



**What does the Hungarian case tell us about the role of the
Commission as “guardian of the treaties”,
and how can we understand this role from the perspective of
theories of European integration?**

Harpa Hrönn Frankelsdóttir

Final thesis for an MPA degree in Public Administration

School of Social Science

June 2014



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Abstract

Can the European Commission, as a public administration body, demand that a member state changes its constitution? Would the Commission be effective, as it lacks police power in member states?

In this thesis we will look at what happened when the new post-communist EU member state of Hungary had a democratic backslide after its accession, as its new constitution entered into force on 1 January 2012. International actors criticised it for undermining the checks and balances necessary in democratic states. The Commission took action on 17 January 2012 against three issues in the constitution, which breached EU law, when it started infringement proceedings. Hungary resolved one issue quickly, but the other two played out in various courts and before the Venice Commission. Hungary's government started a war of words with the Commission, but in the end Hungary gave in to its demands. At this time the Commission, content with changes made by Hungary, has closed two of the infringement procedures. In the third one, the European Court of Justice has recently ruled against Hungary.

Despite generally weak power and compliance to its demands, in comparison to national governments, the Commission is strong in enforcement when using material sanctions, rather than social sanctions, if linkage to money can be added. The effectiveness of its measures in general is debateable though and the future might bring new measures, especially designed with the possible democratic backslide among new post-communist EU members in mind, considering that old habits of illiberal rule die hard.

First, we will examine the executive tasks of the European Commission in general. Then we will look at a case study of the infringement proceedings brought up against the Hungarian constitution, to look closer at how the task of being the "guardian of the Treaties" was executed. Finally, we will reflect on the guardian role from the perspective of theories of European integration.

Key words: "guardian of the treaties", administrative role of the Commission, executive tasks, EU governance, political administration, principal-agent theory, democracy, democratic backslide, European integration.

Útdráttur

Getur framkvæmdastjórn Evrópusambandsins, sem stjórnsýslueining, krafist þess að aðildarríki breyti stjórnarskrá sinni? Yrði slík krafa árangursrík, í ljósi þess að hún hefur ekki lögregluvald í aðildarríkjunum?

Í þessari ritgerð munum við kanna hvað gerist þegar Ungverjaland, fyrrum kommúnistaríki og nýtt aðildarríki í ESB, hrasaði í lýðræðisvæðingu sinni, þegar ný stjórnarskrá tók gildi þann 1. Janúar 2012. Aðilar í alþjóðakerfinu gagnrýndu landið fyrir að grafa undan aðgreiningu valds sem nauðsynleg væri í lýðræðisríkjum. Framkvæmdastjórnin greip til aðgerða þann 17. Janúar 2012 í þremur málum í stjórnarskránni, sem voru gagnstæð ESB löggjöf, er það hóf málsmeðferð vegna brota. Ungverjaland leysti úr einu máli fljótt og vel, en hin málin tvö voru rekin fyrir hinum ýmsu dómstólum og fyrir Fenevjanefndinni. Stjórnvöld í Ungverjalandi hófu orðastríð við framkvæmdastjórnina, en að lokum létu ungversk stjórnvöld undan kröfum hennar. Þegar ritgerðin er skrifuð er framkvæmdastjórnin ánægð með breytingar sem gerðar hafa verið í Ungverjalandi og hefur lokað tveimur málsmeðferðum vegna brota. Í hinu þriðja hefur Evrópuðómstóllinn nýlega kveðið upp úrskurð Ungverjalandi í óhag.

Þrátt fyrir að vald og hlíting séu veik, í samanburði við þjóðstjórnir, er framkvæmdastjórnin sterk í framfylgni þegar hún notast við efnisleg viðurlög, fremur en félagsleg viðurlög, ef hægt er að bæta við þau tengslum við fé. Umdeilt er þó hversu áhrifaríkar aðgerðir hennar eru almenns séð og í framtíðinni gætum við séð nýjar aðgerðir, sem væru sérstaklega gerðar til að sporna við afturför í lýðræðisþróun meðal fyrrum kommúnistaríkja sem eru ný aðildarríki í ESB, í ljósi þess að lengi lifir í gömlum glæðum óumburðalyndra stjórna.

Við munum fyrst kanna framkvæmdavaldsverkefni framkvæmdastjórnar Evrópusambandsins almennt. Síðan munum við gera tilvikskönnun á málsmeðferð vegna brota sem hafin var gegn stjórnarskrá Ungverjaland, til að kanna frekar hvernig þau verkefni er lúta að því að vera „verndari sáttmálanna“ eru leyst af hendi. Að lokum lítum við á verndarahlutverkið frá sjónarhóli kenninga um Evrópusamruna.

Preface

This Master's thesis in Public Administration at the University of Iceland was composed with the help and supervision of Dr. Maximilian Conrad, lector in European Studies at the University of Iceland.

I would like to express my heartfelt gratitude to all those who made it possible for me to conclude this assignment, which finalises my Masters in Public Administration studies. From the point when I finished all my courses in 2005 up until now in 2014 when I turn in this final assignment – my Master's thesis – nine years have gone by. To be honest, I had forgotten all about the unfinished Master's thesis, when I got a phone call from the Head of Department for Masters of Public Administration Studies, offering me to come back to complete this final stepping-stone. As I had some free time coming up, this opportunity couldn't have come at a better time.

It is safe to say that I needed the extra nudge that the good staff of the Faculty of Political Science provided for me, the rusty student I was upon my return, to be able to conclude this thesis - having had it on ice for such a long time. I thank them for that.

I also had a little help from my friends. Julie Ann Ingham, School Director at Enskuskólinn, did proofreading on the thesis and Theodór Már Sigurjónsson, Prentsmiðjan Viðey, printed the thesis. They both worked on a weekend, as a special favour to me, to enable me to meet a Monday deadline for the thesis. Thank you, Jude and Teddi.

Moreover, I would like to give special thanks to my father, who is my constant source of support, encouragement and wisdom.

On a personal note, writing this thesis alongside taking extra courses in European Studies has given me much pleasure this semester. Time sure flies when you are having fun.

Reykjavík, 5 May 2014

Harpa H. Frankels.

Content

Abstract.....	2
Útdráttur	3
Preface	4
1. Introduction	8
1.1 Project, aim, execution	8
1.2 About the project and the background of the researcher	8
1.3 About the thesis	9
2. Academic Summary	10
2.1 Concepts.....	10
3. Methodology	15
3.1 Research questions and a case study	15
3.2 Case study: How the EU tackled the democratic backslide of Hungary in the Constitutional Affair	15
3.3 Research Methods and Data Collection.....	16
3.3.1 Research methods	16
3.3.2 Data	18
3.4 Validity, generalization, reliability	18
4. European Integration theories – who has the power?	22
4.1 Neofunctionalism:	22
4.1.1 How would neofunctionalism see the Commission?	22
4.2 Liberal intergovernmentalism:	23
4.2.1 How would liberal intergovernmentalism see the Commission?	24
4.3 Federalism:	24
4.3.1 How would federalism see the Commission?	25
4.4 Thoughts on the theories	26
5. The structure of the European Union	27
5.1 The Treaties – the constitutional documents of the EU	27
5.2 The invisible constitution	27
5.3 From Westphalian sovereignty to a new non-state entity	27
5.4 Actors at the EU level	28
6. The Dual Executive Power of the EU	29
6.1 Delegation of Powers	29
6.2 Political and Administrative Executive Power.....	31
7. The Commission.....	32
7.1 On the executive Tasks of the Commission and their restrictions	33
7.2 Power resources.....	34
7.3 The Executive tasks of the Commission	35
7.3.1 Initiating legislation and proposing policies	35
7.3.1.1 Legislation initiated	35
7.3.1.2 Proposing Policy Ideas	35
7.3.2 Rule-making.....	36
7.3.2.1 Competition Policy	36

7.3.2.2 Direct or multi-level implementation.....	37
7.3.2.3 Comitology	37
7.3.3 Managing the EU finances	38
7.3.4 External representative and negotiator	40
7.3.4.1 Trade agreements	40
7.3.4.2 Other economic relations.....	43
7.3.4.3 European External Action Service	44
7.3.5 Enforcing Community Law.....	44
7.3.5.1 Social sanctions	45
7.3.5.2 Material sanctions (infringement proceedings)	46
7.3.5.3 Article 7 – The “nuclear option”	46
7.3.5.4 Case study: The Constitution Affair in Hungary	47
7.3.6 Mediator and conciliator	48
7.3.7 Promoter of the general interest	49
8. Hungary’s Democratic Backslide in the Constitution Affair	51
8.1 Super right-wing shift.....	52
8.2 The Commission takes action against Hungary	55
8.3 Infringement Procedures on Three Issues	56
8.4 EU’s position	62
8.5 Hungary’s position.....	69
8.6 Sedelmeier: Democratic backslide - Social and material sanctions are necessary	74
8.7 Lessons from the case of Hungary’s new constitution.....	74
9. Discussions.....	77
9.1 Is the Commission a European government?	77
9.2 EU’s actions against the new constitution of Hungary	85
10. Conclusions	90
10.1 The executive tasks of the EU – To what extent does this make the European Commission a European Government?	90
10.2 The case study: Hungary’s new constitution.....	92
Annexes.....	95
Annex 1	
Chart 1: The Political Institutions of the EU other than the European Council.....	95
Chart 2: The European Commission’s organisation charter	96
Chart 3: European Court of Justice and various procedures in the TFEU	97
Chart 4: The Directorate-Generals and Services of the Commission	98
Chart 5: EU competences	99
Chart 6 : The EU Budgetary Procedure.....	100
Chart 7: The trade negotiation procedure in the European Union	101
Annex 2	
Article 2 TEU – The fundamental rights in the EU.....	102
Article 7 TEU – The “nuclear option” of suspending rights of a member state.....	102
Article 17 TEU – Commission shall promote the general interest of the Union	102
Article 21 TEU – General provisions on the Union’s external action	103
Article 22 TEU – Decision-making for external action	103

Article 207 TFEU – Common commercial policy	103
Article 218 TFEU – How trade agreements are negotiated.....	104
Article 258 TFEU – Commission the Guardian of the Treaties	104
Article 314 TFEU – The EU Budget.....	104
Bibliography	106
Other references.....	112
Web pages	112

1. Introduction

1.1 Project, aim, execution

Some say that the European Commission takes on the role of a government at the European Union. It is safe to say that some tasks of the Commission are similar to those tasks that national governments traditionally have jurisdiction over. Most noticeable is its task of initiating legislation and submitting it to the European Parliament and the Council of Ministers for approval. Executive tasks are another aspect of the Commission's duties, which we will study here, with focus on one task in particular. The Commission is a rule-maker, manages the EU finances, conducts external representation and trade negotiation, serves as a mediator and conciliator, the guardian of the treaties, and promoter of the general European interest.

In this thesis we will begin by examining the executive tasks of the Commission. To assess its powers we will compare it to powers of governments; we will therefore examine if the Commission is the equivalent of a European government. In doing so we will have a clear picture of the Commission's powers and possible powers by comparing various tasks. In the second part of the thesis we will focus on one executive task - the Commission's role as the guardian of the treaties. We will examine how these enforcement competences translate in reality in a case study. The case study chosen is the EU's action taken against the new Hungarian constitution of 2012, which was considered in breach of several EU laws and treaties. In this examination we will explore further the political and administrative powers of the Commission as the guardian of the treaties. Finally, we will reflect on the guardian role from the perspective of theories of European integration.

1.2 About the project and the background of the researcher

By choosing this subject, on the executive tasks of the Commission and answering the question of if it has become a government, I am trying to shed a little clearer light on one small aspect of the European Union from as objective a point of view as possible.

Having a Bachelor's degree in Political Science I have always been interested in International Relations. I have especially been interested in the development of the European Union and its influence on Iceland. I have always thought that debate in Iceland on EU matters is limited. There is little coverage in the newspapers on recent developments and legislation brewing, although some of Iceland's legislation is an adoption of legislation from

the European Economic Area. I think the media entertains too many pro-EU and anti-EU spokespeople, which I think distorts the overall picture when it comes to discussions in the public sphere¹ on how the EU works. Therefore, I feel there is need for more effort in the direction of speaking objectively about the Union and examining the effects of European integration. I think it would be useful for Icelanders to intertwine public administration more with European studies. Decision-making in the EU does affect public administration in Iceland due to the European Economic Agreement (EEA) although Iceland is not a part of the EU.

To speak clearly up front, I have not made my mind up as to whether or not I think Iceland should join the European Union, but I can say that I would like to see the completion of Iceland's accession negotiations to see what kind of a deal Iceland would get and ensure that Icelandic ownership of the natural resources is safeguarded. I would also like to mention that I worked briefly as an intern at the Delegation of the European Union for Iceland and Norway eleven years ago. I am now Editor in Chief and owner of an online EU news website, www.evropufrettir.is, which covers current affairs in the EU; this is more of an enthusiast's hobby than a business. It is my sincere goal to examine this subject as objectively as possible.

1.3 About the thesis

The thesis is a 30 ECTS final thesis towards concluding a degree of Master in Public Administration (MPA studies). The thesis will view the public administration subject of executive powers with a European studies twist.

Dr. Maximilian Conrad, who is a lector in European Studies at the University of Iceland, is the supervisor for this thesis.

¹ (Ingram 2010).

2. Academic Summary

Before embarking on the voyage ahead, it is helpful to define concepts, such as the executive and bureaucracy and its source of power. In relations to the concept of government, we will look here at authority, legitimacy, power and compliance. The Westphalian understanding of sovereignty will be explained. The two polar academic debates of intergovernmentalism and supranationalism are introduced.

For the case study we will examine the term limited government (a form of liberal democracy), separation of powers, the rule of law and types of distribution of power, such as democracy, oligarchy, elite, and aristocracy, in addition to authoritarian and totalitarian regimes.

These concepts, although mostly developed around nation states and national governments rather than the **sui generis** one of its kind EU governance, may hopefully move us closer to a deeper understanding of the subject.

2.1 Concepts

Executive tasks in democratic nation states are traditionally carried out by the national government. The political executive is the core of government, the strongest of the three branches. You could govern without an assembly or judiciary, but you could not rule without an executive.² Hague, Harrup and Breslin (1998) point out that executive operation is different on one hand, in liberal democracies and on the other hand in authoritarian systems. Liberal democracies restrain the exercise of power and rules apply for succession to executive office. Political leaders are accountable for their conduct. They pinpoint three groups of executive in **liberal democracies**: a *presidential government*, a *parliamentary government* and a *dual executive of presidents and prime ministers*. The executive should not be confused with the term *bureaucracy*.³ They define the concept of the *executive* as follows:

*The **executive** is the political tier at the apex of government. It is charged with directing the nation's affairs, supervising how policy is carried out, mobilizing support for its goals and providing both ceremonial and crisis leadership. In liberal democracies, the executive takes a presidential, parliamentary or dual form".*⁴

² (Hague 1998) page 202.

³ (Hague 1998) pages 202-215.

⁴ (Hague 1998) page 202.

Bureaucracy – another term for it is **public administration** - is the engine of a governing body filled with paid specialists and general staff to carry out and advise on policies of a political executive generally speaking. Lacking the legitimacy of elections it has been criticised for its sometimes strong influence.⁵ Bardes, Shelley and Schmidt (2000) define this institutional body as follows:

*“The **bureaucracy** consists of salaried officials who conduct the detailed business of government, advising on and applying policy decisions. In contrast to the personal advisors surrounding a ruling monarch, a modern bureaucracy is a public institution with recruitment on merit and an emphasis on the consistent application of clear rules to individual cases.”*⁶

The executive role and tasks of the European Commission are outlined in the Treaty of Rome and other treaties and the Commission and its institutions must work within their constraints. In the EU the legal frame is called primary law, constituting key formal rules and norms for task allocation. They are subject to the **principle of conferral**, meaning that the EU can only act where competences are conferred to it by the member states under the founding Treaties. Outside this legal frame, competences lie with the member states. With the Maastricht Treaty came the important **subsidiarity rule**, which states that tasks belong with local level of governance unless a more efficient decision making can be reached at a higher level. This is another basic rule that affects executive tasks.

American professors of political science, Bardes, Shelley and Schmidt (2000) define **government** as an institution of decision makers and enforcers:

*“A permanent structure (institution) composed of decision makers who make society’s rules about conflict resolution and the allocation of resources and who possess the power to enforce those rules.”*⁷

They maintain that when a society “reaches a certain level of complexity, it becomes necessary to establish a permanent or semipermanent group of individuals to act for the whole, to become the government”⁸. A government does not work though, unless it has **authority** and **legitimacy**. It has to have the right to enforce compliance with decisions and its laws being obeyed because they are “appropriate and rightful”⁹.

⁵ (Hague 1998) page 219.

⁶ (Hague 1998) page 219.

⁷ (Bardes 2000) page 7.

⁸ (Bardes 2000) page 8.

⁹ (Bardes 2000), page 8.

When discussing government, the concepts of **power** and **compliance** come up, when considering the type of coercion governments use to gain compliance from their citizens or the ability to influence the actions of others, and the people's "acceptance and carrying out authorities' decisions".¹⁰

There are many types of distribution of political power, terms with trace their origin to ancient Greece. The ancient Greeks used **democracy** as a term for rule by the people. **Oligarchy** is when a small group of people from the elite is in control (**elite** meaning "[a]n upper socioeconomic class that controls political and economic affairs"¹¹). **Aristocracy** is rule of outstanding individuals with regard to talent, education or virtue.¹² Distribution of political power can therefore take many forms and it is important to recognize that it might be developed into new concepts still.

On the other spectrum to democracy, we would find authoritarian and totalitarian regimes. Linz's (1970) definition of **authoritarian regimes** are:

*"political systems with limited, not responsible, political pluralism, without elaborate and guiding ideology...and in which a leader or occasionally a small group exercises power within formally ill-defined limits but actually quite predictable ones."*¹³

Key characteristics of an authoritarian government are to exclude the people from effective control over their rulers and not pay attention to individual rights, resulting in an illiberal and undemocratic rule.¹⁴

Totalitarian regimes don't have pluralism (**pluralism** is a rule by many) "*but follow an explicit ideology and seek total control to implement their vision of a transformed society.*"¹⁵

Western democratic states have what Bardes, Shelley and Schmidt (2000) call **limited government** where principally the powers of the government shall be clearly limited, either in writing or through wide public understanding. Institutional checks are established to keep the government from serving its own interests and ensuring it serves the public interest¹⁶. Related to the term is **separation of powers** which is defined as the "principle of dividing governmental powers among the executive, the legislative and the judicial branches of

¹⁰ (Bardes 2000), page 10.

¹¹ (Bardes 2000), page 9.

¹² (Bardes 2000), page 9.

¹³ (Hague 1998), page 13.

¹⁴ (Hague 1998), page 13.

¹⁵ (Hague 1998), pages 13 and 125.

¹⁶ (Bardes 2000), page 12.

governments.”¹⁷ This serves the system of **checks and balances**, where each government branch exercises a check on the actions of the other branches.¹⁸

Aristotle said: “*The rule of law is better than that of any individual*”.¹⁹ The concept of **the rule of law** has evolved in history and entails ideas such as; to hold government authority to account, placing wishes before the ruler, independence of the judiciary and the role of judicial process, a code applying to the ruler, such as today’s constitutionalism.²⁰ The United Nations define the rule of law so:

“The modern conception of the rule of law has developed as a concept distinct from the ‘rule of man’, involving a system of governance based on non-arbitrary rules as opposed to one based on the power and whim of an absolute ruler. The concept of rule of law is deeply linked to the principle of justice, involving an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs.”²¹

We are used to all these concepts in relation to the traditional Westphalian understanding of a **sovereign** state found in the writings of French philosopher Jean Bodin (1530-1596). Sovereignty resides in a state and it cannot be subject to the commands of another; the state makes the law, abrogates law already made and amends obsolete law, in Bodin’s writing. Leaders are limited by natural law and the constitutional law, treaty or covenant with the people of the state and there is no one above them. The Treaty of Westphalia in 1648, building on this concept, marked the end of the Thirty Years War, embracing the idea of sovereignty.²²

When talking EU governance, we have left the Westphalian understanding of a sovereign government. The political architecture of the EU’s executive is a mix of the supranational and intergovernmental, which can result in stress caused by its mismatch. Etzioni (2007) claims supranational bodies can become nations with community building. They would still be separate nations, due to cultures and loyalties, just with narrower scope of values and loyalty. Without force such supranational bodies can become nations and “can emerge out of moral dialogues between free people and be expressive of shared values.”²³

¹⁷ (Bardes 2000), page 46.

¹⁸ (Bardes 2000), page 46.

¹⁹ (United Nations 2014).

²⁰ (United Nations 2014).

²¹ (United Nations 2014).

²² (Mingst 1999), pages 27-30.

²³ (Etzioni 2007), page 27.

There are two “polar” views in academic debate on the influence of the Commission, with variations in between, on the extent of leadership and independence that the Commission is able to practice. Firstly, the “**intergovernmentalist**” view sees the Commission as an “agent” working under guidelines and instructions given by its “principals”, which would be mainly the member states in the European Council or the Council of Ministers. Secondly, the “**supranationalist**” view sees the Commission as an “agent who is able to escape control in important respects, with more focus on the decision-making processes than decision-taking.”²⁴ Bulmer (1993) marked a strong entrance of new institutionalism, arguing that institutions matter in EU governance.²⁵

So even if the European Union is not a federation of states, might we have what characterizes a government in the Commission, although it is not spelled out in the treaties? Is there a new kind of government form arising in the EU? These questions shall be considered in this thesis.

²⁴ (Nugent 2010), page 137.

²⁵ (Bache c2011), page 22.

3. Methodology

3.1 Research questions and a case study

The purpose of this thesis is to shed a light on the executive power of the European Commission.

The contribution of this thesis to Public Administration Studies will be a view of how member states' governments share their executive powers with the Commission (and thus other member states) in order to have harmonized legislation, shared larger market, gain more negotiating power and share fundamental values in the EU countries. In doing so the member states gain an instrument for a cross-border executive power.

The Commission's strength of powers might vary in relation to each of its tasks and so we will review the most important ones; Nugent's seven categories of Commission's tasks (Nugent, 2010). This examination is meant to give an overview of EU tasks, but not to be a complete listing of the wide ranges of activities undertaken by the Commission. This is one of the limitations of the thesis.

For example, there will be little focus on the vast range of legislative tasks performed by the Commission, as the focus will mainly be on its executive tasks.

The research questions are:
What are the executive tasks of the European Commission?
To what extent does this make the European Commission a European Government?

We will then present a **case study** of one of its executive tasks, namely enforcing EU law, to see how effective the Commission's executive power is in comparison to that of a government. In the discussions we will be able to reflect on the question asked in the title of the thesis: What does the Hungarian case tell us about the role of the Commission as "guardian of the treaties", and how can we understand this role from the perspective of theories of European integration?

3.2 Case study: How the EU tackled the democratic backslide of Hungary in the Constitutional Affair

The Commission is the "guardian of the Treaties" and enforces EU law if the member states do not. We will present a **case study** on this executive task to see how its powers measure up as a government's executive powers. The Commission, in this case, is enforcing EU law on democracy and the rule of law against the new constitution of Hungary, and the

essence of the case is that Hungary isn't honouring the democratic principle of separation of powers (limited government).

3.3 Research Methods and Data Collection

The thesis builds on existing literature, books, journals, articles, official EU documents, online news, opinion articles, etc. on European integration, the European Union, the European Commission, national governments, governance and various theories on integration. The scope of the research will, therefore, be limited by this type of data collection.

The case study of an executive task of the Commission will be based on mostly official EU documents, articles, online news and opinion articles.

3.3.1 Research methods

Chris Hart (2005) defines case study as:

*“A focus on a single case (person, group, settings, etc.) which allows investigation of the details, including contextual matters, of a phenomenon. Usually ideographic the emphasis is on explication and illumination rather than variables. In psychology often used to explore the exceptional case and in conversation analysis the deviant case.”*²⁶

Yin (2014) calls case study the research strategy of all-encompassing method:

*“A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident.”*²⁷

Chris Hart (2005) acknowledges three general types of thesis (or dissertations, as he prefers to call them) at master's level. His definition of a traditional dissertation is a dissertation that is:

*“[u]sually based on primary data collection to test a hypothesis, proposition or fulfil a research aim. [It] Can include evaluation studies and analysis of secondary data sources.”*²⁸

He also acknowledges work-based dissertations and literature review dissertations. Elements from two or three types can be combined in a structured research method. Work-based dissertation is not a type that will be used here, but let's look a little bit closer at the literature review.²⁹ Hart defines it as:

²⁶ (Hart 2005), page 327.

²⁷ (Yin 2014), page 13-14.

²⁸ (Hart 2005), page 119.

²⁹ (Hart 2005), page 119.

“[u]se of a topic and/or methodological literature to explore an issue or argument or origins of an idea, or provide evidence for decision-making.”³⁰

This thesis is a traditional desk-based thesis, which will be based on analysis of secondary data. It is categorized as an empirical thesis.

The thesis work consists of four stages. At the first stage, there is search and review of literature so as to formulate a research problem and clarify concepts and present definitions. The aim of the research has to be decided and the research question(s), objective and purpose determined. Accessibility of the necessary data then has to be evaluated and the question of if the project is realistic and feasible.³¹ At stage two, comprehensive review of the literature takes place. The researcher needs to know the main arguments and studies to map out knowledge of the topic at hand. The origins of the topic is stated and the definition of the problem within the context of the literature.³² At stage three, a research design is made and the choice of technique and methodology is rationalized. Ethical issues are addressed. After that the research methods are applied to collect data and the result is presented appropriately.³³ At stage four, the data is analysed and interpreted with regard to the problem. The literature is used to show if the findings address the research problem or not and whether they add to the existing knowledge. In the end conclusions are based on the interpretations regarding what the findings may mean for understanding of the topic.³⁴

Key challenges of the traditional dissertation are: firstly, that a topic needs to be identified within a limited timeframe and it has to have quality literature written on the matter or in other ways be capable of being researched. Secondly, various skills will be tested with different elements, such as literature searching and reviewing, the making of a research design, along with data collection and analysis. Thirdly, honesty, integrity and trust are basic features within the design and the approach to the topic. Fourthly, the length of the thesis puts limitations on the work that can be included in it, so the order of the day is being concise, clear, systematic and self-critical. Finally, as technical aspects can take time, care must be taken to ensure good breadth and depth in interpreting the data and that this is reflected in the conclusions.³⁵

³⁰ (Hart 2005), page 119.

³¹ (Hart 2005), page. 122.

³² (Hart 2005), page. 122.

³³ (Hart 2005), page. 122.

³⁴ (Hart 2005), page. 122.

³⁵ (Hart 2005), pages 127-128.

3.3.2 Data

If we look at how the data was collected³⁶, an overview of literature was used in European Studies, Public Administration and in the Department of Political Science at the University of Iceland. Of course we examined official EU documents on the EU's website (http://europa.eu/publications/index_en.htm). Articles were extensively read online, for example through Gegnir (www.gegnir.is), which is the gateway of the University of Iceland to academic journals and articles all around the world (for example from ProQuest). Emphasis was placed on articles by known and recognized scholars. Media online was extremely helpful, for example news agencies that specialize in EU issues, for example EurActiv (www.EurActiv.com), European Voice (www.europeanvoice.com) and the EU Observer (www.EUobserver.com). I would like to disclose that I am the editor of an EU issue website, called Evrópufréttir (www.evropufrettir.is), where news articles from EU media have been translated. Some references are made to this website.

Regarding research ethics, it is important for the search and review of literature on the topic to be well conducted and for all the literature to be overviewed. Lack of this could result in an assessment of literature which does not give fair and balanced regard to other people's ideas and arguments. This would be considered unprofessional.³⁷ Furthermore, independence shows non-partisan and detached standpoint from the subject, as is ideal and should be sought after.³⁸ Lastly, self-reflection is imperative, according to Hart and

*“failure to reflect upon your role and status as a researcher, including your own choice of affiliations to a methodological position, may be regarded as a form of methodological myopia; and omitting to articulate your own methodological assumptions and beliefs while using them as the basis for interpretation might be regarded as a deliberate ploy to present an interpretation as based only in the data and this amounts to deception.”*³⁹

3.4 Validity, generalization, reliability

Validity, generalization and reliability will have to be evaluated as the research evolves and the answers to the research questions begin to form. However, it does not apply to all chapters of the thesis. It does not apply as such to the chapters discussing the role of the Commission. Those cannot be analysed in this manner.

³⁶ (Hart 2005), page. 430.

³⁷ (Hart 2005), page. 298.

³⁸ (Hart 2005), page. 198.

³⁹ (Hart 2005), page 299.

On the question of to what extent do these (the executive tasks) make the European Commission a European Government we will be able to draw on the literature and concepts in our conclusions, after examining in-depth the executive tasks and their limits. Integration theories will help us with this examination and generalisation.

Validity, generalization and reliability will be applicable and will have to be discussed in relations to the analysis of the case study.

The secondary data sources that the case study (an example of an executive enforcing task of the Commission and how the Commission asserted its powers) builds on, were mostly sourced from official EU documents, articles, online news and opinion articles.

