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The Commission in EU Policy Preparation

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Abstract: Since the heyday of Jacques Delors, the Commission has been challenged by the rise of the European Council, the empowerment of the European Parliament and the creation of European agencies. However, while many scholars agree about the direction of change, there is disagreement about the extent to which the Commission’s position has declined. A number of studies are skeptical, and we join this skeptical line. Our contribution is to focus on the Commission’s role as a maker of both legislative and executive rules (implementing and delegated acts). These rules are all decided under complex inter-institutional procedures. But the Commission possesses the right of initiative in all procedures. We investigate how the Commission can use this first-mover advantage to influence EU policy. We establish a framework for understanding what strategic options the first-mover advantage entails and provide a first empirical illustration with a qualitative analysis of ten selected Commission proposals.
The Commission in EU Policy Preparation

Since the heyday of Jacques Delors, the position of the Commission in the EU system has been challenged. The rise of the European Council, the empowerment of the European Parliament, the creation of new regulatory agencies, and the development of an increasingly Eurosceptic public have led observers to conclude that the Commission’s position is declining (Bauer et al. 2018: 9-12; Ellinas and Suleiman 2012: 195-210; Hartlapp et al. 2014: 22-24; Kassim et al. 2013: 130-135; Wille 2013: 186-203). This decline thesis has figured especially prominently in the writings on “New Intergovernmentalism”, which holds that since the Maastricht Treaty, the member states have preferred to bypass the Commission and initiate policies through the European Council by methods beyond the traditional community method and to implement them through de novo bodies (Bickerton et al. 2015; van Middelaar 2019).

However, while many scholars agree about the direction of change, there is disagreement about the extent to which the Commission’s position has declined. A number of studies argue that decline may be limited. Nugent and Rhinard (2016) find that in some respects the Commission’s functions have actually been strengthened. Becker et al. (2016) argue that “presidentialization” of its leadership has made the Commission able to act more strategically. Schimmelfennig (2015) finds that “new intergovernmentalist” traits are limited to certain areas, e.g. fiscal policy. Bauer and Becker (2014) argue that institutional responses to the fiscal crisis have actually strengthened the Commission’s position. Studies of European agencies indicate that they in practice lean towards the Commission and thus consolidate its position (Egeberg and Trondal 2017).

The purpose of this paper is to join this skeptical line of research. Our contribution is to focus on the Commission as a rule-maker. This role encompasses both the Commission’s legislative functions and its functions as maker of executive rules (since the Lisbon Treaty known as implementing and delegated acts). Although legislative activity is reduced compared to earlier times, the output of rules from the EU system is still very high. The annual number of legislative acts amounts to about one hundred, delegated acts to about 200, and implementing acts to more than one thousand. These acts are all decided under complex inter-institutional procedures. But common to them all is the fact that the Commission possesses the right of initiative. This right amounts to a first-mover advantage to formulate and time proposals. We investigate how the Commission can use this position to steer EU policy in its preferred direction. We do this by studying how the
Commission prepares its proposals. Our first contribution is to bring together insights from the literature and turn them into a coherent framework for understanding what strategic options the first-mover advantage entails. Our second contribution is to provide a first empirical illustration of this framework with a qualitative analysis of ten selected Commission proposals.

The paper is structured as follows. First, we explain in greater detail what the Commission’s right of initiative entails in both the legislative and executive arenas. Second, we argue why the Commission is likely to use its right of initiative to shape EU rules. Third, we develop an analytical framework for understanding how the Commission can employ strategies to use the right of initiative to shape EU rules. Fourth, we illustrate the usefulness of this framework in an empirical analysis of ten cases of policy preparation based on interviews and documentary material. We conclude by discussing the implications of our findings and pointing to avenues of future research.

The Commission’s right of initiative
In the legislative arena, the Commission possesses a treaty-based right to propose and draft legislation (TEU, article 17). This right is only circumscribed in two ways. First, in one policy area – freedom, security and justice – a legislative initiative can also be taken by a quarter of member states (TFEU, article 76). Second, both the Council and Parliament can request the Commission to make legislative proposals (TFEU, articles 225 and 241). Until the Lisbon Treaty, there was some uncertainty whether such a request was legally binding for the Commission (see Moser 1997: 336). However, the Lisbon Treaty clarified that the Commission need not act upon such a request, but then must explain its reasons. With these qualifications, the Commission’s traditional right of legislative initiative remains intact. This right also means that if the Commission finds that the potential changes of the status quo, which are acceptable to the Council and Parliament, are inferior to the status quo, it can refrain from making a proposal. The right of initiative thus also amounts to a pre-veto in the EU legislative process.

