the general EU interests, as they are supposed to do. But how do Commissioners act in the college? Based on organisational theory, Morten Egeberg (2006) identifies four different roles which Commissioners can assume: the collective European Commission role, the portfolio role, the national role and the party political role. He argues that *organisational structure*, *demography*, *locus/arena*, *culture* and *policy sector* influence behaviour. Based on an expert survey, he finds that Commissioners act most frequently in their portfolio roles, followed by Commission role, country role and party role. The organisational setting matters in determining which of the multiple roles Commissioners adopt.

Based on Egeberg's (2006) work, there has been some progress on the issue. Arndt Wonka (2008) enquires about the motivations for Commissioners' decisions. Wonka identifies different groups of factors that influence conflict between Commissioners: these are transnational party, national party, national agency and political portfolio. In his case studies, he finds that the portfolio and the national agent scenario matter, whereas the party scenarios, both national and transnational, do not have any influence. Wonka's results are largely in line with Egeberg's previous findings.

Andy Smith (2003) inquires to what extent individual Commissioners should be regarded as independent political actors and what influences their impact on policy-making. In eight case studies, he finds that individuals and their behaviour matter and that it is not only the institution determining actors' behaviour. Smith also states that the extent to which Commissioners matter for policy-making depends on how much they use latent resources they have at their disposal, the most important being the country of origin and the portfolio; moderated by the President's leadership. This is line with Franchino's results above: external factors influence the work in the Commission. Smith also finds that previous careers have no significant impact on whether Commissioners become more technocratic or more politicised in their actions. If this claim is right, the selection efforts by governments (which Döring's and Wonka's publication have shown) could to some extent be in vain.

None of the initially mentioned recent monographs explicitly aims at solving the puzzle of Commissioners' behaviour. Also Egeberg concludes in a more recent study that Commissioners do take different roles, but it is still unclear under what circumstances Commissioners take which role (Egeberg 2012). There is thus a substantial research gap at the top of the European Commission.

DIRECTIONS FOR FUTURE RESEARCH

Existing research has shown that Commissioners fulfil different roles. Those identified so far can be summarised as either European (driven by portfolio or institutional concerns) or national (be it purely a national or national party driven) role. The literature does not suggest that any of the roles is necessarily dominant and there is plausible support for both types of role behaviour.

So far, empirical work has relied on case studies, analyses of biographical data, expert surveys and analyses of Commission output. None of these sources however allows objective conclusions on the behaviour of individual Commissioners. We propose a novel way to overcome the methodological difficulty of measuring Commissioners' behaviour and argue that quantitative speech analysis is a promising tool able to contribute to academic knowledge on Commissioners. Utilising such techniques assumes that policy positions are revealed in speeches and that analysing Commissioners' speeches allows conclusions on their actual behaviour in office.

An example may illustrate the application. In the second Barroso Commission (2009-14), Máire Geoghegan-Quinn was Commissioner for Research, Innovation and Science. During her term, the new Framework Programme for Research and Technological Development, Horizon 2020, was initiated. Geoghegan-Quinn presented the proposal in most member states and the EP. These speeches can be compared, showing whether she used different vocabulary in the different settings. It would be especially interesting to see whether her stated position in Ireland deviates from the position in other member states or in the EP.

Some of the research above suggests a principal-agent relationship between member state governments and Commissioners. In such a framework, the Commissioner is selected to serve the member state's interests and has incentives to do so. Consequently, a crucial test for the framework is a change of the member state government, which frequently happens. The Commissioner could react in two ways. First, the Commissioner could be located closer to another principal, since he or she does not share the preferences of the new government. Second, the possibility of sanctions or rewards leads to an alignment of the Commissioner to the new government. The positions of European Commissioners on their portfolio can be traced over time in order to assess the Commissioners' reaction.

The example of the Slovenian Janez Potocnik, who was Commissioner for Agriculture in the second Barroso Commission (2010-4), serves as an illustration. In his role, he often gave speeches at stakeholder conferences. The Slovenian government changed after the Parliamentary elections in December 2011. In principal-agent terms: the appointing government was Potocnik's original principal and he was their agent in the Commission, but the government left office. Which principal did the agent Potocnik now serve, if at all? Did Potocnik adapt his position and if so, in what way? Did he align his position with the new government's position or did he move to a more European position? Such questions can be answered by comparing his speeches before and after the formation of the new government.

