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Chapter 1

Introducing the Commission

The composition and structure of the Commission

In legal terms, the Commission is a single entity and when it formally acts it always does so collectively. However in practice the Commission has two distinct levels, or arms: the College and the services. Somewhat confusingly, the word ‘Commission’ is commonly used to refer both to the College and to the Commission as a whole.

The College of Commissioners

There are currently twenty members of the College of Commissioners: two from each of the five largest member states (France, Germany, Italy, Spain and the United Kingdom) and one from each of the other ten member states (Austria, Belgium, Denmark, Finland, Greece, Ireland, Luxembourg, Netherlands, Sweden and Portugal). The highly politicised and drawn-out processes by which members of the College are appointed are examined in Chapter 4, as are the characteristics of Commissioners.

Commissioners used to be appointed for four years, but this was lengthened to five years by the 1992 Maastricht Treaty so as to bring the College’s term of office into close alignment with that of the European Parliament (EP). The first College to be appointed to a five-year term was that which assumed office under the presidency of Jacques Santer in January 1995. This College became, however, the first not to complete its term of office when, amidst allegations of general incompetence and inappropriate behaviour by some of its members, it was forced to resign in March 1999.

The post of Commission President, which is examined in detail in Chapter 3, has become increasingly important over the years. Although the President does not command the range of powers within

the College that national leaders normally command within their Cabinets/Council of Ministers, he (there has not yet been a female President) does stand significantly 'above' his College colleagues. Indeed, it is common for Colleges, and more broadly the Commission, to be referred to by the President's name. So, for example, the 1985–88 College is referred to, after Jaques Delors, as the Delors 1 Commission (Delors led three Colleges), the 1995–99 College is known as the Santer Commission, and the College that replaced the Santer College is referred to, after its President, Romano Prodi, as the Prodi Commission.

The College sits at the apex of the Commission. The approval of the College is necessary for all major initiatives and decisions that are taken in the Commission's name. Nothing of significance can be decided without being referred up the Commission system to the Commissioners. There is a strong tendency in the College towards consensual decision-making, so voting, though permissible, is rare. The members of the College hold policy portfolios in a manner that is similar to the ways in which ministers at national level are responsible for particular areas of policy. Within their designated policy spheres, Commissioners are the most senior individual figures in the Commission.

Because of the nature of its membership – most Commissioners are former senior national politicians – and its responsibilities, the College is frequently described as the political arm of the Commission.

The services

The services, which constitute the Commission's administrative arm, are relatively small in size, totalling officially just over 21 000 full-time employees (see Table 7.1, pp. 164–5) – about the same as a reasonably important ministry in a medium-sized member state or a large city council. The most senior officials in the services have traditionally been appointed on the basis of national and political considerations, whilst other staff have been recruited through open competition. Promotion policies have been somewhat arbitrary and politicised, with an accompanying large measure of time-serving below the most senior levels. As is shown in Chapter 7, reforms being carried out under the Prodi Commission are seeking to place the whole of personnel policy on a more meritocratic basis, though with some regard for balance between nationals of the member states.

Like national administrations, the Commission's administration is sub-divided. The main sub-units are called Directorates General (DGs). The number of these is subject to periodic change, but in recent years there have been between twenty and twenty-five. Prior to the Prodi Commission all DGs were assigned a Roman numeral and it was by these, rather than by their name, that they were normally known. So, for example, the DG for Industry was known as DG III, the DG for Development as DG VIII, and the DG for Energy as DG XVII. In the interest of making the Commission, and the EU as a whole, more transparent and understandable, Prodi decided to remove the numerals, so DGs are now referred to by their – in some cases streamlined – names.

Other sub-units are not constituted as DGs but rather as special services. Prominent amongst these are the Secretariat General, which has as its main task the promotion of effective internal coordination between the many different parts of the Commission, and the Joint Interpreting and Conference Service, which undertakes the heavy interpretation workload which follow upon the EU having eleven officially recognised languages.

The Commission's multi-dimensional nature

The Commission is often portrayed as being a homogeneous and monolithic institution, but in fact it is composed of many parts and contains within its ranks a wide range of different views and interests. As Cram (1994) has put it, the Commission is a complex 'multi-organisation'.