Once a legislative proposal is tabled, the Council and Parliament may amend it. However, the Commission’s right of initiative also provides it with some powers over potential amendments (Lupo 2018; Rasmussen 2007). First, as long as the Council has not acted, the Commission may amend its own proposal. Second, the Commission has the right to withdraw proposals from the legislative process. The withdrawal right does not amount to a post-veto, because it can only be used as long as the Council has not acted. But it places some limits on the
Council’s and Parliament’s amendment power since the Commission can legitimately withdraw a proposal if an amendment undermines the proposal’s original rationale (Chamon 2015).

Turning to the executive arena, the Commission is often delegated the power to issue executive rules since legislation often only sets broad goals. Executive rules then come as implementing or delegated acts that flesh out details, update for technical progress or take contextual changes into account. Both implementing and delegated acts are decided under interinstitutional procedures. Implementing acts are controlled ex-ante by comitology committees, while delegated acts can be vetoed ex-post by the Council or Parliament. Importantly, under both procedures, the Council and Parliament have no amendment rights, but are given take-it-or-leave-it offers (Brandsma and Blom-Hansen 2017).

In sum, the Commission’s right of initiative in both the legislative and executive arena provides it with a valuable starting point for shaping EU rules. In the next section, we argue why the Commission is likely to exploit this opportunity.

Is the Commission interested in influencing EU rules?
Several images exist of what type of actor the Commission really is (Egeberg 2006; Hartlapp et al. 2014: 282-293; Nugent and Rhinard 2015: 382-391). The most classic image, dating back to Haas (1958), is probably the Commission as a technocratic machine and honest broker in EU politics. But several competing images exist. Rational choice analysts portray the Commission as an engine of integration, a competence-maximizing preference outlier that seeks to push integration further than the member states want (e.g. Tsebelis and Garrett 2000). Others argue that the Commission is driven by party politics (e.g. Wonka 2007) or national interests (e.g. Hug 2003). A final image is the Commission as a bureaucratic organization in which both commissioners and officials pursue portfolio interests (e.g. Egeberg 2006).

These images offer different interpretations of the Commission but, with the exception of the image of the technocratic machine, they share the notion that the Commission is not a neutral actor, but an actor with distinct interests. It is plausible that all images have some merit, but may be empirically relevant to different degrees. However, for the present, the important point is the fact that all the images – with the exception of the technocratic image – imply that the Commission is an actor with interests to pursue, protect and develop. This is arguably increasingly the case after the turn of the millennium where the Commission has undergone a process of “presidentialization” and “ politicization” (Kassim et al. 2017).
In sum, since in most cases the Commission is not a disinterested actor, it is likely that it will try to use the right of initiative to shape EU rules. We now turn to how this right can be used to frame, formulate, and time proposals, influence who is involved and affect how proposals are received.

**How can the Commission use the right of initiative to shape EU rules?**

In this section we argue which strategies the Commission can use to influence EU rules by means of its right of initiative. Following Mintzberg (1978), we define a strategy as a pattern in a stream of decisions. That is, a strategy can be identified when a sequence of decisions exhibits a certain consistency over time. Our analytical framework distinguishes between four strategies:

- **Strategy 1**: Getting the house in order – making the Commission’s numerous Directorates-General (DGs) work together
- **Strategy 2**: Exploring the political room for maneuver – anticipating the preferences of the Council of Ministers and the European Parliament
- **Strategy 3**: Building coalitions – securing a strong alliance with stakeholders behind new initiatives
- **Strategy 4**: Manipulating institutions – using the intricacies of the EU’s decision procedures to influence the process and the outcome

**Strategy 1: Getting the house in order**

The Commission is a fragmented organization. This fact is most evident at the top, the College. Commissioners do not necessarily know each other upon taking office, are not tied together by any party organization or shared ideology, and do not have any common future once their time in office is completed. However, fragmentation not only occurs at the top; it is also evident at the administrative level, where the Commission is divided into more than fifty Directorates-General (DGs) and services. Given this fragmented nature, the relevant resources to draw upon when formulating new initiatives are typically spread across several DGs. If the Commission is to fully utilize its resources when formulating new initiatives, the most immediate challenge is therefore internal coordination – that is, to get the house in order.

