

Beyond “Ever Closer Union”: The Juncker Commission’s Ambition in Migration and Economic Policy

By

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Jakov Bojovic

August 31, 2020

A handwritten signature in blue ink, appearing to read 'Jakov Bojovic', is written over a light blue horizontal line.

Signature

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ABSTRACT

Since the 1992 Maastricht Treaty, in new areas of EU activity such as migration and economic policy, the Member States have substantially integrated policymaking at the EU level without transferring new powers to the traditional supranational bodies like the European Commission. Because of the intergovernmental nature of many of these new governance mechanisms, the Commission's leadership and the ability to drive integration forward has been put into question ever since. It is certainly true that the traditional way that the EU has integrated in the past – expansion of the Community method leading to an ever closer union – does not work in these policy areas. The possibilities for the European Commission to be an ambitious policy entrepreneur within such constraints are investigated in this thesis.

Beyond ever closer union, there are still options for the Commission to lead in other ways. In other words, there are other types of ambition that the Commission may have. These are the ambition to empower other EU institutions (the so-called *de novo* bodies), to find and propose new types of integration or coordination of policies, and to act politically by pursuing policy changes within the existing institutional architecture. All of these ambitions can be, in one way or another, in a clash with the Commission's potential appetite for an ever closer Union. Delegating powers to new bodies runs against its presumed role as the government of Europe in an ever closer union, new types of integration or coordination of policies means that powers remain mostly at Member State level and acting politically negatively affects its perception of neutrality necessary for traditional EU integration. In the analytical framework developed in this thesis, the three are referred to as subjects of “focus of ambition” of the Commission.

Some would expect that Member States would have primary roles in pursuing such solutions, with the Commission being either opposed to or complicit with them. However, this thesis hypothesizes that the Commission takes an active role in pursuing them, as a highly ambitious actor. As highly ambitious, the Commission proposes, rather than waits for the

European Council or other intergovernmental body to instruct the solution. Being initially highly ambitious, the thesis hypothesizes that the Commission is also ready moderate its ambition after discussions with the stakeholders. In some situations, its high ambition can also lead to its proposals being ignored by the decision-makers. While the first set of expectations are about the focus of ambition, these expectations of a highly ambitious Commission are about the level of the Commission's ambition.

The thesis takes the presidency of Jean-Claude Juncker as a time frame for analysis, specifically six policy episodes within the policy fields of EMU and JHA. Semi-structured elite interviews, process tracing, and document analysis are used to investigate the Juncker Commission's ambition. The findings confirm the hypotheses relating to the focus and the level of ambition, which shows that the Commission has moved its focus to other projects rather than ever closer Union, as the second hypothesis of new intergovernmentalism suggested, and has done so with a high level of ambition.

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LIST OF ABBREVIATIONS

BU	Banking Union
SRB	Single Resolution Board
CEAS	Common European Asylum System
CMU	Capital Markets Union
CSR	Country-specific Recommendation
EAM	European Agenda on Migration
EASO	European Asylum Support Office
EBCG	European Border and Coast Guard
ECB	European Central Bank
ECOFIN	Economic and Financial Affairs Council
EDIS	European Deposit Insurance Scheme
EDP	Excessive Deficit Procedure
EFC	Economic and Financial Committee
EMU	Economic and Monetary Union
ESM	European Stability Mechanism
EU	European Union
EUAA	European Union Agency for Asylum
EWG	Eurogroup Working Group
JHA	Justice and Home Affairs
MIP	Macro-Economic Imbalance Procedure
MTO	Medium-Term Objective
NI	New intergovernmentalism
QMV	Qualified Majority Voting
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
SGP	Stability and Growth Pact
SRF	Single Resolution Fund
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

1 INTRODUCTION

1.1 The context: The European Commission in new areas of EU activity

The topic of this thesis is the ambition of the European Commission during the mandate of President Jean-Claude Juncker (2014-2019). Specifically, the thesis looks into the reform proposals in six policy episodes in the domains of Justice and Home Affairs (JHA) and Economic and Monetary Union (EMU) to arrive to conclusions regarding the level and focus of ambition of the Juncker Commission. These policy areas touch upon essential aspects of state sovereignty such as borders or national budgets, and cover value-driven political issues such as immigration or fiscal solidarity. Thus, they are particularly challenging areas for EU integration. Rising euro-skepticism and populism only add to what was described in theory as a context of post-functionalism (Hooghe & Marks, 2009) in which political obstacles to supranationalism outweigh the potential functional benefits of common European policies. Since the Maastricht Treaty came into force, these new areas of EU activity have gradually become more integrated, but without giving new powers to the traditional supranational bodies such as the Commission (Bickerton et al., 2015). Ever since the early 1990s, it appeared like the Commission was moving towards a slow and steady decline, as the traditional type of EU integration seemed to have reached its natural limits. The Commission itself focused more on consolidating its own ranks after the Santer Commission's resignation and the big bang enlargement of 2004 (see Ellinas and Suleiman, 2012; Wille 2013).

However, the initial puzzle for this thesis came from the fact that President Juncker, in such a restrictive environment, came into office with a seemingly high level of ambition. He wanted the Commission to be more political, to be “big and big things and small on small things” (Juncker, 2014: 1). His Commission published Ten political priorities which aimed to reform taxation policies, economic governance, migration, and other. It is important to note that President Juncker had already been a veteran of EU politics before becoming Commission

President, as Prime Minister of Luxembourg (1995 – 2013) and President of Eurogroup (2005 – 2013). He knew EU governance and politics inside out. Bringing a high level of energy, knowledge and experience of the EU, he raised some hopes in the pro-EU circles that he could lead the Commission in a way that was different than his recent predecessors (see Hayward, 2008) and perhaps more similar to ex-Commission President Jacques Delors. This intention was, of course, seen as a red flag in Eurosceptic circles (The Telegraph, 2017a).

As the Juncker Commission recently finished its mandate, it is prime time for an assessment of not only its results, but also of its ambitions. Specifically, what was the Juncker Commission's ambition in migration and economic policy, how high was its ambition to push for integration (with or without supranationalization), where did this ambition come from and how it developed over time, are the main research questions of this thesis for which an analytical framework of the Commission's ambition is developed. Through the concept of ambition, this thesis offers a theory-informed comprehensive assessment of the Juncker Commission in two critical policy areas.

1.2 Why focus on the Commission's ambition?

Focusing specifically on the ambition, instead of outcomes of policymaking or EU integration, is a novel approach developed in the thesis which opens a different set of questions from traditional theoretical approaches to the Commission and its role in the EU's polycentric system of governance (see Pollack, 2003). These questions are particularly important for the Commission in new areas of activity such as the EMU and the JHA. These areas are not fully supranationalized, the power in them is still mostly in the hands of the Member States. Does the Commission seek to make these areas more supranational, in the long term leading to a federal Europe? Does it want to play a political role within these areas, pushing the continent as a whole towards more left-leaning or right-leaning policies? Indeed, alleged ambitions of the Commission are already used for political purposes by a variety of actors who claim that it always seeks to expand its roles and

further EU integration. One can think of Hungarian Prime Minister Victor Orban who initiated an anti-Commission government sponsored billboard campaign in Hungary (Euronews, 2019a). The face of Jean-Claude Juncker and the text “stop Brussels” suggested that the Commission was as an institution with an ambition to impose Europe-wide liberal migration policies behind the backs of some more conservative EU Member States. Similarly, a power-hungry Commission was used as a reason for Brexit by some of its main advocates, such as Boris Johnson (The Telegraph, 2016).

It is important to note here that all of these questions or concerns are entirely about the assumed ambition of the Commission, not the outcomes themselves or the process through which the decisions are made, yet they are increasingly relevant. It is important to investigate them because the results may suggest that the Commission is a different body in these areas than expected by both the Commission-friendly pro-Europeans and the Eurosceptics who see the model of a self-enforcing integration with the Commission at its center as a sign of Europe’s demise. As it will be shown, it is also important for more theoretical reasons, as the ambition of the Commission has become a topic of debate since the proliferation of new types of governance in the new areas of EU activity and the theories that sought to explain this.

Moreover, a high ambition of the Commission does not guarantee success. In fact, a high level of ambition can lead to undesirable effects. Given that many of the Commission’s most wanted reform proposals in this period ended with a deadlock or a watering down, investigating the reform ambition themselves or the reasons for failure to negotiate deals is what remains to be studied from these cases. The reforms of the Common European Asylum System (CEAS) and the aim to complete the Banking Union (BU) with a common European Deposit Insurance Scheme (EDIS) are just a few examples. In fact, it could be that its ambition to play a larger role in these debates, and to push them far above the Member State preferences, hurt the EU’s chances to arrive to a viable agreement that a more moderate proposal would have brought. Hence, the Commission’s high ambition is not necessarily a positive thing, if the end goal you want to see is

more integration. There is a possibility that a more strategic or less political approach could have been more fruitful (see Blok, 2019). There were also many situations in which the Commission's initial high ambition was moderated, which has led to some success. For example, the European Border and Coast Guard (former Frontex), under the Commission's reform leadership, saw a full operationalization and a significant empowerment of the things it can do on the ground.

Regardless of whether it leads to success or deadlock, the Commission's ambition is an important aspect of the EU decision-making process to look into. By investigating the Commission's ambition and how it developed, this thesis answers questions regarding the Commission's agenda setting in new areas of EU activity, which is especially relevant given the important role that the European Council has in this area. This was very clearly elaborated by the authors of the new intergovernmentalism (Puetter, 2016; Fabbrini and Puetter, 2016; Bickerton et al. 2015), a theory developed to explain EU integration in the new areas of EU activity. According to this theoretical approach, areas of EU activity such as JHA and EMU have integrated since the Maastricht treaty with mostly intergovernmental and hybrid modes of governance. It will be elaborated later on how this thesis builds on this theoretical approach. Given its confirmed high role in managing the euro crisis, focusing on the Commission's ambition in the case of JHA during the refugee crisis allows for checking whether the European Council had control over what the Commission should or should not propose. Simply put, a highly ambitious Commission does not wait for instructions (be it from the European Council or not), it acts. The same will be investigated in the case of EMU, a post-crisis policy area for which President Juncker had big reform ideas as well.

1.3 The concept of ambition

This thesis makes use of the concept of ambition, borrowed from the literature on political leadership (see Elgie, 1995) and developed into a framework for analyzing the Commission's role in the new areas of EU activity. There are two other concepts which could have been used instead

for this analysis but for different reasons they have not, and these are policy entrepreneurship and preference formation.

The European Commission is not only a policy manager, but it is also a policy entrepreneur, and this is a well-established finding in the literature (e.g. Cram 1994, Laffan 1997, Kaunert 2010, Rhinard 2010, Batory and Lindstrom 2011, Matlby 2013). What this means in practice is that the Commission was found to be using strategies of policy entrepreneurship (Baumgartner and Jones 1991), issue framing and venue shopping, to bring issues to the EU agenda and influence outcomes.

The policy entrepreneurship framework itself was often applied in cases where the ambition of these actors was pretty clear and did not warrant a more detailed inquiry. For example, when researching the role of the public health organizations as policy entrepreneurs in tobacco regulation reforms, there is no need to present any special evidence proving the premise that their ambition was to regulate public smoking (see Spill et al. 2001). There is of course variation in the frames these actors will use, but they will always be in line with their overall ambition. However, with the Commission, as a special mix of a bureaucratic and political organization (Wille, 2013; Peterson, 2017a), in the challenging environment of the new areas of EU activity, investigating the focus of its ambitions is certainly a worthwhile effort, as it may for example shift from supranational-focused to more political-oriented ambitions (see Hodson, 2013). These outcomes are often in conflict with each other and the Commission has to make a choice between them. This is one of the things that make the Commission's role as a policy entrepreneur particularly complex.

For example, the hypotheses of new intergovernmentalism that will be presented in the next chapter ask this very question, speculating that the Commission has moved away from “ever closer union” to other types of institutional or policy reforms. The approach of policy entrepreneurship does not give the right analytical tools to deal with such a situation. Mintrom and Luetjens (2017: 1375-7) also emphasized the lack of research on various motivations of policy

entrepreneurs and proposes it as future avenue for research in this field. By bringing forward the concept of ambition from political leadership literature, the aim is to answer this call and thus contribute also to the growing literature on policy entrepreneurs as reasons for policy change.

Seemingly similar to ambition is the concept of preference, but there are important differences that led to the choice of the former for this thesis. In the theory of liberal intergovernmentalism preferences are central concepts. Member States arrive to them through domestic preference formation process, and then they clash and bargain at the EU level in order to find common solutions. This is how EU integration moves forward according to the theory. The concept of domestic preference comes from the idea that a government's preference can be calculated by measuring the levels of influence (and interests) of domestic interest groups. Moravcsik (1993; 1998: 24) called a domestic preference an "ordered and weighted set of values placed on future substantive outcomes" that are "not simply a particular set of policy goals but a set of underlying national objectives independent of any particular international negotiation". While this understanding of domestic preference is not without its problems in the domestic setting (see e.g. Crespy and Schmidt 2014, Csehi and Puetter 2020), it is argued here that it also cannot be simply transferred to the Commission and used as an analytical tool for investigating the Commission's aims. In the past it was used as a premise for structural approaches like the principal-agent model that offered analyses of the bargaining processes while keeping the Commission's preference fixed to pro-supranationalism, based on its hard-wire to the idea of ever closer union (Pollack 2003). However, the claim here is that the Commission's position is not that fixed and cannot be inferred from structural factors. It may also change between different political contexts, policy areas, different proposals, and especially between different Commission Presidents. A change in government in one of the Member States can also trigger a change in the Commission's ambition. It is proposed here to use the analytical concept of ambition, instead of the theoretically heavy concept of preference, to distinguish the approach applied in this thesis from the structuralist traditions that have this concept as their main building block.

For these reasons, a turn is made to the concept of ambition which, although already discussed in political science literature, has not yet received the proper theoretical attention it deserves. For example, Robert Elgie in his classic book “Political leadership in liberal democracies” (1995) mentioned ambitions as an important aspect of leadership. There are two important aspects which characterize political leaders according to Elgie: their ambitions and their leadership styles. Both of these are highly influenced by the leadership environment comprised of institutions, political and other forces or demands. This is an important distinction as, indeed, ambition itself can be a factor that leads to positive or negative outcomes, just like leadership style can in some situations be crucial for striking a deal in complicated negotiations. Positive outcomes of high ambition can be about starting a wider debate, bringing a potential new solution to a policy problem on the agenda, or providing leadership in much need moments of crisis. If high ambition leads to inability to come up with a more moderate solution that still be a step forward, that would be a negative consequence of a high ambition (Dryzek and Ripley, 1988; Schout et al., 2019).

Leaders also differ in the focus and level of the ambitions they have or show (Elgie 1995: 10). By focus, it is primarily meant that there are different policy solutions or institutional reforms that an actor can choose to propose. Moreover, an actor in the process can also have an ambition to act politically, or an ambition to build credibility, and this goes beyond the concept of preference that is limited to the potential reform outcomes. Finally, ambition is a useful word to use because it is also an adjective, thus encapsulating not only the focus but also the level of ambition within it. An actor can put forward a highly (or less highly) ambitious proposal, and this is, simply put, what is meant by the level of ambition. This multi-faceted aspect of ambition is a strong reason for which it was chosen in the thesis, as the aim is to investigate both the focus and level of ambition in the Commission’s proposals. This will allow drawing critical comparisons. For example, is it the case that if the proposal is political, that it is also well-tested and strategic? Or, if the proposal involves the delegation to de novo bodies, will the Commission’s ambition be higher?

1.4 The questions of focus and level of the Commission's ambition

It is clear that by investigating the ambition itself, a series of interesting new questions for analysis of the Commission opens up. As mentioned, final outcomes of post-Maastricht EU integration processes in new areas of activity have not led to the spread of the Community method¹ in them. This was also the case post-Lisbon, including during President Juncker's mandate. In JHA and EMU, integration mainly followed through the creation of new and the expansion of competences of existing EU agencies as well as developing soft methods of policy coordination. For example, the expansion of the size and mandate of the European Border and Coast Guard (formerly known as Frontex) featured as perhaps the most notable of all policy responses to the refugee crisis (Niemann and Speyer 2018). Similarly, an agency called the Single Resolution Board (SRB) was bestowed important monitoring duties in the Banking Union. The European Stability Mechanism (ESM), Europe's bail-out fund was established through an intergovernmental treaty as a new type of institution outside the EU law that Member States can keep under their watchful eyes. Also, other institutional responses such as the establishment of hotspots as a way to manage the migratory influx and the foundation and gradual expansion of the European Semester, the EU's system for economic policy coordination, suggest that soft coordination mechanisms are still on the rise.

These integration efforts do not include an expansion of Community method as a whole or its elements into the new areas of EU activity. Still, the puzzle that will be addressed in the thesis is the Commission's ambition in such reforms. An idea that the Commission, a traditional supranational actor, may have a strong role in arriving to non-supranational governance solutions is an interesting thought. Why would the Commission do this, if found true? The hunch is that the Commission is struggling to remain relevant in the challenging environment and seeks to shift its

¹ The Community method is the EU's ordinary decision-making procedure in which the Commission proposes legislation, the Council of Ministers adopt decisions by QMV, while the ECJ rules in cases of non-compliance.

ambitions to such projects in order to portray itself as a useful and politically relevant actor. The Commission increasingly needs to, as the title of the thesis suggests, find new ideas for Europe that go beyond the concept of ever closer union.

Moreover, a recent empirical phenomenon that also inspired this thesis is the Commission's ambition to act politically. The Juncker Commission's ambition to be political was already introduced above. The question that will be answered using the concept of ambition is whether and when did the Commission act politically in its proposed policy reforms.

