

Review of: Jörn Ege, Michael W. Bauer & Stefan Becker (Eds.), *The European Commission in Turbulent Times. Assessing Organizational Change and Policy Impact*, Baden-Baden: Nomos 2018 (254 p.)

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COMMON MARKET LAW REVIEW

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Aims

The Common Market Law Review is designed to function as a medium for the understanding and implementation of European Union Law within the Member States and elsewhere, and for the dissemination of legal thinking on European Union Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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Establishment and Aims

The Common Market Law Review was established in 1963 in cooperation with the British Institute of International and Comparative Law and the Europa Instituut of the University of Leyden. The Common Market Law Review is designed to function as a medium for the understanding and analysis of European Union Law, and for the dissemination of legal thinking on all matters of European Union Law. It aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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Jörn Ege, Michael W. Bauer and Stefan Becker (Eds.), *The European Commission in Turbulent Times. Assessing Organizational Change and Policy Impact*. Baden-Baden: Nomos, 2018. 254 pages. ISBN: 9783848745142. EUR 59.

This edited volume presents a collection of political science papers (note: there is only one chapter that presents a legal analysis) looking into the institutional position of the Commission, both *vis-à-vis* other institutions or actors (Chs. 2–4), in terms of its internal organization (Chs. 5–6) and in terms of its capacity to shape policy (Chs. 7–9). Chapter 10 takes a step back, trying to connect the dots between the chapters and presenting some further research.

The background to the volume is the conventional wisdom that the Commission is an institution in decline, with the chapters looking into the question of how the Commission has positioned itself or how it is trying to continue to fulfil an important role “in turbulent times”. Overall, the volume presents interesting research strands that set themselves the ambitious aim of going beyond merely scratching the surface of this complicated question. Most chapters thereby present final or intermediate findings, but there are some that only seem to reflect preliminary findings and which would have merited further work.

In Chapter 1, the editors present the different chapters and the background to the overarching topic. Then Eckhart and Wessels (Ch. 2) try to answer the question of whether the Commission is (i) an agent, (ii) a hidden principal or (iii) a partner to/of the European Council by looking into how many times the European Council in its Conclusions either delegates a task to the Commission or, alternatively, further builds on suggestions/initiatives of the Commission. This measurement tool evidently has its restrictions, as it can only be used to falsify models (i) and (ii), but not (iii). In addition, the authors may have jumped to conclusions when noting that the Commission may “have the European Council act[ing] in its interest or impose policies against the European Council’s will,” (p. 45) since this does not logically flow from the finding that the Commission “has the competences to considerably influence the development of the Union and may at some point succeed in pursuing own agendas” (p. 45). The authors acknowledge the preliminary nature of their findings by noting that “overall conclusions” cannot be drawn (p. 49), and they identify the further research steps that must be taken to answer their main research question.

In Chapter 3, Maurer and Wolf turn to the Commission’s relations with the Parliament and look into the latter’s agenda-setting power through its legislative and non-legislative own-initiative reports. While the discussion of the legal framework governing

these reports (pp. 59–63) is rather confusing, the quantitative and qualitative analyses of the reports result in interesting findings and show how the Parliament indeed has an indirect agenda-setting power since the Commission follows up on requests in 50% of the cases. In the next chapter, Adam, Bauer and Hartlapp look into the frequency of annulment actions (under Art. 263 TFEU) brought against the Commission by the Member States. As the authors note, the annulment procedure is understudied (in political science); but contrary to what Kassim and Connolly claim in Chapter 10, it is *not* about “the relationship between the Commission and the Court”, and “Member State v. Commission” cases do *not* “pit the Council as principal against the Commission as an agent” (p. 237). Adam, Bauer and Hartlapp studied the whole population of cases in the period spanning from 1996 and 2007 to try and determine which variables explain the frequency with which Member States institute proceedings against the Commission. Their findings are interesting but should be handled with caution because of the (inevitable) difficulty of operationalizing key independent variables. For instance, when operationalizing the variable “creative agency by the Commission” (i.e. whether the Commission follows a maximalist interpretation of its own mandate, which in turn would trigger Member States in launching proceedings against the Commission) they defensibly make the choice not to check whether the Commission stayed within its mandate (which is almost impossible to verify) but to operationalize “creative agency” by simply counting the number of times the Commission adopts a decision addressed to the Member State concerned. The independent variables, having a statistically significant relationship with the frequency of annulment litigation, are the effectiveness of national governments (as measured by the World Bank’s governance indicators – the lower the higher the incidence of proceedings) and the informal relations between the government and Commission (if severed because of the appointment of a new Commission/government the more likely proceedings are initiated) (p. 107). The authors conclude by defining a research agenda in this specific field.