These brief examples highlight possibilities on how to link principal-agent theory and quantitative text analysis in the field of EU politics. To date, more than 11,000 speeches by Commissioners are available online. These speeches offer a rich body of empirical material to be analysed. There have been contributions in EU contexts (Benoit et al. 2005; Proksch and Slapin 2009), but Commissioners' speeches have so far not been systematically analysed.

Both supervised software packages like Wordscores (Laver, Benoit, and Garry 2003) and unsupervised packages like Wordfish (Slapin and Proksch 2008) are able to extract information from Commissioners' speeches along the lines of the two examples presented above.

Commissioners' speeches thus offer a promising data source for further developing research on the European Commission and for understanding decision-making in the College of Commissioners.

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Book Review

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TRANSNATIONALIZATION AND REGULATORY CHANGE IN THE EU'S EASTERN NEIGHBOURHOOD: UKRAINE BETWEEN BRUSSELS AND MOSCOW

Author: Julia Langbein

This book examines the factors shaping regulatory change in the EU's Eastern neighbourhood by tracing Ukrainian convergence towards transnational rules (both EU and international) from 1994 to 2012. It primarily analyses cross-sectoral variation across four policy sectors (shareholder rights, technical regulation, telecommunications and food safety) in regulatory convergence towards transnational market rules in Ukraine (2015: 24). Langbein does not just study what comes out of that analysis, she also seeks to generalise how the EU acts as a change agent in its neighbourhood. The author adopts process-tracing analysis to identify conditions under which regulatory change takes place in a post-communist country, such as Ukraine. In terms of its theoretical approach, the paper reflects on rational choice, management/institutionalist and governance scholarship.

The book comprises a brief introduction and six chapters; all informative and well structured. The first chapter theorises transnationalisation and regulatory change in the EU's Eastern neighbourhood and provides an overview of the relevant literature on historical institutionalism, rational choice and the study of regulatory change/governance. Additionally, it conceptualises regulatory convergence in terms of 'self-regulation'; 'delegation to private actors'; 'enforced self-regulation'; 'output regulation'; 'co-regulation'; 'consultation and cooptation of private actors'; and 'lobbying' (2015: 9). This allows the author to study policy variations in chosen policy sectors and systematically examine patterns of transnationalisation and regulatory change in Ukraine. The second chapter explores shareholder rights in Ukraine at length: the deep transnationalisation of public and private actors, the EU's unique role as a regulatory actor, along with Russia's impact on Ukraine's shareholder rights regulation. It offers an illustrative discussion of EU conditionality and its distinctive role which supports Ukraine's transnational reform coalition. Based on innovative criteria introduced by Langbein, chapters three, four and five examine the effectiveness of the EU governance initiatives in the field of technical regulations, telecommunications and food safety. The final section concludes.

Langbein links mechanisms of transnationalisation by analysing how local incentives and capacities change over time. By doing so, she develops a precise research framework about the dynamics of transnationalisation and regulatory governance. Langbein brings scholarly attention to the important question of regulatory governance by examining the experiences of the post-communist state. When explaining regulatory change, Langbein argues that there are four dimensions of regulatory convergence: 1) the formal adoption of transnational rules; 2) the existence of forms of governance based on internal rules that correspond to the prescription of transnational rules; 3) the capacity of private and public actors to play their expected roles in these forms of governance; and 4) the actual implementation of the rules on the ground (2015: 9-10). She argues that it is necessary but not sufficient to examine to what extent state actors adopt, monitor and enforce rules ('output'), and whether state and non-state rule targets follow these rules ('outcome'). She contends that state

actors increasingly need to coordinate regulatory measures with non-state actors due to the complexity of the globalised economy. These are important points, but they still do not bring the audience closer to understanding what is implied by the term 'coordination'.

Nevertheless, most importantly, Langbein does bring the issue of coordination to the attention of the reader. The existing scholarly literature reveals that the European Union's coordination role has indeed been limited both internally and externally. For example, bearing in mind Russia's territorial instincts, the EU has to advance coordination mechanisms which help develop dynamic and capable cooperative relations with Russia. Dimitrova and Dragneva (2009) have previously used EU-Ukrainian relations to test how the influence of Russia affects the EU's ability to export its norms and rules abroad. They argue that interdependence with Russia is a key variable that defines the effectiveness of EU's external governance. In addition, the Russian worldview does not include an understanding of external governance as a projection of the EU's own multi-level governance system. The existence of the above-mentioned factors has important implications, ranging from delimiting what the EU can achieve in its neighbourhood policies to requiring internal EU policy adjustments to take into account Russia's presence, as Langbein incorporates into her analysis.