1.5. Summary and outline

The role that the Commission plays in the process of European integration is one of the most researched areas within EU studies, from its very beginnings (see Haas, 1958). As many authors showed, it can remain resilient and preserve its influence even in tougher or skeptical environments (see Nugent and Rhinard, 2016; Becker et al., 2016). Its influence was defined as, for example, spillover facilitating (see Haas 1964), policy entrepreneurship (see Kaunert 2010), purposeful entrepreneurship (see Cram 1994), strategic entrepreneurship (see Hodson 2013), policy activism (see Howarth and Roos 2017), presidential leadership (see Ross 1995). This extensive literature on the role of the Commission in EU integration, or the EU institutional architecture in general, is where this thesis is primarily situated. The aim is to create a space for novel and original research of the Commission and its role in the EU as a polity that is increasingly complex, by connecting this rich area of research with the recent findings and expectations of the theory of new intergovernmentalism (Bickerton et al. 2015) by using the concept of ambition. Hence, the aim is to open new possibilities for research by specifically focusing on the ambition of the Commission, hence not limiting the research to the end results of policy initiatives.

An important scope condition of the thesis and its findings is that it is limited to the developments in the new of EU activity. These areas developed after the Maastricht Treaty came into force: Justice and Home Affairs (JHA), Economic and Monetary Union (EMU), security,

foreign and defense policy, as well as social and employment policy (Puetter 2014: 2). These are chosen not only because of their high importance and prioritization by the Juncker Commission, but also because of the link to the theory of new intergovernmentalism, which has the same scope condition.

Before the hypotheses are developed and introduced in Chapter 2, the most relevant theoretical and analytical approaches to the Commission are reviewed. The literature review presents what different theoretical approaches to EU integration hypothesized about the ambition of the Commission both as an assumed unitary actor, and as a group of ideologically diverse political officials and bureaucrats. The approaches – neofunctionalism, liberal intergovernmentalism, principal-agent theory, policy entrepreneurship, and leadership studies – are also critically assessed and the need for a new approach for the areas where the new intergovernmentalism applies is justified. The literature review is followed by a sub-chapter that selects the different possible ambitions in terms of focus and makes claims with regards to the changing level of the Commission's ambition. Especially important is the new intergovernmentalism's hypothesis that the Commission's ambition, due to a changing context, has moved away from the concept of ever closer union. It is this claim that is further developed and ultimately put to the test in this thesis (focus of ambition), along with a claim that the Commission can find enough space to be highly ambitious within this context (level of ambition).

2 THEORY AND METHODS

2.1 Literature review of the Commission-related literature and the assumed ambition of the Commission

The foundational work in EU integration studies, Ernst Haas' "The Uniting of Europe" (1958), is the first application of the theory of neo-functionalism to EU integration, building on previous writings of David Mitrany (1943). The theory was developed in response to the realist accounts of international relations that portrayed the inter-state relationships as an anarchic, zero-sum game in which sovereign nations compete and pursue their own interest at the expense of others (e.g. Morgenthau, 1946). The European Coal and Steel Community, the European Economic Community, and the EURATOM served to early neo-functionalists as examples of inter-state cooperation and gradual supranationalization that showed how economically inter-dependent nation states can indeed cooperate and create common institutions. Moreover, once the integration process begins in one area, that unfolds integration in the other related areas, for functional reasons. This phenomenon called "functional spillover" is at the centre of neo-functionalist thinking about EU integration.

Together with spillover, what happens in the integration process, according to the neo-functionalists, is a redirection of loyalties and expectations toward the supranational level. The citizens of nation states as well as interest groups are expected to realize that they are benefiting from the integration process and are thus deemed likely to become loyal subjects and advocates of the new political institutions created by regional integration. Haas (1958) devoted one chapter of his seminal book to investigating the role that the High Authority – the later European Commission - played in this shift of loyalties that the author calls "political integration". Haas found that the role of the High Authority, and especially Monnet as its first President, was crucial in establishing a "federalist pattern" for the future of EU integration. As Jean Monnet's (1978) memoirs also show, which will be analysed later in this Chapter as well, he was also aware of this

pattern and had a deliberate agenda of exploiting this functionalist potential of gradual integration. Later on, this process in which the supranational secretariats, together with regional interest groups and other actors that have a direct benefit from the integration process, drive the process itself forward was labelled “cultivated spillover” (Tranholm-Mikkelsen 1991: 6).

The theory had a revival in the 1980s and the 1990s, when the Economic and Monetary Union (EMU) was created together with the single currency. For example, Stone Sweet and Sandholtz (1997) re-introduced the main concepts of neo-functionalism to explain how the Commission provided a key impetus in the run-up to the Single European Act’s adoption and the Maastricht Treaty which laid the groundwork for the EMU. Together with functional spillover, the activism of then Commission President Jacques Delors was seen as one of the most decisive factors in the integration process.

Neo-functionalism was often criticized for placing too much emphasis on the Commission’s role in EU integration process and for ignoring the bargaining that happens between the Member States (Moravcsik 1998, 1999). Furthermore, it failed to explain the situations in which the Member States did not choose supranationalization, despite functional pressures (Hooghe and Marks 2009). The times of slowing integration, such as the one in the 1970s, and the advances made in other theoretical approaches have sent the theory of neo-functionalism in decline. The revival of the theory seemed short-breathed as it predominantly focused on the personality and leadership skills of President Delors. The following leaders failed to fit into Delor’s boots. Especially since the enlargement to the East, the focus has somewhat shifted from political leadership and policy activity onto consolidating the Commission that went from 15 to 28 Commissionaires. This made it even harder for the Commission to pursue its traditional roles described by the neo-functionalists. Although it may seem like neo-functionalism is losing its mainstream status, neo-functionalist approaches were recently used to explain the advances in border protection (Niemann and Speyer, 2018), euro area integration (Niemann and Ioannou,

2015), and even the potential of EU disintegration (Schmitter and Lefkofridi, 2016). This case-specific literature is further discussed in the empirical sections later in the thesis.

Taking the story back to the concept of ambition that this thesis investigates, in neo-functionalist writing the ambition of the Commission is clearly described as furthering EU integration by identifying and exploiting the so-called spillovers. According to neo-functionalists, the Commission seeks to “exploit the inevitable spill-overs and unintended consequences that occur when states agree to assign some degree of supra-national responsibility for accomplishing a limited task and then discover that satisfying that function has external effects upon other of their interdependent activities” (Niemann and Schmitter 2009: 45). For neo-functionalists, the European Commission is the main agent driving integration forward. The type of integration that follows from its efforts is the classic community method integration in which the Commission is given the monopoly on legislative agenda setting while the Council and the European Parliament decide on its proposals. This is the case in policy areas such as the single market, enlargement, trade, or agriculture. However, the most important reforms in areas of JHA and EMU during both the Juncker and the Barroso Presidencies did not involve further supranationalization through Community method integration. Instead the Commission’s ambition was mostly focused on policy reforms with a strong political character, as well as a different type of EU integration, through delegation to agencies or creating coordinative institutional practices between the Member States (Hodson 2011, 2013). This shows a strong need for a new understanding of the Commission’s ambition, one that goes beyond exploiting spillovers for Community method integration.

While neo-functionalism had its prime in the 1950s and early 1960s, the empirical reality of the following decade diminished the explanatory potential of the theory to such a degree that Ernst Haas himself declared the theory obsolete (see Haas, 1975). The Empty Chair crisis of 1965-6 marked the start of a period of a paralysis in EU integration, and the theory of intergovernmentalism was applied to explain why this happened and what it tells us about the limits of regional integration (see Ludlow, 1999). Expectedly, intergovernmentalism had a different

view of the Commission compared with neo-functionalism. According to the theory, as its founder Stanley Hoffman (see 1966) emphasized, the Member States remain in full control over the integration process and are always at its centre. In this portrayal of EU integration, there is very little or no space at all for the Commission to drive integration forward. When vital interests are involved, the Member States retain tight control over decision making. These vital “national” interests were defined as intrinsic to any nation state (ibid.: 122). Hence, according to the theory, integration of core policy areas was deemed impossible, as it would jeopardize the Member States’ sovereignty and national interests. However, with the Single European Act (SEA) and the Maastricht Treaty moving the integration into new policy areas such as economic and monetary policy (EMU), this early version of intergovernmentalism was too simplistic to explain the new empirical reality.

This was taken up by liberal intergovernmentalism. For liberal intergovernmentalism, the Commission is not the driver of integration, regardless of its ambition, that the authors of the theory discuss in several key contributions. According to Andrew Moravcsik (see 1998), EMU is a result of convergence of domestic, instead of “national”, interests of core Member States. Moravcsik, outlining the theory of liberal intergovernmentalism (Moravcsik, 1993), explains that the domestic interests are shaped by major interest groups, instead of being intrinsic to the nation states, and if these actors favour centralization of certain policies on the European level they will pressure their governments to advocate for such policies. Interest groups are crucial domestically in the process of national preference formation, which is the first level of the liberal intergovernmentalist integration mechanism. The second level is one of EU-level bargaining between Member States. This analytical distinction between the two levels has been criticized before as too strict (e.g. Schmidt, 2018; Bickerton et al. 2015; Csehi & Puetter, 2020). At the bargaining stage, the Member States decide to create common institutions, and this is for the reason of securing credible commitments. Specifically, the commitments are made credible by supranational institutions.

Thus, for liberal intergovernmentalism, the Commission's ambition is not an important factor in explaining EU integration. "EU integration can be best understood as a series of rational choices made by national leaders." (Moravcsik 1998: 18). The Commission is expected to be under tight control of the Member States, similarly to the way it was portrayed by the old intergovernmentalism. Its ambition could be expected to be primarily tied to securing its credibility as a neutral actor, especially as the Commission and the ECJ ensure the credibility of intergovernmental commitments on part of the member states. If the Commission decides to be too ambitious, the Member States have the option of refusing the proposals or opting out individually. In the terms of liberal intergovernmentalist theory, one can expect a backlash against the Commission if it was to be too ambitious in relation to circumventing Member States' preferences. This backlash can have a negative impact on the future credibility of the Commission's proposals, which implies that the Commission's ambition could even be a topic of interest for liberal intergovernmentalists. It is important to note that liberal intergovernmentalism is a theory primarily interested in great bargains that sees integration as a series of treaty changes and major events, unlike neo-functionalism that is focused on day-to-day decision making and that sees treaty changes as events when law catches up with political reality.

Another approach, linked to liberal intergovernmentalism, takes a closer look at the type of control that the Member States exercise over the Commission - the principal-agent model (see Bawn, 1995). The principal-agent model investigates the relationships between the Member States of international organizations (principals) and the supranational institutions or secretariats entrusted with tasks to perform on their behalf (agents). It looks into the possibility of agents to drift from the control of the principals and drive the organization's development. As such, the approach is particularly relevant for the EU, in which the role of the Commission had already been a topic of debate before the model came about.

Mark Pollack (1997a) pioneered the usage of this model in EU studies. In practice, principal-agent analyses start with an overview of preferences of the Member States and the

supranational institutions, so that a potential drift in the direction of the Commission's preference could be identified in the end-result of institutional reforms. According to Pollack (1997b), the Commission's preference is to act in a competence maximizing way: "it seems clear that the Commission, the Court of Justice, and the European Parliament have indeed pursued a broadly pro-integrationist agenda throughout the history of the EC." (p. 4). Without political controls from the Member States, the Commission officials would be in favour of supranational solutions. If they propose something different, this is seen as result of Member State control. Thus, since the agent (the Commission), to which the principals (the Member States) delegate authority has such a strong leaning towards integration, the agents adopt administrative and oversight procedures to control for potential "agency shrinking" (Pollack 1997b: 7). However, in Pollack's principal-agent analysis, there is still room for the Commission to have influence on the outcomes. This can happen when Member State preferences are weak or conflicting, when there is low possibility of sanctioning for agency shrinking, when the Commission has more information than the Member States, and when it has clear transnational constituencies which can bypass the Member States. Although this rationalist approach is more nuanced in its view of the Commission's influence than liberal intergovernmentalism, it shares the rigid portrayal of its preference towards supranational integration. The approach was used to explain agency shrinking and monitoring mechanisms such as comitology in a variety of policy areas (Kassim and Menon, 2003; Dunlop and James, 2007; Bocquillon and Dobbels, 2014).

The two grand theories, liberal intergovernmentalism and neo-functionalism, still stand as the most developed approaches to explaining EU integration as a long-term process. In the next sub-chapter, the recent contender, the new intergovernmentalism, will be presented as the framework this thesis contributes to. Furthermore, together with the EU becoming a more stable and developed polity, institution-specific and policy-specific approaches started to abound in the field of EU studies from the Maastricht Treaty era onwards. Many of these studies focused on the Commission, as different authors researched the values and beliefs of Commission officials, the

strategies and discourses of the Commission as a policy entrepreneur, the leadership skills of its Presidents, and the political or technocratic nature of its roles. In this thesis, the topic of analysis will be ambition of the Commission overall, which is not restricted only to integration proposals, but also extends to policy reforms as well.

Especially important for this thesis are the studies that assessed the Commission's preference by surveying the people who work for the Commission to find out what their values and beliefs are. The findings of these empirical studies show a much more mixed picture than the described theoretical approaches and models paint. Liesbet Hooghe (1999) used 140 interviews and 106 questionnaires undertaken between 1995 and 1997 to test for supranationalists and intergovernmentalist views among top Commission officials. The author finds variation in beliefs of top Commission officials with regards to their seniority, nation-state of origin and time spent working in the Commission. More senior officials coming to the Commission after years of working in their own Member State have a more diverse set of preferences that is less likely to include supranationalism, as they were socialized in different environments from which they brought their own sets of values. The Commission officials who come from Member States that have a federal political system are found to be more likely to be supranationalists. Finally, the longer a top official worked in the Commission, the more likely he or she was to become a supranationalist. This shows that preferences of individuals within the Commission vary to a significant degree, a finding that may stand opposed the principal-agent model, if we assume that values of individuals translate into ambition of the Commission as a whole. More recent empirical research shows similar results (Hooghe and Rauh, 2017). With regards to the overall distribution between different beliefs, Kassim et al. (2013) distinguished between supranationalists, intergovernmentalists and institutional pragmatists in the analysis of their survey material that assessed beliefs of senior Commission officials. The table below reproduces the findings of their study and shows mixed results, which vary over time.

Table 1 Beliefs towards supranationalism among senior Commission officials

	1996 (%)	2002 (%)	2008 (%)
Supranationalists	35.2	53.1	39.3
Institutional pragmatists	37.0	26.1	33.5
Intergovernmentalists	22.2	8.8	12.6

n (1996) = 105, n (2002) = 93, n (2008) = 186

Source: Kassim et al. (2013)

The studies of Commission officials' values showed, if the values are translated into preferences or ambitions, the Commission should at least not always be expected to pursue supranationalist outcomes. Its ambition could be much more varied than it was portrayed by the grand theories and abstract models.

Case-studies of the Commission's policy entrepreneurship (Kingdon, 1995) in various areas explained how the Commission translated its ambition into action in times of ambiguity by combining strategies of issue framing and venue shopping to set the EU's agenda in a favourable way (see e.g. Crespy & Menz, 2015; Matlby, 2013; Laffan, 1997). The cases selected for analysis are usually those where the Commission had the intention to expand competences in a certain area and was found to be successful through the usage of the two strategies. The areas investigated were various, including economic policy and economic policy (Copeland and James 2013), energy policy (Matlby, 2013), agriculture and biotechnology (Rhinard 2010), justice and home affairs (Kaunert, 2010, Paris, 2017), higher education policy (Batory and Lindstrom 2011). For example, for Copeland and James (2013), the Commission was found to be strategically framing the existing Lisbon strategy as a crisis exit strategy, and in effect it successfully put forward Europe 2020 as the new EU's economic reform agenda (p. 3). The approach is naturally linked to neo-functionalism, and in few contributions this step from case-specific analysis to this EU integration theory was explicitly made (Niemann, 1998; Stephenson, 2012). While a lot can be learned about

strategies and individual cases from these analyses, they do not tell us a lot about the nature of the Commission's ambition as such. The studies of policy entrepreneurship focus on strategies, rather than goals or ambition, to a degree that the concepts of strategies and policy entrepreneurship are at risk of becoming inseparable (Green, 2017). Another issue with this approach is its clear bias towards using success stories as cases for analysis (see Mintrom and Norman, 2009).

This thesis builds on the policy entrepreneurship approach's focus on the Commission as an actor that has its own agenda independent of the Member States and that acts strategically to achieve its goals. However, the aim here is to fill the various gaps of the case-specific literature on policy entrepreneurship by investigating the ambitions of policy entrepreneurs, the influence of other actors and the institutional context on the policy entrepreneurs. It is also a rare attempt at comparative analysis in policy entrepreneurship across cases and time (see Rhinard, 2010 and Green, 2017 for exceptions). Finally, by referring to the context of areas dominated by the new intergovernmentalism the thesis aims to open a new research agenda of investigating policy entrepreneurship of the Commission in an environment dominated by the European Council.

Another way in which the Commission was analysed was through its Presidents and their individual ability to influence outcomes as well as to manage the house. The literature on leadership in the Commission has, until recently, mostly focused on Jacques Delors and the following incumbents that failed to reach his level of influence or presidential skills (Endo 1999, Drake 2000, Tömmel 2013, Tömmel and Verdun 2017, Müller 2017). For example, Tömmel (2013) borrowed the distinction between transformative and transactional leadership from the literature on political leadership to compare Commission Presidents Delors, Santer, and Prodi. To summarize the framework: while transactional leaders deal more with day-to-day operations, transformative leaders bring about fundamental changes. The institutional setting, situational context, and the personal qualities of Presidents can influence an exercise of transformative, as opposed to transactional, leadership. Tömmel found, not surprisingly, that Delors was a transforming leader for most of his Presidency, while Santer and Prodi were transactional. However, even Delors was

unable to exercise such leadership when the context was unfavourable, and the Member States did not seek more integration (see also Nugent, 1995). Finally, if the situation is not favourable and a President tries to display leadership, it can be counter-productive for EU integration. This was the case when “Prodi’s ambitious leadership, in combination with limited strategic and tactical skills, caused strong headwinds from the Council and ultimately resulted also in a worsening situational context” (Tömmel 2013: 803).