Reducing fragmentation is, however, difficult since it is to some extent externally imposed. The collegial nature of decision-making in the College of Commissioners, the powers of
the Commission President, and the number of commissioners are regulated in the treaties. The Commission’s administrative organization – the number of DGs and the division of work among them – is not regulated in the treaties but is in principle up to the Commission President to decide. However, there are limits to how far reorganization can go. Much of the Commission’s administrative organization follows from the growth in the EU’s policy competences over time and the need for a sufficient number of portfolios for the 27 commissioners (Nugent and Rhinard 2015: 167–200).

The public administration literature shows that coordination works best if it relies on hierarchical direction inside organizations, not negotiated coordination across organizations (Gulick 1937; Peters 2015). However, given the limited options for large-scale reorganization and, thus, increased hierarchical direction, it is plausible that getting the house in order will be attempted by negotiated coordination. In practice, this means securing that DGs and commissioners cooperate. In the public administration literature, there are well-known means to organize such cooperation, including planning boards, interdepartmental committees, organizational duplication and overlap, special coordinating units, cabinet committees, and ministers with special coordinative portfolios (Gulick 1937: 36; Peters 2015: 74-103).

These instruments are all used by the Commission. The formal set-up signals high ambitions of negotiated coordination. The Commission’s rules of procedure require that “the department responsible for preparing an initiative shall ensure from the beginning of the preparatory work that there is effective coordination between all the departments with a legitimate interest in the initiative” (Commission 2010: Article 23). This procedural rule is supported by a number of organizational arrangements, most importantly the Secretariat-General with a staff of about 600, which reports directly to the Commission President.

Without hierarchical direction, however, there are limits to how much can be accomplished with these structures. They may secure “negative” coordination – that is, ensure that new initiatives do not interfere with the established interests of other units (Scharpf 1994). It is more doubtful whether, without hierarchical direction, they can be used for “positive” coordination – that is, to maximize the overall efficiency by utilizing the joint competences of several units (Scharpf 1994).

To enable the efficient pursuit of its interests, it is therefore plausible that the Commission attempts to embed negotiated coordination in hierarchical structures to the extent possible – that is, to create negotiated coordination in the shadow of hierarchy (cf. Scharpf 1994).
Traditionally, because of the Commission’s fragmented nature, this has been difficult. However, over the past decades, fragmentation has been reduced and power gradually centralized. First, treaty changes have increased the formal powers of the Commission President. Second, Commission presidents – starting with Prodi and Barroso and taken to new heights by Juncker and von der Leyen – have created an informal hierarchy inside the College of Commissioners by appointing vice presidents as “super commissioners” (Böttner 2018). Third, at the administrative level, the Commission’s Secretariat-General has been transformed into a personal service of the presidency, has grown significantly in size, and has tightened its control over the individual DGs by installing a Regulatory Scrutiny Board with powers to block submissions of proposals to the College of Commissioners (Senninger and Blom-Hansen 2020). In the literature, this gradual centralization of power is known as “presidentialization” of the Commission (Kassim et al. 2017).

This development has not turned the Commission into a full-fledged hierarchy. Indeed, from the literature we know that coordination across DGs is sometimes conflictual (Hartlapp et al. 2014). But we also know that the Commission is able to muster extensive coordination in salient cases (Blom-Hansen and Finke 2020), which indicates that fragmentation has been reduced and central control increased. In other words, embedding negotiated coordination in hierarchical structures has over time become more realistic.

**Strategy 2: Exploring the political room for manoeuvre**

Since proposals for legislative and executive acts need to be enacted or approved by the Council and Parliament, the Commission’s political room for manoeuvre depends on what is acceptable to these two institutions. The Commission therefore has an incentive to sound out how much room for maneuver it has. It may then strategically formulate new initiatives so that they suit its interests to the extent possible while still being acceptable to the Council and Parliament.

Many theories of EU politics, for example rational choice models, assume that the Commission anticipates the preferences of the Council and Parliament (e.g. Tsebelis and Garrett 2000). However, identifying the room for maneuver is not straightforward. It requires an intimate knowledge of the preferences of the Council and Parliament. This again demands an ongoing dialogue.