Independent regulatory authorities or private companies which achieve regulatory tasks such as certification or monitoring according to European and international market rules were not needed during communism when economies were regulated by the state. Therefore, Langbein argues that capacity building (the transfer of knowledge, technologies, financial resources and skills) through networks contributes to regulatory change in a hierarchical governance structure like Ukraine's. Domestic agents of change and lobbying activities by civil society actors are supported by foreign actors through various transgovernmental initiatives: twinning, Technical Assistance and Information Exchange (TAIEX) or legal advice centres like the Ukrainian European Policy and Legal Advice Centre (UEPLAC), which bring institutional change and transform Ukraine. However, Langbein does not include civil society movements in the analysis on the grounds that they are not well developed and are passive in the EU Eastern neighbourhood countries. Civil society elites are therefore underrepresented and undervalued by her study. However she admits that interactions amongst various actors at different level of governance as well as interactions amongst private actors can impact on a more direct or indirect way on domestic regulatory change (Langbein 2015: 11).

It goes without saying that more empirical work is needed to understand better the interactions between different actors and institutions which are capable of bringing regulatory change in the EU's Eastern neighbourhood. Excellent analysis conducted by Langbein of the determinants of regulatory change along with the empirical richness of her cases greatly contributes to scholarly studies on European governance and institutions in general and the literature on transnational market making in particular. According to Roland (2005), institutions have no meaning if the constraints they impose are not enforced. In the exogenous models, enforcement relies on the role of a third party. Such models, therefore, have the disadvantage of raising the questions of where these third parties derive their enforcement power and what their incentives are to enforce the rules (Roland, 2005). Policy dialogue therefore requires not just a dialogue with governments but also with different components of civil society at large, especially with civil society elites who have not just an interest but also extensive expertise and training in rule enforcement. Those elites are not necessarily represented in governments but are a very active component of civic life in post-communist countries. Langbein, who argues that the EU and international/regional organisations facilitate cooperation and coordination within various state, sub-state and private actors, for example, reform-minded segments of bureaucracy, or civil society agents, endorses Roland's statement about the role of third parties and importance of their enforcement power.

Additionally, this study contributes to our overall understanding of EU-Russia relations by offering an alternative governance perspective as opposed to Russia's expansionist perspective.

Europeanisation literature predominantly focuses on Russian power politics assuming it is the reason for current regional conflicts. The comparison of cross-sectoral policies and regulatory change, which Langbein extensively researched for her book, shows that Russia not only weakened but also strengthened support for regulatory integration with the EU and international markets in Ukraine. Langbein is suggesting analysing numerous Russian transnational actors and their impact on domestic change and by doing that she adds particular nuance to the study of governance. She concludes that Russia's presence does not necessarily hinder the integration of the EU's Eastern neighbours into international markets. Rule enforcement is happening despite the lack of an EU membership perspective and the presence of Russia as an alternative governance provider. That, without any doubt, provides a platform to further studies of not just Russia as an alternative provider of governance, but the role of regional organisations such as the European Union, and the Eurasian Economic Union.

In all, this informative and thoroughly researched book will be of interest to a broad audience, both practitioner and academic. This is a fascinating study since the book provides comprehensive analysis, coupled with empirical evidence, over the unfolding debate about transnational governance and regulatory change within the European neighbourhood. The case studies presented by Langbein shows that overall transnationalisation has been an efficient instrument for European integration and the development of transnational market making rules. However, recent events in Eastern Ukraine demonstrate that despite an existing degree of institutionalisation of sectoral policies in countries with transition economies, effectiveness in solving territorial and governance conflicts has remained rather weak. The challenges Ukraine faced, and still faces, will certainly encourage academics to conduct further research in areas of transnationalisation, regulatory change, and policy coordination in post-communist countries. In a timely manner, Langbein's study obviously demonstrates that international competitive pressures and domestic regulatory capacity building play a significant role in determining Ukraine's future course in line with European integration.

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