The most obvious distinction within the Commission is that between the political (College) and administrative (services) arms. Relations between the two are by no means always harmonious and have often been characterised by tension and friction. Commissioners and their personal staff – the latter of whom are located in *cabinets*, or private offices – at times feel that the services prefer to concentrate too much on their own agenda rather than giving full support to Commissioners' initiatives and policy preferences. For their part, the services sometimes feel that their work is undervalued by Commissioners and *cabinets*, and they frequently feel that *cabinet* officials interfere too much and too directly in the work of the services. Very soon after being nominated as Commission President-designate Prodi

made it clear that one of his central organisational goals would be to bring the political and administrative arms of the Commission into a much closer and more harmonious working relationship (Prodi, 1999a, 1999b).

The political and administrative arms are themselves internally segmented, with Commissioners having to concentrate primarily on their portfolios rather than looking to the performance of the Commission as a whole and with services being obliged to focus on matters within their specified areas of responsibility. This segmentation can be a source of internal tension and friction within the Commission.

In the College, tensions and frictions sometimes arise, especially in cross-sectoral policy areas, over who is responsible for particular aspects of policy. This has, for example, long been a problem in the sphere of external policies, where Commissioners' portfolios are not wholly self-contained but rather overlap at the edges. With most Commissioners wanting to be responsible for as much as possible, 'turf disputes' can sometimes become decidedly sharp.

In the services, a common problem is differences between DGs over policy priorities and policy methods. One such persisting example is attitudes towards the management of the internal market, with the Competition DG long having adopted a strongly liberal/non-interventionist stance and DGs such as Transport and Regional Policy having been sympathetic to specific forms of public support and intervention in particular circumstances. Several commentators relate such policy content and policy style differences to cultural differences within the Commission, with the behaviour and actions of officials being seen to be at least partly influenced by identities officials have either assumed or brought with them. These identities are based along a number of lines, some of which are mutually reinforcing and others of which are cross-cutting. The most important identities are normally identified as being location within the Commission and nationality. Regarding location, studies have shown how some DGs virtually have their own sub-cultures, into which newcomers are usually quickly absorbed (see, for example, Abélès, Bellier and McDonald, 1993; Cini, 1996a, 1996b, 1997). Regarding nationality, studies reveal that whilst national practices and traditions are partly combined in a 'cultural compromise' (Abélès and Bellier, 1996), they are not totally extinguished and they do play a part in the everyday functioning of the Commission – especially where there are clusters of national officials (McDonald, 1997).

The functions of the Commission

The institutional structure of the EU positions the Commission at the very heart of the EU's system of governance. It has at least some involvement with every aspect of EU affairs and it is a direct participant at virtually every stage of EU policy and decision-making.

The central position occupied by the Commission in the EU system means that it undertakes a wide variety of functions. Most of these functions are provided for by the EU's treaties, though usually in only generally defined terms – as with Article 211 (ex-155*) of the Treaty Establishing the European Community (TEC) which, amongst other things, states that the Commission shall 'formulate recommendations or deliver opinions on matters dealt with in this treaty, if it expressly so provides or if the Commission considers it necessary'. A few functions have no explicit treaty base at all but are a consequence rather of practical necessities and/or of views within and outside the Commission as what it should be doing.

The nature of the functions

The Commission's functions are examined later in the book. Three functions – the legislative, executive and external – are given their own chapters, whilst others are examined at various places in Chapters 8–12. All, therefore, that will be attempted here will be an identification of and an introduction to the main functions. They are as follows:

Policy initiator The Commission promotes and develops many of the policy initiatives that are launched at EU level. It is best known for launching proposals in respect of what may be thought of as grand and overarching policies, but in volume terms most of its initiatives are focused on detailed policies in particular sectors. Whether, however, grand or specific policies are concerned, the initiation and development process customarily involves activities ranging from floating ideas and promoting dialogue with interested parties to drawing up and issuing policy documents.

*The Treaty on European Union and the Treaty Establishing the European Community were renumbered following the 1997 Treaty of Amsterdam. This book uses the new numbering system, but on the first reference to well known and well used articles the former number is given in brackets.