Validity: Is the research investigating/measuring what we say we want to investigate/measure? We should take note of the variety of our data and how we link data together. It is about ensuring that you have built a sufficient robustness into your research. In this way you should be confident to make generalizations.⁴⁰

The case study example being contemplated, is to examine how the Commission, as the “guardian of the treaties” persuaded Hungary to change its new constitution, whereas Hungary upheld its sovereign right to decide on its own constitution. The state lost the battle. Some issues worked out before the ruling of ECJ and one case was solved very quickly. Thus we could argue that the Commission can enforce its powers and have member states change their legislation without a formal ECJ ruling. And that even at this important grand level that a constitution is for member states; it is the holy grail of all sovereignty - the people’s covenant of how to rule inside their own territory. One matter was resolved quickly, whereas it had linkage to money and we will examine the method used in that case. Could some of the results stem from political and public relations reasons? Is that where the Commission’s powers lie, as they do not have a police enforcing their decisions?

The official EU documents state how the Commission’s authority and executive task were being enforced. The behaviour of Hungary was examined through news articles, as its written answers to the EU’s infringement proceedings were not in the EU’s official archives (but subject to formal data request rules). Hungary’s official statements in online newspapers, speeches in the European Parliament. Opinion articles were helpful in examining the underlying atmosphere and the real extensive scope of the case, which was much bigger than only the three issues that the EU brought infringement cases against. Harsh critique on Hungary’s government and also on the Commission’s instruments and actions came through

⁴⁰ (Hart 2005), pages 334-338.

especially clearly in opinion articles. There were two polar opinions in the European Parliament on which action should be taken on the issues. Foreign leaders and NGO's had opinions in the matter. As the case-study example involves legal proceedings, the researcher was careful in reflecting both sides of the conflict. The domestic landscape in Hungary and the citizens' support of the government was also examined.

After examining this data we can summarise different mechanisms at play here leading to different results in relation to the method and linkage used in the matter. This procedure has provided us with the research to investigate what we want and need to investigate which in this case are the mechanisms.

Generalization: Can the results be generalized? Not all research is compelled to aim for this or produce it. *Concept generalization* or analytical generalization is linked to ethnomethodological and conversation analysis studies.

*"The aim is to use general concepts to analyse instances (specimens) to see if general formulations of devices, methods and principles can be used to inform the analysis of other specimens."*⁴¹

A replication of analysis with other instances and naturally occurring interaction, is usually the outcome.⁴²

It might be possible to make a generalization in the instance of the case study. That linking enforcement of EU law to money delivers better results than other linkages or softer approaches. We will look at executive methods being used to assert coercive power. There are legal rules here that apply evenly to all member states, but the instances where those provisions are being used vary considerably. The scenario might have played out differently with another state than Hungary. For example, if that state had never had EU interference before so as to escalate matters. Matters breaching democracy and rule of law values are a big problem though, that would be dangerous for the Commission to ignore. Also a general flaw has been found in the Commission's lack of a proper monitoring system that might lead to inequality in which countries are picked for enforcement proceedings. It might be dangerous to assert that further generalisation can be made and researchers will have to tread lightly there.

⁴¹ (Hart 2005), page 332.

⁴² (Hart 2005), pages 331-333.

Reliability: How can we prove how the research or data collection can be re-enacted so as to get the same results? The tools or instruments we use need to be as free of bias as possible within known limits.⁴³

The secondary data being used in this thesis is open to all and could be used by another researcher to find the same results. It is a question of whether the two researchers would use exactly the same data collection, but if they did the likelihood of them reaching the same result would increase vastly. Official documents are being used and it is unlikely that they would be lost. The same could apply to the articles of scholars. However, some of the research data involves news articles and opinion articles online. The existence of those might be temporary and the material might be lost as time goes on. So the reliability could weaken to some extent as years go by.

It is very important to incorporate into the case study all aspects and opinions in this conflict, without excluding any. As the case-study example involves the beginning of legal proceedings, the researcher took note here of how both sides of the conflict argued their case in light of measures that the Commission took in exercising its executive power of guarding the Treaties.

⁴³ (Hart 2005), pages 346-349.

4. European Integration theories – who has the power?

Integration theories on European integration are an essential tool-kit in understanding the complex mosaic that is Europeanization. No one theory explains perfectly why and how integration occurs, but many give good insight into this mechanism.

Using these tools helps us better understand the Commission's position with regard to who holds which powers, to actors and their motivation and to mechanisms that bring power to the Commission. Thus the analysis will be sharper and this will deepen our understanding of the functioning of the Commission. The grand theories are neofunctionalism and liberal intergovernmentalism. We might also look into federalism and its relevance today.

4.1 Neofunctionalism:

Neofunctionalism is one of the grand theories of integration in EU. Monnet was the first one to describe a functional spillover before it became an explicit academic label. Haas and Lindberg were the formal instigators of the theory. Haas introduced the “expansive logic of sector integration” where one sector under integration leads to “technical pressures” and this pushes states to integrate other sectors. Some sectors are so interdependent that it is not possible for them to be isolated from the other sectors. “Functional spillover” was later used about the functional-economic rationale for further integration.⁴⁴

Neofunctionalism sees the supranational institutions as the drivers of integration. They try to meet the needs of the European people with integration or cooperation across borders in EU. The reviving of neofunctionalism in the 1980's asks among other things who drives the integration process. According to Niemann and Schmitter (2009) a strong presidency in the EU is needed for integration and the Commission is considered to be a policy entrepreneur. Social dynamics such as the development of supranational loyalties come into play, where loyalty has shifted away from the nation state over to the EU.⁴⁵

4.1.1 How would neofunctionalism see the Commission?

The Commission is a highly important institution when it comes to integration. It is the driving force of integration, along with the EU's other supranational institutions, and an important one at that, being centred in the EU's structure. Once the Commission had been established, neofunctionalists would say it took on a life of its own and escaped the control of

⁴⁴ (Wiener 2009), pages 45-50.

⁴⁵ (Wiener 2009), pages 45-50.

the member states. The employees of the Commission then try to increase their own power and become agents of further regional integration. They try to influence the perceptions of elites and governments' interests.⁴⁶

Haas sees outcomes of bargaining with the Commission as a mediator as a more non-threatening approach, than bargaining between states where the outcome is the lowest common denominator. Thus common interests are upgraded, in the sense that the participant feels it has gained something, despite conceding something else.⁴⁷

There is distinction between political spill-over, socialization, deliberation and learning process spill-over and a cultivated spill-over under this theory. The cultivated spill-over stems from pressures exerted by supranational institutions. The Commission is thought of as being capable of being proactive and being able to take an integrative leadership initiative, if certain conditions are met as research proves, but otherwise the Commission's impact would be very marginal.⁴⁸

There are six factors that decide the policy entrepreneurship of the Commission. Firstly, its ability to forge internal cohesion. Secondly, its capacity to shape the agenda (also outside of its treaty based role, like having close ties with the Presidency, proactively tabling proposals and skilfully timing them). Thirdly, nurturing relationships with member governments, interest groups and other actors and thereby securing support for its policies. Fourthly, being able to build consensus and broker compromises. Fifthly, instrumentalization of functional spill-over pressures (promoting integration on this rationale). And lastly, the capacity to know the limits of its entrepreneurial leadership in relation to the member states.⁴⁹

The hurdles of the Commission's entrepreneurial leadership are: firstly, the absence of interest groups as allies; secondly, the lack of support of a significant political actor (whereas the Commission is most effective with the support for example of a powerful member state); thirdly, status quo, whereas the greatest impact on policy comes from periods of swiftly changing events, uncertainty and incomplete information and while policy adaptation is in progress.⁵⁰

4.2 Liberal intergovernmentalism:

States are the main actors and initiators of integration in this theory. States can achieve their goals through intergovernmental negotiation and bargaining, as it is rational for them to

⁴⁶ (Wiener 2009), page 48.

⁴⁷ (Wiener 2009), page 50.

⁴⁸ (Wiener 2009), pages 59-61.

⁴⁹ (Wiener 2009), pages 60-61.

⁵⁰ (Wiener 2009), page 61.

maximise their utility of cooperation. States are the masters of the treaty and nothing is accepted against their will. They hold the political legitimacy.⁵¹ As cooperation benefits states, they decide the pooling of sovereignty. This Europeanization is not about replacing the nation state, but about adapting it to cope with globalisation.⁵²

4.2.1 How would liberal intergovernmentalism see the Commission?

The Commission a policy co-ordinator, passive and controlled. It is necessary to facilitate the member state's cooperation. It is an instrument to deal with the unintended, unforeseen and unwanted consequences. The Commission helps the member states to reach a collectively superior outcome, by reducing the cost of negotiation on issues and supplying them with information on each state's future preferences and behaviour, thereby reducing uncertainty.⁵³

Member states do delegate decision-making to the EU and by extension to the Commission. Most EU procedures set norms and procedures for more efficient bargaining, and those pure coordination cases are being delegated. There are also cases of more extensive delegation to the Commission, such as its right of proposal and the negotiating mandates. If costs of this delegation are high for powerful domestic actors, then there is danger of non-compliance with the Commission's decisions. The theory stresses that there is no coercive power or fiscal capacity attached with EU institutions and a small administration has little power. Implementation is in the hands of the member states. Moravcsik and Schimmelfennig (2009) find that the exceptions to these main points would be: competition, monetary and trade policy. They find that in competition and trade policy matters the Commission has strong executive tasks and decision-making power.⁵⁴

Similarly, the Commission as the guardian of the treaties and as such taking actions against member states that breach the treaties, will do so without a consideration of the opinion of member states on each action. This does benefit all member states, as it reflects on uncertainties that would arise if the Commission as a supranational institution would not address it.

4.3 Federalism:

The founding fathers of the Union, Monnet and Schuman, both described plans for Europe with federalist grounding. Federalism entails a treaty/covenant, an ideology and unity in diversity (the combination of shared rule and self-rule in a territory). Federalism is both

⁵¹ (Wiener 2009), page 67-69.

⁵² (Wiener 2009), page 73.

⁵³ (Wiener 2009), pages 68, 72-73.

⁵⁴ (Wiener 2009), pages 72-73.

theory (in terms of how political power can be organized in a way that accommodates diversity while creating unity) and advocacy (in terms of aiming at overcoming the division of Europe into separate nation states). Federalism can exist without being a federation, but a federation cannot be without federalism. A federation has a constitution for two levels of government at least with a government directly elected and where a central government has a direct effect on citizens.⁵⁵

4.3.1 How would federalism see the Commission?

Federalism sees the EU as a new kind of order. It is not a federation of states as of yet. The Commission although appointed by intergovernmental actors, i.e. the member states, is invested in working for the interests of the whole union and Commissioners may not advocate the interests of their own country. This is a federalism notion. As the guardian of the treaties the Commission takes action against breaching of the treaties, but the member states are mostly in charge of implementing the rules and they do often have a framework giving them flexibility in deciding in which way or by which means to comply. This would be the showcase of unity in diversity, which the Commission resides over and reflects on federalism as a theory. The Commission works within its legal framework according to the treaties, but will yield to the subsidiarity rule providing that a decision should be taken on the lowest possible level. This goes well with the federalist notion of self-rule and shared rule.⁵⁶

The forgotten theory of federalism has been on the rise again in recent years. It has been central to the reform ideas of Joschka Fischer, a former Foreign Minister of Germany and more recently of Guy Verhofstadt, the Belgian Member of Parliament and former Prime Minister, who is calling for the United States of Europe.⁵⁷

In Verhofstadt's future view there should be deeper integration in Europe with a concrete architecture for a federal state, including a "European social and economic government", an autonomous budget financed from taxes, a president, foreign minister, army and prosecutor. This idea for a federalist Europe is a step further than the steps taken in the failed constitution attempt and shows a barometer of those who are willing to go the longest distance in regional integration in Europe today.⁵⁸ This theory is still relevant and recent fiscal integration, giving the Commission supervisory powers in the making of the fiscal budget of the member states, is a reminder of its relevance.

⁵⁵ (Wiener 2009), pages 27-35.

⁵⁶ (Wiener 2009), pages 29-30.

⁵⁷ (Beunderman 2005-12-01).

⁵⁸ (Beunderman 2005-12-01).

4.4 Thoughts on the theories

Keohane and Nye (1977) argue that international institutions are often necessary for a durable international cooperation. The neofunctionalist and liberal intergovernmentalist theory agree with historical institutionalism, that these international bodies can act against the governments' preferences.⁵⁹ We can see here that different theories do sometimes have a common ground.

Looking at the big picture, these theories are a tool-kit for us to understand European Integration better and on a deeper level. Maybe it isn't fair to ask for all instances happening under the EU umbrella to fall in line with one theory. Academics like to refer to the mosaic of theories, where many theories might apply to draw up the bigger picture.

With regard to the two "polar views" in the academic studies, we might have to be prepared for the view to depend on each executive task, i.e. the Commission's independence might vary between tasks.

⁵⁹ (Wiener 2009), page 72.

5. The structure of the European Union

5.1 The Treaties – the constitutional documents of the EU

The EU is governed by two Treaties, since the implementation of the Lisbon Treaty in December 2009: the *Treaty on European Union*⁶⁰ (TEU) and the *Treaty on the Functioning of the European Union*⁶¹ (TFEU). Although there is not a formal constitution in the EU these are considered to be the founding “constitutional” documents of the EU.⁶²

The EU’s Post-Lisbon Architecture is a structural reform change from the EU’s Three-Pillar Structure of the period 1993-2009, with the two Treaties as a source of power. The Treaty on European Union (TEU) sets out broad principles that govern the EU, the role of the institutions, principles on who may apply for membership and how to exit the EU. Furthermore, it details the operation of the Common Foreign and Security Policy (CFPS), where it is clear that the location of it in this Treaty stresses the point that it is not under the jurisdiction or full authority of the Court of Justice. The other treaty, by contrast, the Treaty on the Functioning of the European Union (TFEU), sets out the detailed operation of institutions and policy areas of the EU and is termed the *Union Method*.⁶³

5.2 The invisible constitution

The question is, if we read the legal documents on the structure of EU, do we then grasp the overall understanding of its institutions and their workings? Or is there in practice more that we need to consider to be able to assess if the Commission has some of the aspects of a government? Political scientist Antje Wiener challenges people’s understanding of core constitutional norms of non-state entities in her book, *The Invisible Constitution of Politics*. She stresses the importance of looking beyond the surface of formal texts and written norms in an international and European context. Inter-institutional agreements are growing in importance in this context.⁶⁴

5.3 From Westphalian sovereignty to a new non-state entity

Whereas the EU is a non-state entity, we might have to stretch our perceived understanding of the term government, which is normally used in relation to *liberal democracy governments*.

⁶⁰ “The Treaty on European Union” is in Icelandic “Sáttmálinn um Evrópusambandið” (Hugtakasafn þýðingamiðstöðar utanríkisráðuneytisins).

⁶¹ “The Treaty on the Functioning of the European Union” is in Icelandic “Sáttmálinn um starfshætti Evrópusambandsins” (Hugtakasafn þýðingamiðstöðar utanríkisráðuneytisins).

⁶² (Bache c2011), pages 225-226.

⁶³ (Bache c2011), pages 227-228.

⁶⁴ (Curtin 2009), pages 280-281.

The term Westphalian sovereignty, which has shaped our understanding of a sovereign nation-state since 1648, has been questioned in recent years and new visions are on the rise.⁶⁵ Globalisation and regionalisation have entered the scene of international relations, questioning the traditional understanding of a state according to the Westphalian criteria. Anthony Giddens sees globalisation not merely in economic terms. “Globalisation is political, technological and cultural, as well as economic. It has been influenced above all by developments in systems of communications, dating back only to the late 1960s.”⁶⁶

5.4 Actors at the EU level

The Commission has great administrative powers invested in it by the treaties. In real life there is ongoing task allocation on all varieties of issues. The Commission reacts to the needs of actors in the European System, as well as some actors in the International System. There are needs of the member states’ governments, who have national interests in mind. There are needs of the institutions, such as the Commission and the European Parliament, that want to enhance the powers of the EU. And there are the needs of NGO’s pushing for influence on both EU and national levels.⁶⁷

⁶⁵ (Wikipedia 2006b).

⁶⁶ (Giddens 2000), page 28.

⁶⁷ (Benson 2011).

6. The Dual Executive Power of the EU

The Commission is the main engine of the European Union. Its development and powers are, therefore, of great interest. We will look at the delegation of powers to the Commission, i.e. the role of the Commission as an agent.

The European Union has dual executive powers. The European Commission and the Council of Ministers share executive responsibilities in this institutional separation of powers, where the Commission governs short term matters, whereas the Council governs long term matters. The governments of the member states have delegated significant powers to the Commission. Those powers are: political leadership, policy implementation and regulation.⁶⁸

6.1 Delegation of Powers

In the framework of the “principal-agent”, the principal delegates responsibilities to specific actors, i.e. agents. The challenge for the principal is to ensure that the task is executed in a neutral manner by the agent, but agents do have their own interests and policy preferences. Firstly, the agent could become targeted by lobby groups. Secondly, the agent might want to increase their own influence over the policy process. Thirdly, bureaucrats want to maximize their independence from their principals and their ability to shape policy. This can cause policy drift. To control this the principal can either use selection (choosing an agent with similar preferences to the principal) or control (selecting a competent agent with ideal points that is identical to that of the principal). In a collective body, like in the European Union, the actors of the body do not always have identical ideal points. The principals can limit policy drift of the Commission by using monitoring devices and constraining the possibility by specifying delegated tasks.⁶⁹

Franchino adds that the governments of the EU can choose whether to delegate legislation to the Commission (risking policy drift) or the member states (where implementation may differ between member states). The degree of autonomy of agents depends on: firstly, the nature of the task, secondly, the institutional rules, thirdly, the degree of policy disagreement between member states, and fourthly, the amount of information the principals have on the likely actions of agents.⁷⁰ Thus if a policy issue is decided by qualified majority voting, there is willingness to delegate it to the Commission, as member states see a possibility to change it

⁶⁸ (Hix 2011), page 23.

⁶⁹ (Hix 2011), pages 23-25.

⁷⁰ (Hix 2011), pages 26-27.

if the Commission changes it beyond its original intention, whereas unanimous decisions are preferably delegated to the national administrations (as they are difficult to change).⁷¹

After the Single European Act in 1986, there seems to be more restricted delegation of power to the Commission, whereas the SEA with its significant supranational executive agenda-setting powers in establishing rules for the common market, allowed more policy drift to enable more common policies. Governments in newer treaties are more reluctant to hand over agenda-setting in new or highly sensitive policy areas. Furthermore, they are restricting policy initiative already delegated to the Commission.⁷²

Executive power is increasingly expanding, not only in the EU, but worldwide. Powers are increasingly being delegated to and within the administrative level. In the EU political system there is horizontal delegation of powers in two aspects. Firstly, the Commission (sometimes the Council) delegates its own administrative power to other actors, in order to refocus on its more “political” tasks, such as policy initiation. Secondly, implementation of regulations (some requiring expert knowledge or additional considerations in complex matters) can sometimes qualify as “political” executive act.⁷³

When looking at power separated into political and administrative, an American legal scholar has argued that at EU level there are fundamentally non-political powers (non-majoritarian) which are then administrative in character. The political “principals” (member states) have thus, when delegating power to the “agent”, such as the Commission, limited the “agents” autonomy to apply only to the administrative level.⁷⁴

“New” branches of government have been called various names, such as the fourth branch (public administration and civil servants) of government or (sub) branch (unelected organs). Non-majoritarian agencies is a term in political science, referring to all bodies and organs that are “unelected” in the national political processes. Unelected independent experts are considered better equipped to assess risks in many cases of decision-making. The Commission is a non-majoritarian institution and there are others in the EU’s political system with looser ties with a “political” core (depoliticized actors).⁷⁵ The EU’s executive power is

⁷¹ (Hix 2011), page 27.

⁷² (Hix 2011), pages 29, 31.

⁷³ (Curtin 2009), pages 38-41.

⁷⁴ (Curtin 2009), pages 36-37.

⁷⁵ (Curtin 2009), pages 51-52.

fragmented and more plural than its legislative or judicial counterparts, as well as being dispersed across increasing number of institutions and actors.⁷⁶

6.2 Political and Administrative Executive Power

Traditionally, when referring to power it has been separated into two types: political and administrative. Some though argue that the two are complementary. The political tasks would be leadership that would produce proposals of policy and legislation. Political tasks would be agenda setting, policy initiative, policy decision and external representation. The administrative would be implementation of law, distribution of public revenues and passing of secondary and tertiary rules. Administrative tasks would be policy implementation, policy application, distribution of public funds and policy supervision. Joerges argues that “the political” and “the administrative” can be joined together. There is tension between the adoption and implementation of a pure technical decision, based on expert advice (“administration”) and a decision where certain values are balanced (“politics”). Similarly, the German Rudolf Wiethölter developed the term “political administration”, which draws from Max Weber’s concept of “administration”.⁷⁷

⁷⁶ (Curtin 2009), pages 53 and 65.

⁷⁷ (Curtin 2009), pages 37-39.

7. The Commission

The Commission, established in the Treaty of Rome and TFEU, plays a part in legislation as a proposer of legislation, i.e. it has an initial role. The European Economic and Social Committee and the Committee of the Regions have a right to be consulted on legislative proposals.⁷⁸ The executive role of the Commission would be implementing legislation and supervision in relation to that. Implementation of legislation is partly the responsibility of the Commission, although mostly it is the responsibility of the member states. The Commission and the Court of Justice then both serve the role of watchdogs to ensure that the member states fulfil their obligations (see chart 3 in Annex 1). The Commission also proposes the annual budget, within the seven year framework set by the European Council, before the Council and European Parliament (EP) jointly decide on it.⁷⁹

To sum up, the Commission's main functions are initiating Community legislation, being a guardian of the Treaties, acting as the executive of the Community, and negotiating trade agreements. It also draws up the preliminary draft Budget.⁸⁰ The Commission is based both in the Berlaymont in Brussels and in Luxembourg.⁸¹

Composition: There are twenty eight Commissioners, one from each member state, that form the college that the Commission is, where each Commissioner is responsible for a specific policy area, which is decided upon by the President of the Commission (see the European Commission's organisation chart in chart 2 in Annex 1). The President of the Commission is first nominated by the European Council, but the European Parliament has to affirm his appointment for the candidate to become the President of the European Commission. The Europe-wide democratically elected EP also has to approve the appointments of other Commissioners.⁸² The Commission is accountable to the EP, which can sack the entire commission with a two-thirds majority (an individual commissioner cannot be dismissed though).⁸³ There are many intergovernmental aspects to the choosing of the European Commission, which has a supranational agenda and tasks.

For the first time, in the upcoming European Parliament elections in May 2014, the President of the Commission will be chosen directly by European citizens. The EP parties

⁷⁸ (Bache c2011), page 229.

⁷⁹ (Bache c2011), page 229.

⁸⁰ (Kent 2001), pages 25-26.

⁸¹ (European Union 2014a).

⁸² (European Union 2014a).

⁸³ (Dinan 1999), pages 205-216.

have nominated their candidates, who seek support in their trans-European campaigns.⁸⁴ The European Council President, Herman Van Rompuy⁸⁵, and German Chancellor, Angela Merkel⁸⁶, have doubts about the Commission's initiative in linking the President of the Commission to the outcome of the European Parliament elections, underlining that the president has to suit the member states first.⁸⁷

7.1 On the executive Tasks of the Commission and their restrictions

The Commission has limited authority and ability to execute EU policy, despite it being called the executive body of EU.⁸⁸ The College of Commissioners are the core executive and it focuses on the political tasks. The bureaucracy (Directorates-General) work on legislative drafting, administrative work and some regulatory tasks (see chart 4 in Annex 1). A network of quasi-autonomous agencies undertake a variety of monitoring and regulatory tasks.⁸⁹

The member state governments have delegated powers to the Commission, in order to reduce transaction costs and produce policy credibility. The governments are selective in this delegation and have retained control of key executive powers (treaty reform, nominating the Commission President and selecting the Commissioners, Common Foreign and Security Policy (CFSP) making, long-term agenda-setting, front-line implementation of EU legislation and coordination of national macroeconomic policies). Additionally, the comitology system (committees) restrict the Commission's powers.⁹⁰

In the beginning the Commission was designed as a technocratic body with independent experts, who would solve policy problems, broker deals, drive integration onwards and guard common European interests. It was far from being a government. Only in recent years has the importance of the Commission been recognised, as it now shows many organizational and behavioural patterns that are typical of executives in national states, where the Commission's bureaucratic divisions are comparable to ministries.⁹¹

To increase efficiency, expediency and lower cost, while EU policies have expanded, the Commission has "contracted out" some lower-level purely managerial tasks. Withholding core tasks in terms of their political significance, the Commission has established a new type of implementing agency. Public authority tasks are being delegated to executive agencies

⁸⁴ (European Commission - Press release 2013-03-12).

⁸⁵ (EurActiv 2013-10-14).

⁸⁶ (Mahony 2013-10-25).

⁸⁷ (Wikipedia 2014a).

⁸⁸ (Dinan 1999), page 223.

⁸⁹ (Hix 2011), page 34.

⁹⁰ (Wiener 2009), pages 72-73.

⁹¹ (Curtin 2009), pages 63-64.

(Community bodies) and national public-sector bodies. There has been considerable growth in establishing agencies in recent years. Studies show the direct influence of Commission on some agencies, while others seem independent.⁹²

The Commission does extensive planning and preparation work, both at Commission level and at department level, much in alliance with the yearly State of the Union address of the Commission's President.⁹³

7.2 Power resources

Firstly, the Commission has initiative powers that are exclusive and non-exclusive, shared with member states or coordinated (see chart 4 in Annex 1). Secondly, neutrality has brought the Commission powers, when it is seen as trustworthy and less partisan than most other EU actors. Thirdly, its overall presence in all decision-making forums and stages gives it advisory powers relating to its good access to information. Fourthly, small states look to the Commission for leadership and protection (effective in early stages of policy-making and decision-making⁹⁴) and most member states are small.⁹⁵

On the downside, since SEA there has been increase in decision-making procedure other than the Community method. Also the Council's and EP's strengthening of decision-making powers have eroded the Commission's decision-making power. The creation of European Council President and High Representative do undermine the Commission's power.⁹⁶

Dinan (2010) talks about "the glory days of Jacques Delors's presidency", while José Manuel Barroso's current presidency is considered pragmatic during this period of the Commission's waning political influence. Dinan feels Barroso's Commission is as influential as is possible under the difficult circumstances, at a time of resurgent intergovernmentalism and economic uncertainty. Supranationalists are disappointed with Barroso's subservience to national leaders.⁹⁷ Guy Verhofstadt, ALDE leader and a candidate for President of the Commission in 2014, describes the Barroso's policy-making so, in the first presidential debates: "First he phones to Paris, then Berlin, in fact it's the opposite, first Berlin and then to Paris, and only when he has the green light of both, then he takes an initiative. Far too little and far too late."⁹⁸ The Commission's power thus vary by periods, treaties and the

⁹² (Curtin 2009), page 140-157.

⁹³ (European Commission 2014).

⁹⁴ (Thorhallsson 2000), pages 237-239.

⁹⁵ (Nugent 2010), page 121.

⁹⁶ (Nugent 2010), pages 135-137. (Hix 2011), page 31.

⁹⁷ (Dinan 2010), pages 171-172.

⁹⁸ (Frankelsdóttir 2014-04-29).

personalities of the people that are leaders of the nation states, the Commission and the European Parliament – and the relationships that these people have established.

7.3 The Executive tasks of the Commission

7.3.1 *Initiating legislation and proposing policies*

Article 17 TEU⁹⁹ makes the Commission responsible for promoting the general interest of the Union. The Union method of law making entails that the Commission shall exclusively initiate legislation, except where the Treaties say otherwise.¹⁰⁰

7.3.1.1 Legislation initiated

The Commission alone has the sole right to initiate proposals for legislation in all policy areas under the Union method (except in the area of freedom, security and justice where this power is shared). Therefore, if no proposals came from the Commission, the EP and the Council of Ministers wouldn't be able to legislate.¹⁰¹ After Lisbon, the Commission has enhanced power to delegate legislation in all EU policy aspects, without being limited by the comitology system.¹⁰² As we are focusing on the executive tasks of the Commission, we will not examine the legislative task of the Commission here.

7.3.1.2 *Proposing Policy Ideas*

The Commission proposes policy ideas for the medium-term development of the EU. The governments set the long and medium-term agenda, by reforming the EU Treaty and they delegate political and administrative tasks to the Commission. The Commission has a leadership role here. The power to set the policy agenda and implementing EU policies is shared with the Council, European Council and the Commission.¹⁰³

The power to initiate policy is the most when the Commission is exclusive in its legislation. But sometimes the Commission has non-exclusive powers to initiate policy, which is important too. Having good access to information at the administrative level strengthens the Commission, as it knows where reforms are needed.¹⁰⁴

⁹⁹ Article 17 TEU – see Annex 2.

¹⁰⁰ (Nugent 2010), page 122.

¹⁰¹ (Bache c2011), pages 259-260.

¹⁰² (Curtin 2009), page 3.

¹⁰³ (Hix 2011), page 46.

¹⁰⁴ (Nugent 2010), page 121.