With regards to the Commission’s internal functioning, the ability of the President to control the Commission’s agenda is also a theme of interest for Commission scholars (see Brooks & Bürgin, 2020). Despite the lack of transformative leadership in the Commission, it is found to have become gradually more presidential or centralized over time. This process of presidentialization implies an increasing dominance of the Commission President’s leadership and his or her agenda vis-à-vis agendas that may come from within the bureaucratic arm of the Commission. According to Kassim et al. (2013), this trend started with the beginning of Barroso’s first term and intensified significantly over time. Examples of this trend are the changing role of the Secretariat General of the Commission, which became the President’s main tool in controlling the agenda, the representation of the EU in international organizations, the establishment of the posts of six Vice-presidents and the First vice-president of the Commission, and even symbolic moves like the introduction of the “State of the Union” address. Possible systematic consequences of this trend on ambitions or policy outcomes in the EU are still largely unexplored. To mention an exception, Kassim et al. (2017: 654-5) found that the reduction of the Commission’s output in terms of legislative proposals is a direct consequence of the process of presidentialization, as both Barroso and Juncker had an explicit aim of reducing the Commission’s legislative activity. From this short review of the literature on the presidents, the Commission’s ambitions seem to be product of, at the very least, an interplay between the services and the political arm of the Commission. Different ambitions may exist not only on this vertical axis, but also horizontally. As Cram (1994) emphasized, the Commission is not a unitary actor, and there may be differing

positions between the DGs that have overlapping functions, which is often the case in complex bureaucratic organizations.

Another novel approach to leadership in the EU is one of collaborative leadership as a measure of success (Nielsen and Smeets 2018, Van Esch 2017). The Four Presidents Report (European Council, 2012) and the Five Presidents Report (European Commission, 2015d) presented jointly by presidents of EU institutions are examples of how leaders of EU institutions can work together to achieve policy outcomes with a sort of a political synergy. Naturally, the Commission's ambition may be influenced not only by actors within the Commission, but also other EU institutions. The Member States have a large impact on what the Commission may finally propose, as they may curtail its original ambitions. This thesis will go in depth on the process through which the Commission decides on its ambition, to find what has influence on it both from inside and outside. In effect, the ambition that the Commission as a whole has, as a product of its internal and external procedures, manifests itself in the proposals and media appearances of its top officials, which are assessed together with interviews conducted for this thesis.

The consequences of the open politicization of the Commission, as mentioned in the Introduction, were also a topic of a few contributions. In an early account, John Peterson (2017b) found that due to this development, the Commission was more closely linked to national capitals than before and that, as a consequence, the simple divisions of the supranational-intergovernmental debate are a thing of the past. Nugent and Rhinard (2019) only offered an exploratory account of different political roles played by the Commission and found that the Commission has increased its capacity to act politically over time. This means that the Commission's ambition may lie in policy reform instead of institutional reform at the EU level. To be more specific, it may pursue policy reforms with high political implications. Studies that would focus on both policy and the institutional dimension are rare (see e.g. Hodson, 2013). This thesis aims to fill this gap by offering a theoretical framework that can investigate both in order to provide a more nuanced and complete analysis of the Commission's ambition.

To conclude this section, the literature on the Commission is vast but still leaves enough room for further exploration of the Commission's ambitions, especially having in mind the proliferation of new areas of activity in the EU, and the novelty of presidentialization and politicization of the Commission. Grand design theories of neo-functionalism and liberal intergovernmentalism, as well as the rationalist principal-agent model, are found to fall short of considering the complexity of the Commission's ambitions. Notwithstanding, the assumed ambition of supranationalism (neo-functionalism) still remains a hypothesis worth exploring, as it will turn out in the next chapters that outline my framework, this will be the zero hypothesis of the research presented in this thesis.

The overall complexity and potential existence of a variety of ambitions within the Commission, was shown by surveys of top Commission officials. This can be expected to translate to the central level, but the Commission's ambition also heavily depends on the institutional factors, situational context and personal qualities or preferences of the president. Furthermore, the literature on the presidential leadership (e.g. Kassim et al. 2013, 2017, Peterson 2017, Sanjurjo Hanck and León 2018), has slowly moved from its strong focus on Delors and into issues of presidentialization, politicization, and collaborative leadership, which all open interesting research puzzles with regards to their influence on the making of the Commission's ambition. The policy entrepreneurship literature (e.g. Paris 2017, Princen 2017) as discussed above is more about impact than ambition itself, but it offers a rich selection of individual cases in which the Commission managed to convince the Member States into supranationalism. However, it has problems with case selection and lack of focus on context that make accumulation of knowledge about the Commission's overall and varying ambition hard. Still, its conceptualization of strategies that the Commission can independently use as an actor to influence outcomes and smart usage of process tracing to track crucial moments that led to policy change remain useful.

Each of the theories and frameworks outlined above thus offer certain analytical concepts that help define the nature, source and impact of the ambition of the Commission. However, none

of them explicitly focus on situations of “integration without supranationalization” which happened in JHA and EMU, the cases for analysis in this thesis, also known as new areas of EU activity. Furthermore, none of them differentiate between the different ambitions that the Commission may have, in terms of focus or scope. That is why a turn to the new intergovernmentalism follows, as the theory which made specific statements about the Commission’s role in situations where its traditional powers are not strengthened. The next subsection makes the connection between the theory of New Intergovernmentalism and the Commission and outlines the Commission-related hypotheses that can be borrowed or inferred from it. This is followed by a further discussion of critical concepts that feature in the hypotheses.

2.2 New intergovernmentalism and the Commission: Drawing the hypotheses of the Commission’s ambition in the new areas of EU activity

The new intergovernmentalism (Puetter, 2014b; Bickerton et al., 2015; Fabbrini and Puetter, 2016; Schmidt, 2016) is a theory explaining the integration in new areas of activity that occurred in the period after the Maastricht Treaty. According to the authors, since 1993 the power of traditional supranational actor in these policy areas has not increased in the way it has before. A combination of different modes of integration such as methods of policy coordination, delegation to executive agencies, and involvement of intergovernmental bodies in executive decision-making, has replaced the Community method as the main mode of integration in areas such as the EMU. As Hodson (2011: 7) elaborated:

“(...) Economic and Monetary Union (EMU) represents a radical departure from the EU’s traditional *modus operandi*, the Community method. Under the Community method, as the old adage goes, the Commission proposes and the Council disposes. Under EMU, in contrast, the Commission patrols and the Council cajoles when it comes to economic policy coordination, while the European Central Bank (ECB) controls monetary policy.”

An influential Commission was perceived as a sort of a (neo-functionalist) threat to the validity of the New Intergovernmentalism. For example, Nugent and Rhinard (2016) attempted to

disconfirm the theory by suggesting that the Commission had not really been in decline during the post-Maastricht period, especially in terms of its core functions of agenda setting, executive and legislative roles. How does the new intergovernmentalism, as a theory primarily focused on the Member States and their deliberations in intergovernmental bodies, fare then with seemingly ambitious attempts by the Juncker Commission to reform the governance as well as policies of EMU and JHA? Unlike Nugent and Rhinard's approach, this thesis suggests that the two phenomena – new methods of integration and an ambitious Commission, do not necessarily have to stand opposed to each other, but often go hand in hand.

The new areas of EU activity that new intergovernmentalism focuses on are closely connected with core state powers such as economic, international, or migration policy (Hooghe & Marks, 2009, Genschel & Jachenfuchs, 2018). Both the field of JHA and the EMU are considered as new areas of EU activity (see Puetter 2014a, Bickerton et al. 2015). Furthermore, both policy areas have been on the European Council's agenda for quite some time due to the refugee crisis and the economic and financial crisis, thus the case selection of this thesis also allows for a comparison between a crisis and post-crisis mode of EU governance or integration. Given how important the role of the European Council is for the New Intergovernmentalism, the two case studies that this thesis takes up can be used to examine the Commission's role in areas where there would be little doubt about the relevance of the NI theoretical framework.

Moreover, one should not forget that the role of the Commission in these areas is also an established topic of scholarly enquiry. The Commission's recently enhanced policy activism, especially during President Juncker, was already noticed (Kassim, 2017; Peterson, 2017b; Haverland et al., 2018), but there remained open questions regarding where it comes from and what its aims are. The EMU reforms of early 2010s that happened after the financial and debt crisis were previously used as cases to examine the Commission's role within the new intergovernmentalism. The findings confirmed the theory's Commission-related hypotheses. Thomas Warren (et al., 2017) and collaborators used an in-depth framing analysis of the

Commission's public discourse during the eurozone crisis to find that it was not "hard-wired towards supranationalism as is often assumed" (p. 1310). The Barroso Commission in fact strategically framed the discussion around intergovernmental fiscal discipline in order to formulate proposals that could be passed under the SGP framework that was already in place (p. 1325). Moreover, relevance of the new intergovernmentalism for understanding the general and recent developments in Justice and Home Affairs was confirmed (Maricut 2016, Scipioni 2017), yet without a specific focus on the role the Commission plays in this new constellation of powers between the EU institutions. Focusing on the EMU reform and the JHA during the Juncker Commission, in the context of the new intergovernmentalism, thus would fill a significant research gap in EU studies literature. This thesis presents conceptually and theoretically grounded tools for assessing the nature of the Commission's ambitions both in terms of focus and level of its ambition in six recent policy episodes.

How does the theory of new intergovernmentalism inform this analysis of the Commission's ambition? The main claims of the new intergovernmentalism were laid out in Bickerton et al.'s (2015) foundational article on the theory published in the *Journal of Common Market Studies* in 2015. The article explained the paradox of integration without supranationalization and how existing theories of EU integration fail to fully explain it. This is also visible in the literature, which was reviewed in section 2.1, as all of the described approaches assumed that the interdependence of the Member States would lead to supranationalization. The article provided six hypotheses² of the new intergovernmentalism to fill this gap and invited new contributions to test them (Bickerton et al. 2015: 711). Out of the six hypotheses of the new intergovernmentalism, the second and the third hypothesis are directly relevant for this thesis

² Here the authors borrow Brady and Collier's (2010: 331 as quoted in Bickerton et al. 2015: 711) definition of a hypothesis as a "tentative answer to a research question".

(Figure 1). Importantly, both hypotheses say something about the ambition of the Commission, or at least the (changed) focus of this ambition.

Figure 1 Six hypotheses of the new intergovernmentalism

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| <p>Hypothesis 1: Deliberation and consensus have become the guiding norms of day-to-day decision making at all levels.</p> <p>Hypothesis 2: Supranational institutions are not hard-wired to seek ever closer union.</p> <p>Hypothesis 3: Where delegation occurs, governments and traditional supranational actors support the creation and empowerment of de novo institutions.</p> <p>Hypothesis 4: Problems in domestic preference formation have become stand-alone inputs into the European integration process.</p> <p>Hypothesis 5: The differences between high and low politics have become blurred.</p> <p>Hypothesis 6: The EU is in a state of disequilibrium.</p> |
|---|

Source: Bickerton et al. (2015)

In fact, the two hypotheses have a critical importance for the aim of this thesis as they openly discuss the ambition of the Commission as something that is not “ever closer union”. This allows for an investigation of what these other ambitions may be, when does the Commission take initiative and become an ambitious advocate, without challenging the theory’s intergovernmental postulates. The main aim of this chapter is thus to further build on the two hypotheses above by reviewing relevant academic and even historical sources to identify the possible hypotheses on the focus and level of the Commission’s ambition. Through this analytical exercise, it is found that the two hypotheses are not enough on their own to test the focus and level of ambition of the Commission in the new intergovernmentalism, but they require further operationalization of the two as well as additional hypotheses that would outline the different types of institutional or policy reform projects that the Commission wanted to accomplish. These projects, or goals, present the focus of the Commission’s ambitions.

Moreover, the topic of thesis is also the level (or scope) of the Commission’s ambition, which helps connect the framework of new intergovernmentalism to the Commission-related

literature that is mostly interested in the ability of the Commission to exercise leadership. Can we expect a highly ambitious Commission that even takes leadership roles in the areas where the new intergovernmentalism applies?

Several studies have shown how, overall, the Juncker Commission was more ambitious than Barroso's (Peterson 2017b, Bassot & Hiller 2019, Schout et al. 2019). As the topic is to assess the leadership of the Commission, it would be impossible to do so thoroughly without arriving to a conclusion regarding the overall scope or level of its ambition. After elaborating the hypotheses on the focus of the Commission's ambitions, a turn is made to the hypotheses that make claims about the Commission's level of ambition compared with the Member States and intergovernmental bodies. The intergovernmental bodies for NI are not merely venues where interests of the Member States clash but are seen as themselves one of the main driving forces behind institutional or significant policy changes in the new areas of activity. For this reason, the level of ambition is operationalized as the desire to set the agenda for the union vis-à-vis other actors influential in the NI, especially the European Council. If one thinks about the different levels of ambition as a scale, the Commission could drive the discussion with a highly ambitious proposal (high ambition); the Commission could moderate its own original ideas after stakeholders discuss it (moderated ambition); or the Commission could simply wait for the Member States to reach consensus on their own (low ambition). The word moderated is used instead of the word medium on this scale because the focus is clearly on the process (or timing) as well as the context, not the substance of the proposals themselves. Focusing on the substance to measure the level would not be possible without making arbitrary decisions on what makes the level of an ambition high, medium, or low with regards to a change of policies or institutional arrangements, which is why it is avoided in this thesis. Instead, by observing the process in detail, one can find whether the Commission pushed with its reform vision despite potential opposition. The process tracing can also reveal if the Commission kept on the side and left the intergovernmental bodies to lead the way, suggesting a low ambition in terms of level. More detailed level-related hypotheses are

presented later in the next chapter. But first things first – what type of outcomes can be the focus of the Commission’s ambitions?

2.3 Hypotheses on the focus of the Commission’s ambition

Hypothesis A-0: The Commission’s ambition is institutional reform in line with the concept of ever closer union.

It is both fruitful and honest to first consider the opposite hypothesis to the one proposed by the new intergovernmentalism which is the starting point of the thesis. The roots of the H-0 can be found in the principal-agent model reviewed in the previous section (Pollack 2003). As Francesca Batzella (2018) notes, “the (P-A) model also assumes that the principals and the agent have different preferences, and that the latter will try to behave opportunistically and satisfy its own preferences rather than those of the principals”. According to this model it is taken as a fact that if the Commission would propose a different type of institutional reform, it would be due to the request of the Member States. The preference of a supranational agent such as the Commission was thus assumed to be competence expansion (see also Epstein and O'Halloran 1999). Moreover, Pollack (2005) claimed the reason for the Commission’s integration entrepreneurship is that its officials are hard wired to support more Europe because of self-interest or ideology. This is the underlying reason for the Commission’s assumed hard-wire with the idea of ever closer union. Neo-functionalists also share this belief in the Commission’s preference for supranationalism, as well as the focus on structure over agency (Sweet and Sandholtz, 1997; Niemann and Speyer, 2018). They differ between each other on the conditions under which the Commission exerts influence and the general belief in the Commission’s ability to drive this process forward autonomously.

Hence, according to this understanding, the Commission is hard wired due to structural and ideological factors that are intertwined, to pursue this concept of ever closer union that has the Commission at its center. A further explanation was added to this claim: in cases where the

Commission puts forward a proposal that does not aim to contribute to an ever closer union but has a different project in mind, this is due to an intervention or request of the Member States. This implies that looking into official proposals is not enough to investigate the underlying ambition of the Commission, but it acts as a starting point for further inquiry. It is the aim of this thesis to investigate whether the fact that the outcome did not include further supranationalization is enough to assume that the Commission did not have a role in it. Or, in reverse, the goal is to investigate if and when the Commission can be a key causal factor in a mechanism that leads to outcomes associated with the new intergovernmentalism.

Quite the opposite to the claim widely held by the EU integration literature, the second hypothesis of the new intergovernmentalism states that supranational institutions are not hard-wired to seek ever closer union. It is also the main hypothesis that is investigated in this thesis:

Hypothesis A: The Commission is not hard-wired to seek ever closer union.

Bickerton et al. (2015: 710) further elaborated that their argument is “not that supranational institutions have been devoid of ambition since Maastricht but that their ambition has been directed elsewhere at projects that did not entail a transfer of significant new powers to the supranational level”. While the new intergovernmentalism can be perceived as a restricting environment for the Commission, especially in terms of its ability to shape the agenda autonomously and obtain traditional supranational decision-making powers, this hypothesis still leaves a lot of room for investigation. Specifically, the Commission’s actual policy and institutional reform ambitions in the new areas of EU activity remain unexplained or not covered by the original six hypotheses of the new intergovernmentalism. If the ambition of the Commission is not to seek ever closer union in new intergovernmentalism, on what kind of projects can we expect the Commission to be focused on in the new areas of activity? Does this matter at all to the NI? The claim of the thesis is that this could be of significance for the theory, as the Commission’s role in the integration outcomes of the new intergovernmentalism could be understated by the lack of more specific hypotheses on it. Later in this chapter, alternative projects which the Commission

may pursue, both in institutional and policy reform, are investigated and linked to existing theories and frameworks including and beyond the new intergovernmentalism.