In the case of the Council, there are well-institutionalized venues for such a dialogue. The Commission has a comprehensive and multifaceted system for interactions with the member states and their national administrations. This is the so-called European administrative space, which
denotes the increasingly integrated nature of administrations at the national and supranational levels (Trondal and Peters 2013). It consists of a number of elements. First, member state officials are organizationally integrated into the Commission through the system of seconded national experts, which secures a permanent presence of member state expertise inside the Commission (Murdoch et al. 2016). Second, the so-called expert groups, which are consultative bodies set up by the Commission, almost invariably include representatives from relevant national ministries or agencies (Hartlapp et al. 2014: 209-226). Third, the comitology system is a system of implementation committees in which the Commission interacts with member state representatives (Brandsma and Blom-Hansen 2017). Fourth, the Council of Minister’s preparatory bodies, the permanent technical working groups, all include representatives from the Commission (Fouilleux et al. 2005). Fifth, the Commission is a member of almost all European transnational regulatory and administrative networks, which include national ministries or agencies responsible for the implementation of EU policies (Mastenbroek and Martinsen 2018). Finally, the Commission sits with member state representatives on the management boards of all the EU agencies that have been created over the past 20-30 years (Egeberg and Trondal 2017).

In sum, the European administrative space is a construction that in separate, but interconnected constellations enables close contact between administrations at the EU level and the member states. It is a web of different actors and organizational fora. The spider in the middle of this web is the Commission, which is a major actor in all areas of the web. If the Commission wants to test the limits of its political room for manoeuver vis-a-vis the member states, the European administrative space provides it with a giant sounding board.

In contrast to the well-institutionalized structures for an ongoing dialogue with the member states, there are few institutionalized venues for regular contacts between the Commission and Parliament. However, indications are that relations are nevertheless relatively close and take place at all levels. At the top, the individual commissioners are increasingly expected to cultivate a relationship with “their” political group in the Parliament (Wille 2013: 88-89). At the level of top civil servants, relations with the Parliament also appear to be increasingly regularized. Contacts take the form of attending committee meetings in the Parliament or talking with individual members of Parliament (Ellinas and Suleiman 2012: 213). Below these high-level contacts, an informal everyday relationship seems to have developed between lower-ranking officials in the Commission’s DGs and the administrative staff of the Parliament (Egeberg et al. 2013).
In sum, the relationship between the Commission and Parliament is gradually characterized by regularized contacts at different levels. However, compared to the venues for contacts between the Commission and the member states, these contacts appear embryonic. It is not impossible for the Commission to test the limits of its political room for maneuver vis-a-vis the Parliament, but the opportunities for doing so are less favorable than with the Council.

**Strategy 3: Building coalitions**

Even though the Council and Parliament are powerful actors in the EU, neither institution is immune to pressure from outside coalitions. Many years of research show that interest groups are important actors in EU politics (e.g. Klüver 2013). This fact provides the Commission with an incentive to try and influence which coalitions develop around its policy initiatives. For a number of reasons, the conditions for doing so seem relatively favorable. First, the European administrative space that was discussed in the preceding section provides the Commission with a ready supply of contacts to both member states and interest groups. These contacts can be used to identify potential allies that may help initiatives survive the EU policy process.

Second, given its right of initiative, the Commission is a natural object of lobbying for interest groups. However, this is not a one-way street. Involving interest groups in policy drafting also provides the Commission with opportunities to seek out allies for dealing with the Council and Parliament (Binderkrantz et al. 2020).

Third, the Commission is embedded in an institutional environment that encourages a dialogue with affected interests. Treaty provisions include a general obligation for the Commission to “carry out broad consultations with parties concerned” (TEU, article 11) as well as more specific consultation requirements in the various policy areas.

Finally, over the past 15-20 years, the Commission has pursued a “better regulation” agenda (Radaelli 2018). One building block in this agenda is improved consultation with stakeholders, which provides the Commission with opportunities for seeking out allies that may be useful in its dealings with the Council and Parliament.

In sum, it seems plausible that the Commission possesses the instruments to influence the nature and magnitude of the coalitions that develop around its policy initiatives. These coalitions are likely to be informal networks such as advocacy coalitions (Jenkins Smith et al. 2014), epistemic communities (Haas 1992), or policy networks (Marsh and Rhodes 1992). The point is not that the Commission can always control coalitions and decide when they develop or
what form they take. The point is rather that the Commission, because of its first-mover advantage, may influence how encompassing a given coalition is and at what point in the policy process it is activated. This is an important political weapon because, as argued by Schattschneider (1960), the outcome of political processes is often determined by the scope of the conflict. By scope, he referred to the number and nature of actors involved in the conflict. Changing the scope of conflict is likely to change the balance of power among the original actors, sometimes so much that the original actors may lose control of the conflict altogether. As Schattschneider (1960: 4) argued, “conflicts are frequently won or lost by the success that contestants have in getting the audience involved in the fight or in excluding it”.