A resource that is of considerable use to the Commission in enabling it to initiate policy debate and proposals is that it is generally recognised as being the main repository of ‘the Union interest’ – or, as it is still frequently referred to, ‘the Community interest’. This is a very ill-defined and loose notion, but it helps the Commission to present itself as acting in the interests of the whole, as being ‘the conscience of the Union’ rather than, as is often the suspicion when initiatives stem from other sources, a particular interest. The notion also means that Commission proposals are not seen as representing, as Council proposals frequently are, the sum total or the lowest common denominator of national interests. The Commission is thus well placed to be, as it described itself in its submission to the 2000 Intergovernmental Conference (IGC), ‘the driving force behind European integration’ (Commission, 2000e: 11).

Legislative functions The Commission is, in several ways, crucial to the making of EU legislation. First, under the EC pillar of the EU it has the exclusive right to draft legislative proposals, save for a few exceptions in the justice and home affairs policy sphere. (Legislation is not made under the second and third pillars of the EU – the Common Foreign and Security Policy (CFSP) and Police and Judicial Cooperation in Criminal Matters pillars.) Second, alone of the EU institutions, the Commission is represented at, and can contribute to, all legislative stages – including those that are conducted in the Council of Ministers and the EP – which makes it ideally placed to be able to undertake the inter-institutional conciliation and brokering that EU legislative processes have come to require. Third, the Commission can employ useful power resources as proposals make their way through legislative processes – with, for instance, its subject expertise meaning that the Council and the EP may have to bow to it on technical/information grounds. Fourth, most administrative legislation is not subject to a full legislative examination but is made in the name of the Commission – usually via committees of national representatives which, though not rubber stamps, do not usually cause the Commission too many difficulties.

Executive functions The Commission undertakes executive responsibilities of a number of different kinds. For the most part these responsibilities are more concerned with setting out the ground rules and monitoring and coordinating the activities of others than they are with directly implementing policies and laws itself.

Responsibility for the implementation of EU policies and laws can be thought of as being stretched along a spectrum, with the Commission carrying the main responsibility at one end and agencies of various sorts doing so at the other. The only major policy area where the Commission carries extensive direct implementation responsibilities is competition policy, although there are parts of several other policies – usually the funding parts – where there is also direct implementation. Where the Commission is not the direct implementer it still has executive responsibilities to perform. Two of these responsibilities are especially important. First, the Commission draws up and issues administrative legislation: that is, the detailed rules that it is not possible to incorporate in treaties or primary legislation but which are vital in policy areas where circumstances change quickly and where highly specific, often very technical, regulation is required. Second, so as to ensure that policies are applied in a reasonably consistent manner throughout the EU, the Commission attempts to supervise, or at least keep a watching brief on, the outside agencies that are responsible for most direct implementation.

Legal guardian Closely related to, and overlapping with, its supervisory responsibilities, the Commission has a legal guardianship function. This function, which is exercised in association with the European Courts – the Court of Justice (ECJ) and the Court of First Instance (CFI) – involves ensuring that the EU's treaties and legislation are respected. As is shown in Chapter 11, it is an extremely difficult function to perform since infringements of EU law can be very difficult to detect, and when they are so there are often reasons – economic, social and political – which make it questionable as to whether they should be pursued.

Infringements can take many different forms, but whoever the suspected infringer may be, and whatever the suspected nature of the infringement, the Commission is obliged to deal with each case it chooses to investigate with great care and according to procedures that are specified in the treaties. All parties who are investigated are given a full opportunity to explain themselves and to refute any allegations made against them. If the Commission finds that an infringement has occurred it has the power to impose financial penalties, which can be subject to judicial appeal.

External representative and negotiator The Commission undertakes many external responsibilities on behalf of the EU. These have grown

in importance as the EU has become an increasingly significant international actor. The nature of the responsibilities are described in Chapter 12, so comment here will be limited to making the general point that the responsibilities are far from confined to the sphere of external activity with which the EU and the Commission are most commonly associated, namely trade. Amongst responsibilities that are non-trade or non-exclusively trade in character are the management of development aid, association with the work carried out under the EU's CFSP pillar, and numerous tasks in regard to the process of EU enlargement.