A legitimate criticism of a hypothesis that includes a concept of ever closer union is that there is not enough conceptual clarity around it. Simply put, it can mean different things depending on who you ask. As such, it seemingly defies meaningful comparative research, as any outcome that brings “more Europe” can be defined by some as one bringing the union ever closer. However, in the framework of the new intergovernmentalism, modes of intergovernmental governance and delegation to EU agencies, are not subsumed under the concept of ever closer union. This thesis will build on this understanding of new intergovernmentalism and give it more conceptual clarity by defining the concept of ever closer union, with several key sources as guidance. What is the most relevant for this thesis is the understanding that the authors of new intergovernmentalism assign to it, as that is what the thesis will put to a test. To identify the key sources and understandings, presented here is an overview of the references to the concept in the EU treaties, Jean Monnet’s ideal of EU bureaucracy, Jacques Delors’ vision of EU integration pre-Maastricht, and relevant academic contributions that discussed “ever closer union”. The hope of this exercise is to arrive to a workable definition for the concept that can be operationalizable and tested later in the thesis.

The phrasing ever closer union was first mentioned in official legal documents in the Treaty Establishing the European Community, the Treaty of Rome. Its Preamble stated that its signatories are “Determined to lay the foundations of an ever closer union among the peoples of Europe...”. It was subsequently mentioned in every next major treaty reform and since Lisbon there are three references to an ever closer union in EU treaties. Firstly, the Treaty on the European Union (TEU) Preamble stating that the Member States are: “RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity.”; later in Article 1 TEU “This Treaty marks a new stage in the process of creating an ever closer union

among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.”; and finally in the Preamble of the Lisbon’s Treaty on the Functioning of the European Union (TFEU), the Member States are “DETERMINED to lay the foundations of an ever closer union among the peoples of Europe...”. It is obvious that the writers of the Treaties gave great importance to the concept as a sort of an ideal to which the EU should strive. However, they do not go into detail on what exactly it would entail. Arguably, the concept is used in the Treaties as a political slogan that may include any step towards closer integration.

Opposed to this political understanding of the concept, the new intergovernmentalism uses a narrower understanding of the phrase ever closer union. In Bickerton et al. (2015: 712), when describing the change in supranational institutions with regards to the idea of an ever closer union, the authors claim that the post-Maastricht period “has been notable for the absence of a big push for the centralization of decision-making in new areas of activity”. Hence, the understanding is that ever closer union involves a centralization of decision making with one supranational institution at the centre of this process, the Commission. This understanding excludes delegation to the EU’s agencies and other bodies, *de novo* bodies as the new intergovernmentalism authors call them, as well as intergovernmental modes of policy coordination, from the concept of ever closer union. Is this conceptualization justified, given the quite broad definition of ever closer union that is used in the EU treaties? Even the European Council meeting conclusions of 27 June 2014 suggested: “the concept of ever closer union allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further” (European Council, 2014).

A strong justification for a narrower interpretation of the concept of ever closer union can be found in the understanding of one of the founding fathers of (Western) European integration, Jean Monnet, who envisaged a particular path of integration he would like to see Europe follow. As a proud European federalist, he was strictly opposed to intergovernmental solutions. He

claimed in his memoirs how “intergovernmental co-operation has never led anywhere” (Monnet 1978: 328). Instead, Monnet believed in “limited achievements, establishing a de facto solidarity, from which a federation would gradually emerge” (ibid.: 367). This suggests that Monnet indeed cultivated a gradual approach towards centralization with the High Authority, later the Commission, as the central body (ibid.: 368). The Monnet method implied a strategy of “great discretion, minimizing anything that might alert actors to unforeseen medium-term implications of what they were presently doing” (Ross 1995: 230). Later, this gradual approach featured prominently in Ernst Haas’ (1958) early theory of European integration in ‘The Uniting of Europe’ with the concept of functional spillover. Hooghe and Rauh (2017) also offer a similar description of a broader understanding of Monnet’s ideas of the role of the European Commission. According to their understanding, the Commission modelled by Monnet’s ideas should have the sole power of initiative, should develop new policies rather than administer existing ones, should have a meritocratic composition and not a geographic one, should not be simply subservient to the Member States, and “should become Europe’s government in an ever closer Union” (ibid.: 203).

A similar conception was shared by Jacques Delors, at least in his first presidency as George Ross (1995: 246) argued in his detailed account of the Delors Commission. Ross described Delors’ approach as a hybrid of the Monnet method. Although he agreed with Monnet on the general direction towards more Europe, Delors favoured direct political confrontation, as he was, unlike Monnet who was never elected, a true political leader, a *statesman*. Thus, Delors believed that an ever closer union could be achieved by a strategic and political approach, cleverly using the political opportunities structure to convince the Member States about the benefits of supranationalism. Despite the great achievements in the field of the single market and the creation of the main building blocks of EMU, Delors’ vision was constrained by the growing divide between pro-EU elites and the Eurosceptic popular opinion in the run up to the signing and ratification process of the Maastricht treaty (ibid.: 245-247). Hooghe and Marks (2009) referred to these changes as the shift from permissive consensus to constraining dissensus.

This thesis adopts a narrower definition of the concept of ever closer union that allows for testing between the different ambitions in line with different types of integration, thus closely following the logic of the new intergovernmentalism. Although the Treaties and other political actors implicitly or explicitly deploy a very broad conceptualization, a justification for a narrower one is found primarily in the Monnet's ideal, which was later partially followed by Jaques Delors, and as Kassim et al. (2013) showed in their survey research by still a significant number of top European Commission officials (see Table 1 on Page 18 in this chapter). Advocating for an ever closer union thus translates into advocating for centralization of decision-making and expansion of competences of a single European bureaucracy. This implies an expansion of the domains that are governed through the Community method, which is characterised by the Commission's sole right of initiative, qualified majority voting in the Council, co-decision by the European Parliament and the Council, and legal oversight by the Court of Justice of the European Union. Areas that are fully governed by the Community method have thus moved very close to Monnet's ideal of a federal bicameral governance structure. For example, internal market policies, transport policies, common commercial, agricultural and fisheries policies belong to this domain. A progressive increase of areas governed by the Community method from the single market to issues within JHA, environment, and other policy areas described above led many to believe that the Commission is hard-wired to pursuing gradual expansion of the Community method to other areas of EU activity.

Since the concept of ever closer union is now defined as the gradual spread of the Community method into new areas, one should also not forget the first part of the NI's hypothesis, where the claim is that the Commission is not "hard-wired" to this concept. Since this is a phrase that can also cause some confusion, the operationalization would not be complete without going into the meaning of it. The online version of the Merriam-Webster Dictionary (2020: 1) defines being hard wired as being "genetically or innately determined". Thus, there is something in the Commission's nature or structure that makes it want to pursue centralization of decision-making.

As was explained in the previous sub-chapter 2.2., the source to this behaviour is found either in the Commission's self-interest or ideology. The hard-wire is also to a large degree based on and depends on success, as it is linked to the very idea of spillover – once the supranational actors realize they can extend their competences, they are likely to do so. This creates a path dependency, which reinforces the hard wire itself. However, while this may work in the single market, and other older and more technocratic policy areas of the EU where the initial success enabled this institutional behaviour, the new areas of EU activity have followed a different path.

First, when these policies were integrated, special attention was given to making sure that the supranational institutions are restricted in their powers. Nothing could be hidden from the watchful Member States weary of their rights to decide in areas crucial to their sovereignty, so the idea that the Commission could smuggle some extra supranationalism into the integration process when the Member States were not watching sounds very unrealistic. Second, the expansion of the NI modes of integration in new areas of activity created a different kind of path dependency, giving incentives to Member States to even transfer the novel ways of governing Europe from one policy area to another. Thus, instead of the Commission being hard-wired to ever closer union, one may find the Member States being hard-wired to pursuing new intergovernmental solutions, and the Commission finding a new place for itself in this environment. This does not mean that the concept of ever closer union and Monnet's ideal, are gone forever – it may still work in the old areas of activity, or even the new ones if the context is to change dramatically. Still, the focus of this thesis is on the new areas of activity in this era of the EU project, and the new position the Commission has in advocating for its further integration, even though it does not put the Commission itself at the centre of these policies.

Finally, not being hard-wired to ever closer union does not imply that the Commission never proposes any elements of the Community method in the new areas of activity. Hence, a simple instance of such institutional behaviour does not dispute the claim that it is not hard-wired to ever closer union as it may have been before. Ambition to expand the Community method

decision-making should be in a significant minority compared with other ambitions in order to prove that the Commission is not hard-wired to the idea.

To understand the nature of the Commission's ambition and develop more operationalizable and specific hypotheses that could be tested, potential ambitions that do not include an ever closer union are presented next in this chapter. These types of desired outcomes are borrowed from the literature on the Commission and the empirical practice of post-Maastricht decision-making, but they do not present an exhaustive list of potential ambitions of the Commission. The main aim is to show whether the Commission had a variety of ambitions that do not include ever closer union, and to call for more research that would add to our knowledge about the Commission's ambition in new areas of activity, including other potential projects that are not identified in the research framework introduced by this thesis. The ambitions that do not contribute to ever closer union, which are here investigated, include both policy and institutional reforms (Figure 2). They are the following:

- a. Creation of new and empowerment of existing *de novo* bodies (Institutional reform).
- b. Integration through pragmatic and non-supranational governance (Institutional reform).
- c. Acting politically by shaping the substance of policies (Policy reform).

Figure 2 The difference between institutional and policy reforms

Institutional Reform proposals involve a change of mandates, or new roles, for institutional actors within a policy area. For an expansion of community method which is a type of “grand” institutional reform, a Treaty change is necessary. However, the Member States and the Commission have found various ways to pursue institutional reforms without treaty change, and outside of Community method, which is what the theory of new intergovernmentalism investigates.

Policy Reform proposals are the ones that suggest a change in either policy objectives or instruments within the current institutional arrangements. This can involve either a new legislative proposal, or a new *modus operandi* of a policy coordination type of governance.

Hypothesis A-1: The Commission's ambition is to pursue institutional reform through the creation or empowerment of *de novo* bodies.

Creation and empowerment of *de novo* bodies is a way of institutional reform that does not involve a spread of the Commission-centered Community method integration. Instead, it empowers a new type of actors by assigning to them roles that, in principle, the Commission could have exercised as well. It is important to mention that their mandates are, in majority of the cases, negotiated and implemented through Community method legislation. When not, like in the case of the ESM, this is done through an intergovernmental agreement outside of the Community method. The case of the ESM strongly suggests (see Smeets et al. 2017) that the Commission prefers to stick to institutional reform under and inside EU law. However, keeping to EU law is not where the Commission's ambition regarding the development of *de novo* bodies ends. The Hypothesis A-1 implies that the Commission is an advocate for, not against, the expansion of *de novo* bodies and their new roles. This is the first hypothesis on the Commission's potential ambition other than ever closer union. It was also identified as something that the Commission is complicit with (not necessarily an advocate of) in the third hypothesis of the new intergovernmentalism (Figure 1 on Page 26), while other studies of the process of EU agency creation have taken this step forward to claim that the Commission supported their creation (e.g. Leonard 2009).

Moreover, the delegation to these bodies have not been ephemeral happenings in the EU integration process since Maastricht, but rather one of the central outcomes. These new bodies that are gaining prominence, especially in executive roles, are defined by the NI as:

“newly created institutions that often enjoy considerable autonomy by way of executive or legislative power and have a degree of control over their own resources. However, they fulfil functions that could have been delegated to the Commission and tend to contain mechanisms for Member State representation as a part of their governance structure” (Bickerton et al. 2015: 705).

They are thus institutions such as EU agencies that perform tasks that could have been delegated to the Commission as well. Moreover, there are also new institutions like the European

Stability Mechanism (ESM), the European Central Bank (ECB), or the European External Action Service (EEAS) that also fit this definition of *de novo* bodies. To illustrate the rise of importance of these institutions in the EU, in 1995 there were only ten EU agencies, and in 2016 their number was 44. In 2015 for example, they had 6,554 posts which was 13% of all EU staff (European Union Agency for Fundamental Rights 2015: 5).

The definitions of agencies are quite broad, given the varied nature of their tasks. According to Majone (2006: 191), an agency is “an omnibus label to describe a variety of organisations which perform functions of a governmental nature, and which generally exist outside of the normal departmental framework of government”. The EU itself does not have a formal definition of an agency, although it does offer a distinction between decentralized agencies, executive agencies, Euratom agencies and independent bodies (Europa.eu, 2020). Decentralized agencies are the ones that are most closely controlled by the Member States, and thus are the ones that fit the definition of a *de novo* body the most. Executive agencies are created by the Commission for a fixed period, while independent bodies and Euratom agencies are too technical or research-oriented for the Member States to be too involved, so they are less of a *de novo* body, and more like an extended arm of the Commission.

As mentioned, independent bodies like the EEAS, ESM, ECB or the European Investment Bank (EIB) are similar in their independence and the type of tasks which they deliver, yet they are formally not referred to as EU agencies. However, their creation and empowerment adds to the decentralization of the EU executive that is the same process that happens when new roles are given to EU agencies. That is why the new intergovernmentalism suggests the usage of the phrase *de novo* bodies instead, to cover a wide range of new bodies that have emerged in the post-Maastricht EU. What is also common to all of these bodies is that their emergence is often explained as a result of reluctance of Member States to give more competences to traditional supranational bodies, like the European Commission and the Court of Justice of the EU. As Leonard (2009: 375) notes “The creation of the agencies allowed the regulatory capacity of the EU

to increase in a manner more acceptable to the Council than a direct expansion of the Commission would have been”. Moreover, agencies and other *de novo* bodies also ensure equal representation of the Member States in the Management Boards, similar to mini-Council formations albeit with direct presence of the Commission’s representatives (Groenleer, 2006: 164).

Economic and Monetary Union and Justice and Home Affairs are policy areas that have witnessed a significant rise in number and importance of *de novo* bodies in the recent years. In EMU affairs, there are four EU agencies currently active: European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA), The European Securities and Markets Authority (ESMA) and Single Resolution Board (SRB). All four of them were established in the aftermath of the economic and financial crisis. If one looks beyond agencies and into all *de novo* institutions, the European Central Bank and European Investment Bank both strengthened their respective roles in the same period. Finally, the European Stability Mechanism (ESM) as Europe’s own bailout fund was one of the most important new institutions in eurozone economic governance established in the context of the euro crisis.

In JHA, eight EU agencies are executing tasks and helping other EU institutions in the policy making process: European Border and Coast Guard Agency (EBCG), European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), European Institute for Gender Equality (EIGE), European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), European Union Agency for Law Enforcement Training (CEPOL), European Police Office (Europol), European Union Agency for Fundamental Rights (FRA), Eurojust and European Asylum Support Office (EASO). There is no other area of EU activity with more EU agencies than Justice and Home Affairs (Europa 2019). Especially drastic are changes in mandate of the EBCG which now deploys its own border and coast guards, and the proposed reform of the EASO which is to be transformed into the EU Agency for Asylum. Both will be investigated in this thesis as policy episodes for looking into the Commission’s ambition with regards to their new mandates.

The expansion of tasks of these bodies and the role that the Commission played in these processes is thus further investigated in the empirical section of the thesis. The Hypothesis A-1 put forward a claim that it was the Commission's ambition to transform these bodies and give them new tasks. This is in line with the overall Hypothesis A, and in turn, opposed to the Commission's hard wire with the idea of an ever closer union (A-0). Unlike the centralization of supranational power that the concept of ever closer union in the understanding elaborated in this sub-chapter would entail, delegation to de novo bodies contributes to a decentralization of governance in Europe and moves the EU further away from the Monnet's ideal. Classic principal-agent theorizing would presume the Member States as main advocates of such solutions, and a reluctant Commission. Since competence expansion is the underlying structural interest of the Commission, delegation to these actors is, according to the principal-agent model, a strategy the Member States employ to counter the Commission's ambition and diffuse the central bureaucratic powers. It is often assumed that it is easier for the Member States to control the potential bureaucratic drift if an EU agency, for example Frontex, is performing tasks on their behalf, than if the Commission was given these tasks. In contrast, it is hypothesized here that EU agency empowerment is an ambition that the Commission has, even when Member States are against or divided on this issue. This is investigated through document analysis of the Commission's proposals and argumentation, and further explored through interviews that inform in more detail about the Commission's ambition and strategy with regards to de novo bodies.

The assumption or initial hunch that will be investigated in this thesis is that the Commission does that because it has accepted the new rules of the game explained by the new intergovernmentalism. Instead of trying to change the rules of the game, by proposing a return to the concept of ever closer union (back to the future), the Commission accepts that if it wishes to remain useful and politically relevant, it needs to find new ways to lead.

Hypothesis A-2: The Commission's ambition is institutional reform through pragmatic and non-supranational governance solutions.

The Commission increasingly faces the pressure to prove to citizens that the EU can do something to improve their lives (see Haverland, de Ruiter et al. 2018). More than often it is put under pressure to prove that it can be part of these solutions without further expanding its powers, given the Member State's reluctance to give it new competences. Thus, for example, the EU has developed in the direction of more intergovernmental coordination, especially in EMU affairs, and the Commission was found to be complicit with this development (Hodson 2009: 517). The Commission was given soft and monitoring roles over EU fiscal and economic policies, which was an excursion into the unknown at the time. In order to remain relevant, the Commission, especially in these areas of EU activity has to think of creative solutions to solve complex governance problems without further supranationalization. The Hypothesis A-2 thus tests the ambition of the Commission to offer pragmatic EU institutional reforms to problems facing the EU without expanding its domain of Community method powers. As a technocratic powerhouse, the Commission is at a unique position to offer such solutions, but the question is whether the ambition for these new roles for the Commission comes from the Member States or the Commission itself. It is hypothesised here that the ambition for such solutions does come from the Commission.