7.3.2 Rule-making

The Commission has a leadership role here. Political and administrative executive powers have been delegated to the Commission. The power to set the policy agenda and implement EU policies is shared with the Council, European Council and the Commission.¹⁰⁵

Whereas treaties and primary legislation cannot foresee all possible areas, the Commission is delegated rule-making powers under conditions defined by the Treaties and EU legislation. The Commission would be on par with a national executive, from the standpoint of being asked to make quick decisions in the grey area of policy overlapping with administration. The aim is to reduce over-involvement of the legislative in detailed and specialized matters, such as in making administrative and technical law. In the Lisbon Treaty delegated political legislation is called “legislative acts”, whereas non-political legislation is divided into categories of “delegated acts” and “implementing acts”.¹⁰⁶

The Commission has with respect to the subsidiarity rule¹⁰⁷ since the mid-1990s, toned down its activism and only issued laws when absolutely necessary.¹⁰⁸ Thus there are more checks on the Commission in recent years, than in the early years of the Single market.¹⁰⁹

Looking at the catalogue of competences (see chart 5 in Annex 1), the EU as a whole has exclusive competences on regulation of the single market, including removing barriers and competition policy. It also has exclusive competences on monetary policy (for euro countries), price setting and subsidy of production under CAP and Common fisheries policy.¹¹⁰

7.3.2.1 Competition Policy

With the single market program came new power to the Commission, when it comes to competition policy.¹¹¹ Moravcsik and Schimmelfennig (2009) find that in competition policy matters, the Commission has strong executive tasks and decision-making power.¹¹² The

¹⁰⁵ (Hix 2011), page 46.

¹⁰⁶ (Nugent 2010), page 125.

¹⁰⁷ “The principle of subsidiarity is defined in Article 5 of the Treaty on European Union. It ensures that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at Union level is justified in light of the possibilities available at national, regional or local level. Specifically, it is the principle whereby the Union does not take action (except in the areas that fall within its exclusive competence), unless it is more effective than action taken at national, regional or local level. It is closely bound up with the principle of proportionality, which requires that any action by the Union should not go beyond what is necessary to achieve the objectives of the Treaties.” (European Union 2014b).

¹⁰⁸ (Nugent 2010), page 125. (Bache c2011), page 264.

¹⁰⁹ (Bache c2011), page 264.

¹¹⁰ (Hix 2011), page 6.

¹¹¹ (Dinan 1999), page 234.

¹¹² (Wiener 2009), pages 72-73.

reason for giving the Commission this power is for the internal market to run efficiently and smoothly, by making the Commission an independent body responsible for applying competition rules in a direct manner.

The Commission has taken on cases against big companies, such as Microsoft, where companies have been found in breach of the EU's competition policy and have had to pay huge fines and change their way of doing business both in Europe and worldwide.¹¹³ This is a good example of a broad non-legislation power, which both introduces a fine and changes the behaviour of actors.

The economic benefits of an efficient single market are providing the Commission with especially strong powers, when it comes to competition policy and removing barriers

7.3.2.2 Direct or multi-level implementation

The Commission operates in two modes as an implementer. Firstly, it has direct implementation powers in very few policy areas. Those areas are the competition policy, fisheries, some programmes involved in the external relations of the EU (for example Humanitarian Aid Programme). Secondly, for most internal policy it sits at the top of a multi-level system of implementation, that extends down to the member states' central authorities and from there to sub-national authorities and agencies. Morten Egeberg argues that the multi-level system represents a "transformation of executive politics in Europe"¹¹⁴ (Egeberg 2006). The Commission has become the "agent" of member states and national and sub-national actors are the "agents" of the Commission. The Commission faces the policy drift problem and has to prevent these agents from pursuing their own agenda. The member states' administration is "double-hatted" in fulfilling its domestic and EU role.¹¹⁵

7.3.2.3 Comitology

Comitology refers to the practice of Commission decision-making under powers delegated to the Commission by the Council.¹¹⁶ In these instances, the Council will usually adopt a framework regulation and the Commission will produce a detailed regulation or directives in line with that. This is often used in the case of the Common Agricultural Policy (CAP). In the beginning, the Commission's legislative activities were supervised by the council with a system set up in the Comitology decision (D87/373), which later led to Council decision no. 468/99, simplifying the supervision system by setting up a new "safeguard procedure".

¹¹³ (Curtin 2009), page 3.

¹¹⁴ (Bache c2011), page 267.

¹¹⁵ (Bache c2011), page 267.

¹¹⁶ (Kent 2001), page 27.

Member states may ask the Council to re-examine the Commission's decisions on safeguard measures, especially when it comes to external trade. The European Parliament may also question decisions "by resolution where they appear to be *ultra vires*".¹¹⁷ After the Lisbon Treaty, the Commission has enhanced power to delegate legislation in all EU policy aspects, without being limited by the comitology system.¹¹⁸

7.3.3 Managing the EU finances

The Commission manages the EU budget. The Commission has a leadership role here. Political and administrative executive powers have been delegated to the Commission. The power to set the policy agenda and implement the budget is shared with the Council, European Council and the Commission (see the EU Budgetary Procedure in chart 6 in Annex 1).¹¹⁹

It is the Commission's job to make a draft budget and the Council's and European Parliament's job to propose changes and adopt it. The annual budgetary procedure (Article 314 TFEU¹²⁰) takes place formally from 1 September to 31 December and all EU institutions draw up estimates for it, in accordance with their internal procedures, before 1 July. Formally, the draft budget is submitted to the Council and the Parliament by 1 September. In practice the Commission aims to present a draft budget before the end of April.¹²¹

After delivering the draft budget, the Council adopts its position on the draft budget, including amending letters, before passing it on to the EP. The EP can adopt amendments according to the Council's position, and the Council in turn accept the amendments and adopt the draft budget. If the two parties disagree on some issues, then the process becomes more complicated (see Chart 6: The EU Budgetary Procedure in Annex 1). If both parties reject the joint draft or fail to agree, the draft budget is rejected and a new budget has to be drafted by the Commission.¹²²

Should there arise unavoidable, exceptional or unforeseen circumstances, the Commission may propose an amendment to the budget by submitting amending budgets. Also the Commission may in light of new information, on its own initiative or at request from EU institutions (on own budgets), present a letter of amendment to the draft budget.¹²³

¹¹⁷ (Kent 2001), pages 27-28.

¹¹⁸ (Curtin 2009), page 3.

¹¹⁹ (Hix 2011), page 46.

¹²⁰ Article 314 TFEU – see Annex 2.

¹²¹ (European Commission 2012-02-06b).

¹²² (European Commission 2012-02-06b).

¹²³ (European Commission 2012-02-06b).

The Commission bases its work on the Preliminary Draft Budget (PDB) on the Annual Policy Strategy (APS), which has adopted the budget outline allocating resources to the priorities in the APS. The APS is a product of the “Orientation Debate” and annual policy strategy discussions in the autumn (more than a year before the budget year). After this outlining, the departments of EU submit their requests for appropriations to comply with that. The Directorate General on Budgets holds hearings on the distribution of money, like preliminary “trialogues” between the Commission, the Council and the Parliament. DG’s draft the budget proposals, but they must be adopted by a majority of the commissioners before they go to the next level. The DG of Budgets submits its estimates to the Commission in April, but it is the Commission that decides on the draft budget in the end or a preliminary draft at the end of April.¹²⁴

Moravcsik and Schimmelfennig (2009) argue that that in monetary matters the Commission has strong executive tasks and decision-making power.¹²⁵ The Commission has limited freedom in drafting a budget, due to limitations of the Treaties and pre-existing expenditure commitments.¹²⁶ The Commission thus serves great leadership role here and executes this highly important administrative task, but with a more modest political power, whereas other political actors have the final decision-making power. However, in submitting amending budgets, after the budget has been adopted, the Commission exercises high political power.

Political power is held by the Council and EP, which make changes and decide the final budget. The Council uses qualified majority voting in order to shield the smaller member states from the powers of the big ones. The EP’s power is great, as it co-decides with the Council on the budget. Firstly, it can propose modifications and amendments within total expenditure. Secondly, MEPs may propose amendments to the non-compulsory expenditures. Thirdly, it can reject the budget in its entirety with 2/3 of votes. The EP has rejected budgets in the past.¹²⁷

The DGs are financially responsible and the Internal Audit Service helps with financial control and management. OLAF, European anti-Fraud Office, helps the Commission making sure EU funds in member states are not used fraudulently.¹²⁸

¹²⁴ (Guess 2010), pages 99-100.

¹²⁵ (Wiener 2009), pages 72-73.

¹²⁶ (Guess 2010), pages 99-100.

¹²⁷ (Guess 2010), pages 101-103.

¹²⁸ (Bache c2011), page 269.

7.3.4 External representative and negotiator

Foreign policy is still largely the responsibility of the member states, but the Union does speak in one voice for example on trade and energy matters. The Commission speaks for all the EU countries in international bodies, such as the World Trade Organisation (WTO). It also negotiates international agreements.¹²⁹

Looking at the catalogue of competences, the EU has exclusive competences on customs union and external trade policies. It has coordinated competences in foreign and defence policies.¹³⁰

7.3.4.1 Trade agreements

Trade policy is an exclusive power of the EU and member states do not negotiate international trade agreements.¹³¹ The Commission prepares possible negotiations by scoping exercises and impact assessment. The scoping exercise constitutes the starting of informal talks with the possible trade partner on the content of possible trade agreement. The impact assessment includes public consultation about the content and options for free trade, followed by assessment of the impact of a deal on the EU and other countries. The Commission must request a formal authorisation from the Council to negotiate a trade agreement with a trading partner, which is known as “negotiating directive”. The directives set out the general objectives to be achieved, which the Council can adopt after discussions and thereby authorise the Commission to negotiate on behalf of the EU. During the negotiation process the Commission must report regularly to both the Council and the European Parliament on the status of the negotiation and in the end both those institutions must agree on the conclusions of the Commission’s negotiating (see negotiation procedure in Chart 7 in Annex 1).¹³² The Commission shall also consult with a special committee, appointed by the Council, which monitors positions taken by the Commission. The committee consists of senior civil servants of the member states, who make sure that the Commission acts in line with the negotiating mandate. Trade decisions do need to be approved at home. An agreement has to be ratified by a full Council meeting using qualified majority voting (QMV¹³³).¹³⁴

¹²⁹ (European Union 2014a).

¹³⁰ (Hix 2011), page 6.

¹³¹ (DG Trade 2013).

¹³² (DG Trade 2013).

¹³³ “Each Member State had a certain number of votes depending on its demographic weight. Under this system, a decision was adopted only if a certain vote threshold was reached by a majority of Member States. Since 1 January 2007, a qualified majority was achieved if 255 out of 345 votes were cast by at least 14 Member States. The weighting of votes in the Council favoured the representation of small Member States compared with the larger States and was regularly the subject of long negotiations...The Treaty of Lisbon simplifies the system with a view to improving its

The aim of making trade agreements is opening new markets for goods and services, increasing investment, making trade cheaper and faster, negotiating on trade policy environment and supporting sustainable development.¹³⁵

With the Lisbon Treaty the EU's formal exclusive competences expanded from being only in trade in goods, to include also trade in services and intellectual products. Unanimity voting rule applies though in the Council with trade in services and the commercial aspect of intellectual property, where there are requirements for the adoption of internal rules, and in trade in cultural and audio-visual services, where a risk arises to the Union's cultural and linguistic diversity.¹³⁶

The common commercial policy also allows for protection from unfair trade practices by non-members. The set of instruments used are imposing restrictions on a non-member state suspected of dumping in the EU market products which cost less than the cost of making them. Other similar measures to protect EU markets from unfair subsidies also are in place. The EU has a policy of working those issues out through WTO, as much as possible.¹³⁷ Here though, the Commission is not bound by the same strict monitoring devices and constraints as when negotiating trade agreements, should disputes not go through WTO.

In Article 218 TFEU¹³⁸ the delegation of power to make trade agreements on behalf of the member states is described. This power results from the Common commercial policy in Article 207 TFEU.¹³⁹ The Commission shall not step into the negotiation power territory of the High Representative of the Union for Foreign Affairs and Security Policy, where the agreement envisaged relates exclusively or principally to the common foreign and security policy.¹⁴⁰

The Directorate General for Trade leads negotiations, with the help of experts from across the Commission, forming a negotiating team. Negotiation rounds are set up and it can take from two to three years or longer to reach a concord. Some meetings are also held between the Trade Minister of the country/trade partner and the Commissioner of Trade within EU. Free Trade Agreements can be a Comprehensive Economic Trade Agreement or an Economic Partnership Agreement. Some are part of a broader political cooperation agreement. All Free

efficiency... The new system of qualified majority voting will apply with effect from 1 November 2014.” (European Union 2009).

¹³⁴ (Bache c2011), page 493.

¹³⁵ (DG Trade 2013).

¹³⁶ (Bache c2011), pages 493-495.

¹³⁷ (Bache c2011), page 494.

¹³⁸ Article 218 TFEU – see annex 2

¹³⁹ Article 207 TFEU – see annex 2

¹⁴⁰ (European Commission 2013-11-13).

Trade Agreements must be reported to the World Trade Organization (WTO).¹⁴¹ Collinson (1999) talks about shared responsibilities for negotiations producing a complex pattern, characterized as a “three-level game” (firstly the governments’ positions, secondly, a common mandate, thirdly, the Commission negotiating within the mandates).¹⁴²

An example of trade proceedings would be the EU-US trade negotiations (TTIP, Transatlantic Trade and Investment Partnership), which would foreseeably create the biggest free trade zone in the world.¹⁴³ The Commission has recently launched a public consultation in May 2014 on investment protection and investor-to-state dispute settlement in the TTIP, where all stakeholders can raise their concerns about issues concerning the possible agreement.¹⁴⁴ The EU-US trade talks are thus in the preparation stage, undergoing impact assessment, in relation to the investment part.

Moravcsik and Schimmelfennig (2009) find that in trade policy matters the Commission has strong executive tasks and decision-making power.¹⁴⁵

Sophie Meunier, on the contrary, concludes, after examining the EU Commission’s role in the Doha-rounds held by the WTO and “managed globalization” of that doctrine, that there is little evidence of autonomy in the Commission impacting the EU position in international trade negotiations in a significant way, considering the power sources of agenda setting, agency slack and norm-repackaging. She found that the limited autonomous impact of the Commission lay in reframing and repackaging member states interests, that this may reshape member states preferences slightly. But it cannot do that if what it proposes widely diverges from major member states’ preferences. It would not be in the Commission’s best interests to act too autonomously either. Meunier points out that enlargement of the EU would increase divergences in opinions and interests among member states, which may enlarge the role for the Commission to act autonomously within the limits of EU trade policy.¹⁴⁶

It is obvious that the member states are really exercising control to avoid policy drift, when delegating trade negotiating powers to the Commission. Constraint is used to specify delegated tasks, whereas the Council must adopt a “negotiating directive” for the negotiation. There are several monitoring devices built in the trade negotiating procedure, as the special committee of senior civil servants makes sure that the Commission follows the Council’s

¹⁴¹ (DG Trade 2013).

¹⁴² (Bache c2011), pages 501-503.

¹⁴³ (Clarke 2014-03-13).

¹⁴⁴ (DG Trade 2014-04-10).

¹⁴⁵ (Wiener 2009), pages 72-73.

¹⁴⁶ (Meunier 2007), pages 921-923.

mandate and assesses its positions, in addition to the reporting to both Council and European Parliament during the negotiating procedure. However, the enlargement of the EU might present the Commission with the possibility for a limited policy drift due to the growing number of non-identical ideal points of the member states.

It would seem that the exclusive EU competences on customs union and external trade policies do not necessarily translate into great political power of the Commission. Despite the EU owning the policy areas trade and customs matters, there are too many limitations for the Commission to exercise the political power of a government on trade and customs matters (a non-member government that is).

7.3.4.2 Other economic relations

The Commission is involved in working on other economic relations with other countries. The EU engages in economic partnerships with African, Caribbean and Pacific States (ACP states), built around former member states' colonies. The Cotonou Agreement from 2000 is based on reciprocal removal of trade barriers with the ACP states, along with political, social and environmental issues. Other relations with neighbour countries include the European-Mediterranean ("Euro-Med") Partnership, establishing bilateral agreements with certain common features, although varied in content. Association Agreement are the most common type of arrangements for countries which wish to join the EU. European Neighbourhood Policy prevents deep dividing lines with neighbour countries by sharing some benefits of the 2004 enlargement without offering membership to the EU.¹⁴⁷

The Commission has proposal powers in Article 22 TEU to the Council on external action, as it fulfils the Union's policy to advance outwardly its fundamental principles, such as democracy, rule of law and integration of countries into the world economy.¹⁴⁸

Despite being mostly economic agreements, it is difficult in many cases to distinguish them from some political aspects.¹⁴⁹ So the Commission might be exercising political administration when completing these tasks.

Furthermore, direct implementation powers exist in very few policy areas and some programmes involved in the external relations of the EU (for example Humanitarian Aid Programme) are example of this great political and administrative power of the Commission.¹⁵⁰

¹⁴⁷ (Bache c2011), pages 489-508.

¹⁴⁸ Article 22 - see Annex 2.

¹⁴⁹ (Bache c2011), page 506.

¹⁵⁰ (Bache c2011), page 267.

The Commission's proposal powers to advance outwardly its fundamental principles in external action matters, can be categorized as political administration along with the economic agreements that possess some political aspects.¹⁵¹ So the Commission might be exercising political administration when completing these tasks. In addition, some programmes involved in the external relations of the EU allow for (rare) direct implementation powers. This demonstrates the great political and administrative power of the Commission, in other external matters than trade negotiations.

7.3.4.3 European External Action Service

The European External Action Service (EEAS) is an autonomous diplomatic body, supporting the EU foreign affairs chief, the High Representative for Foreign Affairs and Security Policy, in conducting the Common Foreign and Security Policy. Legally the EEAS has to ensure that its policies are consistent with other EU policies. The High Representative is also the Vice-President of the Commission and President of the Foreign Affairs Council.¹⁵²

Member states are steadfastly holding on to powers in security and defence matters, by delegating powers to the Council and not to the Commission. By forming a high powered political position and an autonomous body as a vehicle, member states are withholding political powers in these matters from the Commission. This undermines the power of the Commission.

In EEAS and High Representative matters the College of Commissioners does not have authority, as political power in connection with CFSP lies with the Council. The Union Method does not apply.

In conclusion, the Commission has a leadership role, some limited political (political administration) powers and administrative power in external representative matters.

7.3.5 Enforcing Community Law.

The Commission has a leadership role here. Administrative executive powers have been delegated to the Commission and some political powers. The power to set the policy agenda and implement EU policies is shared with the Council, European Council and the Commission.¹⁵³

As a “guardian of the Treaties” the Commission has authority to bring a member state before the ECJ for alleged non-fulfilment of treaty obligations (see the European Court of

¹⁵¹ (Bache c2011), page 506.

¹⁵² (European Union 2014-01-15).

¹⁵³ (Hix 2011), page 46.

Justice and various procedures in the TFEU in chart 3 in Annex 1). Most disputes are resolved before it comes before the ECJ for political and public relations reasons. Member states resent being taken to court and the Commission is not frivolous in possibly alienating them, so it chooses its battles wisely.¹⁵⁴ The Commission acts slowly and deliberately in dealing with infringement and publish a monitoring report annually of the application of Community law. The new member states score rather well in these reports. Furthermore, the Commission has been known to make political deals with member states over the policing of Community law.¹⁵⁵

The Commission may become aware of possible legal breaches and transgressions if a member state does not notify of its incorporation of directives into national law, as member states are obligated to do. In competition matters “whistle blowers” can uncover breaches of EU law. Directives Generals (DG’s) are most likely to deal with these matters, as the Commission cannot investigate a large amount of possible cases. But when the Commission decides to pursue a case, it is careful to seek the appearance of a fair and impartial guardian of EU law and it has to be reasonably sure of its ground before formal actions are taken. When choosing cases it might be a consideration whether they are especially important, high-profile, useful in sending out a warning signal or if they seem to be straightforward.¹⁵⁶

There are three strategies that the executive can use against member states which breach EU law. Social sanctions and formal sanctions, which are enforced by the Commission, and the “nuclear option” of Article 7, which is enforced by the Council. Although the executive has this tool-kit, some of them are problematic in application, due to how long it takes to apply them or for political reasons.¹⁵⁷

7.3.5.1 Social sanctions

The Commission is in a position to put social pressure on a member state to get it to comply with EU law. A gentle approach is usually the first step against possible offenders. They are encouraged to “fall in line” and to negotiate with the Commission on the issue. This approach of informal proceedings and settlement acts is normally preferred to formal heavy-handed actions.¹⁵⁸

¹⁵⁴ (Dinan 1999), pages 233-234.

¹⁵⁵ (Dinan 2010), pages 197-198.

¹⁵⁶ (Nugent 2001), page 281.

¹⁵⁷ (Müller 2013), page 17.

¹⁵⁸ (Nugent 2001), page 282.

7.3.5.2 Material sanctions (infringement proceedings)

The Commission's role as the "guardian of the Treaties" is set in Article 258 TFEU¹⁵⁹ (and Article 106a of the Euratom Treaty). Where a member state fails to comply with EU law (action for non-compliance), the Commission has the power to try to bring the infringement to an end. As a final measure, the Commission can refer the case to the European Court of Justice.¹⁶⁰ The Commission can act to incorporate directives into national law (due to non-incorporation or incorrect incorporation) and for non-application or incorrect application. Many cases result out of differences over interpretation or delay in action on the national front, and most of them end in early settlements. Delay tactics can be used to avoid open confrontations with EU institutions. Delay can be a form of obstruction, because member states assume that actions by the Commission can take months and that there could be years before a ruling of the ECJ (which then can impose fines to enforce its rulings).¹⁶¹

Infringement proceedings are the first step (a pre-litigation administrative phase) in actions against member states. The Commission sends a letter of formal notice to the member state to inform of possible breach of EU law. The state is requested to submit its observations on the identified problem. The Commission carries out an investigation in relation to the observations to establish if EU law has been breached. Then the Commission gives its reasoned opinion. The reasoned opinion must be a detailed statement based on the letter of formal notice, outlining the reasons behind the conclusion that the state has failed to fulfil its obligations under the Treaties or secondary legislation. Should there be breach of EU law, then the Commission refers the matter to the ECJ. Normally a state is given two months to present its observations and a similar time to comply with the reasoned opinion.¹⁶²

7.3.5.3 Article 7 – The "nuclear option"

Last resort for the EU is the "nuclear option"¹⁶³ of Article 7.¹⁶⁴ The Council is the enforcer of this option – the highest political executive authority. It allows for suspensions of membership rights, for example voting rights, if a member state persistently seriously violates basic European values. The fundamental EU values, such as democracy, rule of law, equality etc., are set in Article 2 TEU.¹⁶⁵ There is a political unwillingness to use Article 7 TEU,

¹⁵⁹ Article 258 TFEU – see Annex 2.

¹⁶⁰ (European Commission 2013).

¹⁶¹ (Nugent 2001), pages 282-284.

¹⁶² (Nugent 2001), pages 282-284. (European Commission 2013).

¹⁶³ (Barroso 2012).

¹⁶⁴ Article 7 TEU – see annex 2.

¹⁶⁵ Article 2 TEU – see annex 2.

leaving open the question on where the threshold is for it to be enforced.¹⁶⁶ National executives, being “sensitive about sovereignty”, would also be going against the EU ethos of compromise in using this option.¹⁶⁷ However, although this “safety gate” has never being used, it does not mean that it never will.

EU has not encountered authoritarian governments or totalitarian regimes as of yet, but rather member states’ governments that seek to claim their actions are within the parameters of liberal democracy and they are perhaps pursuing different values than other member states. Verifying if EU members actually “share values” is a subjective discussion.¹⁶⁸

The social and material sanctions (infringement proceedings) do have some political administration powers applied, whereas the Commission is interpreting law and is selective in choosing cases, when it enforces EU law. But the Commission does not have strong political power to punish and suspend membership rights of the member states. The “nuclear option” of Article 7 is dependent on the collective of member states in the Council to secure its correct political use.

7.3.5.4 Case study: The Constitution Affair in Hungary

To examine deeper the executive authority of the Commissions when enforcing EU law, we will do a case study a little later on. We have chosen the Constitution Affair, where the EU was not pleased with the new constitution that a member state had adopted. Hungary adopted a new constitution, which the Commission and the European Parliament found in some instances to breach the EU’s democratic values, especially relating to judiciary, the Central Bank and the data affairs ombudsman. Hungary strongly objected to an intervention in its sovereign rights to build a constitution.¹⁶⁹ We will look into how pressure was used to whip Hungary in line with the Commission’s proposals¹⁷⁰. The European Commission, as the executive of the EU, did commence legal proceedings (“infringement proceedings”).¹⁷¹ In the end Hungary had to change its constitution for it to comply with the EU’s democratic values and the treaties.¹⁷² While on one hand stating that the Commission has various ways to police

¹⁶⁶ (Aghimis 2013).

¹⁶⁷ (Müller 2013), pages 17-18.

¹⁶⁸ (Müller 2013), page 18.

¹⁶⁹ (Frankelsdóttir 2012-03-17).

¹⁷⁰ (News 2012-01-17).

¹⁷¹ (European Commission - Press Release 2012-01-17, EUtopia law 2012-01-23)

¹⁷² (Wikipedia 2006a, Human Rights Watch 2013, Krugman 2011, EurActiv 2013-04-15, 2013-03-11, 2013-01-30, Newseurope 2013-09-19).

Community law, civil rights activists on the other hand would argue that these legal proceedings had not gone far enough in protecting civil rights.¹⁷³

Jan-Werner Müller (2013) defines 4 criteria for legitimate EU interventions in matters of democratic backsliding, as happened in the case of Hungary and its new constitution. Firstly, a member state needs to have a track record of violating the EU's shared political principles. Pre-emptive action has never been taken. The government's actions should have a systematic nature. There is a need for political judgement here. Secondly, previous commitments that were entered into voluntarily are enforced. Thirdly, there isn't a simple formula for understanding democracy in a European context. A government departing from shared understandings, evolved over time, should bear the burden of justification of its actions. All member states and all European citizens benefit from enforcing liberal-democratic commitments, and intervention cannot be dismissed using meddling in internal affairs. Fourthly, respect across the Union matters in the "European family" and political language and tone matter when talking to another member. This also applies to the Commission. Consideration of historical factors should be applied.¹⁷⁴

7.3.6 Mediator and conciliator

EU decision-making of now twenty eight countries with varied preferences is at times in need of a neutral mediator, in the sometimes delicate process of competing interests finding common ground. The Commission must be guarded in its proposals, maybe refraining from putting forth radical initiatives, even though it thinks that action is needed, due to foreseeable fierce opposition. More moderate proposals are likely to succeed, emphasising adjustment or extensions to existing policy, presented in a technocratic manner. The Commission benefits in this role of having an overall presence during the decision-making process and from the fact that it earns trust as the neutral party.

Politicization of the Commission to lessen its democratic deficit could undermine the neutrality of the Commission and possibly its role as a mediator, while also increasing the Commission's power, for example in relations to legitimacy¹⁷⁵ and in personal leadership powers¹⁷⁶.

In the role of the mediator, one could argue, that there is some political power. The Commission has been very cautious in the use of this power – which underlines its political aspects.

¹⁷³ (EUtopia law 2012-01-23).

¹⁷⁴ (Müller 2013), page 16.

¹⁷⁵ (Müller 2013), page 24.

¹⁷⁶ (Handel 1990), pages 262-263.

7.3.7 Promoter of the general interest

The Commission is designed to stand apart from sectional and national interests, looking at the big picture. Many say it should be the “conscience” of the Union, aspiring to attain the “Union esprit”. The Commission is seen as careful in demonstrating its powers here, as it is difficult to identify “general interest” while acting in a neutral fashion, whereas the member states have various interests and perspectives.¹⁷⁷

I would suggest that a recent example of the Commission’s power to promote general interest would be its recommendation, on the 12 March 2013, for the President of the Commission to be chosen directly in European Parliament elections, which will happen for the first time now in May 2014. Although the European Parliament embraces the new structure, derived from a broadly-worded Lisbon Treaty provision of election results influencing the candidate choice, the Council, which formally chooses the candidate, does not appreciate the undermining of its powers.¹⁷⁸ It is difficult to see, after televised pan-European debates¹⁷⁹ involving Presidential candidates across Europe, how the member states in the Council could sidestep the top party candidate for the job. So despite clear Treaty provisions, that state how the President of the Commission is chosen by the Council, another broadly worded provision is used in upcoming elections to change the structure of the Commission, in a fundamental way with the purpose of fixing its democratic deficit, increasing its legitimacy and accountability, reviving election turnout and building a public sphere with citizens’ participation. Support for these structural changes were stated with a Eurobarometer survey, showing this was the will of EU citizens. It was also needed to deepen the economic and monetary union set out in a 2012 policy. In a State of the Union speech in 2012, Barroso called for strengthening of the European dimension in the European elections.¹⁸⁰

Dinan (1999) says history of the EU is providing examples of the Commission leading the way forward with strong leadership of the President of the Commission. As former President Delors said: „the Commission itself cannot achieve much but it can generate ideas. Its main weapon is its conviction.“¹⁸¹ An example would be the Single market program and EMU, where the Commission mapped out the strategy to succeed.¹⁸² Dinan (2010) says there are few frontiers left to conquer in terms of European integration; fiscal federalism, the merging of

¹⁷⁷ (Nugent 2010), page 135.

¹⁷⁸ (Wikipedia 2014a, EurActiv 2013-10-14, Mahony 2013-10-25, European Commission - Press release 2013-03-12) (EurActiv 2014-04-23, Eyrópufréttir 2014-04-24).

¹⁷⁹ (EBU 2014).

¹⁸⁰ (European Commission - Press release 2013-03-12).

¹⁸¹ (Dinan 1999) pages 234-235.