**Strategy 4: Manipulating institutions**

Decision-making in the EU is embedded in complex procedures that leave many options open to the Commission, which may be utilized to influence the process and its outcome. Some of these options have attracted considerable scholarly interest; others lead a quiet life under the scholarly radar. In the following, three examples of institutional manipulation are discussed in more detail. They are not meant to constitute an exhaustive list but to give an idea of how institutions can be manipulated.

The first example has been subjected to intense scholarly scrutiny. This is the option of strategically formulating legislative proposals so that they are acceptable to the “friendliest” majority in the Council and Parliament. It has been intensively discussed in the literature to what extent the Commission has formal agenda-setting powers in the sense of McKelvey (1976) – that is, the ability to dictate outcomes by using agenda powers. The consensus is that over time, this is decreasingly the case because of the introduction of the ordinary legislative procedure. However, even though the Commission’s formal agenda-setting powers may be curtailed, it may still possess *informal* agenda-setting powers. As argued by Pollack (2003: 47–56; see also Schmidt 2000), agenda-setting may take place informally when an actor can set the agenda for a group of decision-makers, not through formal powers, but through the ability to define issues and present proposals that can rally consensus. This line of thought dates back to Schelling’s (1963) idea of focal points. The argument is that when a negotiation situation can be influenced by focal points, the Commission is in a favorable position to do so because of its right of initiative.

A second example of institutional manipulation open to the Commission is to speculate in the dividing line between legislation and delegation. Most major EU initiatives involve some delegation of power to the Commission to issue implementation measures, but the exact
dividing line is up to the Commission to suggest as part of the legislative proposal. Since delegated rules are decided by other procedures than legislation and, therefore, allocate power differently among the EU institutions, the Commission may subtly influence the outcome by carefully proposing what is to be decided in the legislative arena and what is to be left for executive decisions. Since the Lisbon Treaty, the Commission is arguably in an even better position to speculate in delegation since it not only influences what is to be decided by, respectively, legislation and delegation, but also what is to be delegated to, respectively, the comitology system and the delegated acts system (Brandsma and Blom-Hansen 2017).

A third example is that the Commission may speculate in the comprehensiveness of initiatives. New initiatives often include several elements that may either be packaged into one major initiative or split into several formally separate minor initiatives. Depending on the time pressure and decision rule in the Council and Parliament, the Commission may have incentives to either package or split initiatives. The clearest example is probably found in the delegated acts system. Delegated acts do not enter into force upon adoption by the Commission, but only after a approval period, in which the Council and Parliament may veto them. In this situation, the Commission may have an incentive to package initiatives in order to make them complex to evaluate and to embed unpopular elements in popular ones and, thus, increase the costs of vetoing the unpopular elements. This behavior is known as “bundling” and is strongly disapproved of by the Council (2014).

The three ways of manipulating institutions show that it is possible to use the intricacies of the EU’s decision procedures to subtly influence the process and its outcome. The Commission has an incentive to use these options and to look for options in addition to those discussed.

*Summing up*
In conclusion, the Commission has a catalogue of strategies available that may be used to turn the right of initiative into an instrument for shaping EU rules. A relevant question is who within the Commission system employs these strategies? Or, at which level are the strategies employed? These questions are really about the Commission’s internal coherence. More specifically, one may ask whether the Commission operates as a unitary actor in EU politics. There is no clear answer to this question, and the literature is divided. Sometimes the Commission is portrayed as a monolith with uniform preferences, other times it is described as a loosely coupled “multi-organization” (Cram
As an empirical matter, it would be absurd to argue that the Commission is a monolith. It is evident that the Commission is composed of hundreds of units with distinct preferences, and that decision-making often resembles bureaucratic politics. However, it would be equally absurd to argue that the Commission’s different parts are really independent entities acting without any central guidance. The question, however, is not what is empirically accurate, but what behavioral assumption is defensible for the purpose of analysis. More specifically, one may ask whether the Commission behaves with sufficient coherence in its dealings with outside actors to represent a united actor. Since decisions in the Commission system are ultimately made by simple majority-voting in the College of Commissioners, there are plausibly limits to how far policies can drift from the median commissioner. Therefore, it seems justified to expect the Commission to present a relatively consistent position towards the outside world. Consequently, it also seems defensible to base analyses of the Commission’s dealings with the outside world on a pragmatic unitary actor assumption. In sum, while it cannot be ruled out that the strategies are sometimes used by warring factions inside the Commission in their fights over the adoption of the official Commission position, it seems justified to assume that the strategies that are targeted towards the outside world are employed by actors who represent the full Commission. We now turn to an empirical illustration of the relevance of these strategies.