Some examples can help clarify the thinking behind this hypothesis. One would be the role that the Commission played in the Troika, a set of institutions that managed the negotiation and assessment of financial assistance to highly indebted countries. Interestingly, the Commission did not legally act as an EU institution in the Troika, but on behalf of the Member States that provided the loans. This was a historically new role for the Commission, and a large step outside of its Community method competences. The relevant question for an inquiry about ambitions is whether this was an idea of the Commission, or it was the European Council that shaped the agenda and delegated to the Commission (Soares 2015). In other words, the variable that needs looking into is what did the Commission want when it came to this policy episode. Looking into it can help understand the importance of the Commission for the development of the NI (as a set

of practices, not the theory), as well as the ways in which the NI as a contextual reality has impacted the Commission. The establishment of the European Semester in 2010 and similar modes of experimental governance (Zeitlin 2016) could also be considered similar cases as they give the Commission soft coordinative roles and develop novel ways of governing and integrating outside of hard law that characterizes the community method. The case in the refugee crisis that is especially of interest is the hotspot approach developed to manage the high migratory influx in 2015. It gave the Commission a coordinative role over relevant EU agencies and Member State officials (through non-legislative and non-binding acts). Moreover, it offered a concrete solution for more enhanced cooperation between all the relevant actors that deal with the influx on the ground. What is common to all of these is that the Commission took on new and soft executive or monitoring roles. The Commission is consistently gaining more and more diverse roles since Maastricht, as Bauer and Ege (2012: 404) noted, the European Commission “is an organization which is forced to permanently adapt its internal set-up (new responsibilities, re-allocation of portfolios, etc.) while it operates in a constantly changing political system. (...) “the intensity and quality of systemic change the Commission is confronted with appears unmatched in the ‘normal times’ of national contexts”. The hypothesis above puts forward a claim that we can still expect the Commission to be the one to come up with these solutions and suggest development of the EU in an ever-more multifaceted way, with many different types of multi-level, soft or hard governance structures co-existing with the Community method.

This pragmatism is closely related to, but not equal to, the Commission’s ambition to act politically. It is related in a sense that both are about the Commission willing to have a role to play when the stakes are high, for example in situations of crises. The Commission may want to offer an ambitious political proposal and advocate for it in heated European Council debates. However, in the case of a more pragmatic, but still not pro-supranational ambition that is described here, the Commission seeks to prove that it has a role to play in solving problems by thinking of innovative governance solutions. Particularly in the new areas of activity, it is important for the Commission

to justify its role and a place at the table when issues close to national sovereignty are discussed. By providing solutions and involving itself in their delivery outside of the scope of the community method, the Commission builds its reputation as a credible actor, both with the Member States, and with the citizens.

Hypothesis A-3: The Commission's ambition is to act politically by shaping the substance of salient policies.

The Commission may also have the ambition to reform existing policies, without changing the way decisions are made and the roles of different actors in the process. The *modus operandi* in crises situations before Maastricht was that more integration was necessary to fix the functional deficiencies of the EU project. In this thesis it is not the aim to investigate what are the contextual circumstances that lead to changes in the EU, such as crises are often pointed out to be. Still, when opting for policy changes without institutional changes, the Commission suggests that policy changes are enough to fix the problems the EU is facing – Community method integration is no more the go-to solution when it comes to finding common European responses to crises. Hodson (2020) also suggested that the Commission has not been an ambitious advocate for “political integration”, which would imply a Treaty change. Moreover, when Juncker presented his “Future of Europe” scenarios in 2017, he did not suggest which of the five scenarios, ranging from “Nothing but the Single Market” to “Doing much more together”, the EU should follow. After the Commission defined the alternatives, the ball was clearly in the court of the Member States, and President Juncker did not openly suggest that the way forward should be through more Community method integration (of “doing much more together”) (The Telegraph, 2017b; POLITICO 2017). This suggests that being a “political Commission” for President Juncker did not mean pushing for more Community method integration. This was the way that Delors thought a political leadership of the Commission should be like, but this was before Maastricht. Being political for Juncker Commission instead had something to do with policy reform, not institutional reform.

Specifically, the Commission can take two paths when it wishes to contribute to policy reforms in new areas of activity that are inherently political such as migration, borders, fiscal, social, or economic policies. The first is the path of a political actor aiming to push ideologically charged reform proposals, and the second is the technocratic path, in which the Commission leaves the political objective-setting to other institutions and makes process-related proposals aimed at efficiency gains. In either of these two cases, the Commission is pursuing something other than ever closer union, but in the second case its approach has less ramifications to its potential ambition to expand the Community method in the long run. In contrast, cases of leading with political ambition are especially important for this thesis, as they come with certain, “ever closer union”-related, risks.

The first risk is that it could alienate the Member States on the opposite side of the political spectrum, from the one that the Commission is taking. This can have negative consequences on the Commission’s standing as a neutral actor that is crucial for the Community method to be acceptable, as well as for its future policy proposals. The second risk is that if the Commission openly acts in a political way, it leaves it with less time and credibility to focus on institutional reform, particularly ones that would lead to an ever closer union. Leaving the political to the Member States and the Parliament, while focusing on the technocratic (technical), would be a smart move for a Commission that seeks to enlarge its size or powers. However, since the Commission opts for a different type of institutional reform anyway – one that does not put the Commission at the center – this opens the way for its political ambitions. Still, this does not guarantee that it will be successful turning its ambition into reality.

President Juncker openly advertised his desire to lead a political Commission. What does this mean for particular policy reforms? It is important here to further consider the above-mentioned distinction between political and technical policy reforms. Once there is a clear delineation between the two types, a finding of a number of politically charged policy reforms that

the Commission pushed for would show that its ambition to be a political actor actually materialized.

Political Commission is a term that has been predominantly used in the EU policy and media jargon, especially in late 2014 when Juncker presented his Political priorities, and quite a few times investigated in academic research (see e.g. Peterson, 2017b, Nugent and Rhinard, 2019). Generally, there is a lack of operationalization of the notion of political Commission and a common understanding of what kinds of proposals or roles of the Commission would prove its existence or level. This thesis builds on these approaches by offering a way to assess the political roles of the Commission within its ambition to impact policy outcomes.

There are several ways in which the Commission's political character was assessed in the mentioned academic contributions. Overall, their findings suggest that the Commission has been turning more partisan or political with each new President. Simon Hix (2008) for example suggests that the Barroso Commission was more partisan than the previous ones, especially on economic issues, for institutional reasons. For example, the end of an institutional practice of choosing the Commissioners from both the left and the right after the Nice treaty, meant that the President could develop a more ideologically coherent agenda. The Commission was more likely to suggest policies with a stronger left-wing or right-wing bias, meaning that "political" in this analysis is closely linked with party-politics and ideology (see also Wille, 2012). Other institutional changes that followed have also affected the political nature of the Commission. The Spitzenkandidaten process has made the choice of the Commission President more related to the European Parliament elections, which is certainly a political festival (see Christiansen, 2015). President Juncker's seemingly self-enforced concept of political Commission can be understood as a logical continuation of this process of growing politicization of EU affairs. Bauer and Ege (2012) similarly measured the politicization of the Commission by measuring how important party-political issues were for Commission officials. They used survey data to show that the College – the leadership of

the Commission - had become more political since Kinnock reforms, while the Commission bureaucracy had become less political and more instrumental.

The approach used by Hodson (2013) in assessing the political nature of the Commission is especially important for this thesis. The author investigated President Barroso's leadership in the case of the Euro crisis reforms to find whether the Commission supported pro-integrationist or/and partisan solutions. In this case, Hodson found substantial evidence for partisanship taking precedence over pro-integrationist proposals in several cases and he called for more agency-focused, as opposed to structure-focused, research on the Commission which would open the black-box of the Commission's preference formation. This thesis is an attempt to offer exactly that. Hodson's analysis is particularly insightful because it showed how policy reform ambition can be in contrast to an institutional reform ambition. If the Commission truly wants to act politically in the sense of partisanship, it might imply that it cannot act as an engine of supranational integration.

Finally, in a recent study Nugent and Rhinard (2019) conceptualized different types of political roles that the Commission can play as (1) Ideologically political, (2) Policy political, (3) Organizationally political, (4) Administratively political. However, there are two issues with this analytical distinction. First, the distinction between the first and the second type becomes blurry, as policy reforms often have an ideological basis, except in highly technocratic policy areas. Second, by adding the third and fourth element the concept of political becomes too wide for a proper distinction between political and technical, or technocratic. As Juncker's ambition was to move from technocratic to political, the distinction should exist if one wants to assess this ambition in reality. One way to do this would be to see whether the first two types of roles in Nugent and Rhinard's analysis dominate over the other two. Yet, it is easier and more conceptually accurate to stick to the distinction between political and technical when it comes to actual policy proposals.

The aim here is to contribute to this growing literature on political Commission by providing a framework that can be used to analyze the specific proposals of the Commission and

judge their character. Not just in a snapshot, but also over time, by seeing how the level of ambition of the Commission to be political changes upon interventions of different actors. The accumulation of knowledge about the political or technical character of the Commission's proposals will allow for an overall judgment about its political or technocratic nature in new areas of activity. Rouban (2012: 5) noted that the role of the political in bureaucratic bodies "cannot be treated in a broad manner but only on a case-by-case basis", so this thesis will take up two cases to investigate an overall development. A possible criticism would be that the "political" character of the Commission is about the leadership style of the President, not necessarily the proposals themselves (see e.g. Müller 2017). While the leadership style is relevant, it remains outside the scope of this thesis. It could be used as another explanatory factor for the existence of political proposals, alongside the institutional changes (as Commission-focused literature suggests), and the push away from the project of ever closer union (as NI suggests).

This thesis uses a combination of two conceptualizations of the political vis-à-vis technical policy proposals. Both understandings will be considered in order to test the Juncker Commission's ambition to be a political actor in the new intergovernmentalism:

- The nature of the proposal(s).
- Partisanship as a sign of political proposal, as used by Hodson (2013).

The difference between political and technical issues was often explained by their substance, either in terms of the issue area, or the proposal itself. Distinction between high- and low-level policy issues is one way of distinguishing between (highly) political and technocratic issues that was used in EU integration theories, especially in the school of realism (Hoffman, 1995). However, drawing the line between the two can seem arbitrary, as some issue areas become politically relevant or lose this relevance over time as media and political focus shifts elsewhere. Looking into the proposals themselves and the context, instead of just the issue area, could be more fruitful as a starting point of inquiry.

Attempting to explain the difference between political and technical as early as 1935, Pitman B. Potter wrote how “anything which is technical pertains to technique or to a mode – any mode – of process or treatment” (Potter 1935: 266). Potter’s understanding is borrowed in this thesis - technical issues are ones that are about the process. In turn, a political proposal is one that deals with the substance of policies (Winzen, 2011), as is suggested by the Hypothesis A-3. It is fruitful to borrow some key concepts from policy literature that similarly distinguish between process and end goal of policymaking. Namely, every policy, and also every policy reform consists of two elements, policy objectives and policy instruments. Policy objectives are inherently political, as they link certain outcomes to the government interventions, thus reflect underlying values or beliefs. Policy instruments are put into place by the government in order achieve these policy objectives. They are rules and regulations such as taxes, subsidies, sanctions, and many other (see Cairney 2020: 26-7 for a full list). A purely technical policy reform would suggest that a particular policy objective that a government already agreed upon can be reached in a better, more efficient way. A purely political proposal would suggest that the policy objectives themselves should be changed. To summarize, an attempt to change a policy objective is a strong indicator of a political character of a policy proposal. Linking this back to Potter, the policy instruments are about the process, or the belief that some efficiency gains can be achieved if a different or an adjusted policy instrument was used. Changing a policy objective though, which can be done by either introducing new policies (approaches) or significantly changing existing ones - that affects the very substance of policies.

However, looking only into the nature of the proposal is not enough. This would make the analysis oblivious of the context in which the proposal is put forward, which often defines its political character. Thus, a potential issue with this understanding is that, as was mentioned above, anything can be politicized (or become political), even the most technical of issues. The EU integration process itself as a whole is becoming more politicized over time (see Zeitlin et al., 2019; Jabko & Luhman, 2019). For example, the financial size of the European Stability Mechanism,

Europe's bailout fund, may sound like a technical issue but it can also be easily politicized because a larger financial size of the fund may send a particular political message. According to de Wilde et al. (2016), politicization occurs when issues become more salient, when actors are polarized and able to mobilize public opinion. Salience and partisanship are thus the two elements that can be considered when "being political" is taken a scale that an issue can move on. Still, the nature of the proposal is a valuable element in the equation, as the assumption is that a discussion on specific instruments is more likely to be a technocratic one, in case there is previous agreement on common policy objectives that should be achieved.

Justification for employing this understanding of political can also be found in the speeches of the President Juncker himself. Considering President Juncker's interviews and State of the Union addresses, being political meant being involved in salient issues (big on big things), taking sides in relation to highly contested issues, and showing leadership (see Dawson, 2019). In turn, this also implied that the Commission would take a step back from proposing unnecessary regulations and bringing to the EU level issues that could remain at the Member State level. In a speech to students in 2017 Juncker used an attempt of the previous Commission to regulate the flushing of toilets as a fragrant example of such institutional behaviour. On the same occasion, Juncker said: "The previous Commissions were launching 130 initiatives every year. The number now is 23. We have withdrawn between 80 and 100 directives from the co-legislators' table because we don't want to regulate all aspects of the everyday life of the Europeans" (EURACTIV, 2017). Hence, being political does not mean putting forward more legislative initiatives but putting forward an ambitious policy reform vision that includes policies that have a direct and vast impact on the lives of Europeans. Furthermore, the Juncker Commission declared 10 "political priorities" at the start of its mandate, subsequently tracked their progress in yearly reports, and published white papers and packages of proposals in both JHA and EMU affairs.

At the same time, being political for the Commission presupposes that the President is in control of the agenda of the Commission (see Brooks & Bürgin, 2020). Political leadership comes

from the very top of the Commission hierarchy – from the College and the President – not from the bureaucratic arm of the Commission. To achieve political aims, the Commission needs to make best use of its vast resources, including human resources such as the bureaucratic expertise, that all need to be directed towards the fulfilment of the specified political goals. To achieve unity in the Commission, President Juncker established the role of the First Vice-President, who is his second hand in managing the house, alongside six other Vice-Presidents. Furthermore, the General Secretariat of the Commission was further strengthened during Juncker’s mandate and became the main tool for the President to keep all the relevant DGs working towards the political goals. The role of Martin Selmayr, who was first Juncker’s *chef du cabinet* and later became Secretary-General of the European Commission, was particularly instrumental in enforcing the agenda of the President. Selmayr’s authority even was considered a challenge to the actual autonomy of several Commissioners (see Peterson, 2016). All of these changes were put into place to minimize the chances of conflict between the Commissionaires on political goals and to make the best use of the experts in the Commission for turning political goals into viable policy proposals.

To conclude, being political implies putting forward partisan proposals on the substance of salient policies. In order to identify whether the Commission’s ambition was to act politically in order to achieve a policy change in line with its political goals, not only the nature of the proposal, but also timing of the proposal, constellation of preferences towards the proposal, and reactions to the proposal are equally important. Constellation of preferences should suggest that the Member States are divided into camps on a political basis, e.g. a divide between those that are for rigorous fiscal rules and those that are pro-fiscal transfers (Lehner and Wasserfallen, 2018), or between a liberal and restrictive sentiment to migration (Wolf and Ossewaarde, 2018). The Commission’s proposal should take a side in this debate, instead of trying to reconcile the opposing sides, to be considered truly political. Finally, ambitious political proposals facilitate a reaction and are not ignored by neither the political allies, nor those on the other side of the spectrum. To investigate the political nature of Commission’s proposals, this thesis proposes a research design

based on process tracing and document analysis, supplemented by interviews, which provides answers to temporal and ideational questions that the ambition to act politically poses.

2.4 Hypotheses on the level of the Commission's ambition

The Commission of course does not exist in a vacuum. By the time it puts forward a proposal, it is likely to have already been discussed in various forums and among actors such as Member State governments or interest groups. As the aim of this thesis is not only to test the nature of the ambition of the Commission, but also the level of its ambitions, a scale that distinguishes between a high, moderated, or low ambition is necessary. The way to understand this scale is by looking into the process of decision making. Specifically, the process through which the original ambition of the Commission is mediated is where the amount of ambition of the Commission, in the beginning and over time, can be identified. Here, the European Council meetings are especially important, as well as the meetings of the Council, various Council formations, or even bilateral meetings between France and Germany. The Commission's proposals should come before these meetings in order to produce a consensus among the Member States. They should be an attempt to frame the agenda, not a replication of the consensus position which would suggest the Commission's lack of ambition or inability to remain relevant. Thus, when highly political issues or issues of institutional reform reach the agenda of the European Council, the Commission is put to a test in which it can decide to put forward ambitious proposals of its own or wait for consensus and act as an honest broker or even merely a manager of decisions made in these bodies.

Waiting for consensus as a level of ambition is a passive approach, or *low ambition* on a scale that could be used to measure the level of ambition. In such situations, the Commission puts forward proposals that have previously been agreed upon in the European Council, or other consensus-seeking intergovernmental venues, meanwhile potentially acting as an honest broker. This type of behaviour could be linked to a purer version of new intergovernmentalism in which issues are so politically important that the European Council completely takes over the debate,

arrives to political decisions, and then leaves the technocrats with minor issues to decide upon (Hypothesis B-0). However, it is hypothesised here that the Commission's ambition is both higher than to play a passive role, and that it ultimately matters in explaining outcomes, be they failures or successes to arrive to decisions.

Hypothesis B: The Commission is not a passive actor in the new areas of EU activity.

This hypothesis will be further developed in line with expectations regarding the different stages of the EU decision-making process. Before that, the two levels of ambition relevant for this thesis as potential findings are operationalized.