¹⁸² (Dinan 1999) pages 235. (Dinan 2010), page 202.

national armies or the establishment of a federation. Further integration might have run its course, while the implementation of EU programs continues.¹⁸³

There is considerable power invested in the Commission when promoting general interest. The Commission is seen to be careful in the demonstration of its powers here, to preserve its neutral status. Being the “conscience” of the Union requires leadership and it is political in its essence. For example, the Commission is showing great signs of autonomy in its proposals for choosing the President of the Commission directly, executing what they think is best for the EU’s citizens, disregarding clear red flags from the member states in the Council, while taking a long-term perspective.

¹⁸³ (Dinan 2010), page 202.

8. Hungary's Democratic Backslide in the Constitution Affair

After the democratisation of postcommunist Hungary before the EU accession in 2004, the country experienced a democratic backslide in 2012 as the parliament, with one right-wing party controlling the majority, changed Hungary's constitution and enhanced the power of the executive branches.

This did create a problem. The undermining of the separation of powers and the eroding of democracy in Hungary. Increased influence of the executive branch was at someone else's expense, namely the independence of the central bank, the independence of the data protection authority and the independence of the judiciary. This along with changes in the electoral system, affecting advertising of political messages and damaging the chances of unbiased elections¹⁸⁴. Some suggested that the lone ruling Fidesz party was systematically occupying the state, so that if it would ever lose elections, they would never lose the power – a sort of “Putinization”.¹⁸⁵ It would be safe to say at least, that the boundaries of democracy had been pushed in terms of the liberal democratic definition and maybe they had been pushed beyond it.¹⁸⁶

The root of the problem stemmed from the landslide victory of the centre-right Fidesz party in 2010, where it won 2/3 majority of parliamentary seats¹⁸⁷ – not needing any help from another party to pass laws. Together with Jobbik, the other right-wing party, they enjoyed the support of about 70% of the popular vote in Hungary, which is an enormous right-wing shift away from the former socialist government. This affects policy-making immensely and it changes the dynamics towards EU.

How was this new constitution a problem for the European Union? In short, Hungary was breaking EU law in a fundamental way. Secondly, the EU does not have member states with authoritarian executive powers, but member states that guarantee democracy and the rule of law in line with the Copenhagen criteria for membership.¹⁸⁸ Limited government and separation of powers are the underlying structures of member states.¹⁸⁹ Under EU Treaties the Communities are fundamentally based on democracy and the rule of law, i.e. rules of society are based on law, which restrict our authorities in their decision-making, and our judiciary is

¹⁸⁴ (OSCE 2014-04-07).

¹⁸⁵ (Müller 2013), page 8.

¹⁸⁶ (Stieding 2013), pages 6-7.

¹⁸⁷ (Facsar 2010-04-26).

¹⁸⁸ (European Union).

¹⁸⁹ (Bardes 2000), pages 12 and 46.

independent from the executive and legislative branch of government. Checks and balances between the executive, legislative and judiciary branches of the state are the earmark of the democratic state – to keep the government from serving its self-interest instead of the public interest. The executive branch of the state is the strongest branch and it can endanger democratic activity if it gets too strong. It can change a liberal democracy to an authoritarian executive if the constitutional and electoral controls do not constrain the exercise of power, despite the outward forms of elected government.¹⁹⁰

Thirdly, the rise of Euroscepticism and anti-democratic tendencies, that are especially high in the new member states, have produced a contamination effect from one country to another.

Fourthly, the Commission is in charge, as the guardian of the Treaties, of taking appropriate actions. Actions could vary from using social pressure to infringement procedures (threat of fines from ECJ and even linkage to money or some accession benefits) to get a member state to act satisfactorily in the eyes of the Commission. Then there is the “nuclear option”, where the Council suspends a member state’s rights, such as its voting rights.

8.1 Super right-wing shift

Since the election in 2010 the two right wing parties in Hungary have enjoyed overwhelming strength in Hungarian politics, having the support of almost 70% of the public. It is safe to say that this new right-wing direction effects policy-making in the country. It is also changing the dynamics towards the EU.

The lone reigning conservative centre-right Fidesz party has controlled 2/3 of the parliament seats since the elections in 2010 and again in 2014. Fidesz’s agenda in 2010 was making officials accountable for corruption, increasing jobs, simplifying the tax system, lowering taxes and tightening regulation of the financial system.¹⁹¹ The party is pro EU. It is Russian leaning and did, for example, not support recent western sanctions against Russia for annexing Crimea into Russia. Some describe the party’s agenda as an anti-liberal policy model.¹⁹² It pursues a neo-liberal social policy agenda and has introduced high bank-taxes. The party leader, Prime Minister Viktor Orbán, described his 2010 election victory as a “revolution” and his goal is to reshape society on a Christian-national basis. He likes to portray himself as a “freedom fighter” against foreign investors and the liberal tendencies of Western Europe.¹⁹³

¹⁹⁰ (Hague 1998), bls 202.

¹⁹¹ (Economist 2012-01-07).

¹⁹² (Mueller 2014-04-09).

¹⁹³ (Techet 2013).

The ever growing far-right nationalist Jobbik party has a similar agenda, pushing for more jobs. Furthermore, it has an anti-EU, anti-Semitic and anti-Roma agenda. The party is calling for a referendum on the EU to determine if Hungary should leave the European Union.¹⁹⁴

In the 2010 elections Fidesz won 52.73% of the votes and Jobbik 16.67%. The right-wing parties thus won 69.4% of the total votes in 2010. Fidesz won 263 seats and Jobbik 47 (310 together) out of the total 386 parliamentary seats. This was an enormous leap for both parties from former elections. Fidesz gained 99 new seats and Jobbik 47 new seats (all seats were new). Since the last elections in 2006, Fides had increased its support by 10.7%, while the second largest socialist MSZP lost 23.91% support.¹⁹⁵

The formerly ruling Socialists were punished in the 2010 elections as their credibility was lost after unpopular austerity measures in an extremely difficult economy with double digit unemployment figures.¹⁹⁶ After eight years of Socialist left-wing leadership, with corruption and the elite's abuse of power, a strong right-wing tide has emerged among the people of Hungary.¹⁹⁷

In the 2014 elections Fidesz won 44.54% of the votes and Jobbik 20.54%. The right wing parties now have 65.08% of the total votes. Fidesz won 133 seats and is still the largest party, and Jobbik is again the third largest party with 23 seats (156 together) out of 199 parliamentary seats (the electoral system was changed). The right wing is holding on to its gigantic support in Hungary. Fidesz lost 8.19% support but Jobbik won 3.87% support. The socialist MSZP won 25.99% of the votes, increasing its support by 6.29%.¹⁹⁸

The comparison of the outcome of the two elections shows, that despite Hungary's democratic backslide, by Union standards, with its new constitution, the right-wing shift remains overwhelmingly strong. Under fire from some election observation actors,¹⁹⁹ Orbán

¹⁹⁴ (Diggle 2012-10-01).

¹⁹⁵ (Wikipedia 2008).

¹⁹⁶ (Facsar 2010-04-26).

¹⁹⁷ (Economist 2012-01-07).

¹⁹⁸ (Wikipedia 2014b, Visir.is 2014-04-07).

¹⁹⁹ The OSCE found that the parliamentary elections on 06.04.2014 (after 4 years of Fidesz rule) were well administered and offered up diverse choice, "but a number of factors provided undue advantage to the ruling party, international observers said in a statement issued today. These included the manner in which a large number of changes to the legal framework were passed, restrictive campaign regulations, biased media coverage and the blurring of the separation between a ruling political party and the state. ... "The legal overhaul, with some 800 new laws or substantial changes introduced, is unprecedented," said Ambassador Audrey Glover, the Head of the OSCE/ODIHR Limited Election Observation Mission. "Some of the changes were positive, but others undermined checks and balances and there was little or no public consultation or debate. This undermined support for and confidence in the whole process." (OSCE 2014-04-07).

has secured an ongoing two thirds majority in parliament, under his new electoral laws. Voters have supported staying in EU, supported the new constitution, the new legal system and the new economic model based on work, which Orbán announced after the election.²⁰⁰

"Power tends to corrupt, and absolute power corrupts absolutely", said Lord Acton.²⁰¹ This would be the challenge for the super-majority Fidesz party, which alone controls the passing of laws in the parliament.²⁰²

Hungary has seen dramatic changes in its legal framework since 2010. The new constitution of 2012 was meant as a measure to make a break with the communist past of Hungary.²⁰³ The Fidesz party became extremely effective in passing new laws, but along with the constitution those have seen huge numbers of amendments over a short period of time.²⁰⁴ Many amendments were forced on Hungary after criticism from the EU and many other international actors.

The continuing right-wing tide in Hungary is cause for concern for the EU, as the situation calls for alertness over democracy. The people of Hungary don't seem to have much commitment to democratization or consolidation. One explanation might be that they link the economic hardship in 2008 to democracy.²⁰⁵ There might be such a strong will for economic reforms, so that it overrides concerns of how the executive power goes about achieving it. Another global trend is growing cynicism towards national politicians and democratic practices – in Europe this is also growing into cynicism towards the EU and its elitist decision-making.²⁰⁶

Attila Ágh (2012) finds that the new member states are lagging behind in economic, political and social progress terms. Attila Ágh's research shows that during the new member states' post-accession crisis in 1998-2007 there was insufficient EU integration, weak participatory politics and strong cognitive dissonance (or inconsistency) in the EU that resulted in poor global competitiveness, destabilization and led to populism and Euroscepticism during and after the global economic crisis in 2008. So whereas Euroscepticism has grown in Europe, it has grown in particular in the new member states.²⁰⁷ Research of the Political Capital Institute conducted in 2010 indicates that far-right ideas have

²⁰⁰ (Nolan 2014-04-07, Financial Times 2014-04-07).

²⁰¹ (The Phrase Finder 2014, Wikipedia 2003b).

²⁰² (Diggle 2012-10-01).

²⁰³ (Constitutionnet 2012).

²⁰⁴ (Wikipedia 2003a).

²⁰⁵ (Stieding 2013).

²⁰⁶ (Stratulat 2012-10-08), page 4.

²⁰⁷ Ágh 2012), pages 41-43.

not increased significantly in Europe as a whole after the economic crisis, but rather specifically in Southern and Western Europe. In Eastern Europe this tendency has declined, although it remains much higher than in Western Europe. Hungary was in second place when it came to prejudice and far-right value orientation of the twenty six European countries in the survey.²⁰⁸

Attila Ágh concludes that the new member states have to launch a new Europeanization program, whereas bad governance development has caused backsliding in democratization and authoritarian tendencies in all these countries in the recent years. Abuses of democratic practices and values, such as in Hungary, represent a looming danger for EU's future, whereas they have produced a contamination effect from one country to another –they have to be stopped immediately, and actions taken to monitor and enforce democratic standards.²⁰⁹

8.2 The Commission takes action against Hungary

The Commission is by many considered late in tackling undemocratic practices and tendencies, as it has been too preoccupied with solving the economic crisis.²¹⁰ On the other hand, we will have to keep in mind that the Commission was about to intervene in a substantial and controversial manner²¹¹ – it was about to step into unknown territory, traditionally seen as the holy grail of national sovereignty. To ask a member state to change its constitution.

But what action can the EU take when a member state breaks EU law – how does it guard the Treaties in this case?

The last resort is the “nuclear option” of Article 7. In the Constitution Affair the European Parliament discussed the activation of this option against Hungary.²¹²

Hungary had had an easy escape in the Media Law Affair in 2011, when it showed signs of illiberal policy-making. Early on the EU's Digital Agenda Commissioner and members of the European Parliament raised concerns about its legitimacy, for example the required “balanced” coverage might not be compatible with free press principles. Hungary's Minister of Justice offered concessions if EU law was breached. Concerns for equal treatment of member states, in case the Commission were to take action, raised questions on whether the EU had the necessary tools to enforce their own fundamental rights.²¹³ The Commission

²⁰⁸ (Political Capital Institute 2012), pages 1-2 and 4.

²⁰⁹ (Ágh 2012), pages 41-42.

²¹⁰ (Ágh 2012), pages 41-42.

²¹¹ (Müller 2013), page 8.

²¹² (Aghimis 2013).

²¹³ (European Parliament 2011-01-18).

concluded that Hungary had broken EU law and decided to take the soft action of social sanctions by using social pressure and formal exchange of letters to enforce EU law. The Hungarian government promised to ease rules applying to foreign media and alleviate rules against “unbalanced” coverage and “offensive” internet content. Later the Hungarian Constitutional Court declared some articles of the Media Law unconstitutional, but the law was still seen as not according to EU standards.²¹⁴

Finally in 2012 the Commission took firm action against Hungary as the new constitution came into force on the 1 January 2012. Later that year, the President of the Commission, José Manuel Barros, said in his State of the Union Address on 12 September 2012:

“In recent months we have seen threats to the legal and democratic fabric in some of our European states. The European Parliament and the Commission were the first to raise the alarm and played the decisive role in seeing these worrying developments brought into check.

But these situations also revealed limits of our institutional arrangements. We need a better developed set of instruments– not just the alternative between the "soft power" of political persuasion and the "nuclear option" of article 7 of the Treaty.”²¹⁵

8.3 Infringement Procedures on Three Issues

In 2011 the Hungarian government adopted a new constitution for the country, which entered into force on 1 January 2012. The constitution was to signal a “regime change”, completing the post-Communist transition that began in 1989. The new constitution triggered demonstrations by the political opposition and criticism from international actors, including leaders of EU and the USA.²¹⁶

On 17 January 2012, with three Letters of Formal Notice, the European Commission started legal action against Hungary over the new constitution. After several letter exchanges between the Commission and the Hungarian government earlier concerning the draft of the Constitution, the Commission concluded that the constitution conflicted with EU law by risking the independence of the country’s central bank and data protection authorities and by measures affecting its judiciary. In its three Letters of Formal Notice to Hungary, which is the first stage in the EU’s infringement procedure, Hungary was given one month to respond to the Commission’s concerns.²¹⁷

²¹⁴ (Sedelmeier 2014).

²¹⁵ (Barroso 2012).

²¹⁶ (Nadler 2012-01-05).

²¹⁷ (European Commission - Press Release 2012-01-17).

The Commission's three Letters of Formal Notice to Hungary raised questions on three issues, where Hungary's constitution was considered in breach of EU law. Interestingly, despite the focus of the open discussion on democracy and rule of law (the fundamental rights in Article 2 TEU), when criticizing the Hungarian constitution, the Commission talks more on the lines of breaches of EU law, than arguments on democratic theory.²¹⁸

1) Independence of the national central bank

The Commission identified several breaches of primary law. Ministers were by law permitted to participate directly in meetings of the Monetary Council and meeting agendas were to be sent to the government in advance. Remuneration scheme should take effect in a new term, instead of immediately. Rules of dismissal of the Council were considered prone to political interference and as well as frequent changes to the framework of the central bank. Council members should not take an oath of fidelity to the country, whereas its Governor is a member of the General council of the ECB. Possible merger of the central bank with the financial supervisory authority were regulated in the constitution, and this was seen as endangering the Governor's position in the new structure.²¹⁹ The issue's legal reference was Article 130 and 127(4) TFEU and Article 4 of Council decision 98/415/EC:

*"Article 130 TFEU states that: "neither the ECB, nor national central bodies, from bank ... shall seek or take instructions from Community institutions or any government of a Member State or from any other body". Article 127(4) TFEU stipulates that "the ECB shall be consulted [...] on any draft legislative provision in its field of competence". Moreover, 14.2 of the Statute of the European System of Central Banks and of the ECB as well as Article 4 of Council decision (98/415/EC) on timely consultation of the ECB were not respected."*²²⁰

2) Independence of the judiciary

This infringement case focused on Hungary's decision to lower the mandatory retirement age for judges, prosecutors and public notaries to the general pensionable age of 62 (from 70) as of 1 January 2012. The general policy in Hungary was though to raise the general retirement age to 65 years. Furthermore, regarding the independence of the judiciary, information was requested on the new legislation on organization of the courts. In the new system a college is proceeded by one person, making all important judiciary decisions, including appointment of judges. In addition, the position of the president of the Supreme Court was prematurely

²¹⁸ (Müller 2013), page 10.

²¹⁹ (European Commission - Press Release 2012-01-17).

²²⁰ (European Commission - Press Release 2012-01-17).

terminated (it was to end in 2015), and the Supreme Court was terminated for a new Curia.²²¹ The issue's legal reference was Directive 2000/78/EC:

*“EU rules on equal treatment in employment (**Directive 2000/78/EC**) prohibit discrimination at the workplace on grounds of age. Under the case-law of the Court of Justice of the EU, an objective and proportionate justification is needed if a government decides to reduce the retirement age for one group of people and not for others. This principle was affirmed when the Court ruled on 13 September 2011 that prohibiting airline pilots from working after the age of 60 constitutes discrimination on grounds of age.”²²²*

3) Independence of data protection supervisory authority

The infringement case questioned the new National Agency for Data Protection, which replaced the current Data Protection Commissioner's Office, ending prematurely the term of the Data Protection Commissioner (it was to end in 2014). According to the new rules the prime minister and president can dismiss the new supervisor on arbitrary grounds.²²³ The issue's legal reference was Article 16 TFEU, Article 8 and the Charter of Fundamental Rights and Directive 95/46/EC and case nr. C-518/07 ECJ:

*“The independence of data protection supervisors is guaranteed under **Article 16** of the Treaty on the Functioning of the EU and **Article 8** of the Charter of Fundamental Rights. In addition, EU rules on data protection (**Directive 95/46/EC**) require Member States to establish a supervisory body to monitor the application of the Directive acting in complete independence. This has been confirmed by the Court of Justice. In its ruling in a case concerning Germany (**C-518/07** of 9 March 2010), the Court underlined that data protection supervisory authorities have to remain free from any external influence, including the direct or indirect influence of the state. The mere risk of political influence through state scrutiny is sufficient to hinder the independent performance of the supervisory authority's tasks, the Court ruled.”*

None of the claims are built on Article 2 TEU on the fundamental rights of democracy and rule of law. This indicates that a case against Hungary was not thought of as a strong one, if it was based on breaches of Article 2 TEU, therefore establishing the Article to be a weak instrument. Nowhere are there definitions to be found of these fundamental rights, what it entails and what it does not – meaning the concepts are much too broadly worded to be of use

²²¹ (European Commission - Press Release 2012-01-17).

²²² (European Commission - Press Release 2012-01-17).

²²³ (European Commission - Press Release 2012-01-17).

in legal terms. A neutral Commission with some political administrative power is not equipped to interpret the concepts. Broadly speaking in a judicial interpretation, if member states are to be punished, it has to be clear and narrowly interpreted from a legal EU document, published in the Official Journal of the European Union, so that they can expect punishment for a described behaviour or else it will work to the advantage of the accused (in dubio mitius).²²⁴

Unrelated to the infringement procedure at this stage, but relevant to Hungary's bad economy, the Commission decided on a proposal for a Council decision suspending commitments from the Cohesion Fund for Hungary. The Council had concluded in January that response to its 2009 recommendation was not adequate and effective measures were not being taken to bring Hungary's deficit below 3% of GDP in the long term.²²⁵ The suspension was withdrawn on 30 May 2012.²²⁶

On 7 March 2012, the Commission sent **two reasoned opinions**, which is the second stage under EU infringement procedures, on the issues of removal of the former Data Protection Commissioner from office and the retirement age for judges. Hungary had replied on 17 February 2012²²⁷ to the Commission's three letters, but had failed to comply with EU Law in two out of three areas, i.e. the issues relating to the retirement age of judges and the issue of the data protection authority being independent.²²⁸ Additionally, two administrative letters were sent, on the one hand, on the issue of independence of the central bank and on the other hand, on aspects regarding the independence of the judiciary.²²⁹

On 25 April 2012, the Commission had completed its analysis of the replies of the Hungarian government. Hungary had promised to amend legislation in regard to the issue of the independence of the central bank. Conditions were in place to accede to Hungary's request to open negotiations on preventive aid. In the two other cases, where reasoned opinions had been sent, there was dispute between the Commission and Hungary's government. Despite a number of changes to the Hungarian legislation, there were issues where no progress was made and those were referred to the Court of Justice of the European Union. Those disputed cases were: the question of the independence of the data protection supervisory authority on one hand, and the reduction in the retirement age for Hungarian judges, prosecutors and

²²⁴ (Snævarr 1989), pages 473, 501, 505-509. (Oxford Dictionary 2011).

²²⁵ (European Commission 2012-02-22), pages 11-16.

²²⁶ (European Commission 2012-06-12), pages 26-38.

²²⁷ (Nielsen 2012-02-18).

²²⁸ (European Commission 2012-03-07a), case numbers HU 2012/2011 JUST on data protection and HU 2012/2012 JUST on retirement age of judges.

²²⁹ (European Commission - Press Release 2012-03-07).

notaries from 70 to 62 years. In the three administrative letters, sent to Hungary, some amendments had been made, but concerns were about the power of the President of the National Judicial Office to designate a court and possibly transferring judges against their consent. Due to discussions in the Hungarian Parliament and the Council of Europe, the Commission decided not to initiate infringement proceedings on the issue of the independence of the Hungarian judiciary. Discussions were prepared between the government and the Venice Commission on amendments to legislation regarding the administration of justice. On the matter of media law, where social sanctions were applied, very little progress was made.²³⁰

On 19 July 2012 the Commission **closed its infringement procedure on the independence of the Hungarian central bank**. On the issue of the Central bank the Commission did not only threaten financial penalties by the ECJ, but also used issue linkage. In December 2011 the EU and the International Monetary Fund (IMF) negotiated €15-20 billion to restore the independence of the central bank and in April 2012 the Commission declared that it was satisfied enough with these changes to not move forwards with the central bank case.²³¹ Due to talks between the Commission and the Hungarian prime minister on 24 April 2012, the agreement reached led to amendments of the legal status of the central bank by the Hungarian Parliament on 6 July 2014.²³² The other two cases were kept intact.

On 16 April 2013, before a parliamentary debate on the situation in Hungary, the president informed the Commission of his letter to the Hungarian Prime Minister, with concerns over amendments to the constitution, which were adopted on 11 March 2013. Concerns were of the compatibility of the amendments to the rule of law and EU law. As a guardian of the treaties, and after legal analysis, the Commission showed no hesitation in launching new infringement proceedings, if the amendments breached EU law.²³³

On 16 September 2013 the Hungarian parliament did adopt more changes to the constitution, taking back many recent changes in Hungarian legislation, to get in line with the EU's demands, a year short of Hungary's national elections. The parliament is responding to the Commission's threat of further infringement proceedings relating to breach of EU norms and the rule of law. These amendments were to defuse potential conflicts concerning the judiciary and the central bank. Amendments were made on political advertising campaigns,

²³⁰ (European Commission 2012-05-08).

²³¹ (Sedelmeier 2014).

²³² (European Commission - Press Release 2012-07-19), case number HU 2011/2088 Ecfi.

²³³ (European Commission 2013-04-24), page 26

allowing parties to run them on both state- and privately-owned media. Tax plans to pay for ECJ fines were dismissed.²³⁴

On 2 October 2013, Thorbjørn Jagland, Secretary General of the Council of Europe declared that Hungary's laws on the media and the judiciary had been amended to the satisfaction of the Council of Europe. He said the president of the Commission had asked for the involvement of the Council of Europe, whereas the EU did not have legal competences to intervene. A number of further issues would be discussed in co-operation with the Venice Commission, as recommended in June 2013. He said the Hungarians had gone a long way in correcting legislation that was heavily criticised by the international community.²³⁵

On 20 November 2013 the **Commission closed infringement procedure on forced retirement of Hungarian judges**. The Commission was satisfied that Hungary had brought its legislation in line with EU law. The Hungarian Parliament had on 11 March 2013 set new retirement law for judges, prosecutors and notaries, softening the impact of the new 65 year retirement age over a 10 year period, in addition to some compensation. The Venice Commission of the Council of Europe on 15 October 2012 called for dismissed judges (as retirement age was lowered from 70 to 62 in one year) to be reinstated and the Hungarian Parliament did incorporate that in the new law in March 2013. On 6 November 2012 the ECJ (case C-286/12) had also ruled that the early retirement constituted unjustified age discrimination²³⁶ and on 16 July 2012 the Hungarian Constitutional Court ruled it unconstitutional.²³⁷

On 8 April 2014 the **Court of Justice upheld independence of data protection authorities in case against Hungary** (case C-288/12). The ECJ ruled that the abrupt termination of the Hungarian Data Protection Commissioner's term in office by the government, constituted an infringement of the independence of the Data Protection Authority and was thus a breach of EU law. The Commissioner's term ended in 2011 instead of in 2014. Remedies in the aftermath of the ECJ ruling is now in the hands of Hungary. The Commission is expected to call for abolishment of clauses allowing government to terminate the Commissioner of Data Protection, before closing the infringement procedure on the issue of independence of the Data Protection Authorities.²³⁸

²³⁴ (EurActiv 2013-09-17).

²³⁵ (Kumin 2013-10-08, Council of Europe's Parliamentary Assembly 2013-10-02).

²³⁶ (European Commission - Press Release 2012-11-06).

²³⁷ (European Commission - Press Release 2013-11-20).

²³⁸ (European Commission - Press Release 2014-04-08).

8.4 EU's position

Several important actors, other than the Commission, had shown concerns about the new constitution of Hungary, as well as some Hungarian citizens. Before the new constitution entered into force, thirteen prominent Hungarian intellectuals and public figures called on Europe to save the country from a new dictatorship. The 5 areas of concern to them were: legislative power, executive power, jurisdiction, the media and the election law.²³⁹

Hillary Rodham Clinton, US Secretary of State raised concerns in Budapest mid-year 2011 over the removal of checks and balances in Hungary's government, which was essential to democracy, in relations to Hungary's new constitution. She called for a commitment to the independence of the judiciary, a free press and government transparency. Orbán in turn affirmed his commitment to democracy and that the Hungarian legislation was in line with laws in other EU states.²⁴⁰ Orbán on 6 January 2012, after the constitution entered into force, responded to a written letter from Ms. Clinton, reassuring her of his government's commitment to democracy, the rule of law, diverse media services and freedom of religion. The bad economic climate demanded swift action, explaining the speed in decision-making on changes to the parliamentary system. He underlined his close cooperation with the European Commission, interest groups and consultation with opposition parties, and the Venice Commission welcoming the constitution's underlying principles, as the fundamental law from the communist era was exchanged for the new constitution.²⁴¹

The President of the Commission, José Manuel Barroso, has said that the Hungarian government had spent a year ignoring Brussels's complaints about the new constitution. As the Commission took full force actions, Barroso said: "There are concerns about the quality of democracy in Hungary".²⁴²

In the Commission's minutes from the meeting of the College of Commissioners on 11 January 2012, the President of the Commission, José Manuel Barroso, states that he regrets populism of commentators, who portray Hungary as attacking the fundamental rights and democratic checks and balances of the country. The president had sent two letters concerning the compatibility of the Hungarian bank law and economic stability law with Union law and expressed concern on the independence of the Hungarian central bank. Viviane Reding,

²³⁹ (Rajk 2012-01-17).

²⁴⁰ (Bos 2011-06-29).

²⁴¹ (Spectrum 2012-02-25).

²⁴² (Traynor 2012-01-18).

Commissioner for Justice, Fundamental Rights and Citizenship, had sent letters of concern for the independence of the data protection authority, the retirement age for judges and the reorganization of the judiciary.²⁴³

On the Commission's position in the matter, Barroso stated his opinion, that the problem concerned the application of Union law and that the Commission had a duty to examine the compatibility of the new Hungarian constitution with laws and principles of the Union. Reding shared Barroso's concerns and underlined that, while the Hungarian authorities had shown willingness to review the legislation, only real changes to the issues would allay the concerns of the Commission. Olli Rehn, Commissioner for Economics and Monetary Affairs and the Euro, said an independent central bank was a cornerstone of the Treaty, and the new constitution infringed this principle. On Hungary's request in November 2011, through the precautionary credit programme, from the International Monetary Fund and the Union, he informed of informal discussions and that political conditions would have to be attached to new assistance. Neelie Kroes, Commissioner for Digital Agenda, talked about the new media law of 2010 in Hungary and how it jeopardized media freedom and pluralism. She referred to the judgement of the Hungarian constitutional court on 19 December 2011, confirming the Commission's concerns as to the extent of imposed restrictions by this law on the freedom of the print media. She had urged the government to comply with the judgement, but wanted the Commission to go further and "demand that media pluralism be guaranteed more systematically in the attribution of frequencies, that the powers of the media authority be limited outside the field of audio-visual and that more proportionate penalties be introduced for any infringements of the law on the media, among other things in order to avoid the effects of self-censorship".²⁴⁴ The College of Commissioners discussed the importance of not ruling out any course of action, including Article 7 TEU. They agreed Hungary would not pass the test of respect for the Copenhagen criteria that candidate countries go through when applying to EU. They discussed dossiers on Hungary pending regarding the state aid and internal market fields. The possibility of applying financial pressure by setting political conditions for the payment of the assistance requested (as being considered by the IMF) was discussed. Barroso insisted on a legal analysis in a fair and objective manner before deciding on infringement proceedings. He pointed out that in the European Parliament an initiative was

²⁴³ (European Commission 2012-01-25a), page 22.