Methods and data
To explore the empirical relevance of our analytical framework, we have selected ten files for analysis. We have followed a diverse case design (Gerring 2007) and covered different policy areas and different types of initiatives (directives, regulations, codecision acts, Council acts, delegated acts). Furthermore, we have selected cases in which the Commission’s proposal is accompanied by an impact assessment report, which is only made for policy initiatives that have significant economic, environmental, or social impacts. This criterion ensures that something is at stake in our cases. This is important since cases that do not involve some minimum substantial change are theoretically irrelevant since they do not constitute likely vehicles for the Commission’s attempt to steer EU policy in its preferred direction. Finally, all cases are relatively recent because we wanted to do interviews with the responsible policy officers in the Commission. The selected cases appear in Table 1.
Our analytical strategy is to focus on the Commission’s preparation of the ten cases. That is, we concentrate on the period before the initiatives were tabled as formal proposals. It is in this phase that the Commission decides how to formulate the proposal, how to design internal coordination processes, and how to involve stakeholders, so this is the phase when the Commission has the highest chance of influencing the proposal according to our analytical framework. Our ambition is not to deliver bullet-proof evidence that the four strategies are followed in practice. Ten cases cannot do that. Our goal is more modestly to carry out a plausibility probe – that is, to explore whether the theoretical framework has potential validity and, thus, warrants more systematic analysis in future research.

Our data are interviews and documentary material. We interviewed the person(s) involved in the drafting of the initiatives, a total of 20 Commission officials. The interviews took place in January-March 2019 and typically lasted about one hour. In addition to the interviews, we collected three types of documentary material on all cases. First, we collected impact assessment reports, which provide in-depth information not only on the likely impact of the initiative, but also on procedural aspects of its preparation. Second, the Commission’s internal control body, the Regulatory Scrutiny Board, offers an opinion on a draft of the impact assessment report. This opinion evaluates not only the report’s estimation of impacts, but also of its explanation of stakeholder consultation. Third, the COM document is the official Commission proposal, which includes an explanatory memorandum that explains procedural aspects of the preparation of the proposal.

**Empirical analysis**

In the following, we analyze whether and how the strategies described in our analytical framework are evident in the Commission’s preparation of our ten cases. We begin with an investigation of strategy 1 (*Getting the house in order*). This strategy suggests that getting the house in order will be attempted by negotiated coordination. In practice, this means that individual DGs cooperate sincerely in their policy preparation.

Across our ten cases, we find evidence that policy preparation is indeed a team effort. The number of DGs involved in coordination in our ten cases ranges from 8 to 21. When we explore the motivation for coordination, two things become evident. First, several of our interviewees refer to the need to comply with the “better regulation” agenda (e.g., C8, C2). This
agenda is seen as a rulebook with instructions on how to involve other DGs. Second, coordination is seen as an efficient way to collect information. Several interviewees indicate that they prefer to involve broadly from the beginning in order to learn the preferences and ideas of other DGs.

Our interviews also reveal that negotiated coordination in the Commission is characterized by a high degree of centralization. Almost all our interviewees point to the crucial role of the Secretariat-General, which not only organizes coordination in inter-service steering groups but also chairs meetings in these groups, which meet three times on average. Our interviewees explained that discussions in these groups allow the involved parties to discuss technical details of the policy proposal and to receive comments on the consultation process. In some cases, the various DGs even organize common drafting sessions to develop the policy text (e.g., C10). This set-up leads some interviewees to speak of a very efficient, but also very centralized process in which coordination is controlled by the Secretariat-General (e.g., C8).

Overall, negotiated coordination in the Commission appears to be a relatively smooth process in which different DGs cooperate in order to produce high-quality policy proposals. In most cases, the chef de file successfully accommodates the demands from other DGs. However, if there is disagreement, the decision moves up to a higher level, usually the cabinet level (e.g., C10, C1). Here, the deputy heads of cabinet will discuss the conflictual issues. If they cannot remedy the situation, the heads of cabinet will take over before the highest political level, the College of the Commissioners, becomes involved.

In sum, our interview data show that the Commission exploits its in-house resources to a large extent and makes strategic use of the expertise from the various DGs. Furthermore, we find evidence that the Secretariat-General controls the coordination between DGs, making negotiated coordination a highly centralized process. The Commission does not function as a fully hierarchical organization, and conflicts among DGs cannot be ruled out, but the present Commission is very different from the fragmented organization described in earlier times by e.g. Coombes (1970).