A moderated ambition is one when the Commission's original ambition had been higher, but it was moderated either before, during, or after the negotiating process. For example, the Commission can moderate its proposal internally, by understanding that it is too ambitious for the Member States (or the Parliament), it can test the proposal through intergovernmental venues and amend it in line with Member State preferences, or it can agree to quickly change the proposal after it fails the initial discussions. In any case, the finding here would suggest that an original ambition of the Commission was higher but was moderated by the stakeholders.

Finally, a highly ambitious proposal is one that is put forward despite a (possible) negative opinion of a group of Member States. This makes the job of the Commission harder, as the President and the College have to try very hard to convince the opposing Member States. This type of approach of the Commission implies that it is ready to put forward highly ambitious proposals and drive the discussion instead of simply following it. One can expect that the Commission often varies its level of ambition over time and over different issue areas – to be highly ambitious all the time in all issue areas could be either mission impossible or a suicide mission for the Commission.

The level of ambition of the Commission was also a topic of scholarly inquiry. Starting from lowest ambition, achieving the lowest common denominator between the Member States, according to Moravcsik (1999: 299), is the only way in which the Commission can be a meaningful

link in the causal mechanism of EU integration: ‘Rare entrepreneurial success (*of the Commission*) stemmed not from the qualities of supranational entrepreneurs stressed in most existing analyses, but from rare structural circumstances under which international officials could help overcome domestic and transnational collective action problems.’. Moreover, Moravcsik also claims that if the Commission cannot be considered a cause of integration, because even if it had not acted in such a way, a Member State or some interest group would have stepped in and filled the gap with the same proposal (Moravcsik, 2003). Still, for Moravcsik, the Commission could act as an agent that tries to expand its competences, albeit only successfully to the point that the Member States would have suggested anyway, due to control factors that they put in place. On a more specific issue, some authors claim that Barroso’s Commission in the euro crisis was more of a follower of consensus achieved in the European Council than an ambitious actor in itself (Peterson 2017b). This is an example of a low ambition in a one case, measured by the process.

The low ambition hypothesis is seemingly close to the new intergovernmentalism as its authors claim that in the EU consensus has become an end in itself (Puetter 2016). The European Council for example, increasingly important for day-to-day policy making in the view of the new intergovernmentalism, is a body that adopts its conclusions by consensus. Fabbrini and Puetter (2016) claimed that “there is little room for the Commission to play a political role in policy-making that openly challenges the consensus position within the European Council and the Council”.

One could imagine situations in which ideal the intergovernmental bodies are at the centre of agenda setting in the EU, instead of the Commission. The consensus is the key in this process, and the way the Member States arrive to it is through deliberation. The Commission follows the process and would not want to disrupt it with overly ambitious proposals. There is a sort of contingency between the intergovernmental bodies and the Commission’s ambition in this “ideal type” process of new intergovernmentalism. To illustrate the mechanism of this approach, one could imagine it starting in the European Council which, after reaching a consensus, instructs the Commission to prepare legislation in line with the positions shared by the Member States. This

could be the case in highly political areas or situations of vast crises. The Commission's ambition is in this scenario restricted to contributing to or merely following the consensus making practices in the European Council and other intergovernmental bodies active in respective policy areas, and then locking-in the consensus achieved there. The Commission takes a passive role and may act as either an honest broker, or an implementor of decisions of the European Council or another intergovernmental venue. This particular approach is labelled here as one of a pure new intergovernmentalism.

To be precise, the authors of new intergovernmentalism also suggested that the Commission may have a high ambition in some situations (Bickerton et al., 2015: 710). This thesis takes another step to make the claim that the ambitions of the Commission are not at all far away from the outcomes associated with the NI. The label that can be used to describe this sort of branch within the study of NI could be new supranationalism (Schmidt, 2016), or Commission-focused new intergovernmentalism.

When it comes to moderated ambition, this practice was traced in the interviews conducted for this thesis, but it is also well established in the literature. Hodson (2013) for example described the Barroso's Commission as a "strategic" policy entrepreneur in the field of EMU, one that will only propose solutions if they are well tested and have a necessary majority. This means that the Commission under President Barroso was only putting forward ambitious proposals when they were already thoroughly tested and had a projected high chance of approval by the Member States. The European Council is not the only intergovernmental venue where the Commission may try to either test its proposals, seek guidance, or act as an honest broker – there are many intergovernmental forums that bring together either seconded Member State officials in Brussels, or representatives from national Ministries.³ A rise of prominence of these bodies is another way

³ Especially in Economic and Monetary Union, two intergovernmental forums are crucial venues where the Commission could test its proposals before they are official: The Eurogroup Working Group (EWG) and the Economic and Financial Committee (EFC). The EFC is an advisory body composed of senior officials

in which the EU is becoming more intergovernmental (Puetter and Fabrini, 2016) or a sign of the EU's collaborative leadership in development (Nielsen and Smeets, 2018). The role of these configurations will be investigated in detail with regards to every policy episode, in order to test whether the official proposal of the Commission reflects its original ambition. If the original proposal has been moderated to a significant degree by a process of testing the waters in these intergovernmental bodies, or the European Council if it is a highly salient issue, then the Commission's ambition is a moderated one.

The question is one of process: Does the Commission only present proposals once it is sure they have the necessary majority, moderating it along the way, or is it more ambitious than that? It is hypothesised here that the Commission can put forward highly ambitious proposals (a) without necessarily having them tested in the relevant intergovernmental venues, or (b) despite the failure of such a test, due to strong oppositions of one or several Member States. In this case, the Commission's ambition is so high that it does not mind the potential rifts and long negotiations it may cause. Some authors (Peterson 2015, Hodson 2020) suggest that the Juncker Commission was more ambitious than Barroso and that it more often tried to challenge the status quo with its proposals, albeit always keeping the constraints of new intergovernmentalism in mind. Now that the distinction between the high, moderated, and low level of ambition is clear, more specific and context-aware hypotheses of this thesis are as follows.

Hypothesis B-1: The initial level of the Commission's ambition is high and not necessarily contingent on the positions of the intergovernmental bodies.

from national administrations and central banks, the ECB and the Commission, and the EWG is a formation of the EFC that only brings together eurozone Member States. The EWG prepares the meetings of the informal Euro group that brings together finance ministers of the eurozone Member States. In JHA, potentially important intergovernmental venues are the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), Standing Committee on Operational Cooperation on Internal Security (COSI), and High-Level Working Group on Asylum and Migration (HLWG).

Hypothesis B-2: The Commission's initial level of ambition is likely to be moderated by the Member States.

Hypothesis B-3: The Commission's high level of ambition can lead to its exclusion from discussions or loss of credibility with the Member States.

The hypotheses above present expectations of levels of ambition at different points in time: at the agenda-setting stage (B-1), and at the discussion or negotiation stage (B-2, B-3). First, the expectation of an ambitious Commission would be one that is proactive, not reactive. Thus, an ambitious Commission, even within the framework of the new intergovernmentalism, would be one that does not always wait for consensus before proposing reforms (B-1). This would not be in line with a pure version of NI that would put the European Council at the centre. On the scale that was defined in the beginning of this sub-chapter, this would mean that the Commission's ambition was high. A moderated ambition is also in line with the expectations of the Commission as an actor in new intergovernmentalism, as it reflects on its "complicit" character. This means that the Commission does have something it wants, which is found overambitious by the Member States, so its desires are hampered by their reaction (B-2). This hypothesis relates to the negotiation stage and especially to those situations when there is a mixed or negative response to the Commission's proposals. In other words, this model expects an over-ambitious Commission in the new intergovernmentalism. There could also, in theory, be a scenario in which the Commission's proposal is passed through without any moderation. However, building on the findings on collaborative leadership in the EU (Smeets and Beach 2018, Smeets et al. 2020), this is deemed impossible in cases of high political salience and efforts at integrating policy making processes (even without the Community method). Instead, the Commission is expected to invite the Member States and all the other interested actors, such as *de novo* bodies, the European Parliament, Interest Groups, to comment and contribute to its (original) ambition and proposal. This Hypothesis B-2 is there as a connection between this thesis and the collaborative leadership

approach, yet the aim of this thesis is to specifically focus on the Commission and the role that it plays as a catalyst of collaborative approaches.

The reasons for the Commission's high ambition can in some cases be strategic, in order to arrive at middle ground solutions later on. Namely, if it expresses over-ambitious proposals, the Commission can be satisfied even with meeting the Member States (or the Parliament) at middle ground after negotiating, which suggests a strategic use knowing that the other parties will never agree in full on all of its proposals. Normally, the Commission will moderate its proposals in order to remain relevant in case of a Member State backlash. However, the third hypothesis (B-3) suggests that a danger of this strategy is that, if the Commission persists with highly ambitious proposals despite the attempts at moderation by the Member States, it can lead to the Commission being taken off the table and its proposals side-lined (B-3). This hypothesis allows investigating highly ambitious proposals from supranational organizations as causes for sub-optimal outcomes or deadlock.

All of these hypotheses are different to what was identified on the level of ambition scale as a low ambition (B-0). The existence of this passive approach from the very beginning of a policy episode would not be in line with the conceptualization of the Commission as an ambitious actor in the new intergovernmentalism. It would show a Commission that has accepted the fate of an unimportant actor in the shadow of the European Council.

The Figures below present how process and level of the Commission's ambition are intertwined in different EU integration theories and situates the approach of this thesis. Liberal intergovernmentalism is not presented as it completely avoids taking into account the Commission's ambition as a potential driving factor of integration.

Figure 3 Pure new intergovernmentalism: The expected process and level of the Commission's ambition

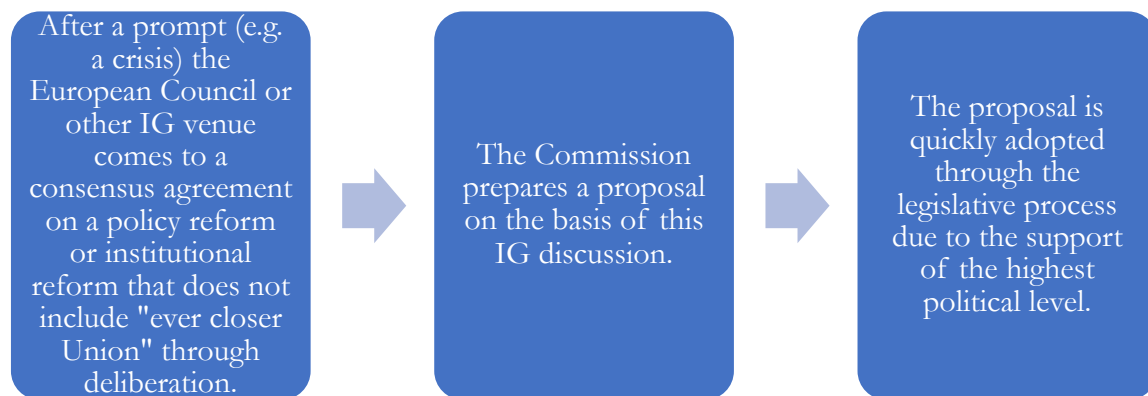


Figure 4 The P-A Model scenario that ends in outcomes of new intergovernmentalism



Figure 5 The neofunctionalist expected process and the level of the Commission's ambition

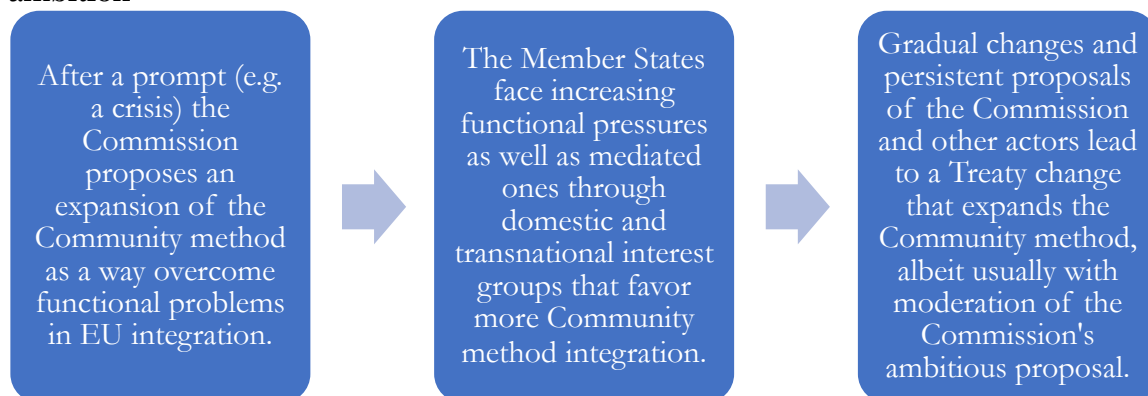
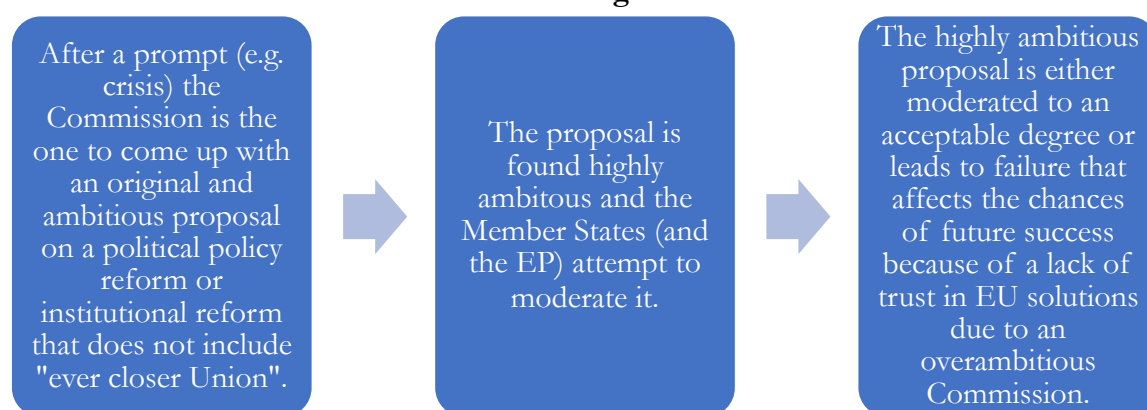


Figure 6 Commission-centred new intergovernmentalism: The expected process and the level of the Commission's ambition according to this thesis



All three hypotheses – B-1, B-2, and B-3, relate to the level of ambition in relation to the three types of ambitions described in hypotheses A-1, A-2, and A-3. They present a dynamic model that explains the Commission's highly ambitious behaviour in these types of proposals, and the potential ramifications of the Commission's highly ambitious proposals. While the key difference between the pure NI (Figure 2) and the Commission-cantered one (Figure 5) is in the timing, compared with the P-A Model's and Neofunctionalist process (Figure 3 and 4), the key difference is in the type of a proposal that the Commission goes for. The type of the proposal that the Commission goes for is in line with the outcomes already described by the NI in its six hypotheses, and suggests that the Commission has accepted its role within the NI limits.

Figure 7 Summary of the main hypotheses on the Commission's ambition

<p>Research Question A (Focus of Ambition): What is the Commission's ambition in the new areas of activity?</p> <p>Hypothesis A: The Commission is not hard-wired to seek ever closer union.</p>
<p>Hypothesis A-1: The Commission's ambition is institutional reform through creation and empowerment of de novo bodies.</p>
<p>Hypothesis A-2: The Commission's ambition is institutional reform through pragmatic and non-supranational governance solutions.</p>

Hypothesis A-3: The Commission's ambition is to act politically by shaping the substance of salient policies.
Research Question B (Level of Ambition): What is the level of the Commission's ambition in the new areas of activity? Hypothesis B: The Commission is not a passive actor in the new areas of EU activity.
Hypothesis B-1: The initial level of the Commission's ambition is high and not necessarily contingent on the positions of the intergovernmental bodies.
Hypothesis B-2: The Commission's initial level of ambition is likely to be moderated by the Member States.
Hypothesis B-3: The Commission's high level of ambition can lead to its exclusion from discussions or loss of credibility with the Member States.

This sub-chapter put forward six specific hypotheses on the focus and level of the Commission's ambition that explain the way this supranational institution can be expected to act within the new intergovernmentalism (Figure 7). They were tested in this research project through qualitative methods of interviews, process tracing, and document analysis. Hypotheses A-1 to A-3 follow the logic of the new intergovernmentalism's original second Hypothesis, that the Commission is not hard-wired to the idea of ever closer union but shifts the focus to a variety of alternative policy or institutional projects, which the Commission is expected to pursue instead. Findings in line with them would stand opposed to Hypothesis A-0 introduced in the beginning of this chapter, that claims that the Commission is hard-wired to an idea of ever closer union. However, before the results of analysis are presented, the following sub-chapter operationalizes the concepts that feature in these hypotheses and describes the way in which they were tested. This is done by introducing certain indicators for each of the hypotheses. For each of the hypotheses, possible findings that are alternative to them, and that also have been found true by

assessing the data in different policy episodes, are investigated and presented. Following that, the methods used are presented in greater detail.

2.5 Methods and operationalizations

The ambition of the Commission within the policy episodes is assessed through document analysis, process tracing of policy episodes, and semi-structured elite interviews. Document analysis of key Commission's Communications, white and green papers, memos, press releases and official proposals will show what the Commission's ambition was, at least on paper. Moreover, the level of political saliency of the proposal, as well as the outcomes of the proposal at the time of the research, is described at the beginning of the policy episodes. That will make it clear which of the three hypotheses about the aim of ambition can be tested in the context of a specific case.

The interviews were designed to investigate the Commission's ambition behind the proposal on paper, and the process through which the Commission arrived to it along with key factors influencing it. They were conducted with Commission officials, both in DGs and in Cabinets, as well as with officials in the Council Secretariat, with officials dealing with COREPER II matters in the permanent representations, staff of the European Parliament Secretariat, and interest group representatives. A total of 27 interviews were conducted – the first set in November 2017 (16 in area of JHA) and the second set in November 2018 (11 in area of EMU). The different actors were asked about the Commission's ambition, to avoid an overestimation of the Commission's role that could be a false finding if only Commission representatives were asked about their goals and achievements. The identity of the interviewers' identity has been anonymized, and the quotes from the interviews will be introduced in the text according to the coding in the Table 2 below.