²⁴⁴ (European Commission 2012-01-25a), pages 24-25.

under way under Article 7 and that the Commission needed to react to it. Decision on possible infringements would be taken in the Commission's meeting in Strasbourg on 17 January.²⁴⁵

The Commission had to take action in the matter of the Constitution Affair. Not only was this the opinion of the Commission, but this was supported by the European Parliament. The Council of Europe, Organisation for Security and Co-operation in Europe (OSCE)²⁴⁶ and the administration of the United States of America also criticised the Hungarian government. US Secretary of State condemned the new constitution as overriding checks and balances and verging on authoritarianism, as the executive extended its powers.

Interestingly, the Council remained silent.²⁴⁷

On 17 January discussion was opened in the College of Commissioners on the three cases where Hungarian legislation infringed European law and the president of the Commission emphasised the necessity of the utmost objectivity in examining the cases, given the quasi-judicial role that the Commission played. The president here voices strengthened belief that actions taken would have widespread support at the European level, naming the Danish Prime Minister in charge of the Danish Presidency of the Council and the European Parliament (EP). The Hungarian Prime Minister had booked a meeting with the president for direct talks, which was seen as a sign of recognition of the Commission's authority. Given that certain political forces in the EP were calling for Article 7 to be activated, the president underlined the independence of European institutions and that besides the Commission, the EP or a third of the member states could propose application of it. However, they had different roles and the Commission was performing a quasi-judicial function in bringing infringement proceedings, whereas the EP had a political role. The Commission, having legal credibility, should thus focus on a "perfectly watertight legal analysis" in case the proceedings would have to be followed up by further measures. The president added that in light of the political importance of these actions, it was important to act without delay and to shorten the usual two month deadline to one month for the response to the letter of formal notice. Commissioner Reding then explained in detail the content of the two letters of formal notice drawn up by her department. In regard to the letter regarding the retirement age, where the constitution with immediate effect forced the early retirement of 274 judges, she stated her personal preference for a two-week deadline, which had precedence. Commissioner Rehn then introduced the letter of formal notice made by his department. He had contacted the Managing Director of

²⁴⁵ (European Commission 2012-01-25a), pages 22-26.

²⁴⁶ (Traynor 2012-01-18).

²⁴⁷ (Meyer-Resende 2013-11-08).

the IMF, which suggested that the Fund's decisions would be conditioned on Hungary complying with the preconditions before the start of formal negotiations. No financial assistance would be given to Hungary until then. Firstly, Hungary should guarantee the independence of the central bank, by amending legislation. Secondly, it should guarantee the independence of its judicial system, which impacts the functioning of the economy. The Commissioners generally agreed on the procedure chosen, based on respect for EU law and values to safeguard the spirit and the letter of the Treaties. Political implications were realised conditioning the precautionary financial assistance to Hungary. Hungary's authorities interests would be increased legal certainty for political and economic confidence. Commissioners argued on the timeframe for Hungary's reply, which some wanted to reduce further than the one-month suggested. The Commission thought it necessary to keep a balanced communication on the proceedings to avoid political exploitation. The Commission was to be regarded positively as fair and impartial in enforcing EU law and values. The president reviewed the Commission's first official initiatives in 2010 to verify if Hungarian authorities' decisions were in line with EU law. The Commission then adopted the decisions of infringement proceedings.²⁴⁸

Leading MEPs criticised the Commission for mild actions instead of more fundamental ones. Guy Verhofstadt and Dany Cohn-Bendit, leaders of ALDE liberals and the Greens in the European Parliament, called for an investigation of whether the Lisbon Treaty had been breached, which could have caused Hungary to lose its voting rights.²⁴⁹ Verhofstadt urged the parliament right in the beginning of the infringement proceedings, to vote on suspending Hungary's voting rights in the Council of Ministers.²⁵⁰

In minutes from the Commission's meeting on 7 March 2012, the day it sent **two reasoned opinions** to Hungary and referred two cases to the European Court of Justice, the president stresses the need for a legal approach, using the Commission's quasi-judicial powers, as the best way to get the Hungarian government to comply with the Commission's commands. Proceedings must go on, although there was willingness shown by the government of Hungary to amend its legislation, despite not accepting all the Commission's objections. Commissioner Reding said Hungary must explain the dismissal of the data protection commissioner before the end of his term and amend that situation. She said the unequal treatment was being executed regarding the general public vis-à-vis judges, prosecutors and

²⁴⁸ (European Commission 2012-01-25b), pages 16-21.

²⁴⁹ (Traynor 2012-01-18).

²⁵⁰ (Chazan 2012-01-18).

public notaries regarding retirement age – and condemned proposed derogation procedure, based on a medical examination and a professional aptitude test for the latter mentioned group. She did propose to send Hungary two reasoned opinions on these two matters, with a month to reply. She then proposed that an administrative letter would be sent on the question of the independence of the judiciary, since response to her administrative letter of 17 January was unsatisfactory. Hungary had challenged the Commission's competences in that area, although Hungarian judges are "European Union judges" when they apply EU law.²⁵¹

Commissioner Rehn suggested in that same meeting on 7 March, that the Commission should not take further procedural steps in the case concerning the independence of Hungary's central bank. Hungary's objection regarding provisions on taking an oath had been withdrawn and new provisions did not constitute an infringement. He suggested that an administrative letter would be sent to the Hungarian government requesting additional clarifications and undertakings. The Commission was awaiting a draft regulation with amendments. Another point on the same issue, was the undermining of the independence of the governor of the central bank, by reducing his salary during his term in office, and that of the president of Hungary's supervisory authority for the financial markets. He said a reasoned letter should be sent if these measures were taken out of personal considerations. Furthermore, consultation and criticism of Hungarian government towards the central bank would have to change. However, it would be better not to issue a reasoned opinion, but rather send another letter for clarification, although the central bank's independence did not appear to have been respected in some measures. On the same issue, with regard to the assistance programme for Hungary, Rehn said IMF and ECB would be consulted on the desirability of continuing the negotiations.²⁵²

The College of Commissioners decided on 7 March to send two reasoned opinions to Hungary, as Reding proposed, concerning the removal of the Data Protection Commissioner from his office and the retirement age for judges, prosecutors and notaries. On Reding and Rehn's initiative, it was decided to send two administrative letters concerning the independence of the central bank and the judiciary. The president warned that attention should be paid so that the case would not be exploited for popular ends, where rhetoric might get out of hand and national divisions opened up. As a guardian of the treaties, the Commission had

²⁵¹ (European Commission 2012-03-07b), pages 11-13.

²⁵² (European Commission 2012-03-07b).

to therefore adopt a constructive attitude and a firm, objective position to strengthen its authority and legitimacy.²⁵³

On 25 April 2012, the Commission had completed its legal analysis. It decided to desist proceedings regarding the issue of independence of the central bank and open negotiations on preventive aid. In the two other cases, where reasoned opinions had been sent, would go to the ECJ. As no progress was made on media law, where social sanctions were applied, Commissioner Kroes suggested that amendments to that law should be a condition for the successful completion of the negotiations on preventive financial assistance, and the Commission should make full use of its political authority. In discussions it was highlighted that enforcement was important to the Commission's credibility, but it was necessary to stand by former conditions for starting negotiations on preventive financial assistance – which did not include press freedom. The Commissioners held that there was a need for more visible involvement in Hungary by the Commission. The president expressed satisfaction with Hungary's progress and the Commission's objective handling of the infringement proceedings. Furthermore, Hungary needed to have a dialogue with the Council of Europe on its media law, as it did on judiciary matters.²⁵⁴

The Commission, despite a war of words of behalf of the Hungarian prime minister (explained in next chapter), seems to have faith in Hungarian reforms after negotiation talks and it is reasonable in allowing for time to implement changes. The proposal of Kroes, Commissioner of Digital Agenda, to add a financial linkage to the issue of press freedom regarding the media law, is surprising, and in my opinion could be seen as unfair in a judicial sense. The media law had been handled with social sanctions and no Letter of Formal Notice had been sent regarding it. To add a financial linkage suddenly before applying material sanctions, could have seriously damaged the legitimacy of the Commission as a quasi-judicial power.

On 16 April 2013, before a parliamentary debate on the situation in Hungary, the president of the Commission informed the Collage of his letter on 12 April to the Hungarian Prime Minister, with concerns based on preliminary legal analysis over amendments to the constitution, which were adopted on 11 March 2013.²⁵⁵ The three issues of concern were the empowerment of an administrative body to transfer cases between courts, a ban on political

²⁵³ (European Commission 2012-03-07b).

²⁵⁴ (European Commission 2012-05-08).

²⁵⁵ (European Commission 2013-04-24), page 26.

advertising in privately-owned media and a tax on the public to pay for fines imposed by the ECJ. New infringement procedures were not ruled out.²⁵⁶

On 17 April 2013 the European Parliament's debate on the rule of law in Hungary exposed a left-right split, as MEPs were expected to vote before summer on the Tavares report (drafted by a Green MEP from Portugal, Rui Tavares) on the situation in Hungary. Many MEPs raised concerns over whether recent changes to the constitution were in line with EU law and the EP's civil liberties committee was working on that matter. Other MEPs challenged the debate, underlining that other countries' laws should be scrutinised as well.²⁵⁷ The centre-right European People's Party (EPP) MEP, Frank Engel, from Luxemburg said on this matter that the Commission was doing its job and the Hungarian government should fall in line. Furthermore, he worried about the Hungarians' impression that the EU was not on their side. The Austrian leader of the Progressive Alliance of Socialists and Democrats (S&D), Hannes Swoboda, said that the Hungarian Prime Minister was restricting freedoms in Hungary and that he was trying to hold on to his power position.²⁵⁸ Marie-Christine Vergiat, a French member of left-wing GUE/NGL highlighted the fact that the constitution had been revised four times in 15 months, which was a lot for a country's basic laws. She suggested the Hungarian Prime Minister was running after the extreme right vote.²⁵⁹

One could read between the lines of EU's actions, that some leading European politicians are concerned with not taking too harsh actions against Orbán's government, so as not to alienate the population against the Union and thereby strengthening Orbán's position.²⁶⁰ Some were surprised that the conservative European People's Party defended Hungary's position and suggested it would lose its strength/majority²⁶¹ in the EP if it were without the Hungarian MEPs.²⁶²

On 5 May a draft of the Tavares report (Green MEP from Portugal) from the LIBE parliamentary committee (Committee on Civil Liberties, Justice and Home Affairs) was issued, slamming the Hungarian government for seriously risking the breaching of EU values

²⁵⁶ (Vogel 2013-04-18).

²⁵⁷ (European Parliament 2013-04-17).

²⁵⁸ (Vogel 2013-04-18).

²⁵⁹ (European Parliament 2013-04-17).

²⁶⁰ (Hungarian Spectrum 2013-07-11).

²⁶¹ European People's Party or EPP had 274 MEPs out of 766 seats in the European Parliament. There were 14 Hungarian MEPs in EPP out of the total 22 MEPs that Hungary had.

(Wikipedia 2004, European Parliament 2014) .

²⁶² (Techet 2013).

so that the “nuclear option” of Article 7 may be activated.²⁶³ On 6 June 500 amendments had been submitted to the LIBE committee to the draft of the Tavares report.²⁶⁴

On 3 July 2013 the European Parliament adopted a resolution based on the Tavares report, “on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012)”.²⁶⁵ The resolution is a call to remove amendments to the Hungarian constitution, which are held to restrict democracy and basic rights in Hungary.²⁶⁶ The resolution on Hungary, which heavily criticised the policies of Fidesz, was carried mainly by left-wing and liberal MEPs, while conservatives abstained or voted against the resolution.²⁶⁷ After an unusual step, where Hungary’s Prime Minister, Viktor Orbán, came to Strasbourg to debate the Tavares report, the report was backed by 370 votes against 249 votes.²⁶⁸

8.5 Hungary’s position

The Hungarian government strongly objected to the EU’s interference in the matter. Its position was that a sovereign country was in charge of writing its own constitution. The infringement procedures put in progress by the European Commission, were seen as illegitimate interference in the country’s sovereignty.²⁶⁹ This view is apparent in Hungary’s prime minister’s speeches.

On 18 January 2012, Viktor Orbán, Prime Minister of Hungary, took the unusual initiative to travel to Strasbourg to defend his government’s new constitution before the European Parliament. He addressed the EP saying that he was leading “a very exciting process of renewal”²⁷⁰ in Hungary, whereas previously institutions had been “on the brink of collapse”²⁷¹. He expressed that the problems could swiftly be resolved, arguing the Commission’s objections were about technical points.²⁷² He also accused his critics of “absurd” rage that was “not worthy” of Europe. Furthermore, he especially defended the “spirit of Christianity and the family” against the “majority” of the EP. Finally, he tracked

²⁶³ (Politics.hu 2013-05-08).

²⁶⁴ (Gardner 2013).

²⁶⁵ (European Parliament 2013).

²⁶⁶ (EurActiv 2013-07-03).

²⁶⁷ (Meyer-Resende 2013-11-08).

²⁶⁸ (BBC News 2013-07-02).

²⁶⁹ (Traynor 2012-03-15).

²⁷⁰ (Traynor 2012-01-18).

²⁷¹ (BBC News 2013-07-02).

²⁷² (BBC News 2013-07-02).

back in history to Hungary's period of "freedom fighters", remaining at the hearts of the Hungarian people. "We demand respect", he added.²⁷³

Orbán here both highlights a conciliatory note, while he at the same time strikes nationalist cords, which are probably aimed at his audience at home. The decision to make a personal appearance before the EP and defend Hungary's constitution and Hungarian values can be considered a bald political move, on Viktor Orbán's part – especially in light of the EU withholding negotiations for money from the IMF that the country so desperately needs to duck national bankruptcy.²⁷⁴

In the response of the Hungarian government on 17 February 2012 to the Commission concerning the three infringement proceedings, the Hungarian government on one hand, stressed its right to decide its own law and held that no changes were required, and on the other hand, was ready to make some concessions. Hungary stood firm on its right to have the Governor and Council of its Central bank take an oath to the Hungarian constitution. On the pension related issues of judges, Hungary was willing to reach a compromise, as well as on the issue of independence of the data protection authority. A new National Agency for Data Protection had replaced the old one, but in spite of openly consulting the old Commissioner, Hungary said it was willing to modify this legislation on this issue.²⁷⁵

The Prime Minister, Viktor Orbán (centre-right Fidesz party), criticised the European Commission harshly in his public speeches for its interference with the infringement procedures against Hungary. "Hungarians will not live as foreigners dictate, will not give up their independence or their freedom, therefore they will not give up their constitution either,"²⁷⁶ he said in a speech on 15 March 2012, as Hungary celebrated the Hungarian Revolution of 1848.²⁷⁷ "The programme and the desire of Hungarians in 2012 goes like this: we will not be a colony," he continued, drawing a parallel with the 1848 freedom fight against the Hapsburg empire.²⁷⁸ Furthermore, he likened the EU with the former Soviet Union. "Can Hungarians be free if they are suppressed by their debts, if they can only dream about having their own home and if they have to think twice whether they can support another child,"

²⁷³ (Verseck 2012-01-19).

²⁷⁴ (Verseck 2012-01-19).

²⁷⁵ (Nielsen 2012-02-18).

²⁷⁶ (Traynor 2012-03-15).

²⁷⁷ (Traynor 2012-03-15, Wikipedia 2014c)

²⁷⁸ (EurActiv 2012-03-16).

Prime Minister Orbán added.²⁷⁹ The message to the Hungarian people was that the country should fight for its freedom and it advocated nationalism.²⁸⁰

At the same time, the prime minister had written a letter to the EU, seeking “precautionary aid” from the EU and the International Monetary Fund.²⁸¹ At that time EU finance ministers had said they would withhold half a billion euros in Hungary’s funding, as the country was breaching fiscal rules and failed to get its budget deficit under control.²⁸²

Viktor Orbán does not seem to think his government is turning its back on liberal democracy. His position on the matter is that the problem is that left-wing politicians in Western Europe didn’t like his advocacy of national pride, Christianity and family values. “Nations without character and ambitions are not capable of making the European Community great”,²⁸³ Orbán has said. He cited Schuman, the “Father of Europe”,²⁸⁴ who declared that either Europe would be Christian or it would not be. On criticism of his government, he points out that Germany and France have more cases of disagreement with the Commission than Hungary has. He questions the legitimacy of the unelected Commission to say that his government infringes the European spirit in the Constitutional Affair and underlines his legitimacy as an elected head of state. He believes his party is under attack from international left-wing people in Europe and from America. The international right-wing did not always feel comfortable in protecting his government. On the huge debt crisis of Hungary, he believes that no person, company or country, that are in debt can be free – and thus Hungary is not a free country. As time passed, the Hungarian parliament made many amendments to its constitution.²⁸⁵

Taking norms out of the equation, then Orbán’s position is that the Commission’s action to Hungary’s new constitution is to be seen as a matter of different cultures clashing.²⁸⁶ The cultures of the international left and the international right.

Hungary does have many supporters of its cause in the Constitution Affair. There seems to be a clear left-right split on the Commission’s concerns. British Eurosceptics and German conservatives agree on the importance of the nation state’s sovereignty.²⁸⁷ Centre-right groups

²⁷⁹ (Politics.hu 2013-03-16).

²⁸⁰ (Traynor 2012-03-15).

²⁸¹ (EurActiv 2012-03-16).

²⁸² (EurActiv 2012-03-16).

²⁸³ (Gutschker 2012-03-04).

²⁸⁴ (Wikipedia 2003c).

²⁸⁵ (Gutschker 2012-03-04).

²⁸⁶ (Müller 2013), page 18.

²⁸⁷ (Müller 2013), page 10.

and Polish MEPs said the complaints about Hungary were “exaggerated”.²⁸⁸ Also conservative parties in the European Parliament do not have as much commitment to liberal democracy as the left-wing parties, like for example in the willingness to use Article 7 in relation to this matter.²⁸⁹

On 2 July 2013, Viktor Orbán, in an unusual twist, visited the European Parliament’s session before voting started on the Tavares report. He addressed the EP and criticised the guardianship that a new organisation would be set up to monitor EU law, as it would make Europe submissive instead of free. He defended his government’s actions and highlighted the bad economy and unemployment in Hungary, and attacked the report for being politically motivated by left-wing and green MEPs.²⁹⁰ He said prejudice ruled against his two-thirds majority government, instead of respect. He said the “very insulting report” violated the Treaty, as it calls for Hungary to be put “under guardianship”. The report’s author, Rui Tavares, responding to criticism said that Europe respected and cherished diversity.²⁹¹

In a 2013 mid-year Medián opinion poll, most Hungarians are still pro EU and only 1/3 sees EU as Hungary’s enemy, whereas on the contrary 71% saw the IMF as an enemy of Hungary and half of the people polled thought Hungary had to defend itself from the IMF. The poll held that 70% of Hungarians were opposed to Orbán’s war against Brussels and although 57% of Fidesz’s followers support Orbán in his “war of independence”, 2/5 of them do not.²⁹² The people of Hungary do want to stay in the Union, despite what the government might want, given the recent circumstances.²⁹³

On 16 September 2013 the Hungarian parliament adopted more changes to the constitution, taking back many recent items of Hungarian legislation, to get in line with the EU’s demands, a year short of Hungary’s national elections. The changes were said to stop “further attacks against Hungary going forward”²⁹⁴

Despite oratorical speeches on the homefront, the Hungarian government showed interest in collaboration with the Commission. But the EU would press on with the infringement proceedings. The benefits of EU membership for Hungary in economic terms were great and linkage to money drove the government to changes. But there were backslides in that

²⁸⁸ (Chazan 2012-01-18).

²⁸⁹ (Sedelmeier 2014).

²⁹⁰ (BBC News 2013-07-02).

²⁹¹ (EurActiv 2013-07-03).

²⁹² (Hungarian Spectrum 2013-07-11).

²⁹³ (Tehet 2013).

²⁹⁴ (EurActiv 2013-09-17).

procedure, with some amendments to Hungary's parliament,²⁹⁵ and delays as several courts and the Venice Commission ruled on the legality of the constitution's content in regard to constitutional law. Although most issues have been solved, one of the three infringement proceedings is still open two years later. As the ECJ has very recently ruled on the last infringement proceeding, it can be expected to close in near future.

To sum up, on the homefront the Hungarian government played on nationalism in its message, underlining the traditional understanding of the sovereignty of the Westphalian nation state. Its people relate to this, this is what they know. It has even used hostile language towards the EU, engaged in war of words, if you will, concerning democracy in Hungary.²⁹⁶ There are also referrals to the EU itself being illiberal and even that smaller powerless member states face graver intervention than bigger member states.²⁹⁷ Despite not taking the Commission's criticism in the Constitution Affair at all well, Orbán seems keen on continued participation in EU. Economically, it would be really important to Hungary's struggling economy and in addition the Hungarian people are pro EU. Thus he has been cooperative in the infringement proceedings of the Constitution Affair. He accepted the legitimacy of the Commission in judging the rule of law and democracy and did not go along the path of insisting that it only was in charge of the internal market and not political questions.²⁹⁸ Some talk about delay tactics as governments' methods to shy away from open confrontation with the Commission, as it enforces EU law, or as a form of obstruction to buy more time knowing that Commission procedures can take years.²⁹⁹ The Hungarian Prime Minister certainly did not shy away from open confrontation with the Commission, but decided to commence a war of words with it. We might say that Orbán's bark is worse than his bite, as he and his government did obey and negotiate. At least in the end on some of the issues. Maybe this was a calculated case of pushing the boundaries to the furthest extent possible, to show some opposition where it would not hurt the country economically.

In joining the EU, Hungary has moved from national to postnational democracy; they engaged in the pooling of sovereignty. Now Hungary obeys EU Treaties that have constitutional status. This allows for the "foreigners" of the Commission to judge if the Hungarian constitution and all other legislation are up to the democratic standards of EU Treaties and EU legislation.

²⁹⁵ (EurActiv 2012-04-24).

²⁹⁶ (Hungarian Spectrum 2013-07-11).

²⁹⁷ (Müller 2013), pages 5-6.

²⁹⁸ (Müller 2013), page 23.

²⁹⁹ (Nugent 2001), pages 282-284.

8.6 Sedelmeier: Democratic backslide - Social and material sanctions are necessary

On the issue of the Media Law, Ulrich Sedelmeier (2014) argues that the EU's use of social pressure in this case was ineffective. Their attempts to achieve greater plurality and independence of the media received minor compliance with EU demands.³⁰⁰

Ulrich Sedelmeier finds that in the case of the Central bank independence, where EU's instrument was infringement procedure (threat of ECJ fines) and issuing of linkage (IMF loan), the outcome was compliance with EU demands.³⁰¹

In the other two cases, the issues of the independence of the data protection authority and the retirement age of judges, where the EU used infringement procedure (threat of ECJ fines), Sedelmeier finds that the outcome was incremental compliance with EU demands.³⁰²

Sedelmeier has compared the outcomes of the EU's attempts to change domestic practices in Hungary and Romania, and found the EU's efforts to be less effective in Hungary, despite being highly selective in addressing the breaches of liberal democracy. In Hungary, the EU obviously had less influence in the Media Law issue than in the other three which were subject to infringement procedures. Among the latter three, the compliance was much faster on the issue of the central bank. Sedelmeier says his research shows that without Article 7, the EU can only effectively counteract democratic backsliding, if very demanding conditions are present for both social and material sanctions. But he adds there is reason for cautious optimism in that social pressure might be enough under favourable conditions. The EU's influence on Eurosceptic illiberal leaders might be especially limited. Furthermore, his study found that EP parties and member states position was influenced by their actors' commitment to liberal democracy – in not using Article 7 for example.³⁰³

The EU did not use its most effective instrument, Article 7 of TEU,³⁰⁴ which deals with the suspension of voting rights of a member state.³⁰⁵

8.7 Lessons from the case of Hungary's new constitution

Obviously as a member state's sovereignty is in a tug of war with EU Treaties, the question of who wins depends on (political) measures taken by both EU and the member state. The EU can evoke Article 7 and have the Council suspend the voting rights of a

³⁰⁰ (Sedelmeier 2014).

³⁰¹ (Sedelmeier 2014).

³⁰² (Sedelmeier 2014).

³⁰³ (Sedelmeier 2014).

³⁰⁴ (EUR-Lex 2014).

³⁰⁵ (EUR-Lex 2014).

member state, i.e. the “nuclear option”³⁰⁶. The member state could desist its membership to the EU. ECJ can formally rule on the matter and impose fines. Then there is the Commission’s ability to exercise social pressure, start infringement procedures (for ECJ fines) and use linkage.

There is an indication of the EU’s lack of power to safeguard member states respect for fundamental rights after accession, also referred to as the Copenhagen dilemma or democratic backslide.³⁰⁷

Some EU bureaucrats and diplomats might complain that the EU treaties leave them with little sanction against a member state’s “undemocratic” or “authoritarian measures”, despite infringement procedures and rulings from ECJ.³⁰⁸

It seems though that the Commission does not have the mandate, a coherent set of legal and policy instruments, to confront rule of law and democracy challenges. Neither does it monitor and report on such developments in a systematic way.³⁰⁹

Attila Ágh (2012) emphasises that the future of Europe depends largely on how the EU will defend democracy and also on how successfully it stops the spreading of undemocratic practices in the new member states and elsewhere.³¹⁰

Also there is need for clear legitimacy of an intervention concerning democracy and the rule of law, if the Commission wants to go down the path of defending the fundamental rights in Article 2 TEU. In the Constitution Affair the Commission talks more on the lines of breaches of EU law, rather than using language related to democracy, while the public argument revolves around the democratic theory.³¹¹

A draft report on the situation of fundamental rights in the European Union from 2012 has been submitted to the LIBE Committee in the European Parliament. It proposes a new mechanism to tackle the “Copenhagen dilemma”, that is the EU’s lack of power to safeguard member states respect of fundamental rights after accession. It proposes setting up indicators, monitoring the situation in the EU, carrying out objectives and comparative assessments. The report brings up the establishment of a European policy cycle to provide a framework and an open annual inter-institutional forum. Furthermore, it suggests adoption of a set of

³⁰⁶ (Meyer-Resende 2013-11-08).

³⁰⁷ (Social Platform 2013-10-03).

³⁰⁸ (The Financial Times 2014-04-07).

³⁰⁹ (Meyer-Resende 2013-11-08) (Müller 2013), page 28.

³¹⁰ (Ágh 2012).

³¹¹ (Müller 2013), page 10.

recommendations and penalties, incorporating an early-warning system, a political and technical dialogue, and the use of letters of formal notice and “freezing procedures”.³¹² Müller (2013) suggests similar actions to be taken. In addition, he suggests harsher actions than in Article 7, so that member states can be expelled quickly.³¹³

Does this call for a political union with stronger democratic accountability? The EU certainly is becoming more and more involved in policy areas that used to be “the holy grail of national sovereignty”,³¹⁴ such as the independence of the judiciary, constitutions, rule of law, electoral frameworks, media laws and the protection of minorities.³¹⁵ One could argue that the Hungarian government’s measures put pressure on the emergence of a political union.

Some of the possible moves for the EU in this position could be empowering the Fundamental Rights Agency, the European Court of Justice or creating a new institution. The purpose would be monitoring and addressing democratic crises in member states, where decisions would be subject to appeal in the ECJ. This is a delicate political area all the same and should be entered into with caution.³¹⁶

³¹² (Social Platform 2013-10-03).

³¹³ (Müller 2013), page 28.

³¹⁴ (Meyer-Resende 2013-11-08).

³¹⁵ (Meyer-Resende 2013-11-08).

³¹⁶ (Meyer-Resende 2013-11-08).

9. Discussions

9.1 Is the Commission a European government?

The seven categories of executive tasks, made up by a mixture of mostly Nugents's (2010) and Hix (2011) with some influence of Dinan's (2010) defining categories, and the powers accompanying the tasks in each of the categories, are presented as the answer to the first research question in this thesis.

The first research question was: What are the executive tasks of the European Commission? The first category of tasks is initiating legislation and proposing policy ideas (legislation tasks are left out of the scope of this thesis's examination of executive tasks) On the task of proposing policy for medium-term development, the Commission has a leadership role. Political and administrative tasks are delegated to the Commission. Agenda setting and implementation powers are shared with the Council and European Council.³¹⁷

The second category is rule-making. This is an administrative task in regard to pure separation of the political and the administrative.³¹⁸ According to Hix (2011) the Commission has a leadership role here. Political and administrative executive powers have been delegated to the Commission. Policy agenda and implementing power is shared with the Council and European Council.³¹⁹ Moravcsik and Schimmelfennig (2009) find that in competition policy matters, the Commission has strong executive tasks and decision-making power. What makes competition rule-setting unique, is that competition rules are applied directly by the Commission, not the member states. The Common Fisheries Policy (CFP) is another policy area with direct implementation powers. In other areas, multi-level implementation applies. The Comitology system has developed a highly technical and specialist committee system with collaboration between the Commission and member states' governments and local bodies, NGOs and other advisory actors, all contributing to highly complex rule-making, such as regarding the Common Agricultural Policy (CAP).³²⁰

The third category is managing the EU finances. This is an administrative task with regard to pure separation of the political and the administrative.³²¹ The Commission has a leadership

³¹⁷ (Hix 2011), page 46.

³¹⁸ (Curtin 2009), pages 38-39.

³¹⁹ (Hix 2011), page 46.

³²⁰ (Wiener 2009), pages 72-73.