Our second strategy (Exploring the political room for maneuver) suggests that the Commission strategically formulates new policy initiatives that suit its interests while still being acceptable to the Council and Parliament. To do so, we expect the Commission to sound out how much room for maneuver it has.

By and large, our interview data confirm the existence of an institutionalized relationship between the Commission and the member states (e.g., through expert group meetings)
that helps the Commission learn their preferences. For example, the ongoing contact between the Commission and the Council preparatory bodies comes in very useful (e.g., C9). However, the Commission cannot always be sure to receive full information. Several interviewees point out that they are uncertain whether member states fully share their positions (e.g., C8). As a result, it is not until the process of stakeholder consultation that the Commission can be sure about the positions of all member states (see strategy 3). Nevertheless, the stable relationship with representatives from the member states via institutionalized channels gives the Commission an idea of the likelihood that the Council will welcome a given proposal.

While the Commission is able to get a good picture of member state interests, the position of the Parliament is much less certain. Almost all of our interviewees confirm that contacts between the Commission and the Parliament in the policy preparation phase are limited. Usually, the Parliament only becomes active when the proposal is formally submitted. This means that the Parliament defines its position at a rather late stage. This sometimes puts the Commission in a frustrating position because it may need to reconsider points that the member states and stakeholders have already agreed on (e.g., C5, C4).

However, the Commission can use a number of instruments to get a sense of the Parliament’s position. In three cases, our interviewees stated that parliamentary resolutions proved useful (C9, C7, C6). In one case, the Parliament used a resolution to demand more ambitious policy proposals, and the Commission then knew that it had to include one very ambitious option in the impact assessment to signal to the Parliament that its demands were taken seriously. The Commission also sometimes tries to get in contact with rapporteurs and other key figures in the Parliament to provide them with additional information about their proposals. In some cases, representatives of parliamentary committees are also invited to take part in Commission expert group meetings (e.g., C11).

In sum, the Commission seems to actively try to explore its political room of maneuver vis-a-vis the Council and Parliament. While it seems to be quite successful in sounding out the positions of member states, its contacts to the Parliament appear rather limited and unstructured. As a result, the Commission sometimes struggles to anticipate the preferences of the Parliament.

Our third strategy (Building coalitions) suggests that the Commission uses the consultation of relevant stakeholders to build an alliance behind new initiatives. A first examination of the impact assessment reports accompanying our cases reveals that the Commission reaches out
to a large and diverse group of stakeholders during the policy preparation process. Across our cases, we observe a variety of consultation instruments, including open online consultations, stakeholder conferences, and consultation in restricted fora, such as advisory groups and expert groups. All this gives the Commission plenty of opportunities to use the input from the consulted actors to show that the proposal enjoys broad support. Such information could, for example, be used to convince the Parliament and Council not to demand too many changes, but does the Commission follow such a strategy?

Our interviews paint a mixed picture. The Commission is certainly interested in having a large group of stakeholders support its proposals, but our data do not document that this interest is always driving the consultation process. Several interviewees state that they have a genuine interest in what the stakeholders think about the proposal and prefer involvement of all relevant actors in order to identify potential problems (e.g., C3). Such an approach also helps the Commission avoid unwelcome surprises at a later stage. For example, a stakeholder, who was not consulted, may lobby the Parliament, which may bring the Commission in the uncomfortable situation of admitting that it did not listen to the concerns of all relevant actors. Our interviews thus suggest that the Commission has an interest in consulting stakeholders independently of the likelihood of their support for the proposal (e.g., C9, C3). In addition, we observe cases in which our interviewees openly state that they initially knew little about who the relevant stakeholders were and therefore delegated the consultation of stakeholders to specialized agencies. In such cases, it is difficult for the lead-DG to strategically exclude stakeholders who are against the proposal.

However, in case of broad support for a proposal from relevant stakeholders, the lead-DG will always emphasize this support in its external communication, for instance, the impact assessment report (e.g., C10, C6). This is particularly the case if the public supports the proposal. Several interviewees point out that the public online consultation does not always generate new information, but general support from the public provides the Commission with a strong argument, which it will use actively.

We conclude that the building of supportive coalitions does not always appear to be at the forefront of the Commission’s consultation activities. However, support from relevant stakeholders and the public is often a very welcome side effect of the consultation process.