Table 2 List of interviews

Policy Area	Code	Affiliation	Date of interview
Justice and Home Affairs (JHA)	COM_1	European Commission, Head of Unit	14 November 2017
	COM_2	European Commission, Head of Unit	14 November 2017
	MS_1	Permanent Representation, JHA Counsellor	15 November 2017
	MS_2	Permanent Representation, JHA Counsellor	15 November 2017
	MS_3	Permanent Representation, JHA Counsellor	15 November 2017
	COM_3	European Commission, Head of Unit	16 November 2017
	GSC_1	General Secretariat of the Council, Senior Official	16 November 2017
	COM_4	European Commission, Head of Unit	17 November 2017
	MS_4	Permanent Representation, JHA Counsellor	17 November 2017
	EP_1	European Parliament, LIBE Committee Official	17 November 2017
	COM_5	European Commission, Head of Unit	20 November 2017
	COM_6	European Parliament, Head of Directorate	20 November 2017
	COM_7	European Commission, Head of Unit	21 November 2017
	MS_5	Permanent Representation, JHA Counsellor	21 November 2017
	MS_6	Permanent Representation, JHA Counsellor	22 November 2017
	MS_7	Permanent Representation, JHA Counsellor	23 November 2017
Economic and Monetary Union (EMU)	COM_8	European Commission, Cabinet Member	26 November 2018
	MS_8	Permanent Representation, EMU Counsellor	26 November 2018
	MS_9	Permanent Representation, EMU Counsellor	26 November 2018
	COM_9	European Commission, Head of Unit	27 November 2018
	COM_10	European Commission, Head of Unit	27 November 2018
	COM_11	European Commission, Head of Unit	27 November 2018
	MS_10	Permanent Representation, EMU Counsellor	28 November 2018
	MS_11	Permanent Representation, EMU Counsellor	28 November 2018
	COM_12	European Commission, Head of Unit	29 November 2018
	MS_12	Permanent Representation, EMU Counsellor	29 November 2018
	MS_13	Permanent Representation, EMU Counsellor	30 November 2018

Process tracing (see Collier, 2011; Beach & Pedersen, 2013) is used to track the Commission's ambition over time. Generally, policy episodes are presented in a chronological, not thematic nor hypothesis-oriented manner. Hence, documents are analyzed having a temporal dimension in mind and the interviewees are asked about crucial events that affect the

Commission's ambition through different periods. Furthermore, process tracing is especially important with regards to the level of ambition and the significance of the intergovernmental venues in moderating it. It is the main method used to establish whether the Commission was a passive implementer of decisions of intergovernmental venues (B-0) or it went beyond it (B-1); if and how its initial ambition was moderated by the Member States (B-2); if a backlash has led to a sidelining of the Commission and its proposal (B-3).

The process tracing and the identified shifts in ambition present an explorative element of the research that goes beyond the hypotheses tested. Another explorative and additional element is finding in which specific cases did the Commission have different ambitions, which will allow putting forward new claims regarding the Commission's role in the new intergovernmentalism. Primarily, the aim is to establish the different types of ambitions of the Commission in new areas of activity dominated by the new intergovernmentalism, yet the amount of data gathered by this thesis project and the analytical framework of ambition that is suggested will allow presenting initial findings with regards to the key contextual and internal variables that guide the Commission to different types of ambition.

Several indicators were used in order to properly test the hypotheses laid out in the previous sub-chapter. The main indicators for the ambition to push for ever closer union (Hypothesis A-0) are formal and informal proposals by the Commission to expand the elements of the Community method in new areas of activity. Another indicator are interview statements suggesting the Commission's short- or long-term ambition to expand the Community method in new areas of activity. Disconfirming this hypothesis would imply that the Commission is not hard-wired to the concept of ever closer union. Thus, indicators that would disconfirm A-0 and confirm the Hypothesis A are formal and informal proposals that suggest other ways to integrate and lead in the policy-making process. Also, interview statements that would openly suggest a lack of ambition to expand the elements of Community method in new areas of activity would be another indicator that clearly shows how the Commission is not hard-wired to the idea.

With regards to de novo bodies (A-1), formal or informal proposals by the Commission to establish new or strengthen the mandates of existing ones serve as indicators that would suggest the validity of this hypothesis. Also, interview statements suggesting the Commission's long or short-term ambition to do the same would supplement this finding as important additional indicators. Finding the opposite indicators would disconfirm this hypothesis. Formal or informal proposals and interview statements that aim to weaken the mandates of existing de novo bodies is one opposing indicator. Also, the Commission's opposition to other actors' proposals to strengthen the mandates of de novo bodies, or establish new ones, is another opposing indicator to Hypothesis A-1. It would suggest that the Commission is not even complicit with the rise of these bodies, which the new intergovernmentalism suggests being the case (at the very minimum).

On Hypothesis A-2 regarding pragmatic and non-supranational governance solutions, indicators that would support it if identified are formal and informal proposals by the Commission to establish new or strengthen existing coordinative or monitoring roles that are outside of the Community method of integration. At the same time, interview statements suggesting the same serve as indicators for this hypothesis. An opposition to such developments in either proposals or interviews would suggest that it is not the Commission's ambition.

Hypothesis A-3 suggests that the Commission's ambition is to reform existing and salient policies. The Commission has the choice to enter political debates and put forward proposals that take a side, or it can stick with its technical expertise and leave the political debates to the Member States. Indicators that would suggest that the Commission acted politically are formal or informal proposals or interview statements by Commission officials that show the ambition to change an objective of a policy. Moreover, proposals or statements by Commission officials that are partisan in a highly salient issue also serve as indicators of a political ambition in policy issues. If the opposite is the case, the Commission does not want to act politically, but seeks to remain to be seen as a technocratic body. If the Commission seeks to change instruments and not objectives

and avoids putting forward partisan proposals in highly salient issues, it does not have a political ambition.

Finally, the second set of hypotheses tests the level of ambition of the Commission. The indicators are closely related to the process through which the Commission arrives to its proposals. If process tracing clearly shows the centrality of the European Council or other intergovernmental venues in setting the Commission's reform agenda, this means that the Commission has a low ambition (Hypothesis B-0). Ambition that goes beyond that already allows a testing of B-1, B-2, and B-3. The first suggests that the Commission's ambition is not contingent on the intergovernmental bodies and can be higher than the consensus position of the European Council or other intergovernmental bodies. An indicator for this is the timing of the Commission's proposal, which should be before the European Council or other body presents it with a solution it should propose. Moreover, the ambition should be higher than the lowest common denominator between the Member States. This implies that the Commission has something it wants in the new intergovernmentalism, and seeks to drive the agenda, and not wait for the consensus to emerge. The second and the third are expectations of what may happen in case of a Member State opposition. The Commission's high ambition can be moderated (B-2), or it can lead to a wider backlash that hampers the proposal itself (B-3). In the case of B-2, the indicators are interview statements and documents suggesting a moderation of an initial high proposal. For B-3, the indicators are interview statements suggesting that the Commission has been side-lined in the debates. The Table 3 below provides a summary of indicators and operationalizations of negative and positive findings with regards to each of the hypotheses.

Table 3 Summary of operationalizations

Hypothesis	Operationalization – Positive finding	Operationalization – Negative finding
A-0: The Commission's ambition is institutional reform in line with the concept of ever closer union.	<p>1. Formal or informal proposals by the Commission to expand community method in new areas of activity.</p> <p>2. Interview statements suggesting the Commission's short- or long-term ambition to expand community method in new areas of activity.</p>	<p>1. Formal or informal proposals by the Commission to integrate in ways suggested by Hypotheses A-2 and A-3.</p> <p>2. Interview statements suggesting the lack of Commission's short- or long-term ambition to expand community method in new areas of activity.</p>
A-1: The Commission's ambition is institutional reform through creation and empowerment of <i>de novo</i> bodies.	<p>1. Formal or informal proposals by the Commission to establish new <i>de novo</i> bodies or to strengthen the mandates of existing ones.</p> <p>2. Interview statements suggesting the Commission's short- or long-term ambition to establish <i>de novo</i> bodies or strengthen the mandates of existing ones.</p>	<p>1. Formal or informal proposals by the Commission to weaken the mandates of existing <i>de novo</i> bodies.</p> <p>2. Interview statements suggesting the Commission's short- or long-term ambition to weaken the mandates of <i>de novo</i> bodies.</p> <p>3. The Commission's opposition to other actors' proposals to strengthen the mandates of <i>de novo bodies</i> or establish new ones.</p>

<p>A-2: The Commission's ambition is institutional reform through pragmatic and non-supranational governance solutions.</p>	<p>1. Formal or informal proposals by the Commission to establish new or strengthen existing coordinative or executive roles that are outside of the community method model of integration.</p> <p>2. Interview statements suggesting the Commission's short- or long-term ambition to establish new or strengthen existing coordinative or executive roles that are outside of the community method model of integration.</p>	<p>1. Formal or informal proposals or interview statements by Commission officials that suggest opposition to establishing new or strengthening existing coordinative or executive roles outside of the community method of integration.</p>
<p>A-3: Hypothesis A-3: The Commission's ambition is to act politically by shaping the substance of salient policies.</p>	<p>1. Formal or informal proposals, or interview statements by Commission officials that suggest the ambition to change an objective of a policy.</p> <p>2. Formal or informal proposals, or interview statements by Commission officials that are partisan in a highly salient issue.</p>	<p>1. Formal or informal proposals, or interview statements by Commission officials that only change the instruments of a policy.</p> <p>2. Formal or informal proposals, or interview statements by Commission officials that are not partisan on highly salient issues.</p>
<p>B-0: The Commission's ambition is low; its proposals</p>	<p>1. Process tracing that shows the centrality of the European</p>	<p>See B-1, B-2, or B-3.</p>

are contingent on the consensus position of the European Council or other intergovernmental bodies.	Council or other intergovernmental bodies in setting the Commission's reform ambition.	
Hypothesis B-1: The initial level of the Commission's ambition is not necessarily contingent on the positions of the intergovernmental bodies.	1. Process tracing that shows a high ambition of the Commission, putting forward proposals that are ahead of the intergovernmental consensus, which are higher than the lowest common denominator.	See B-0.
Hypothesis B-2: The Commission's initial level of ambition is likely to be moderated by the Member States.	1. Process tracing that shows a significant change in the Commission's ambition after the consultations, or after discussions within the relevant intergovernmental bodies.	See B-0.
Hypothesis B-3: The Commission's high level of ambition can lead to its exclusion from discussions or loss of credibility with the Member States.	1. Process tracing that shows the Member States excluding the Commission or the Commission's proposals from the reform agenda and pursuing its own initiatives due to an over-ambitious proposal of the Commission.	See B-0.

2.6 Case selection and outline of the empirical chapters

In the previous section, the analytical framework of this thesis was constructed in such a way that an analysis following it should be able to provide answers to questions regarding the Commission's:

1. Institutional reform ambition.
2. Policy reform ambition.
3. The level of ambition.

With regards to case selection, this thesis presents an analysis of the Commission's ambition in the new intergovernmentalism, based on six policy episodes in two policy areas and the time period of President Juncker's Commission (2014 - 2019). These are:

- a. The hotspots as a new policy instrument in JHA
- b. The European Border and Coast Guard (EBCG)
- c. The Reform of the Common European Asylum System – Solidarity mechanisms for relocation (Part 1) and a new EU agency for asylum (Part 2)
- d. Flexibility in the Stability and Growth Pact
- e. Financial Integration: Banking and Capital Markets Union
- f. Revamp of the European Stability Mechanism and Euro Area Governance

These policy episodes were selected as most relevant and important for assessing the Juncker Commission's ambition in these policy areas after a careful consideration of the interviews conducted for the thesis as well as Commission's publications.

Each of the two empirical chapters starts with a review of the relevant literature, a justification for applying the theoretical framework of the new intergovernmentalism, and the establishment of a research gap regarding the ambition of the Commission. Then, a historical overview of the policy area before President Juncker came to power in 2014 is presented. Next follow the overviews of the policy episode during President Juncker's term and an analysis of the Commission's focus and level of ambition. The empirical chapters end with a summary of findings

and hypotheses confirmed. Thus, each empirical chapter will be structured keeping in mind the following guiding issues for analysis:

1. A short historical overview of the policy episode.
2. Institutional reforms suggested by the Commission.
 - a. *Did the Commission propose any institutional reforms?*
 - b. *Which of the types of institutional reforms were proposed by the Commission?*
3. Policy reforms suggested by the Commission.
 - a. *Did the Commission propose a change of a policy objective or only technical changes?*
 - b. *How salient was the issue? How partisan was the issue?*
 - c. *How partisan was the proposal?*
4. The level of ambitions of the Commission.
 - a. *Was the Commission's initial ambition high?*
 - b. *How was the Commission's ambition moderated?*
 - c. *What was the impact of the Commission's initial high level of ambition?*
5. Summary.

After Chapters 3 and 4, a concluding Chapter 5 will be organized around the six hypotheses of the thesis. It will bring in all of the comparative elements, possible explanations for the different approaches of the Commission, different outcomes, as well as lessons and new questions for future research of the Commission's ambition in the new areas of EU activity.

3 THE COMMISSION'S AMBITION IN THE JUSTICE AND HOME AFFAIRS 2014-2019

3.1 History of policy area and state of affairs

Justice and Home Affairs (JHA) is an area of policymaking in the European Union that spans issues of police cooperation, judicial cooperation in civil and criminal matters, immigration and asylum policy, and external border management. Its significance lies in the fact that it touches upon these fundamental state functions. As Monar (2012: 613) explained, “the rather technically sounding term ‘justice and home affairs’ should not make one forget that in this domain the EU is dealing with issues relating to the most invasive forms of state action such as deprivation of liberty, refusal of entry at borders, expulsion, and uncovering of personal data”. The EU entered this field not as a substitute to the Member States, who remain the primary policy makers, but as an important additional provider of policies and minimum standards.

The origins of JHA, according to Monar (2012: 614-5), can be tracked via three different policies coming together, and this development started as early as 1970s. The first policy was TREVI (“Terrorisme, radicalisme, extrémisme et violence internationale”), an intergovernmental cooperation mechanism set up in 1975 by the Member States in reaction to terrorist challenges. It was a “European Political Cooperation” (EPC), which means that it did not have a basis in any of the treaties nor it produced legal instruments – it was merely an intergovernmental effort to coordinate policies. Still, until 1991 it provided the Member States with a framework through which they extended their cooperation beyond anti-terrorism and into the areas of drug-trafficking, organized crime, police information exchange and cooperation. The second important point in JHA development is the Schengen agreement which was signed on 14 June 1985 by five Member States of the European Economic Community. In 1990 the Schengen Implementing Convention was added to the agreement, devising a common visa policy and the abolition of internal border

control. The Schengen was a sort of an early stage laboratory for policy making in the field of Justice and Home Affairs establishing a culture of cooperation in this area.⁴ For instance, the Member States from early years of Schengen adopted various “compensatory measures” to deal with judicial cooperation, cross-border police, border management, visa, asylum, or migration policy (Ucarer 2016: 283). Unlike the TREVI, it had the prerogatives to adopt legally binding decisions. The Maastricht Treaty is the third point of significant importance for the development of the JHA policy domain. It formally institutionalized the JHA domain in the European Union, bringing together the TREVI and the internal-market crime fighting cooperation mechanisms into the Title VI of the Treaty on the European Union (TEU), later becoming known as the third pillar of the EU.

In practice, this early period did not bring a lot of common policies in the field of JHA, primarily because of a lack of shared objectives, appropriate legal instruments and qualified majority voting. The biggest achievement in the field in this period was the establishment of EUROPOL, the EU’s police cooperation agency in 1998.

Significant integration progress came with the Treaty of Amsterdam in 1999. The Treaty established a common goal of creating an Area of Freedom, Security and Justice (AFSJ), that the JHA policies were part of. It expanded the community method by introducing qualified majority voting into most of the issues of asylum, immigration, border control, and judicial cooperation in civil matters. Also, in 1999 the European Council adopted the Declaration of Tampere laying strategic guidelines for the next five years – this established a practice of 5-year strategic guidelines in the JHA. In 1999 the Common European Asylum System (CEAS) was also created, which started the process of establishing minimum asylum standards in the EU and the rules for deciding

⁴ The Schengen Area today consists of 26 Member States, 22 are EU Member States and four are Member States of the European Free Trade Association – Iceland, Liechtenstein, Norway, and Switzerland. Ireland and the United Kingdom have signed opt-outs from the Schengen Area, while Bulgaria, Croatia, Cyprus, and Romania are legally obliged to join in the future.

which Member States is responsible for an asylum application – the Dublin system (El-Enany and Thielemann 2011). Since then, this system saw three reforms, but its main logic – the rule of the first country of entry as the responsible one for managing the asylum claim – remains untouched.