Mediator and broker In the EU's multi-actor, multi-interest, multi-view system, in which policy processes are many, varied and often complex, there is frequently a need for mediation and brokerage functions to be performed so as to allow policy participants to have confidence in the system and to enable decisions to be made and be applied. The Commission is by far the best-placed actor to perform these functions. It is so for three main reasons. First, it is obliged by treaty to be non-partisan in its behaviour and actions. Under Article 213 (ex-157) of the TEC, Commissioners are charged to act in 'the general interest' and to be 'completely independent in the performance of their duties'. They 'shall neither seek nor take instructions from any government or from any other body'. These stipulations are generally respected, with the result that the Commission is generally regarded as an honest broker when, for example, it advances suggestions and proposals for tackling difficulties and resolving problems. Second, the Commission is often in the best position to judge how a concerned or aggrieved policy actor can be assuaged, how a problem may be resolved, and what approach is likely to command support amongst decision-makers. This is because of the Commission's knowledge of the nature and functioning of the EU, which is derived in no small part from the fact that in most policy sectors the Commission is usually present at every stage of the policy cycle, from initiation to evaluation. Third, embedded in the internal culture and thinking of the Commission are attitudes that help to underpin the exercise of these functions. For example, officials recognise almost as a matter of course the difficulties that can arise if an important policy actor, especially a member state, becomes dissatisfied over a matter, which naturally results in them encouraging and assisting actors to find solutions to problems when that seems to be desirable or necessary.

The Commission is thus well placed to undertake much of the mediation and brokering that is necessary if the EU system is to operate in a harmonious and efficient manner. The mediating and brokering functions are undertaken in many contexts and vary considerably in nature. They range from trying to reach accommodations with governments of member states on problems they may be experiencing in implementing existing EU laws to identifying ways in which differences within and between the Council of Ministers and the EP in the framework of legislative and budgetary decision-making procedures can be reconciled.

Mobiliser If an initiative is to advance at EU level it must achieve wide support. Preferably, it should be supported by all the main policy actors who have a direct interest, be they institutional, governmental, or non-governmental. At a minimum it must command the support of the principal decision-makers.

The diversity of interests existing in the EU means that sufficient support is usually not automatically forthcoming for initiatives, wherever they may come from and whatever form they take. Rather, support usually has to be mobilised. The Commission frequently exercises such a mobilising role. Amongst the ways it does so are the following: Commissioners and their representatives meet with decision-makers, opinion formers and the leaders of important interests; Commission members and officials address gatherings of interested and affected parties in the member states; the merits and advantages of initiatives are explained by Commission representatives when opportunities arise in the many forums in which they engage with other policy actors on a regular basis – such as in Commission advisory committees, in Council meetings at their different levels, and in EP committees; and policy documents of an explanatory and consultative nature are issued regularly.

This mobilising function is closely related to the mediating and brokering functions that were identified above. It is, however, perhaps a rather more pro-active function in that it tends to involve more in the way of initiating and pressing on the part of the Commission. Sometimes, indeed, what happens is that the Commission spots favourable circumstances for the development of an initiative and, acting as a ‘purposeful opportunist’ (Cram, 1993, 1997), seeks to take advantage of the circumstances by bringing key actors together to help develop policy and/or persuade them that a particular course of action is desirable.

Tensions between functions

There are tensions between some of the Commission's functions, with the skills and resources that are necessary for the effective and efficient undertaking of some functions not necessarily being the same as those that are required for others.

Over thirty years ago David Coombes, in a study of the early Commission, noted the emergence of what has subsequently been the main tension between roles, namely that between being a promoter of integration on the one hand and a policy administrator on the other (Coombes, 1970). The former role requires dynamic and innovative leadership whilst the latter is dependent on more routine and bureaucratic capacities. Until recently, insufficient attention was given to ensuring that the routine and bureaucratic capacities were in good order. Under the presidency of Jacques Delors in particular they were neglected with, as Anand Menon has observed 'the Commission's workload, rather than how well the work was done, [being] taken as the measure of its standing' (Menon, 1999: 14).

Another example of tension between roles concerns mediating and mobilising. It can be difficult for the Commission to appear to be neutral and to successfully broker a compromise on, say, a policy proposal when it has previously been attempting to convince policy actors that the proposal should take a particular form.

A central (and independent?) policy actor

The Commission is not the formal and final EU decision-maker on major issues – the European Council, the Council of Ministers and the EP have greater powers in that regard – but on most matters that concern the EU it is an extremely important policy actor. Even in spheres of activity where its treaty powers are weak, its influence usually looms large.