Chapters 5 and 6 focus on the internal organization of the Commission. First, Böttner looks into Juncker’s decision to install project teams, beefing up the Commissioner Groups which were already set up under Barroso. Following a properly reasoned legal analysis, Böttner finds that the hierarchy between Commissioners introduced by the “President’s working methods for the Commission” breaches the Commission’s rules of procedure and the principle of collegiality; he suggests some tweaks to the system to ensure its conformity with EU primary law (pp. 127–128). Trömmel looks (Ch. 6) into the political leadership of Juncker in the unfavourable institutional and situational context in which he took up office. The leadership performance of Juncker then clearly is the dependent variable and what is explained, even if the chapter claims that the personal qualities of Juncker are taken as the dependent variable (p. 139). The way in which Juncker subsequently tried to promote a certain agenda and how he reformed decision-making within the Commission are then discussed, concluding that Juncker used his agenda-setting and procedural powers “in a very strategic and at the same time cautious way” (p. 154). However, the conclusion that Juncker therefore adopted a different style and approach from that of Barroso (p. 155) is not supported by the discussion, as the chapter only focuses on the Juncker Commission. The reader is left wanting a bit more since the chapter does not address the most pertinent question, i.e. whether Juncker’s (different) leadership style also had a concrete impact on EU policies.

The last three main chapters look at the way in which the Commission has (not) shaped EU policy. Eckert’s chapter discusses the role of the Commission in negotiating with “third partners”: the Swiss Republic, following the 2014 referendum on limiting mass immigration, the UK on its new membership deal under Cameron and the UK in relation to its withdrawal agreement. Eckert presents an interesting comparison of these three cases and the differentiated role which the Commission plays. In Chapter 8, Knodt and Ringel present preliminary research results on the Commission’s role of policy shaper, in its role of reviewing Member State compliance through so called “harder soft governance”. They do so by focusing on the Commission’s Governance Regulation for the Energy Union proposal of the 2016 Winter Package (COM(2016)759). The authors present some key elements of this proposal and discuss the prior evolutions in the EU’s climate policy showing how the Commission attempts, through

“harder soft governance” to take a greater role in shaping policy. However, the idea that the Commission might want to push the boundaries of the status quo to acquire a greater role seems rather evident, the real question being whether and to which extent these attempts are successful. To answer this question, the final Governance Regulation (2018/1999), which was adopted after the publication of the volume, would indeed need to be studied. In Chapter 9, Becker presents a very interesting narrative of how the Commission has linked its purely soft-law powers under Europe 2020 with its beefed up powers under the revised Stability and Growth Pact. His analysis of the country-specific recommendations shows how the Commission’s focus under Juncker shifted from an emphasis on austerity in public finances to more attention for structural reforms and social policies (p. 218). Applying statistical analysis to the recommendations, Becker (counterintuitively) finds that higher deficits result in fewer recommendations; higher GDP growth does not result in fewer guidance actions; being a big Member State results in more guidance; and lower account imbalances result in more recommendations. In contrast, lower unemployment rates indeed result in fewer guidance actions; being a post-2004 Member State results in more guidance and being a Eurozone Member State results in more guidance (p. 222). Becker concludes that the Commission’s recommendations are therefore also informed by political considerations (p. 223). Chapter 10 by Kassim and Connolly briefly comments on the different chapters but also invites researchers to study an aspect that has not received attention in the volume, i.e. the role played by the backgrounds, beliefs and values of Commission civil servants. According to the authors, cracking this “black box” is instrumental in better understanding the role played by the Commission as an institution (in turbulent times).

The edited volume presents interesting European Studies research on the European Commission. Readers of the *Common Market Law Review* who like to stay abreast of the research in EU political science research will find this a worthwhile read.

Merijn Chamon
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COMMON MARKET LAW REVIEW

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