³²¹ (Curtin 2009), pages 38-39.

role and is responsible for distributing the EU budget, according to Hix (2011).³²² Political and administrative executive powers have been delegated to the Commission. It has the power to set the policy agenda and implementing EU policies is shared with the Council and European Council.³²³ Moravcsik and Schimmelfennig (2009) argue that that in monetary matters the Commission has strong executive tasks and decision-making power.³²⁴ The Commission has limited freedom in drafting a budget, due to limitations of the Treaties and pre-existing expenditure commitments.³²⁵ The Commission thus serves a great leadership role here and executes this highly important administrative task, but with a more modest political power, whereas other political actors have the final decision-making power. However, in submitting amending budgets, after the budget has been adopted, the Commission exercises high political power.

The fourth category is external representation. This is a political task in regard to pure separation of the political and the administrative.³²⁶ Moravcsik and Schimmelfennig (2009) argue that that in trade policy matters the Commission has strong executive tasks and decision-making power.³²⁷ Sophie Meunier, on the contrary, finds that the limited autonomous impact of the Commission lies mainly in reframing and repackaging member states interests, that this may reshape member states preferences slightly. The enlargement of the EU with increased divergences in opinions among member states might enlarge this role for the Commission in the future.³²⁸ It does seem that with regard to the task of making trade agreements, the Commission is really limited in autonomous decision-making.

It is obvious that the member states are really exercising control to avoid policy drift, when delegating trade negotiating powers to the Commission. Constraint is used to specify delegated tasks, whereas the Council must adopt a “negotiating directive” for the negotiation. There are several monitoring devices built in the trade negotiating procedure, as a special committee of senior civil servants makes sure that the Commission follows the Council’s mandate and assesses its positions, in addition to the reporting to both Council and European Parliament during the negotiating procedure. However, the enlargement of the EU might present the Commission with the possibility for a limited policy drift due to the growing number of non-identical ideal points of the member states.

³²² (Hix 2011), page 46.

³²³ (Hix 2011), page 46.

³²⁴ (Wiener 2009), pages 72-73.

³²⁵ (Guess 2010), pages 99-100.

³²⁶ (Curtin 2009), pages 38-39.

³²⁷ (Wiener 2009), pages 72-73.

³²⁸ (Meunier 2007), pages 921-923.

It would seem that the exclusive EU competences on customs union and external trade policies do not necessarily translate into great political power for the Commission. Despite the EU owning the policy areas trade and customs matters, there are too many limitations for the Commission to exercise the political power of a government on trade and customs matters (a non-member government that is).

In other external representation (excluding the EESA) the Commission might be left more leeway, as it has initiative powers of proposals to advance outwardly the fundamental principles, such as democracy, rule of law and integration of countries into the world economy.³²⁹

The Commission's proposal powers to advance outwardly its fundamental principles in external action matters, can be categorized as a political administration along with the economic agreements that possess certain political aspects.³³⁰ So the Commission might be exercising political administration when completing these tasks. In addition, some programmes involved in the external relations of the EU allow for rare direct implementation powers. This demonstrates the great political and administrative power of the Commission, in external matters other than trade negotiations.

In EEAS and High Representative matters the College of Commissioners does not have authority, as the political power on CFSP lies with the Council. The Union Method does not apply.

In conclusion, the Commission has a leadership role, some limited political (political administration) powers and administrative power in external representative matters.

The fifth category is enforcing Community law. This is an administrative task with regard to the pure separation of the political and the administrative.³³¹ According to Hix (2011) the Commission has a leadership role here. Administrative executive powers have been delegated to the Commission and some political powers.³³² The soft and material sanctions (infringement proceedings) do have some political administration powers when applied, whereas the Commission is interpreting law and is selective in choosing cases and deciding on which instruments to use, when it enforces EU law. It's use of linkage, to for example money, with infringement procedures is a political decision, although used while the Commission has its "quasi-judicial hat" on. But the Commission does not have the highly

³²⁹ Article 22 - see Annex 2.

³³⁰ (Bache c2011), page 506.

³³¹ (Curtin 2009), pages 38-39.

³³² (Hix 2011), page 46.

political power to punish and suspend membership rights of the member states. The “nuclear option” of Article 7 is under the collective of member states in the Council to secure its correct political use.

The sixth category is the role of mediator and conciliator. This might be regarded as a political task in regard to pure separation of the political and the administrative.³³³ There is political nature in exercising this role and the Commission is careful in practicing it.

The seventh category is the role of promoter of the general interest. This is a political task in regard to pure separation of the political and the administrative.³³⁴ There is political nature in exercising this role and the Commission is careful in practicing it.

The growing size of public administration and delegation of tasks in the 1990s and onwards is an international trend on the national level and the international level is not excluded from it. This gives rise to and opens up opportunities for policy drift, according to the principal-agent theory, where the agent starts to run its own agenda if it is not controlled well. The Council seems to have learned its lesson after the Single European Act from 1986, establishing the inner market, played out allowing for much policy drift to create common policies effectively. The Commission became highly powerful in matters concerning the single market, in rule-making especially.

In later Treaties the Commission’s tasks are quite well limited by monitoring devices and constraining possibilities by specifying delegated tasks. In EU finances and in making trade agreements on behalf of all EU member states, the Commission seems to be well monitored. In trade negotiations especially, the Commission has strong negotiation power limited by the specified “negotiating directive” from the Council. Of course now, due to the enlargement to EU28, too many voices from that collective body might not always have identical ideal points, again increasing the risk of policy drift, where the agent uses the disagreement of the principals to sway decision-making its way. But as the “negotiating directive” defines objectives and desired outcomes, the possible shift might be minimum and limited mostly to reframing and repackaging member states’ interests.

Regarding the great rule-making power of the Commission in matters concerning the single market, this power became more limited in the 1990s by the subsidiarity rule. However, by making the Commission an independent body responsible for applying competition rules

³³³ (Curtin 2009), pages 38-39.

³³⁴ (Curtin 2009), pages 38-39.

in a direct manner, the Commission still enjoys its strong powers regarding these kinds of tasks.

The role of the “guardian of the Treaties” although being administrative can sometimes be seen as “political administration”, whereas the Commission has to interpret legal provisions and values before enforcing the legislation. It is also a matter of political decision for the College regarding which instruments to use, when enforcing the treaties. In the case of Hungary, it certainly was as linkages were used to a more profound effect.

In the role of the mediator, one could argue, that there is some political power. As the Commission has, up until now, been considered neutral, it has been trusted by other actors for the role of a mediator, in the sometimes delicate process of competing interests finding common ground. The Commission has been very cautious in the use of this power – which underlines its political aspects.

There is considerable power invested in the Commission when promoting general interest. The Commission is seen as carefully demonstrating its powers here, to preserve its neutral status. Being the “conscience” of the Union requires leadership and it is political in its essence. For example, the Commission is showing great signs of autonomy in its proposals for choosing the President of the Commission directly, executing what they think is best for EU citizens, disregarding clear red flags from the member states in the Council, while taking a long-term perspective.

The answer to the problems regarding the increased need for delegation of powers in recent years, is effective control of the agents set by the principals (member states). Policy drift is thus kept well under control by specifying delegated tasks well and using monitoring devices on the agent. The trade negotiating power of the Commission on behalf of all the member states is a perfect example of how the independence or autonomy of the Commission is extremely limited in this policy area of exclusive EU powers.

The second research question was: To what extent does this make the European Commission a European Government? The referral of the second question is to the answer provided by the first research question’s findings on what the executive tasks of the Commission were.

To answer the second research question affirmatively, that the Commission is a European government, in accordance with Bardes’s, Sheley’s and Schmidt’s (2000) definition of government, we would have to demonstrate firstly, the Commission’s permanent structure, secondly, the Commission being made up by decision makers who make society’s rules about

conflict resolution and the allocation of resources, and thirdly, that the Commission possesses the power to enforce those rules. The Commission would have to have the authority and legitimacy of a government, as well as the compliance and power necessary to govern. These are the criteria and characteristics built around the nation states and national governments in comparative politics.

The answer would be affirmative on the first criteria of government, of the Commission being a permanent structure. Firstly, the Commission has been an integral part of EU structure for a very long time now and its existence rests on sound grounds in the Treaties. Its tasks are vital for the European Union to work, as day-to-day leadership has to be present in between meetings of the European Council and the Council of Ministers, concerning political and administrative tasks that do not fall under the European Parliament.

The answer would be negative on the second criteria of government, concerning the Commission being made up by decision makers who make society's rules about conflict resolution and the allocation of resources. The EU has a dual executive and the Council of Ministers is the other body, governing long term matters, whereas the Commission governs short term matters.³³⁵ The Commission has been delegated political leadership, policy implementation and regulation. If we, firstly, look at the part about making rules about conflict resolution, this seems like a technical task, which is popular to delegate to the Commission as it has specialists and technical experts at its disposal. However, the true test would be to ask who the decision-maker is at the end of the day. This political responsibility is likely not with the Commission, although it might put the work in. If we, secondly, look at the part of making rules for the allocation of resources, with regard to EU finances this might be true, but again the Commission puts in the work and the Council and the European Parliament control the decision-making in the end and the total amounts of money allocated to the EU budget. Although there are more tasks that might be considered "allocation of resources" the budget is the most important one and the Commission does not have decision-power over it. This is the main control device of governments, when deciding on policy and emphasis on policy priority and new endeavours. The procedure around the Commission's work on the Budget, discussing ideas and collaborating on such a large scale as it does, showcases the administrative nature of the Commission's work on the budget. Another power that governments have but the Commission has not is the power to impose taxes. It seems that intergovernmental agents or directly elected members of the European Parliament are the

³³⁵ (Hix 2011), page 23.

actors with deciding power and legitimacy to determine EU rules about the allocation of resources and conflict resolution – and not the Commission. In both instances the people have elected the decision-makers.

The answer would be affirmative, with limitations, on the third criteria of government, concerning the Commission possessing the power to enforce EU society's rules. The member states are really the main enforcers of EU law and their perspectives have to be respected while adopting it, so that the states will apply it. This is limiting to the enforcing powers of the Commission and it chooses its battles well, when it makes a decision to enforce EU law, abandoning soft social pressure to opt for infringement procedures. Soft social pressure can be a weak form of enforcement instrument. Sedelmeier (2014) holds that without Article 7 (Council's power to suspend rights of member states), there have to be very demanding conditions present to be able to use both social and material sanctions if the Commission wants to effectively fight democratic backsliding – although there is room for cautious optimism that social pressure is enough in favourable situations (when not dealing with illiberal governments, but dealing with actors who look favourably on liberal democracy).³³⁶ National governments have police power to back up their coercion power, but the Commission has not and is therefore not as strong in **power** and **compliance**. The Commission's ability to gain compliance, influence the actions of others and the member states' /citizens' acceptance and will to carrying out EU decisions is clearly less than that of national governments. Member states can act obstructively and buy a lot of time, while the ECJ mulls things over. The Commission's **authority** and **legitimacy** are not in question though, when it is enforcing EU legislation, meaning that the member states acknowledge that it has the right to enforce compliance and laws being obeyed as they are "appropriate and rightful", as showcased in the case of Hungary and the new constitution.³³⁷ In summary, when enforcing EU law the Commission has a problem with power and compliance, that is a strong characteristic of governments. The Commission is weak in this regard and relies on the goodwill of the member state. The use of linkage to money or important benefits, which would be withheld if the member state did not comply, is the Commission's only strong weapon to achieve compliance, in addition to fines if the ECJ so rules. But situations do not always allow for the use of this strong weapon.

³³⁶ (Sedelmeier 2014).

³³⁷ (Bardes 2000), page 8.

The Commission does not live up to the criteria of being a European Government, as defined by Bardes, Sheley and Schmidt (2000). This is the traditional criteria of government created around the nation state and national governments, used in comparative politics.

This is also supported by the fact that nowhere in the Treaties is there a mention of the Commission being the government of the European Union – the Union couldn't formally have a government either, since the Union is not a state, confederation or a federation.

Looking to the integration theories there is a strong intergovernmentalist ownership of decision-making in EU, despite the supranational appearance of the Commission for example. States are the masters of the treaty and nothing is accepted against their will. They hold the political legitimacy.³³⁸ As cooperation benefits states, they decide the pooling of sovereignty to reach a collective superior outcome.³³⁹ According to intergovernmentalism, there is no coercive power or fiscal capacity attached with the Commission and little administrative power. Implementation is in the hands of the member states. The exception to this would be: competition and monetary matters.³⁴⁰

Neofunctionalism argues for the Commission to be capable of being proactive and taking a leadership initiative, if certain conditions are met, but otherwise the Commission would have marginal impact.³⁴¹ For the Commission to propose electing directly the President of the Commission would be an example of spill-over according to the neofunctionalist theory in action, where the Commission is also escaping the control of the member states and taking on a life of its own. This is a step towards more European integration; it calls for the emergence of a public sphere where people discuss the desirable future path of the EU. It strengthens the legitimacy of the Commission and might politicize it and increase its power. It is certain, that the Commission has shown policy entrepreneurship here: capacity to shape the agenda, nurturing relationships with the European Parliament and its parties, to be able to build consensus (jury still out on the Council though) and instrumentalization of functional spill-over pressures.³⁴² It did have support of economic interest groups and the political actors in the EP and was acting at the end of economic crises and the middle of a democracy crisis, which all helps with removal of possible hurdles on the way.³⁴³

³³⁸ (Wiener 2009), pages 67-69.

³³⁹ (Wiener 2009), page 73.

³⁴⁰ (Wiener 2009), pages 72-73.

³⁴¹ (Wiener 2009), pages 59-61.

³⁴² (Wiener 2009), pages 60-61.

³⁴³ (Wiener 2009), page. 61.

Looking to federalism, one might wonder if the direct election of the President of the Commission was a step towards the Commission being a government. Whereas a federation has a constitution for two levels of government at least, it also has to have a government directly elected and a centre government has direct effect on citizens.³⁴⁴ The Commission still does not fulfil this criteria but it is about to take a large step towards it.

I find that the neofunctionalist theory is better overall in explaining the executive powers of the Commission, although member states' decision-making power is extremely strong. The case of Hungary has shown that the Commission has coercion powers, although they are limited. The case of the direct election of the Commission's President is a clear example of the Commission's autonomous leadership. One can assume that the Commission can be proactive, but is careful in exercising its powers. It is also limited by its principals (the member states) in many ways and doesn't always have a fertile ground and the necessary support for autonomy.

In conclusion, as to the examination of executive tasks, the Commission is better equipped to escape the control of the member states and has stronger political power in some types of tasks, than in others. EU legislation in relation to the task is the main source of restraints, as decided upon by the Council and the European Parliament. Checks and balances are very active in the Union.

9.2 EU's actions against the new constitution of Hungary

Did EU interference with Hungary's new constitution end on a satisfactory note regarding the enforcement of EU law? And can this case teach us something?

The Commission got Hungary to change its position by using its powers without using force, in relation to its watchdog role over the treaties. The Hungarian government was likely to have caved in as their legal ground in the case was weak and they had in fact breached EU law. It is surprising that Hungary's government let these cases the EU brought up against them, go to the European Court of Justice like it did, since it is not a good public relations tactic to wait for a judgement from the EJC, both in domestic and IR sense. A court case lost in relation to fundamental rights and a battle with civil rights organisations, would beforehand been seen as devastating and could have damaged the image of the country in years to come – but still Hungary went down that path.

³⁴⁴ (Wiener 2009), pages 27-35.

Hungary used to its advantage the Commission's weak power and compliance, when it comes to coercing the member states to get in line – at least in two of the three cases (retirement of judges and data protection). It did though accept the Commission's authority and legitimacy, despite the prime minister's war of words with the Commission, as is confirmed when he addressed the European Parliament about the Commission's actions and by participating in the infringement procedures and negotiations around it.

In the case where the infringement proceedings (the issue of the independence of the central bank) were linked to money (the IMF loan), Hungary's government complied quickly with the Commission's demands. There were linkages in the other two cases to ECJ fines (if it found Hungary to break EU law), and those two cases ended up in various courts where the cases played out. Sedelmeier (2014) interprets this as an incremental compliance with the Commission's demands. The Commission and Hungary went all out in these two latter issues – so the conclusion of these issues could have ended more successfully, in terms of length of time especially, than it did, but the Commission's full enforcement powers were felt by the Hungarian government and it changed its ways to please the Commission.

The main lesson of the case is that the system to enforce challenges to democracy and the rule of law is not working well. The EU does not possess a set of legal and policy instruments to address these problems. Thorbjørn Jagland, Secretary General of the Council of Europe, is asked by the president of the Commission for the involvement of the Council of Europe, whereas the EU did not have legal competences to intervene.³⁴⁵

The current system is: too slow time-wise, it has no equality measures between nations, the Commission lacks in legitimacy and there are definition problems of the fundamental concepts.

If the Commission had the same powers as a government, it would have been more successful in enforcing the cases against the Hungarian government and it possibly wouldn't have had to link its demands to money or other EU benefits for a member state to comply better with EU law.

In the case of Hungary the member states have gained an instrument for a cross-border executive power in the Commission. Hungary did not act to the Obama superpower administration's heavy criticism, but it could not ignore the Commission's infringement proceedings. However, it is not the member states that are calling the shots in the three infringement procedures brought against Hungary. Understandably, the member states are not

³⁴⁵ (Kumin 2013-10-08, Council of Europe's Parliamentary Assembly 2013-10-02).

interfering in the Commission's role as a guardian of the Treaties, as the Commission is performing a quasi-judicial power. But when it comes to material sanctions and linkage to money, the Commission is entering into a political area. The Commission is building its own rules.

Looking at the Commission's role from the perspective of theories of European integration, a fundamental aspect is who has the power in the case of Hungary? Is it the member states or is it the Commission? The member states do not play a role in this case, as the Council did not act in the case of Hungary and its constitution. We seem to be leaning towards neofunctionalism, although Dinan (2010) argues that the Barroso's presidency period is a time of resurgent intergovernmentalism.³⁴⁶

Neofunctionalism asks if the Commission is being proactive and taking a leadership initiative? Was the Commission acting independently, escaping the control of the member states and taking on a life of its own? The Commission emphasised that it was making decisions independently and would not be influenced by the political activities of the European Parliament. The Council did not play a part or issue an opinion in the infringement proceedings. The president of the Commission put great emphasis on the neutral and objective role of the Commission as a quasi-judicial power, during decision-making. In doing that he is conservative in exercising the Commission's powers.

However, when the Commission chooses linkage to money (the IMF loan) on the issue of the independence of the central bank that is major political decision-making with political consequences. The Commission used this power conservatively in the case of Hungary. But there is room here for political decisions in terms of content and scope of actions – the Commission might have reached a different solution with a different political landscape among the Commissioners. This is best shown with the example of Commissioner Kroes asking to have the financial linkage in the case extended to the media law, after Hungary had fulfilled the criteria asked of it in relation to the independency of the central bank and judiciary. She asked other Commissioners to use the College's political power to include the media law, where social sanctions had been used, in the financial linkage, blocking Hungary from opening negotiations on preventive aid until it had complied with the Commission's demands. This would have meant a longer waiting time for Hungary and would have come as a surprise at this late stage, keeping in mind that no Letter of Formal Notice (legally necessary in the beginning of infringement proceedings) had been received prior to this kind of demand.

³⁴⁶ (Dinan 2010), pages 171-172.

Although the Commission did not do so in this case, it could have. Nobody argued that the Commission did not have the political power to do that. The Commission can with this instrument create a powerful role for itself, as it acts autonomously in its role of the guardian of the Treaties. This underlines the neofunctionalism theory's relevance in the case of Hungary.

The role is the Commission as a “guardian of the treaties”, besides using its quasi-judicial powers to get compliance with EU law, can be the use great political powers. This is the case when the Commission uses linkage to money or benefits in infringement proceedings, as we see in the Hungarian case. The Commission acts autonomously, when exercising its policing powers and has room to build its own rules. The powers exercised can depend on the political landslide in the Commission. The role that the Commission plays here has characteristics as outlined in the neofunctionalism theory. The use of political power to get the central bank of Hungary and its judiciary in line with EU law in the Hungarian constitution, the holy grail of nation states, is a unique but decisive move towards a political integration. We could talk about a political spill-over that had occurred in the role of the Commission as a “guardian of the treaties”, as it leans towards supranationalism.³⁴⁷

The challenge to democracy and the rule of law in this case and EU actors' notions on the degree of action to be taken did have a left-right split, where actors on the left-wing spectrum of politics called for stronger actions. It is therefore very necessary, after the direct election of the President of the Commission, to set up a new instrument/redirect responsibilities to tackle these challenges.

Old habits die hard and there are obvious signs of democratic backsliding in Hungary, on an even greater range of issues than the EU previously focused on, which is cause for worry. The Constitution Affair has been a war of words; ideologies have been in a tug of war and the EU's democratic ideology has won a mere battle in this war. A war against a government redrawing the lines of traditional understanding of limited government or traditional separation of powers - undermining the people's freedoms.

Furthermore, there are clear signs of democratic backsliding among new member states. This poses a grave looming threat to democracy in the EU and it is relevant to all EU citizens. A democratic backslide of a member state could have a domino effect, contaminating the understanding of the EU's fundamental values. This is an enormous threat to European

³⁴⁷ (Wiener 2009), pages 59-61.

Integration. Were it not for common fundamental values the EU would be a completely different entity, perhaps more of an economic cooperation than the sui generis that it is today.

There are strong signs that point to willingness in the EU to stand stronger after the Constitution Affair. The European Parliament has questioned the effectiveness of the present system and proposed improvements. It is likely that we will see measures taken to turn around the trend of democratic backsliding.

Is there a democratic revolution emerging in the European Union perhaps as an answer to the democratic backslide? The EU's democratic deficit has been a known problem for years, where the democratic legitimacy and accountability of the Commission are found lacking. Economically there is a need for a deepening of the pan-European debate and a strengthening the European dimension. Could the recent events of threats to democracy and the rule of law in the European Union, due to democratic backsliding of some member states, also contribute to these changes in the EU's structure? The answer to that would call for further research. Time will tell if this is the wake of further advances towards a more democratic Union.

The case of Hungary has at least raised the profile of the momentous significance of the EU's fundamental rights of democracy and rule of law to EU citizens, which western countries sometimes take for granted. It has also brought to light the lack of a set of instruments for the Commission to use, when serving as a "guardian the Treaties".

10. Conclusions

10.1 The executive tasks of the EU – To what extent does this make the European Commission a European Government?

The seven categories of executive tasks are made up by a mixture of the defining categories from mostly Nugent (2010) and Hix (2011) with some influence from Dinan (2010), and the powers accompanying the tasks in each of the categories. The first category of tasks is initiating legislation and proposing policy ideas (legislation tasks are left out of the scope of this thesis's examination of executive tasks). The second category is rule-making (an administrative task in regard to pure separation of powers); the Commission has a leadership role and political and administrative powers have been delegated to it. Direct implementation of competition and fisheries issues, are an example of great political power. Other multi-level implementations are more of a shared political administration, as in the case of agricultural issues. The third category is managing the EU finances; the Commission has a strong administrative, leadership and coordination role here and some political powers have been delegated to it, although the decision-making is not in its hands. The fourth category is external representation; the Commission has a leadership role here, and administrative and political powers have been delegated to it, but in trade negotiations the political space is extremely limited and the Commission has strictly defined tasks and monitoring agents limiting its possibilities to act autonomously. The Commission's Union method powers do not apply to the European External Action Service or the domain of the High Representative of the Union for Foreign Affairs and Security Policy. The fifth category is enforcing Community law; the Commission has a leadership role here and enjoys administrative and some political powers. It also has a quasi-judicial role. Its political powers can be seen in the choice of cases and instruments when enforcing EU law. High political power of punishment is kept in the hands of the Council. The sixth category is the role of mediator and conciliator; the Commission has a leadership role here and administrative and political powers have not been delegated to it, but it has rather earned them due to its neutrality and overall presence. The seventh category is the role of promoter of the general interest; the Commission has a leadership role here and administrative and political powers have been delegated to it in a general clause.

Looking at the integration theories there is a strong intergovernmentalist ownership of decision-making, despite the supranational appearance of the Commission for example. It can be said that no decision-making goes against the Council, where the national governments

exercise their political powers – or not many. Realistically, this would probably apply to the big or disputed decisions, as delegated powers probably allow for minor or non-political decisions to be made by the Commission or satellite agencies. The answer to the increased need for delegation of powers in recent years is effective control of the agents set by the principals (member states). Policy drift is thus kept well under control by limiting the tasks well and monitoring the agents. The trade negotiating power of the Commission on behalf of all the member states is a perfect example of how the independence or autonomy of the Commission is extremely limited, in this policy area of exclusive EU powers.

The Commission is not a European government according to the definition of government from Bardes, Sheley and Schmidt (2000). It fulfils one criteria well, one criteria with limitations and it does not fulfil the third.

Firstly, on the criteria of government concerning the Commission being a permanent structure, the Commission does indeed fulfil that criteria.

Secondly, on the criteria of government concerning the Commission being made up by decision makers who make society's rules about conflict resolution and the allocation of resources, the answer is negative. It seems that intergovernmental agents or directly elected members of the European Parliament are the actors with deciding power and legitimacy to determine EU rules about the allocation of resources and conflict resolution – and not the Commission. In both instances the people have elected the decision-makers.

Thirdly, on the third criteria of government, concerning the Commission possessing the power to enforce society's rules within the EU, the answer is affirmative with important limitations. To sum it up, when enforcing EU law the Commission has a problem with power and compliance, that is a strong characteristic of governments. The Commission is weak in this regard and relies on the goodwill of the member state. The use of linkage to money or important benefits, which would be withheld if the member state did not comply, is the only strong weapon of the Commission to achieve compliance, in addition to fines if the ECJ so rules. But situations do not always allow for the use of this strong weapon.

The answer to the second research question is, that the Commission does not live up to the criteria of being a European Government, as defined by Bardes, Sheley and Schmidt (2000). These are traditional criteria of government created around the nation state and national governments, widely used in comparative political analysis.

The answer to the problems regarding increased need for delegation of powers in recent years is effective control of the agents set by the principals (member states). Policy drift is

thus kept well under control by specifying delegated tasks well and using monitoring devices on the agent. The trade negotiating power of the Commission on behalf of all the member states is a perfect example of how the independence or autonomy of the Commission is extremely limited in this policy area of exclusive EU powers.

I find that the neofunctionalist theory is better overall in explaining the executive powers of the Commission, although the member states' decision-making power is extremely strong. The case of Hungary has shown that the Commission has coercion powers, although they are limited. The case of the direct election of the Commission's President is a clear example of the Commission's autonomous leadership. One can assume that the Commission can be proactive, but is careful in exercising its powers. It is also limited by its principals (the member states) in many ways and doesn't always have fertile ground and the necessary support for autonomy.

In conclusion, as to the examination of executive tasks, the Commission is better equipped to escape the control of the member states and has stronger political power in some types of tasks, more than in others. EU legislation in relation to the task is the main source of restraints, as decided upon by the Council and the European Parliament. Checks and balances are very active in the Union.

Whereas the European Union is not a state, federation or a confederation, but a polity of its own kind or "polity sui generis", a system of governance without government if you will, the Commission is not a government, a Commissioner is not a minister and a Commissioner's Directorate-General is not a minister's office.

10.2 The case study: Hungary's new constitution

Did EU interference into Hungary's new constitution end on a satisfactory note regarding the enforcement of EU law? And can this case teach us something?

The Commission got Hungary to change its position by using its powers without using force, in relation to its watchdog role over the treaties. The Hungarian government was likely to have caved in as their legal ground in the case was weak and they had in fact breached EU law.

Hungary used to its advantage the Commission's weak power and compliance when it comes to coercing the member states to get in line. If the Commission had the same powers as a government, it would have been more successful in enforcing the cases against the

Hungarian government and it possibly wouldn't have had to link its demands to money or other EU benefits for a member state to comply better with EU law.

Hungary's government did though accept the Commission's authority and legitimacy, despite the Prime Minister's war of words with the Commission.

The Hungarian government's compliance in the infringement proceedings was more effective where the Commission had a linkage to funds, than with a linkage to fines in the case that the ECJ would rule against it. The Commission's full enforcement powers were felt by the Hungarian government and finally it changed its ways to please the Commission.

Old habits die hard and there are obvious signs of democratic backsliding in Hungary, even on a greater range of issues than the EU's interference was focused on, which is cause for worry. The Constitution Affair has been a war of words; ideologies have been in a tug of war and the EU's democratic ideology has won a mere battle in this war. Furthermore, there are clear signs of democratic backsliding among new member states.

This poses a grave looming threat to democracy in the EU and which is relevant to all EU citizens. A democratic backslide of a member state could have a domino effect, contaminating the understanding of the EU's fundamental values. This is an enormous threat to European Integration.

In the case of Hungary the member states had gained an instrument for a cross-border executive power in the Commission, to interfere in Hungary's constitution and legislation. The Commission has, in the case of Hungary, taken on a life on its own and besides using its quasi-judicial power, it was using its political power as it issued linkage to IMF loan, in the matter of the independence of the central bank and judiciary. There is room for political decisions in terms of content and scope of actions in that kind of decision-making. This was clear when Commissioner Kroes asked the College to extend the financial linkage to the media law, after Hungary had fulfilled the criteria originally given for the IMF preventive aid negotiation to start. This would have meant a longer waiting time for Hungary and would have come as a surprise at this late stage, keeping in mind that no Letter of Formal Notice (legally necessary in the beginning of infringement proceedings) had been received prior to this kind of demand. Although the Commission did not agree on it, it could have. Different political landscape among the Commissioners could have delivered another outcome. The Commission can with this instrument create a powerful role for itself, as it acts autonomously in its role of the guardian of the Treaties. This underlines the relevance of neofunctionalism theory in the case of Hungary.