As the EU has extended its policy reach over the years, so has the extent of Commission influence grown. This is no more clearly seen than in regard to the creation of the Single European Market (SEM), which has been at the heart of much policy activity since the 'relaunch' of the European integration project in the mid-1980s. Although the SEM programme is usually thought of as being deregulatory in character, much of it in fact has consisted of transferring regulation from the national to the European level. The

transfers have covered not just narrowly defined market-related matters such as product specifications and trading conditions but also a wide range of social measures such as working conditions and consumer protection. As Majone (1994) has pointed out, regulatory activity normally requires a high degree of administrative and technical discretion and an expertise that tends to privilege administrative power over political power – which in the EU context means that the Commission is privileged more than any other EU actor.

Fitzmaurice has described the Commission as being ‘animateur, impressario and manager . . . the “player manager” of the EU system’ (1994: 181). This very much captures the diversity of the Commission’s roles, some of which are political in nature in that they involve providing leadership, drive and mediation between the many participants in EU’s policy processes, and others of which are more managerial and administrative in character in that they are concerned with the execution of policies, laws and budgets. The Commission has been assigned and assumed functions and responsibilities that have resulted in it taking on some of the characteristics of a government and some of the characteristics of a secretariat cum civil service. In power terms, it is perhaps best thought of as being somewhere between the two – a hybrid, with powers which are less than those exercised by governments in national settings but which are much greater than those exercised by secretariats of other international organisations.

The role of the Commission in the EU system, and more particularly the extent to which the Commission can act independently and autonomously when using its powers and undertaking its functions, has been the subject of an extensive and lively debate amongst scholars. At one end of a wide spectrum of views is the intergovernmentalist position, which sees the Commission essentially as an agent of the member states, facilitating their ability to take decisions and implementing the decisions they take, but not itself acting in a manner that does anything much more than reflecting and applying the will of the member states as expressed via the European Council and Council of Ministers. The best known proponent of this position is Andrew Moravcsik (1991, 1993, 1995, 1998). At the other end of the spectrum is the supranational position, which acknowledges that the member states are the EU’s main formal decision-takers but suggests that they are frequently guided and led in what they do by a Commission that is, in important respects, relatively independent. Amongst those who, broadly speaking, subscribe to this position are Daniel Wincott

(1995), Janne Matlárý (1997a, 1997b) and Sandholtz and Stone Sweet (1998).

Scholarly perspectives on the autonomy/dependence of the Commission are explored at some length in Chapter 9. Let it be made clear here, however, that the working assumption of this book is that although it is certainly true that the governments of the member states have been reluctant to allow the Commission too much latitude – as is witnessed by their creation and maintenance of various control mechanisms on Commission decision-making – the evidence nonetheless indicates that in some policy areas and in some circumstances the Commission does enjoy a considerable amount of independence and does exercise a significant degree of autonomy. To take, for example, agenda-setting in the EC pillar, numerous case studies have shown the Commission to be the main instigator of ideas, initiatives, and proposals that have worked their way through decision-making processes to become established policy. The Commission is able to exercise such agenda-setting influence because it is in possession of a range of appropriate power resources: it has, for example, the formal power to table policy and legislative proposals; it has access to privileged information of a technical nature; it is well placed to be able to judge the political climate – not least because it is usually aware of the likely reactions of national governments to initiatives; and it is at the centre of a host of useful and potentially influential policy networks.

But whatever viewpoint is taken regarding the independence and autonomy of the Commission, the fact is that it is a central EU policy actor. In undertaking its numerous duties and functions it is required to use and display a wide range of skills and qualities. It must, for example, be innovative and proactive, especially in relation to policy development. It must be responsive to the needs and preferences of others, especially the member states and the other main EU institutions. And it must be vigilant and efficient, especially in respect of financial management and the implementation of sensitive policies and laws.

Concluding remarks

The Commission is a unique institution in terms of its membership, organisation and functions. Taking functions to illustrate this point, the Commission exercises not only administrative functions of the

kind that are normally undertaken by bureaucracies but also political functions that are normally the responsibility of political executives. The exercise of its political functions results in the Commission exerting a considerable influence not only on day-to-day events and on specific policy issues, but on the European integration process as a whole.

The various aspects of the Commission's uniqueness that have been introduced in this chapter are examined at length later in the book.

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