Our final strategy (Manipulating institutions) suggests that the Commission actively uses institutional procedures to influence processes and outcomes. We begin with the Commission’s informal agenda-setting power, which becomes evident in the impact assessment reports. These
reports all discuss several policy options, often 2-3 alternatives to the status quo. One alternative is usually considered preferable, for example because it is more efficient or enjoys broad support among stakeholders. This opportunity to frame arguments for and against various policy alternatives puts the Commission in a potentially powerful position as it is unlikely that the Council and Parliament will try to change a proposal into an option that is more expensive or not supported by key stakeholders.

In addition to exploiting its informal agenda-setting power, our cases also show that the Commission actively considers the dividing line between legislation and delegated decision-making. Our interviewees were well aware that the choice between delegated and implementing acts has important consequences for the scrutiny powers of the Council and Parliament and constitutes a potential point of contestation. They know that the Parliament has a preference for the delegated acts systems, while the Council prefers the implementing acts system. We thus find evidence that the Commission follows its self-interest and considers which instrument gives least control powers to the decision-makers, for instance, by avoiding a comitology committee procedure (C1).

Finally, the strategy of packaging or splitting proposals also appears to be used by the Commission. Our interviewees explained that packaging proposals is a decision made at a higher level. Package deals are therefore much more controversial than other proposals (e.g., C10). As for possible reasons why packaging is used, one interviewee points to the increased costs of vetoing the act (C3).

In sum, we find evidence that the Commission makes rather active use of the strategy of manipulating institutions. In our cases, the most visible is the use of impact assessments for informal agenda-setting, the choice between delegated and implementing acts, as well as the packaging/splitting of policy initiatives.

**Conclusion**

The Commission’s once commanding position in the EU has been challenged over the past decades, but the extent of change is debated. Our paper joins a line of research that is skeptical about the degree of decline. Our contribution to the debate is to focus on the Commission as both legislative and executive rule-maker. In both functions, the Commission enjoys a right of initiative. We brought together insights from the literature to develop an analytical framework for understanding the strategic options these rights of initiative imply for the Commission. More specifically, we
distilled four strategies open to the Commission, and we illustrated their empirical relevance in a study of ten selected Commission initiatives.

The main implications of our research are two-fold. First, our study makes clear how powerful a right of initiative can be. We moved beyond the formal agenda-setting approach (McKelvey 1976) and studied the informal ways in which such a position can be used to gain influence. Our strategies show how a right of initiative can be used to frame, formulate, and time proposals, influence who is involved, and affect how initiatives are received. Second, by focusing on the Commission as rule-maker in both the legislative and executive arena, we made clear how these two arenas may be linked. Major EU legislation normally comes with delegated powers to the Commission to issue executive rules. But where is the dividing line between legislation and delegation? This is up to the Commission to propose. It is also up to the Commission to propose whether executive rules are to come as delegated or implementing acts. Since power is allocated differently among the Commission, Council and Parliament in the decision-arenas for delegated and implementing acts, this decision may carry real consequences. The Lisbon Treaty’s introduction of the distinction between implementing and delegated acts may thus well have strengthened the Commission as a rule-maker compared to earlier times. However, our empirical analysis was a snapshot and does not allow temporal conclusions. But we see no reason why our analytical framework cannot be used to make comparisons across time. Indeed, this would be a natural next step.

Future studies might also well address some limitations of our study. First, our main contribution was theoretical and conceptual – the identification of strategies open to the Commission. Our empirical analysis was a plausibility probe. We analyzed ten cases and found traces of all our strategies, but this is, of course, only a first step. It indicates, but does not prove, the power potential of the right of initiative. Future studies should carry out more wide-ranging empirical analysis of a larger number of cases. This would not only provide a broader empirical basis, but also make it possible to investigate the potentially contingent nature of the four strategies – for example, whether their empirical relevance varies across EU decision procedures or policy areas. Second, we found mixed evidence on one of our strategies (building coalitions). Future studies should explore in more depth how interactions with interest groups may empower the Commission in its dealings with the Council and Parliament. Finally, our interviews were limited to Commission officials. Future studies might well include testimony from other actors in the EU.
system, such as the Council secretariat, member states, the European Parliament, and interest
groups.
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<th>Responsible Directorate-General (DG) in Commission</th>
<th>Title of policy initiative (abbreviated)</th>
<th>COM document/Impact Assessment Report/Regulatory Scrutiny Board Opinion</th>
<th>Decision procedure</th>
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