The role is the Commission as a “guardian of the treaties”, besides using its quasi-judicial powers to get compliance with EU law, can be the use great political powers. This is the case when the Commission uses linkage to money or benefits in infringement proceedings, as we see in the Hungarian case. The Commission acts autonomously, when exercising its policing powers and has room to build its own rules. The powers exercised can depend on the political landslide in the Commission. The role that the Commission plays here has characteristics as outlined in the neofunctionalism theory. The use of political power to get the central bank of Hungary and its judiciary in line with EU law in the Hungarian constitution, the holy grail of nation states, is a unique but decisive move towards a political integration. We could talk about a political spill-over that had occurred in the role of the Commission as a “guardian of the treaties”, as it leans towards supranationalism.³⁴⁸

The main lesson in the case is that the system of enforcing challenges to democracy and the rule of law is not working well and at the same time the Commission is enhancing its political power as a “guardian of the treaties”. The EU does not possess a set of legal and policy instruments to address these problems. The current system is: too slow time-wise, has no equality measures between nations, the Commission lacks in legitimacy and there are definition problems surrounding the fundamental concepts. There is need for to set up a new instrument to tackle these challenges. In infringement cases, the Commission is going past its traditional quasi-judicial powers and using its political administrative powers for more political integration.

There are strong signs that point to willingness in the EU to stand stronger after the Constitution Affair and measures to turn around the trend of democratic backsliding are likely to emerge in near future.

The case of Hungary has at least raised the profile of the momentous significance of the EU’s fundamental rights of democracy and rule of law to EU citizens, which western countries sometimes take for granted. It has also brought to light the lack of a set of instruments for the Commission to use, when serving as a “guardian the Treaties”. More political integration is needed and it will be enforced by the Commission.

³⁴⁸ (Wiener 2009), pages 59-61.

Annexes

Annex 1

Topic:
Three of the original Community institutions are of a political nature, namely the European Parliament, the Council of Ministers and the Commission. They represent different interests.

Political institutions of the EU other than the European Council			
Name	The European Parliament	The Council (of Ministers)	The European Commission
Treaty provisions	Arts. 223 TFEU et seq.	Arts. 237 TFEU et seq.	Arts. 244 TFEU et seq.
Represents	The peoples of the Member States In legislative procedures, the EP represents the democratic element: <i>Roquette Frères</i> (1980), <i>Titanium Dioxide</i> (1991), <i>European Investment Bank</i> (2008).	The Member States	The European Union
Main functions	<ul style="list-style-type: none"> Monitoring the other institutions (via yearly reports from them; parliamentary questions; Ombudsman); Important role in the appointment of the Commission (together with the European Council); Participation in most legislative procedures; see Chapter 5; Budgetary competences (together with the Council). 	<ul style="list-style-type: none"> Adoption of secondary legislation and decisions; see Chapter 5; Conclusion of treaties with third countries; Budgetary competences (together with the Parliament). 	<ul style="list-style-type: none"> "Motor of integration": legislative planning, near-monopoly on the right of initiative in EU legislation, legislative powers as delegated through Union acts; see Chapter 5; "Watchdog": e.g. competition law, enforcement procedures against Member States; see Chapter 9, Chapter 12; Negotiations with third countries in relation to treaties; Administration of EU funds.
<p>Note: The above cannot properly be compared to the functions of State organs. The powers of the above political institutions represent a special mixture of legislative, executive and even partially judicative functions.</p>			

Chart 1: The Political Institutions of the EU other than the European Council

The Political Institutions of the EU other than the European Council. Article 244 of TFEU applies to the Commission and its functions: initiating EU legislation, watchdog role, negotiations with third-party countries and administration of EU funds. (Chart: Tobler).³⁴⁹

³⁴⁹ (Tobler 2010) page 72.

Topic:

The Commission consists of 27 independent Commissioners, one from each Member State. Under the guidance of a president the Commissioners are organised into a number of different departments.

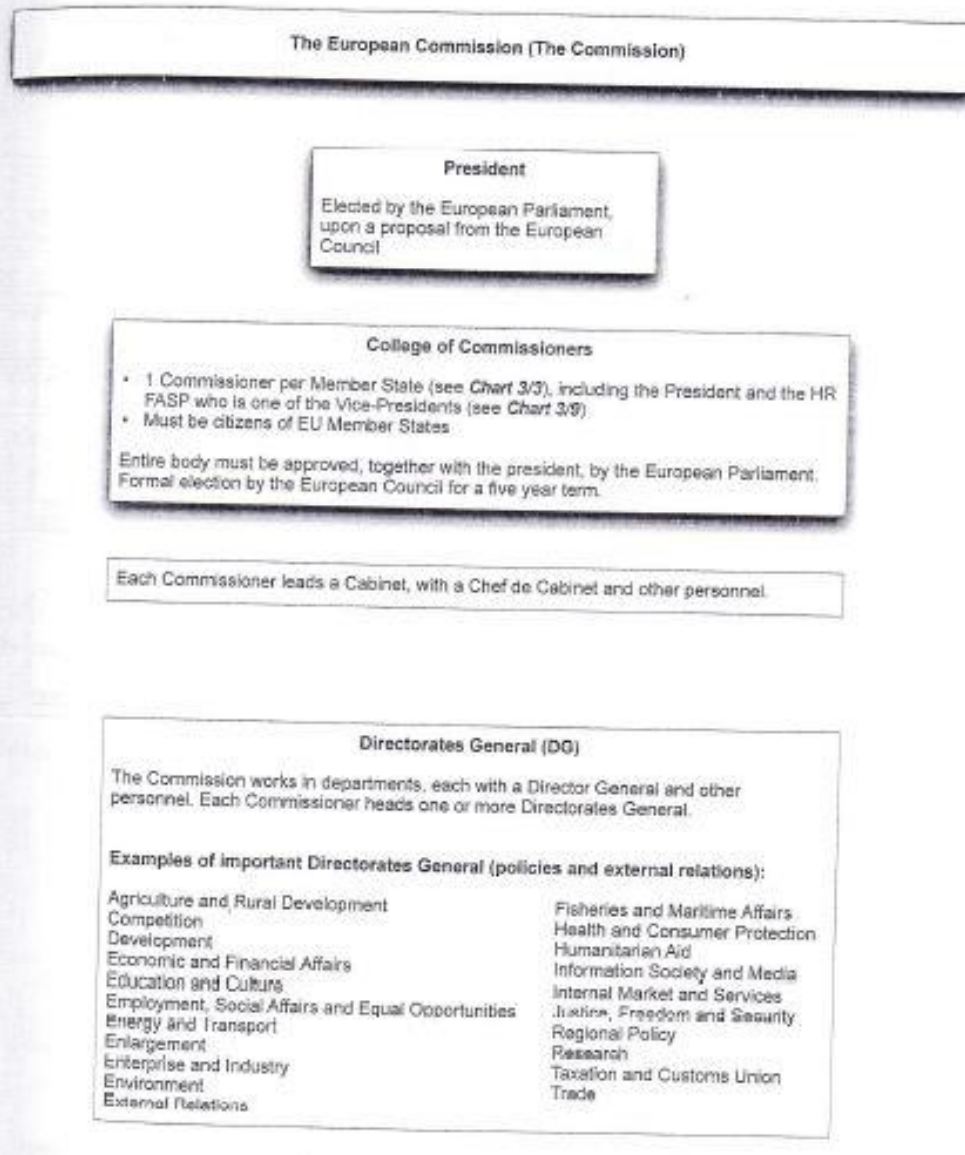


Chart 2: The European Commission's organisation charter

The European Commission's organisation charter (now 28 independent Commissioners reside in it). A Commissioner leads a Cabinet and has one or more Directorates General. (Chart: Tobler).³⁵⁰

³⁵⁰ (Tobler 2010) page 72.

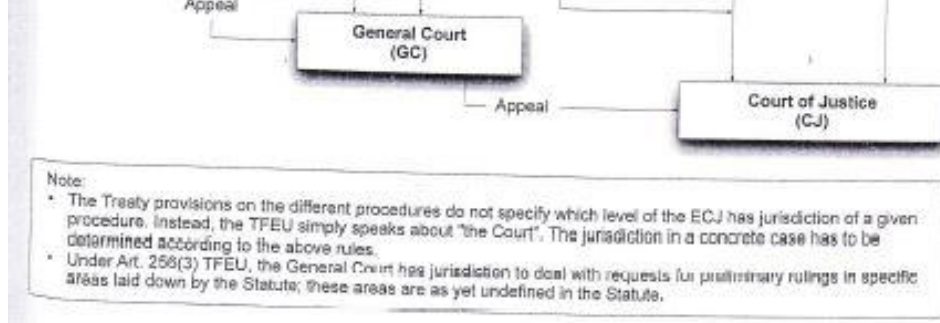


Chart 3: European Court of Justice and various procedures in the TFEU

European Court of Justice and various procedures in the TFEU. The Commission supervises that there is compliance with the Treaties along with the ECJ, and can initiate a case if rules are broken. (Chart: Tobler).³⁵¹

³⁵¹ (Tobler 2010) page 293.

Policies	External Relations	General Services	Internal Services
Agriculture and Rural Development (AGRI)	EuropeAid Development & Cooperation (DEVCO)	Communication (COMM)	Budget (BUDG)
Climate Action (CLIMA)	Enlargement (ELARG)	Eurostat (ESTAT)	Human Resources and Security (HR)
Competition (COMP)	Humanitarian Aid and Civil Protection (ECHO)	Joint Research Centre (JRC)	Informatics (DIGIT)
Economic and Financial Affairs (ECFIN)	Service for Foreign Policy Instruments (FPI)	Secretariat-General (SG)	Interpretation (SCIC)
Education and Culture (EAC)	Trade (TRADE)	European Anti-Fraud Office (OLAF)	Translation (DGT)
Employment, Social Affairs and Inclusion (EMPL)		Publications Office (OP)	Bureau of European Policy Advisers (BEPA)
Energy (ENER)			European Commission Data Protection Officer
Enterprise and Industry (ENTR)			Infrastructures and Logistics - Brussels (OIB)
Environment (ENV)			Infrastructures and Logistics - Luxembourg (OIL)
Maritime Affairs and Fisheries (MARE)			Internal Audit Service (IAS)
Mobility and Transport (MOVE)			Legal Service (SJ)
Health and Consumers (SANCO)			Office For Administration And Payment Of Individual Entitlements (PMO)
Communications Networks, Content and Technology (CNECT)			Central Library
Internal Market and Services (MARKT)			Historical archives
Justice (JUST)			
Regional Policy (REGIO)			
Research and Innovation (RTD)			
Taxation and Customs Union (TAXUD)			
Home Affairs (HOME)			

Chart 4: The Directorate-Generals and Services of the Commission

Directorate-Generals and Services categorised in line with the content of their workings. Services are marked in blue. (Chart: an updated version based on Bache).³⁵²

³⁵² (Bache c2011), page 257-258.

Exclusive EU competences

- Single market regulation, including removing barriers and competition policy
- Customs union and external trade policies
- Monetary Policy for the member states, whose currency is the euro
- Price setting and subsidy of production under the CAP
- Common fisheries policy

Shared EU and member states competences

- Social regulation, such as health and safety at work, gender equality and non-discrimination
- Environmental regulation
- Consumer protection and common public health concerns, such as food safety
- Economic social and territorial cohesion
- Free movement of persons, including policies towards third-country nationals (e.g. asylum)
- Transport
- Energy

Coordinated competences

(where member states coordinate their domestic policies at the EU level because of the effects on each other of conducting separate policies)

- Macroeconomic policies
- Foreign and defence policies
- Policing and criminal justice policies
- Health, cultural, education, tourism, youth, sport and vocational training policies

Exclusive member states competences

- All other policies, for example most areas of taxation and public spending

Chart 5: EU competences

Where the EU has exclusive competences, the Commission can exercise great power, but less in areas where the EU shares its powers with member states or has coordinated competences. Where the member states have exclusive competences, the EU has no say. (Chart: Hix).³⁵³

³⁵³ (Hix 2011), page 6.

The budgetary procedure

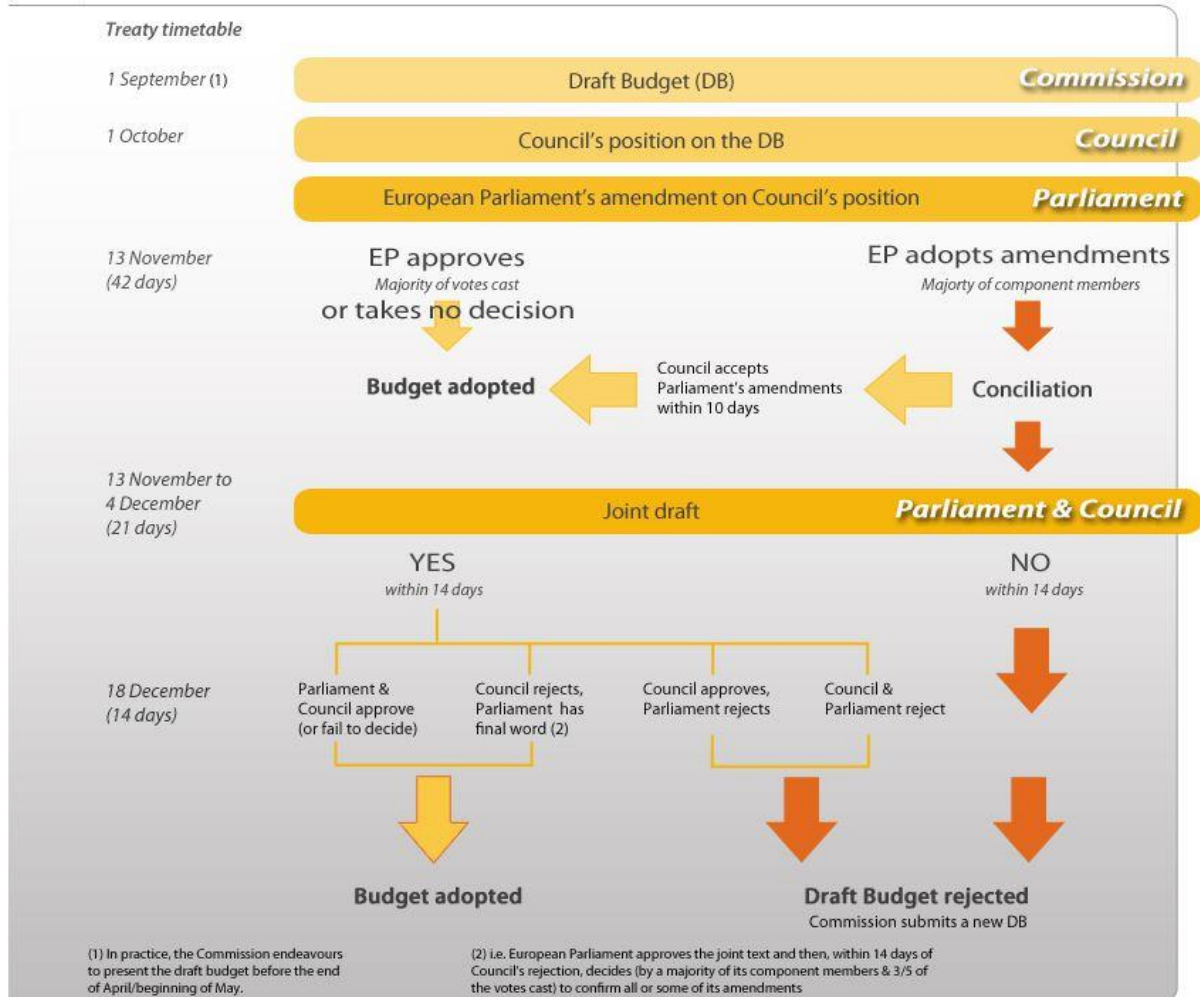


Chart 6 : The EU Budgetary Procedure

The Commission composes a draft budget. The Council and the European Parliament both have a saying in the adoption of the Budget. (Chart: European Commission).³⁵⁴

³⁵⁴ (European Commission 2012-02-06a)

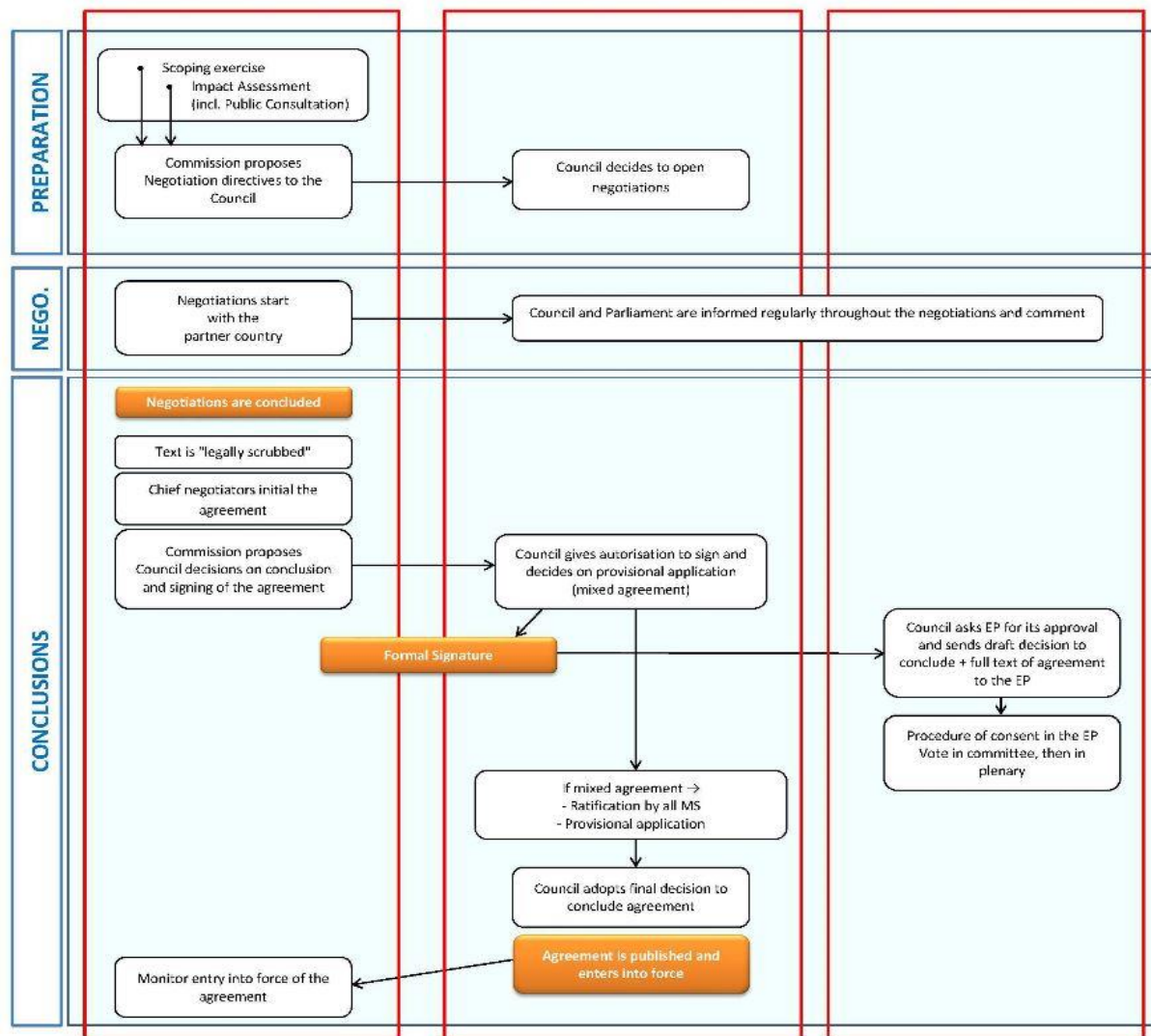


Chart 7: The trade negotiation procedure in the European Union

The EU has exclusive power under the trade policy to make international trade agreements on behalf of member states. The Council must agree to negotiate with a trade partner and set outlines for the deal, and then the Commission handles the negotiation, reporting to the Council and the European Parliament on the progress. In the end the Commission proposes a Council decision on the conclusion and signing of the agreement. The Council has to give authorisation to sign and decides on provisional application. The Council asks the EP for its approval. The Commission monitors the entry into force of the agreement. (Chart: DG Trade).³⁵⁵

³⁵⁵ (DG Trade 2013), page 7.

Annex 2

Full text of Treaty Articles cited. TEU refers to the Treaty of the European Union and TFEU refers to the Treaty of the Functioning of the European Union.

Article 2 TEU – The fundamental rights in the EU

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 7 TEU – The “nuclear option” of suspending rights of a member state

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union.

Article 17 TEU – Commission shall promote the general interest of the Union

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving inter-institutional agreements.

2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.

3. The Commission's term of office shall be five years.

The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

4. The Commission appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014, shall consist of one national of each Member State, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents.

5. As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

The members of the Commission shall be chosen from among the nationals of the Member States on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States. This system shall be established unanimously by the European Council in accordance with Article 244 of the Treaty on the Functioning of the European Union.

6. The President of the Commission shall:

(a) lay down guidelines within which the Commission is to work;

(b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;

(c) appoint Vice-Presidents, other than the High Representative of the Union for Foreign Affairs and Security Policy, from among the members of the Commission.

A member of the Commission shall resign if the President so requests. The High Representative of the Union for Foreign Affairs and Security Policy shall resign, in accordance with the procedure set out in Article 18(1), if the President so requests.

7. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in paragraph 3, second subparagraph, and paragraph 5, second subparagraph.

The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

8. The Commission, as a body, shall be responsible to the European Parliament. In accordance with Article 234 of the Treaty on the Functioning of the European Union, the European Parliament may vote on a motion of censure of the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from the duties that he carries out in the Commission.

Article 21 TEU – General provisions on the Union’s external action

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

- (a) safeguard its values, fundamental interests, security, independence and integrity;
- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
- (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- (g) assist populations, countries and regions confronting natural or man-made disasters; and
- (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

Article 22 TEU – Decision-making for external action

1. On the basis of the principles and objectives set out in Article 21, the European Council shall identify the strategic interests and objectives of the Union.

Decisions of the European Council on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. Decisions of the European Council shall be implemented in accordance with the procedures provided for in the Treaties.

2. The High Representative of the Union for Foreign Affairs and Security Policy, for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council.

Article 207 TFEU – Common commercial policy

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.

3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.

The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority.

For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council shall also act unanimously for the negotiation and conclusion of agreements:

- (a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;

(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.

5. The negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three and to Article 218.

6. The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonisation.

Article 218 TFEU – How trade agreements are negotiated

1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.

3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

(i) association agreements;

(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(iii) agreements establishing a specific institutional framework by organising cooperation procedures;

(iv) agreements with important budgetary implications for the Union;

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.

(b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorisation.

8. The Council shall act by a qualified majority throughout the procedure.

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.

9. The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

Article 258 TFEU – Commission the Guardian of the Treaties

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

Article 314 TFEU – The EU Budget

The European Parliament and the Council, acting in accordance with a special legislative procedure, shall establish the Union's annual budget in accordance with the following provisions.

1. With the exception of the European Central Bank, each institution shall, before 1 July, draw up estimates of its expenditure for the following financial year. The Commission shall consolidate these estimates in a draft budget, which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

2. The Commission shall submit a proposal containing the draft budget to the European Parliament and to the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5, is convened.

3. The Council shall adopt its position on the draft budget and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. The Council shall inform the European Parliament in full of the reasons which led it to adopt its position.

4. If, within forty-two days of such communication, the European Parliament:
- (a) approves the position of the Council, the budget shall be adopted;
 - (b) has not taken a decision, the budget shall be deemed to have been adopted;
 - (c) adopts amendments by a majority of its component members, the amended draft shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. However, if within ten days of the draft being forwarded the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.
5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.
- The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.
6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee agrees on a joint text, the European Parliament and the Council shall each have a period of fourteen days from the date of that agreement in which to approve the joint text.
7. If, within the period of fourteen days referred to in paragraph 6:
- (a) the European Parliament and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text while the other one fails to take a decision, the budget shall be deemed to be definitively adopted in accordance with the joint text; or
 - (b) the European Parliament, acting by a majority of its component members, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, a new draft budget shall be submitted by the Commission; or
 - (c) the European Parliament, acting by a majority of its component members, rejects the joint text while the Council approves it, a new draft budget shall be submitted by the Commission; or
 - (d) the European Parliament approves the joint text whilst the Council rejects it, the European Parliament may, within fourteen days from the date of the rejection by the Council and acting by a majority of its component members and three-fifths of the votes cast, decide to confirm all or some of the amendments referred to in paragraph 4(c). Where a European Parliament amendment is not confirmed, the position agreed in the Conciliation Committee on the budget heading which is the subject of the amendment shall be retained. The budget shall be deemed to be definitively adopted on this basis.
8. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not agree on a joint text, a new draft budget shall be submitted by the Commission.
9. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been definitively adopted.
10. Each institution shall exercise the powers conferred upon it under this Article in compliance with the Treaties and the acts adopted thereunder, with particular regard to the Union's own resources and the balance between revenue and expenditure.

Bibliography

- Aghimis, Andrei. 2013. "Article 7 TEU: a mechanism to protect EU values." In *EPRS*. Brussels, Strassburg and Luxembourg: European Parliamentary Research Service. <http://epthinktank.eu/2013/10/07/article-7-teu-a-mechanism-to-protect-eu-values/> (accessed 14.04.2013).
- Ágh, Attila. 2012. "Report on Democracy, Liberty and Freedom in Central and Eastern Europe." In *FEPS*. Brussels: Federation for European Progressive Studies. <http://www.feps-europe.eu/assets/7c2f832a-a70b-4340-9e17-818e2e0cb0ab/316.pdf> (accessed 12.04.2014).
- Bache, Ian, George, Stephen & Bulmer, Simon. c2011. *Politics in the European Union*. New York: Oxford University Press Inc.
- Bardes, Barbara A., Shelley, Mark C. & Schmidt, Steffen W. 2000. *American Government and Politics Today: The Essentials. 2000-2001 Edition*. Belmont: Clark Baxter - Wadsworth/Thomson Learning.
- Barroso, José Manuel Durão. 2012. "State of the Union 2012 Address." In *European Commission - SPEECH/12/596 12/09/2012* Brussels: European Commission. http://europa.eu/rapid/press-release_SPEECH-12-596_en.htm (accessed 13.04.2014).
- BBC News. 2013-07-02. "Hungary PM Orban defends constitutional changes." In *bbc.co.uk*, ed Steve Hermann. London: BBC. <http://www.bbc.co.uk/democracylive/europe-23149618> (accessed 02.05.2014).
- Benson, David & Jordan, Andrew. 2011. "Exploring the Tool-kit of European Integration Theory: What Role for Cooperative Federalism?" *Journal of European Integration* 33 (1):1-17. doi: 10.1080/07036337.2010.526711.
- Beunderman, Mark. 2005-12-01. "Belgian leader proposes 'United States of Europe'." In *EU Observer*. Brussels: EU Observer. <http://euobserver.com/institutional/20465> (accessed 14.02.2014).
- Bos, Stefan. 2011-06-29. "Clinton Questions Hungary's Democratic Credentials " In *Voice of America*. Washington, D.C.: Federal government of the United States. <http://www.voanews.com/content/clinton-emphasizes-democracy-in-hungary-124781889/160236.html> (accessed 29.04.2014).
- Chazan, David. 2012-01-18. "Hungary PM Orban fights back in European Parliament." In *bbc.co.uk*. London: BBC. <http://www.bbc.com/news/world-europe-16613934> (accessed 02.05.2012).
- Clarke, Ken. 2014-03-13. "A threat to democracy? The EU-US trade deal is no such thing." In *The Guardian*. London: Guardian News and Media. <http://www.theguardian.com/commentisfree/2014/mar/13/eu-us-trade-deal-no-threat-democracy-monbiot-transatlantic-partnership> (accessed 17.04.2014).
- Constitutionnet. 2012. "Constitutional history of Hungary." In *Constitutionnet*: The International Institute for Democracy and Electoral Assistance. <http://www.constitutionnet.org/country/constitutional-history-hungary> (accessed 08.04.2014).
- Council of Europe's Parliamentary Assembly. 2013-10-02. "2013 Ordinary Session (Fourth part). Report. Thirty-third sitting. Wednesday 2 October 2013 at 3:30 p.m." Council of Europe Accessed 02.05.2014. <http://assembly.coe.int/Main.asp?link=/Documents/Records/2013/E/1310021530E.htm>.
- Curtin, Deirdre. 2009. "Executive Power of the European Union [Ebook]: Law, Practices, and the Living Constitution." In. New York: Oxford University Press (accessed 12.02.2014).
- DG Trade. 2013. Trade negotiations step by step. Brussels: European Commission.
- DG Trade. 2014-04-10. "Stakeholder meeting on investment protection in the TTIP." European Commission, Last Modified 09.04.2014 Accessed 17.04.2014. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1058>.
- Diggle, Jacob. 2012-10-01. ""Hungary is being held hostage by an outdated tyrant"." In *New Statesman*. London: Progressive Media International. <http://www.newstatesman.com/blogs/world-affairs/2012/10/hungary-being-held-hostage-outdated-tyrant> (accessed 13.04.2014).
- Dinan, Desmond. 1999. *Ever Closer Union - An Introduction to European Integration*. Edited by Neill Nugent, Paterson, William E. & Wright, Vincent. Second edition ed, *The European Union Series*. London: Lynne Rienner Publishers, Inc. Original edition, Previous ed.: 1994.
- Dinan, Desmond. 2010. *Ever Closer Union. An Introduction to European Integration*. Edited by Neill & Paterson Nugent, William E. 4 ed, *The European Union Series*. Basingstoke: Palgrave McMillan.
- EBU. 2014. "The Eurovision Debate." European Broadcasting Union Accessed 20.04.2014. <http://www3.ebu.ch/calendar/the-eurovision-debate>.

- Economist, The. 2012-01-07. "The long march of Fidesz." In *The Economist*, ed Vendeline von Bredow. Budapest: The Economist Newspaper Limited. <http://www.economist.com/node/21542422> (accessed 12.04.2014).
- Etzioni, Amitai. 2007. The Community Deficit. *JCMS: Journal of Common Market Studies* 45 (1): 23-42. Accessed 20.01.2014.
- EUR-Lex. 2014. "The Treaty on European Union." In *Official Journal C 326*, 26/10/2012 P. 0001 - 0390. Brussels: European Union. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT> (accessed 08.04.2014).
- EurActiv. 2012-03-16. "War of words rages between Orbán and Barroso." In *EurActiv*, ed Daniela Vincenti. Brussels: The EurActiv Media Network. <http://www.euractiv.com/central-europe/war-words-rages-orban-barroso-news-511557> (accessed 08.04.2014).
- EurActiv. 2012-04-24. "Hungarian leaders are playing 'cat and mouse' with the EU." In *EurActive*, ed Daniela Vincenti. Brussel: The EurActiv Media Network. <http://www.euractiv.com/future-eu/facts-hungary-right-analysis-519336> (accessed 11.04.2014).
- EurActiv. 2013-01-30. "Is Hungary's new constitution really so outlandish?" In *EurActiv.com*, ed Daniela Vincenti. Brussels: The EurActiv Media Network. <http://www.euractiv.com/countries/hungarys-new-constitution-really-analysis-510467> (accessed 04.05.2014).
- EurActiv. 2013-03-11. "Hungary's constitutional changes fuel new tensions." In *EurActiv.com*, ed Daniela Vincenti. Brussels: The EurActiv Media Network. <http://www.euractiv.com/future-eu/hungary-constitutional-changes-f-news-518383>.
- EurActiv. 2013-04-15. "EU threatens Hungary with legal action over constitution." In *EurActiv.com*, ed Daniela Vincenti. Brussels: The EurActiv Media Network. <http://www.euractiv.com/future-eu/commission-threatens-hungary-leg-news-519102> (accessed 04.05.2014).
- EurActiv. 2013-07-03. "Parliament divided over Hungary's democratic record." In *EurActiv.com*, ed Daniela Vincenti. Brussels: The EurActiv Media Network. <http://www.euractiv.com/central-europe/parliament-divided-hungary-democ-news-529047> (accessed 02.05.2014).
- EurActiv. 2013-09-17. "Hungary amends its constitution to appease EU." In *EurActiv.com*, ed Daniela Vincenti. Brussels: The EurActiv Media Network. <http://www.euractiv.com/central-europe/hungary-amends-constitution-apppe-news-530515> (accessed 02.05.2014).
- EurActiv. 2013-10-14. "Van Rompuy scorns direct election of Commission president." In *EurActiv.com*, ed Daniela Vincenti. Brussels: The EurActiv Media Network. <http://www.euractiv.com/eu-elections-2014/van-rompuy-underlines-objections-news-531049> (accessed 20.04.2014).
- EurActiv. 2014-04-23. "Commission reacts to Van Rompuy's election anger." EurActiv Accessed 23.04.2014. <https://www.youtube.com/watch?v=30JbjXgkjBA>.
- European Commission - Press Release. 2012-01-17. European Commission launches accelerated infringement proceedings against Hungary over the independence of its central bank and data protection authorities as well as over measures affecting the judiciary. In *European Commission - IP/12/24 17/01/2012* Brussels: European Commission.
- European Commission - Press Release. 2012-03-07. Hungary – infringements: Commission takes further legal steps on measures affecting the judiciary and the independence of the data protection authority, notes some progress on central bank independence, but further evidence and clarification needed. In *European Commission - MEMO/12/165 07/03/2012* Brussels: European Commission.
- European Commission - Press Release. 2012-07-19. Commission closes infringement procedure on the independence of the Hungarian central bank. In *European Commission - IP/12/803 19/07/2012*: European Commission.
- European Commission - Press Release. 2012-11-06. Court of Justice rules Hungarian forced early retirement of judges incompatible with EU law. In *European Commission - MEMO/12/832 06/11/2012* Brussels: European Commission.
- European Commission - Press release. 2013-03-12. 2014 European Parliament Elections: Commission recommends that political parties nominate candidate for Commission President In *European Commission - IP/13/215 12/03/2013*. Brussels: European Commission.
- European Commission - Press Release. 2013-11-20. European Commission closes infringement procedure on forced retirement of Hungarian judges. In *European Commission - IP/13/1112 20/11/2013*. Brussels: European Commission.
- European Commission - Press Release. 2014-04-08. Court of Justice upholds independence of data protection authorities in case against Hungary. In *European Commission - MEMO/14/267 08/04/2014*. Brussels: European Commission.

European Commission. 2012-01-25a. "Minutes of the 1985th meeting of the Commission held in Brussels on Wednesday 11 January 2012." In *PV(2012)1985 final*, ed Secretariat-General. Brussels: European Commission. <http://ec.europa.eu/transparency/regdoc/rep/10061/2012/EN/10061-2012-1985-EN-F1-1.Pdf> (accessed 29.04.2014).

European Commission. 2012-01-25b. "Minutes of the 1986th meeting of the Commission held in Strasbourg on Tuesday 17 January 2012." In *PV(2012)1986 final*, ed Secretariat-General. Strasbourg: European Commission. <http://ec.europa.eu/transparency/regdoc/rep/10061/2012/EN/10061-2012-1986-EN-F1-1.Pdf> (accessed 29.04.2014).

European Commission. 2012-02-06a. "How is the Budget decided?". European Commission, Last Modified 06.02.2012 Accessed 19.04.2014. http://ec.europa.eu/budget/explained/management/deciding/decide_en.cfm.

European Commission. 2012-02-06b. "How is the budget decided? The procedure in detail." European Commission, Last Modified 06.02.2012 Accessed 19.04.2014. http://ec.europa.eu/budget/explained/management/deciding/deciding_detail/decide_detail_en.cfm.

European Commission. 2012-02-22. "Minutes of the 1991th meeting of the Commission held in Brussels on Wednesday 22 February 2012." In *PV(2012)1991 final*, ed Secretariat-General. Brussels: European Commission. <http://ec.europa.eu/transparency/regdoc/rep/10061/2012/EN/10061-2012-1991-EN-F1-1.Pdf> (accessed 01.05.2014).

European Commission. 2012-03-07a. "Application du droit de l'Union européenne." European Commission Accessed 29.04.2014. http://ec.europa.eu/eu_law/eulaw/decisions/dec_20120307.htm.

European Commission. 2012-03-07b. "Minutes of the 1993th meeting of the Commission held in Brussels on Wednesday 7 March 2012." In *PV(2012)1993 final*, ed Secretariat-General. Brussels: European Commission. ec.europa.eu/transparency/regdoc/rep/10061/2012/EN/10061-2012-1993-EN-F1-1-ANNEX-1.Pdf (accessed 01.05.2014).

European Commission. 2012-05-08. "Minutes of the 1999th meeting of the Commission held in Brussels on Wednesday 25 April 2012." In *PV(2012)1999 final*, ed Secretariat-General. Brussels: European Commission. <http://ec.europa.eu/transparency/regdoc/rep/10061/2012/EN/10061-2012-1999-EN-F1-1.Pdf> (accessed 01.05.2014).

European Commission. 2012-06-12. "Minutes of the 2004th meeting of the Commission held in Brussels on Wednesday 30 May 2012." In *PV(2012)2004 final*, ed Secretariat-General. Brussels: European Commission. <http://ec.europa.eu/transparency/regdoc/rep/10061/2012/EN/10061-2012-2004-EN-F1-1.Pdf> (accessed 01.05.2014).

European Commission. 2013. "Infringements of EU law." European Commission, Last Modified 23.01.2013 Accessed 15.04.2014. http://ec.europa.eu/eu_law/infringements/infringements_en.htm.

European Commission. 2013-04-24. "Minutes of the 2042th meeting of the Commission held in Strasbourg on Tuesday 16 April 2013." In *PV(2013) 2042 final*, ed Secretariat-General. Brussels: European Commission. <http://ec.europa.eu/transparency/regdoc/rep/10061/2013/EN/10061-2013-2042-EN-F1-1.Pdf> (accessed 01.05.2014).

European Commission. 2013-11-13. "Trade - Policy making." European Commission, Last Modified 13.11.2013 Accessed 16.04.2014. <http://ec.europa.eu/trade/policy/policy-making/>.

European Commission. 2014. "Strategic planning and programming cycle." European Commission, Last Modified 09.04.2014 Accessed 21.04.2014. http://ec.europa.eu/atwork/planning-and-preparing/strategic-planning/index_en.htm.

European Parliament. 2011-01-18. "Hungarian media law sparks controversy at the European Parliament." In *European Parliament - Press release*. Strasbourg: European Parliament. http://www.europarl.europa.eu/pdfs/news/expert/infopress/20110117IPR11813/20110117IPR11813_en.pdf (accessed 14.04.2014).

European Parliament. 2013. Situation of fundamental rights: standards and practices in Hungary. edited by European Parliament. Strasbourg: European Parliament.

European Parliament. 2013-04-17. "MEPs voice concerns over constitutional changes in Hungary." Last Modified 17.04.2013 Accessed 02.05.2014. <http://www.europarl.europa.eu/news/en/news-room/content/20130416STO07356/html/MEPs-voice-concerns-over-constitutional-changes-in-Hungary>.

European Parliament. 2014. "MEPs." European Parliament Accessed 02.05.2014. <http://www.europarl.europa.eu/meps/en/search.html?country=HU>.

European Union. "Accession criteria (Copenhagen criteria)." European Union Accessed 16.04.2014. http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhagen_en.htm.

- European Union. 2009. "The Council of the European Union." European Union, Last Modified 24.12.2009 Accessed 18.04.2014.
http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0008_en.htm.
- European Union. 2014a. "European Commission." European Union Accessed 09.02.2014.
http://europa.eu/about-eu/institutions-bodies/european-commission/index_en.htm.
- European Union. 2014b. "Subsidiarity rule." European Union Accessed 21.04.2014.
http://europa.eu/legislation_summaries/glossary/subsidiarity_en.htm.
- European Union. 2014-01-15. "European External Action Service - Structure and organisation." European Union, Last Modified 15.01.2014 Accessed 16.04.2014.
http://eeas.europa.eu/background/organisation/index_en.htm.
- EUtopia law. 2012-01-23. "Constitutional change in Hungary: what can the EU do?" In *EUtopia law*, ed Aidan & Brown O'neill, Christopher: Matrix Legal Information Team.
<http://eutopialaw.com/2012/01/23/constitutional-change-in-hungary-what-can-the-eu-do/> (accessed 14.02.2014).
- Evrópufréttir. 2014-04-24. "Framkvæmdastjórnin lætur leiðtogaráðid ekki slá sig út af laginu og stefnir að beinni kosningu forseta framkvæmdastjórnar." In *Evrópufréttir*, ed Harpa H. Frankelsdóttir. Reykjavík: Evrópufréttir. <http://evropufrettir.is/2014/04/23/framkaemdastjornin-laetur-leidtogaradid-ekki-sla-sig-ut-af-laginu-og-stefnir-ad-beinni-kosningu-forseta-framkvaemdastjornar/> (accessed 24.04.2014).
- Facsar, Fanny. 2010-04-26. "Center-right Fidesz party sweeps to victory in Hungary." In *CNN*. Atlanta: Turner Broadcasting System Inc.
<http://edition.cnn.com/2010/WORLD/europe/04/26/hungary.election.results/index.html?s=PM:WORLD> (accessed 12.04.2014).
- Financial Times. 2014-04-07. "Victor Orbán re-elected in Hungarian landslide." In *Financial Times*, ed Lionel Barber. London: Financial Times Ltd. <http://www.ft.com/intl/cms/s/0/93e64bde-be21-11e3-961f-00144feabdc0.html#axzz2yFzhqlrI> (accessed 08.04.2014).
- Frankelsdóttir, Harpa H. 2012-03-17. "Ungverski forsætisráðherrann: "Við munum ekki verða nýlenda"." In *Evrópufréttir*. Reykjavík: Evrópufréttir. <http://evropufrettir.is/2012/03/17/ungverski-forsaetisradherrann-vid-munum-ekki-verda-nylenda/> (accessed 14.02.2014).
- Frankelsdóttir, Harpa H. 2014-04-29. "Fyrstu forsetakappraðurnar í ESB." In. Reykjavík: Evrópufréttir. <http://evropufrettir.is/2014/04/29/fyrstu-forsetakappraedurnar-i-esb/> (accessed 05.05.2014).
- Gardner, Andrew. 2013. "Centre-right MEPs take aim at report on Hungary." In *European Voice*. Brussels: European Voice SA. <http://www.europeanvoice.com/article/imported/centre-right-meps-take-aim-at-report-on-hungary/77432.aspx> (accessed 02.05.2014).
- Giddens, Anthony. 2000. *Runaway World*. New York: Routledge. Original edition, 1999.
- Guess, George M & LeLoup, Lance T. 2010. *Comparative Public Budgeting: Global Perspectives on Taxing and Spending*. Albany: State University of New York Press.
- Gutschker, Thomas, Haupt, Friederike, Hefty, Georg Paul & Zastrow, Volker. 2012-03-04. "„Es gibt ein verborgenes Europa“ " In *Frankfurter Allgemeine Zeitung*. Frankfurt: Frankfurter Allgemeine Zeitung GmbH. <http://www.faz.net/aktuell/politik/europaeische-union/viktor-orban-im-gespraech-es-gibt-ein-verborgenes-europa-11671291.html> (accessed 14.04.2014).
- Hague, Rod, Harrop, Martin & Breslin, Shaun. 1998. *Comparative Government and Politics - An Introduction*. Edited by Vincent Wright. Fourth edition ed, *Comparative Governmen and Politics*. Basingstoke & London: Macmillan Press Ltd. Original edition, 1982.
- Handel, Michael. 1990. *Weak States in the International System*. Second edition ed. Portland: Frank Cass. Original edition, 1981.
- Hart, Chris. 2005. *Doing Your Masters Dissertation*. London: SAGE Publications Ltd. Original edition, 2005. Reprint, 2006.
- Hix, Simon & Høyland. 2011. *The Political System of the European Union*. Edited by Neill Nugent, Paterson, William E. & Wright, Vincent. 3 ed, *The European Union Series*. Basingstoke: Palgrave McMillan. Original edition, 1999.
- Human Rights Watch. 2013. "Hungary: Constitution Changes Warrant EU Action." Human Rights Watch, Last Modified 12.03.2013 Accessed 05.02.2014. <http://www.hrw.org/news/2013/03/12/hungary-constitution-changes-warrant-eu-action>.
- Hungarian Spectrum. 2013-07-11. "Hungarian public opinion on Viktor Orbán's "war of independence"." In *Hungarian Spectrum*, ed Eva S. Balogh. Ottawa: Balogh, Eva S. <http://hungarianspectrum.wordpress.com/2013/07/11/hungarian-public-opinion-on-viktor-orbans-war-of-independence/> (accessed 15.04.2014).

- Ingram, David. 2010. *Habermas: Introduction and Analysis*. Ithaca and London: Cornell University Press.
- Kent, Penelope. 2001. *Law of the European Union*. Harlow: Pearson Education limited. Original edition, 1992.
- Krugman, Paul. 2011. "Hungary's Constitutional Revolution." In *The New York Times*. New York: Arthur Ochs Sulzberger, Jr. http://krugman.blogs.nytimes.com/2011/12/19/hungarys-constitutional-revolution/?_php=true&_type=blogs&_php=true&_type=blogs&_r=1 (accessed 05.02.2014).
- Kumin, Ferenc. 2013-10-08. "Council of Europe's Jagland: 'Hungarians Have Gone a Long Way'." In *A Blog About Hungary*, ed Deputy State Secretary for International Communication Ferenc Kumin. Budapest: Kumin, Ferenc. <http://ferenckumin.tumblr.com/post/63454622999/council-of-europes-jagland-hungarians-have-gone-a> (accessed 02.05.2014).
- Mahony, Honor. 2013-10-25. "Merkel: EU vote not decisive on commission President." In *EU Observer*. Brussels: EU Observer. <http://euobserver.com/political/121906> (accessed 20.04.2014).
- Meunier, Sophie. 2007. Managing Globalization? The EU in International Trade Negotiations. *JCMS: Journal of Common Market Studies* 45 (4): 905-926. Accessed 18.04.2014. doi:10.1111/j.1468-5965.2007.00753.x.
- Meyer-Resende, Michael. 2013-11-08. "Preventing more Hungaries – a stronger human rights architecture for the EU." In *OpenDemocracy*: openDemocracy Limited. <http://www.opendemocracy.net/can-europe-make-it/michael-meyer-resende/preventing-more-hungaries-%E2%80%93-stronger-human-rights-architectu> (accessed 08.04.2014).
- Mingst, Karen. 1999. *Essentials of International Relations*. 1 ed. New York: W.W. Norton & Company, Inc.
- Mueller, Jan-Werner. 2014-04-09. "Hungary's election offers some disturbing lessons for Europe." In *The Guardian*. London: Guardian News and Media. <http://www.theguardian.com/commentisfree/2014/apr/09/hungary-election-europe-prime-minister-viktor-orban> (accessed 13.04.2014).
- Müller, Jan-Werner. 2013. "Safeguarding Democracy Inside the EU - Brussels and the Future of Liberal Order." In *Transatlantic Academy*. Washington: Transatlantic Academy. http://www.transatlanticacademy.org/sites/default/files/publications/Muller_SafeguardingDemocracy_Feb13_web.pdf (accessed 14.04.2014).
- Nadler, John. 2012-01-05. "Why Hungary's New Constitution Could Be Bad for Europe." In *Time*. New York: Time Inc. <http://content.time.com/time/world/article/0,8599,2103775,00.html> (accessed 08.04.2014).
- News, BBC. 2012-01-17. "EU opens legal action against Hungary over new laws." In *bbc.co.uk*, ed Steve Hermann. London: BBC. <http://www.bbc.co.uk/news/world-europe-16593827> (accessed 14.02.2014).
- Newseurope. 2013-09-19. "Hungary amends its constitution to appease EU." In *newseurope.me*, ed Newseurope. Montenegro: Newseurope. <http://newseurope.me/2013/09/19/hungary-amends-constitution-appease-eu/> (accessed 04.05.2014).
- Nielsen, Nikolaj. 2012-02-18. "Hungary responds to EU infringement procedure." In *EUobserver*. Brussels: EUobserver. <http://euobserver.com/justice/115300> (accessed 08.04.2014).
- Nolan, Daniel. 2014-04-07. "Hungarian PM rejects election monitors' criticism after polls triumph." In *The Guardian*. London: Guardian News and Media. <http://www.theguardian.com/world/2014/apr/07/hungarian-pm-viktor-orban-election-monitors> (accessed 08.04.2014).
- Nugent, Neill. 2001. *The European Commission*. Edited by Neill Nugent, Paterson, William E. & Wright, Vincent, *The European Union Series*. Basingstoke: Palgrave. Original edition, 2001.
- Nugent, Neill. 2010. *The Government and Politics of the European Union*. Seventh ed, *The European Union Series*. Basingstoke: Palgrave Macmillan.
- OSCE. 2014-04-07. "Although parliamentary elections in Hungary offered voters a diverse choice, ruling party enjoyed undue advantage, say international observers." In *OSCE*. Vienna: Organization for Security and Co-operation in Europe. <http://www.osce.org/odihr/elections/117200> (accessed 10.04.2014).
- Oxford Dictionary. 2011. "Oxford Reference." Oxford University Press Accessed 26.04.2014. <http://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-910>.
- Political Capital Institute. 2012. "Attitude radicals in Hungary - in international context." In *Friedrich Ebert Stiftung*. Budapest: Friedrich Ebert Stiftung. http://www.politicalcapital.hu/wp-content/uploads/2012/derex_ess5_english.pdf (accessed 13.04.2014).
- Politics.hu. 2013-03-16. "Orbán says Hungary will not be a colony as thousands chant 'Viktor, Viktor'." In *Politics.hu*. Budapest: All Hungary Media Group (accessed 08.04.2014).
- Politics.hu. 2013-05-08. "Fidesz MEPs accuse EP committee of trying to 'colonize Hungary' with report (includes document)." In *Politics.hu*. Budapest: All Hungary Media Group.

- <http://www.politics.hu/20130508/fidesz-meps-accuse-eu-committee-of-trying-to-colonize-hungary-with-report/> (accessed 02.05.2014).
- Rajk, László. 2012-01-17. "Hungary: democracy crisis, diagnosis and appeal " In *OpenDemocracy*. London: openDemocracy Limited. <http://www.opendemocracy.net/l%C3%A1szl%C3%B3-rajk/hungary-democracy-crisis-diagnosis-and-appeal> (accessed 08.04.2014).
- Sedelmeier, Ulrich. 2014. Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession. *JCMS: Journal of Common Market Studies* 52 (1): 105-121. Accessed 07.04.2014. doi:10.1111/jcms.12082.
- Snævarr, Ármann. 1989. *Almenn lögfræði*. Reykjavík: Bókaútgáfa Orators.
- Social Platform. 2013-10-03. "European Parliament's rapporteur on fundamental rights calls for a new mechanism tackling the 'Copenhagen dilemma'." Social Platform, Last Modified 03.10.2013 Accessed 09.04.2014. <http://www.socialplatform.org/news/european-parliaments-rapporteur-on-fundamental-rights-calls-for-a-new-mechanism-tackling-the-copenhagen-dilemma/>.
- Spectrum, Hungarian. 2012-02-25. "Prime Minister Viktor Orbán's answer to Secretary of State Hillary Clinton's letter." In *Hungarian Spectrum*, ed Eva S. Balogh. Ottawa: Balogh, Eva S. <http://hungarianspectrum.wordpress.com/2012/02/25/prime-minister-viktor-orbans-answer-to-secretary-of-state-hillary-clinton/>.
- Stieding, Sine. 2013. "To what extent are Central and East European countries backsliding towards more authoritarian / illiberal styles of government?" In *Academia.edu*: Academia.edu. http://www.academia.edu/6156500/To_what_extent_are_Central_and_East_European_countries_backsliding_towards_more_authoritarian_illiberal_styles_of_government (accessed 10.04.2014).
- Stratulat, Corina & Dhéret, Claire. 2012-10-08. "A tale of modern-day capitalism and democracy: in view of the European protests." In *ECP Policy Brief*. Brussels: European Policy Centre. http://www.epc.eu/documents/uploads/pub_2970_european_protests.pdf (accessed 13.04.2014).
- Techet, Peter. 2013. "'But there are lots of positive stories from the Balkans'." In *The European Forum Alpbach's: Interview with Susanne Glass*. Vienna: The European Forum Alpbach. <http://www.alpbach.org/medienakademie/en/but-there-are-lots-of-positive-stories-from-the-balkans/> (accessed 15.04.2014).
- The Financial Times. 2014-04-07. "Hungary's Orban cocks a snook at European democracy." In *The Financial Times*, ed Lionel Barber. London: The Financial Times Ltd. <http://www.ft.com/intl/cms/s/0/cfeabe5a-be42-11e3-b44a-00144feabdc0.html#axzz2yFzhqlrl> (accessed 08.04.2014).
- The Phrase Finder. 2014. "Power corrupts; absolute power corrupts absolutely." Gary Martin Accessed 13.04.2014. <http://www.phrases.org.uk/meanings/absolute-power-corrupts-absolutely.html>.
- Thorhallsson, Baldur. 2000. *The Role of Small States in the European Union*. Aldershot: Ashgate Publishing Ltd.
- Tobler, Christa & Beglinger, Jacques. 2010. *Essential EU Law in Charts*. Second "Lisbon" edition ed. Budapest: HVG-ORAC.
- Traynor, Ian. 2012-01-18. "Hungary PM Viktor Orban faces EU backlash over new policies." In *The Guardian*. London: Guardian News and Media. <http://www.theguardian.com/world/2012/jan/18/hungary-viktor-orban-eu-backlash> (accessed 02.05.2014).
- Traynor, Ian. 2012-03-15. "Hungary prime minister hits out at EU interference in national day speech." In *The Guardian*. London: Guardian News and Media. <http://www.theguardian.com/world/2012/mar/15/hungary-prime-minister-orban-eu> (accessed 08.04.2014).
- United Nations. 2014. "What is the rule of law?". United Nations Accessed 24.04.2014. http://www.unrol.org/article.aspx?article_id=3.
- Verseck, Keno. 2012-01-19. "Hungary in the Crossfire: Orbán Lashes Out at Critics in European Parliament." In *Spiegel Online International*, ed Rüdiger Ditz. Hamburg: Spiegel Online GmbH (accessed 02.05.2014).
- Visir.is. 2014-04-07. "Þjóðernissinnar allsráðandi í Ungverjalandi." In *Visir*, ed Mikael Torfason. Reykjavík: 365 miðlar ehf. <http://www.visir.is/thjodernissinnar-allsradandi-i-ungverjalandi/article/2014140409295> (accessed 12.04.2014).
- Vogel, Toby. 2013-04-18. "MEPs split over changes to Hungary's constitution." In *European Voice*. Brussels: The Economist Group. <http://www.europeanvoice.com/article/imported/meps-split-over-changes-to-hungary-s-constitution/77000.aspx> (accessed 02.05.2014).
- Wiener, Anthe & Diez, Thomas. 2009. *European Integration Theory*. Second edition ed. Oxford: Oxford University Press. Original edition, 2004. Reprint, 2012.
- Wikipedia. 2003a. "Fidesz." Mikimedia Foundation Inc, Last Modified 24.04.2014 Accessed 12.04.2014. <http://en.wikipedia.org/wiki/Fidesz>.

- Wikipedia. 2003b. "John Dalberg-Acton, 1st Baron Acton." Wikimedia Foundation inc, Last Modified 01.05.2014 Accessed 13.04.2014. http://en.wikipedia.org/wiki/John_Dalberg-Acton,_1st_Baron_Acton.
- Wikipedia. 2003c. "Robert Schuman." Wikimedia Foundation Inc, Last Modified 03.05.2014 Accessed 14.04.2014. http://en.wikipedia.org/wiki/Robert_Schuman.
- Wikipedia. 2004. "Political groups of the European Parliament." Wikimedia Foundation, Last Modified 31.03.2014 Accessed 02.05.2014. http://en.wikipedia.org/wiki/Political_groups_of_the_European_Parliament.
- Wikipedia. 2006a. "Constitution of Hungary." Wikimedia Foundation Inc, Last Modified 27.03.2014 Accessed 05.02.2014. http://en.wikipedia.org/wiki/Constitution_of_Hungary.
- Wikipedia. 2006b. "Westphalen sovereignty." Wikimedia Foundation Inc, Last Modified 15.04.2014 Accessed 13.02.2014. http://en.wikipedia.org/wiki/Westphalian_sovereignty.
- Wikipedia. 2008. "Hungarian parliamentary election, 2010." Wikimedia Foundation Inc, Last Modified 11.04.2014 Accessed 04.05.2014. http://en.wikipedia.org/wiki/Hungarian_parliamentary_election,_2010.
- Wikipedia. 2014a. "European Parliament election, 2014." Wikimedia Foundation Inc, Last Modified 17.04.2014 Accessed 20.04.2014. http://en.wikipedia.org/wiki/European_Parliament_election,_2014.
- Wikipedia. 2014b. "Hungarian parliamentary election, 2014." Wikimedia Foundation Inc, Last Modified 10.04.2014 Accessed 13.04.2014. http://en.wikipedia.org/wiki/Hungarian_parliamentary_election,_2014.
- Wikipedia. 2014c. "Hungary." In *Wikipedia*. <http://en.wikipedia.org/wiki/Hungary> (accessed 08.04.2014).
- Yin, Robert K. 2014. *Case Study Research: Design and Methods*. 5 ed. London: Sage Publications Inc.

Other references

Jónsson, Friðrik H. & Grétarsson, Sigurður J. 2007. *Gagnfræðakver handa háskólanemum*. Reykjavík: Háskólaútgáfan.

Web pages

- BBC News – Europe: <http://www.bbc.co.uk/news/world/europe/>
- Guardian – European Union: <http://www.theguardian.com/world/eu>
- EurActive: www.euractiv.com
- EU Observer: www.euobserver.com
- EU Politics News: <http://eupolitics.einnews.com/>
- European Commission: http://ec.europa.eu/index_en.htm
- European Parliament: <http://www.europarl.europa.eu/portal/en>
- European Union [official website]: http://europa.eu/index_en.htm
- European Voice: www.europeanvoice.com
- EuroparlTV: <http://www.europartv.europa.eu/en/home.aspx>
- Evrópufréttir: www.evropufrettir.is
- Telegraph – European Union: <http://www.telegraph.co.uk/news/worldnews/europe/eu/>
- The European Convention: <http://european-convention.eu.int/EN/bienvenue/bienvenue2352.html?lang=EN>
- Website of the Hungarian Government: <http://www.kormany.hu/en>