The following decade of 2000-2010 is considered a golden era in terms of policy output “with well over a hundred new texts having been adopted every year by the Justice and Home Affairs Council during the decade” (ibid.: 1). As an important step in judicial and police cooperation, the European Arrest Warrant (EAW) was introduced in 2002. In 2005, the EU’s border control agency Frontex was established, one of the most important and most powerful (in terms of staff and resources) agencies in the EU. Other important provisions adopted during this time include the Temporary Protection, Qualification, Procedures, and Reception Conditions Directives, adopted as part of the CEAS (Kaunert and Leonard, 2012: 1401). The Treaty of Lisbon in 2009 further expanded majority voting and involvement of the European Parliament into issues of police and judicial cooperation in criminal matters. The Stockholm Programme, which laid down the strategy for JHA for 2009–14, “lists more legislative proposals than the 1992 Programme that implemented the Single European Act in its time” (Wolff 2015: 130). In 2010 the EU also adopted its first EU Internal Security Strategy. Furthermore, also in 2010 the European Asylum Support Office started operating. Procedurally, unanimity remained the rule in JHA for issues of short-stay and visas, passports, identity cards, residence permits, family law (Article 81 TFEU), the establishment for a European Public Prosecutor’s Office (Article 86 TFEU), and operational police cooperation (Article 87 TFEU) (ibid. 132). The ECJ gained the right to review all of JHA policies in 2014, however, with the limit to not ‘review the validity or proportionality of operations carried out by the police or other law-enforcement services of a member state or the exercise of the responsibilities incumbent upon member states with regard to the maintenance of law and order and the safeguarding of internal security’ (Article 276 TFEU).

That was the state of affairs before 2014 – the JHA domain was an area of EU activity that was partially supranationalized, with a large role reserved for EU agencies. Moreover, a key

principle of JHA remained mutual recognition and mutual trust in the national judicial systems, as resources and policy prerogatives remained by and large decentralized.

Policies that were developed under this regime proved unready to respond to the demands of the refugee crisis which unfolded at the start of President Juncker's mandate. This chapter takes the policy developments and reform attempts of the period 2014-2019 as a case to investigate the ambition of the Commission in this area. Specifically, the cases chosen are within the scope of the migration, asylum, and border control aspects of the JHA domain. In 2014, Commission President Juncker made Migration one his ten political priorities for the period 2014-2019 and entrusted a Commissioner with a special responsibility for Migration, Home Affairs and Citizenship, Mr. Dimitris Avramopoulos from the Greek party of New Democracy (European People's Party). Not only is JHA a case of a hybrid regime between national policies, intergovernmental and supranational common policies, it is also a case of a highly political area, and one that has been in crisis for most of Juncker's mandate. It is thus a perfect case for assessing the role that the Commission plays in the new intergovernmentalism.

The refugee crisis can indeed be considered a crisis of governance. At the height of the crisis, in the year 2015, more than 1 million people entered Europe from the Middle East and North Africa (MENA) region, and most of them through Italy or Greece (BBC, 2016). This created a disproportionately large pressure on the two frontline Member States and from the very beginning displayed the fallacies of the JHA policies. Most importantly, the Dublin system in which the Member State of entry is responsible for administering the asylum claim has failed and effectively stopped being implemented in 2015. Also, as of November 2015, a number of Member States including Austria, Denmark, Sweden and France used the right to reinstitute internal border controls, thus also effectively suspending the Schengen acquis. Hungary went so far in its anti-refugee approach to build a wall on its southern border with Serbia. In contrast, Germany adopted a more liberal approach, at least initially, when the government decided to let in over a million Syrian refugees (DW, 2016).

The Commission also did not sit tight and wait for the crisis to pass, or the MS governments to solve it. The refugee crisis sparked a series of reform proposals from the Commission in the area of Justice and Home Affairs. Some of the adopted proposals include the establishment of the Hotspots for migration management, the EU Migration Partnerships, the transformation of Frontex into the European Border and Coast Guard (EBCG), the Asylum, Migration and Integration Fund, and the EU Emergency Trust Fund for Africa. Furthermore, the EU-Turkey deal was signed on March 18, 2016 in an attempt to solve the issue of influx, promising Turkey €6 billion in financial aid, for accepting the Syrians who reached Greek islands illegally, whilst taking into the EU the legal Syrian refugees from Turkey. The proposal to reform the Common European Asylum System (CEAS) is still in a deadlock as the Member States were strongly divided on the adoption of solidarity relocation mechanisms. By 2018 the situation at the EU's borders stopped being widely considered as a crisis situation. The level of irregular arrivals in 2018 dropped over 90% below the level of 2015, with around 150,000 arrivals (European Commission, 2019a). Still, the talks of reforming the CEAS and other areas within JHA are continuing after President Juncker's mandate as well.

The research presented in this chapter looks specifically into policy episodes in the fields of migration management (the case of Hotspots), border control (the case of EBCG), and two episodes within the case of asylum policies (the case of CEAS). The three cases are chosen to investigate the ambition of the Commission, to test the hypotheses outlined in the previous chapter. These cases are chosen primarily because of their prominence, established in the thesis interviews, and due to their contextual difference. This difference is shown already by looking into the length of procedure from proposal to adoption. The Hotspot approach to migration management was the quickest one to be introduced with less than 6 months from proposal to their instalment and fully-fledged usage on the ground. The EBCG deal was introduced in a medium amount of time, between six months and one year. Finally, after three years of negotiations in the Council, the CEAS reform is far from complete, as the Council during Juncker's Presidency had

not agreed on a common position on four of the Commission's proposals. These are the Dublin IV regulation, the asylum procedure, the eu-LISA, and the Revision of the rules for temporary reintroduction of border controls. Although, it should be pointed out that in June 2017 the Council and the European Parliament reached an agreement on creating a fully-fledged EU Agency for Asylum - EAA (instead of EASO), one of the Commission's most ambitious proposals on institutional change in the JHA (The Council, 2017a). However, the Member States have agreed to only move forward with CEAS reform as package deal, so this initial success on several policy files (including the EAA) has to wait for better luck with the negotiations on the most controversial file on relocation mechanisms, which is one of the policy episodes in this thesis. The policy episodes are also chosen because they contained clear elements of new intergovernmentalism, such as the lack of transfers of new powers to the traditional supranational institutions, the intergovernmental consensus-seeking practices, new forms of cooperation and governance, and most evidently high levels of delegation to de novo bodies. The policy episodes are described in greater detail in the respective sub-chapters (3.3., 3.4., and 3.5.) which start by looking into the context of the policy area in order to establish the relevant hypotheses on the Commission's ambition that can be tested by it.

With regards to the Commission's response to the refugee crisis, the European Agenda on Migration (European Commission, 2015a) published amid the height of the crisis in May 2015 in many ways shaped the EU's response in the three policy areas. The interviews conducted for this thesis show that this policy document was prepared during 2014, before the crisis took full force (COM_4, COM_6). This clearly displays how the ambition of the Commission to put migration policy on the radar precedes the crisis. As mentioned, migration was selected in 2014 by the President as one of the ten political priorities of the European Commission for the period 2014-2019. This helped when an immediate response was needed - during 2015 the refugee crisis made migration, asylum and border control a permanent item on the European Council agenda.

The European Agenda on Migration features prominently in the empirical analysis of the policy episodes, together with interviews and other document data it is used in order to find out which ambition the Commission had and how it developed vis-à-vis the discussions in the intergovernmental bodies. Before that, a literature review of EU integration in the field of Justice and Home Affairs is presented. The focus of the literature review is twofold: to establish the relevance of the new intergovernmentalism as an approach to EU integration in this field, and to present the most relevant descriptions of the Commission's role and ambition in integration in this field both before and during the refugee crisis. This review exercise further establishes the research gap with regards to investigating the Commission's ambition in new areas of activity and sets the stage for presentation of the empirical findings with regards to the reform ambition of the Commission.

3.2 Review of literature in the field of JHA

Even though it touches upon fundamental areas of state sovereignty, the area of JHA has gradually become more integrated. Why has this been the case? The dominant early approach in the literature that tried to explain the integration of the field of Justice and Home Affairs is the one of venue shopping of the Member States. According to Guiraudon (2000, 2003), national policy makers in the field of asylum and migration decided to shift these issues to the EU level in order to avoid domestic pressures and obstacles that would lead to more liberal migration policies. Especially strong pressures at that time came from the constitutional courts, in the process of the “judicialization” of asylum and migration policies (Gibney 2001 according to Kaunert and Leonard 2012). Indeed, the shift to the EU level that happened during the 1990s was primarily intergovernmental by character and it restricted the ability of the migrant-friendly Commission, the European Parliament and the ECJ to influence policy. However, since Guiraudon's original analysis, the EU has made progress in the field of JHA that both raised the asylum standards across the EU and increased the roles of the EU institutions (Bonjour et al. 2018: 411). This implies,

according to many authors (e.g. Block and Bonjour, 2013, Ette et al., 2011, Kaunert and Leonard, 2012), that the era in which the Member States had exclusive control over their migration policies is over. Some authors (e.g. El-Enany and Thielemann, 2011, Acosta and Geddes, 2013) have made the next step to claim that it is now the supranational institutions that act as a liberal constraint controlling the Member States' desire for restrictive migration policies. For example, the CJEU was found to be an actor interested in limiting the ability of the Member States to adopt rules that were overly restrictive (Bonjour and Vink, 2013). Furthermore, a high-speed preliminary ruling procedure in issues concerning the JHA, specifically cases where an urgent response is required because of issues of personal freedom, reinforced the role of the ECJ in the EU asylum policy (Millett, 2008). It has often been applied to provisions concerning asylum, adding to the generally high activity of the court in this area (Kaunert and Leonard 2012: 1407). Also, the Commission was found by Kaunert (2010: 169) to be an important actor in contributing to the shift in political norms that led to the construction of the AFSJ itself and the continuing communitarization of the asylum and migration policies with the Lisbon Treaty. More recently, Paris (2017) argued that the Commission was a key policy entrepreneur in the case of the Blue Card Directive concerning creating legal migration pathways to the EU (see also Howarth and Roos, 2017). Thus, the Commission and other actors were already seen by some as political and active players in the field from its early days.

The thesis that supranational actors (will) bring more liberal outcomes, and more integration overall in the field of JHA, has often been a topic of criticism from authors who used different frameworks to explain these phenomena or lack thereof. The question of the Commission's role in JHA in particular is still subject of a lively academic debate, especially post Lisbon. For example, Lahav and Luedtke (2013: 111) found that the Commission wants to be seen as an ally to the Member States in tougher border control and immigration policies. Scipioni (2015) found variation between different JHA policy fields, whereby the Commission is more liberal on

asylum and restrictive on border and visa policies (see also Maricut-Akbik, 2017 for an overview of positions of different institutions).

Despite its undeniable gradual supranationalization since Maastricht, the JHA has many features that can be associated with the new intergovernmentalism (Wolff 2015: 129). First of all, the JHA is an example of a restrained Community method, in which the Member States have found various ways to retain or regain control over policy, either through the European Council, other intergovernmental bodies, or through informal ways of decision making (Wolff and Mounier 2012). The multi-annual (five-year) programming is an example of the Member States keeping control over JHA agenda setting in the European Council. The Tampere, Hague and Stockholm programmes have been consistently renewing the agenda setting powers of the European Council, through which “it has gotten used to instructing the Commission” (Wolff 2015: 134). Kaunert (2010: 173) also claimed that “while the supranational dimension in the EU institutional structure has been strengthened, the role of the European Council as a strategic decision-making institution in the AFSJ has also been reinforced and strengthened”. Article 68 TFEU states that the European Council “shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice”. The European Council has also established a tradition of adopting European Pacts in the area of the JHA, agreeing on common guidelines in specific areas such as the European Pact on Immigration of 2008. Monar (2011: 119 according to Wolff, 2015: 133) argued that “rather than seeking any form of ‘integration’ of their systems and policies, Member States have therefore opted for gradually increasing interaction and synergy between their national systems, while wherever possible limiting legislation and common structures which may interfere with national control over JHA instruments”. Maricut (2016: 522) called JHA a hybrid area of governance of integration both with and without supranationalization.

Even from a legal standpoint, the Community method is restrained in the JHA in two ways. Firstly, the Commission shares the right of initiative with one quarter of the Member States (Article 76 TFEU). Secondly, the emergency break procedure that was introduced with the Article

82 TFEU gives the right to a Member State to request the European Council to suspend the ordinary legislative procedure if it would “affect fundamental aspects of its criminal justice system” (Article 83(2) TFEU). Furthermore, the common practice of early trialogues that sidelines the Commission and the spread of the JHA agencies are further points that show how the new intergovernmentalism matters for understanding this policy area. According to Wolff (2008), the creation of Frontex in 2005 was pursued by the Member States as a solution to avoiding an expansion of competences of the Commission. Management boards of JHA agencies have, according to Wolff and Schout (2013) become “mini-Council formations”, making it hard for the Commission to exercise control over their every-day functioning (see also Busuioc and Groenleer 2011 or Kaunert et al 2013). It is worth noting that instead of the Commission, it is the European Parliament that directly profits the most from the creation of agencies, as it co-legislates their budget and creation (Wolff 2015: 140). Furthermore, according to Scipioni (2017: 11), the JHA “agencies now contribute to setting the agenda by proposing that the Commission triggers actions on foot of monitoring, in cases of disproportionate pressures, or by setting standards and guidelines for implementing EU law and monitoring such implementation. Considering the intent that these agencies grow larger than DG Home and are to feature a complement of specialized personnel, the ability of the Commission to adequately vet the policy proposals they advance may be called into question”. The JHA is the policy field with the most EU agencies active in it, making power and delivery of policies most deconcentrated across all EU issue areas.

As for the literature that emerged as a reaction to the developments sparked by the refugee crisis, it has mostly re-enforced the perception of the JHA as a hybrid area of governance with strong and further enforced presence of the European Council. According to Maricut (2016: 546), the European Council assumed a crisis manager role in the refugee crisis. However, the split within the European Council on relocation of refugees has shown that intensive cooperation at the highest level does not always guarantee consensus outcomes. Still, the European Council was particularly instructive in the process of establishment of the EBCG, and other successful policy

reforms proposed by the Commission, as will be investigated from the Sections 3.3. onwards. The deadlock on relocation within the CEAS reform has mostly been in focus of the literature whereby Member States' lack of common perspective on the issue was explained by the public goods theory (Thielmann, 2018), a lack of common vision for integration (Wolf and Ossewaarde 2018), domestic pressures (Zaun, 2018), and disproportionate exposure to negative externalities (Biermann et al. 2017). There are also a few articles that compare the refugee and the Euro crisis and the reform outcomes that came, or did not come, as a result of them. Scipioni (2017) used the two cases to show how crises do not guarantee further integration, while Börzel and Risse (2018) claimed that the sequence of the two crises is crucial in explaining the difference in outcomes.

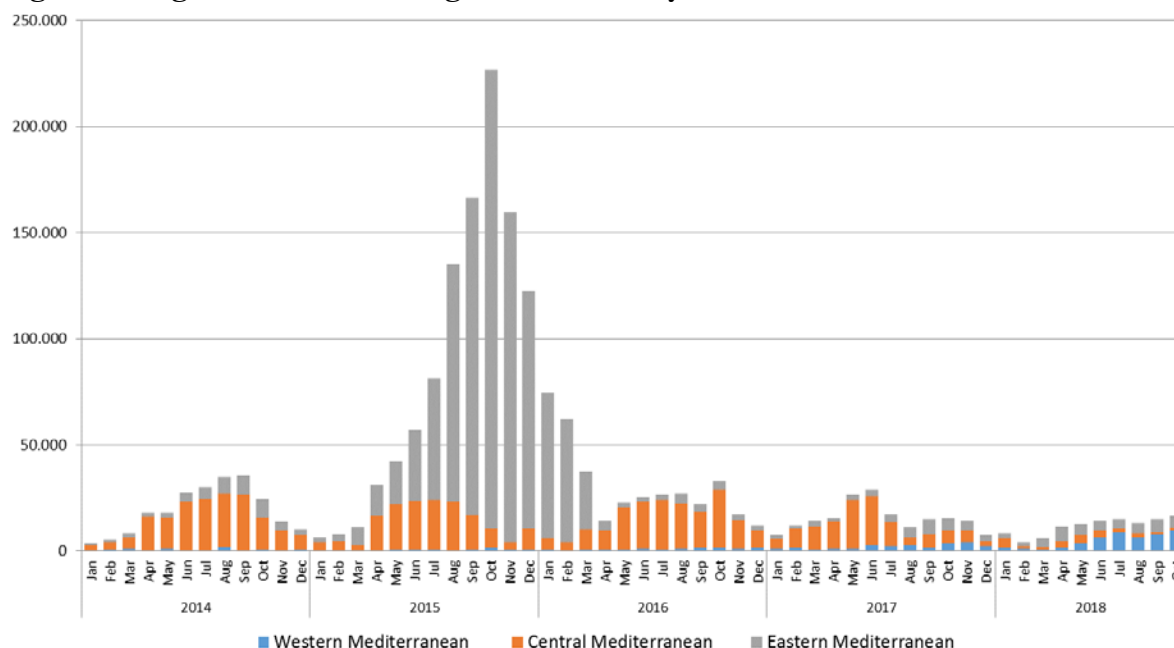
What is generally missing from the crisis and post-crisis literature, where the policy episodes selected in this thesis are situated, is an analysis of the Commission's role in designing common responses to the refugee crisis. The policy episodes that are selected for investigation in this thesis have not yet been investigated from this perspective. This is partially due to the fact that the most important reform proposal, the CEAS reform was stopped in its tracks. However, this does not mean that the Commission's ambition is not a topic worth exploring. The fact that many of the proposals did enter into force is one reason to investigate the Commission's role and ambition. The second reason to explore it is to find whether the Commission had the high ambition to act politically in the CEAS reform, and if that in itself contributed to the outcome of deadlock. Finally, the new intergovernmental side of the JHA was established in the literature, and it seems to have been strengthened during the crisis. All of the policy episodes selected and investigated had strong elements of the new intergovernmentalism, which will be also shown in the respective sub-chapters. Exploring the aim of the Commission's ambition (Hypotheses A-1, A2, A-3) in these episodes thus presents an original attempt to explore the role that the Commission plays in the new intergovernmentalism, an area dominated by the European Council and the quest for consensus. Also, the exact dynamic between the intergovernmental arm of the JHA, most clearly represented by the European Council, and the Commission's own agenda has

not yet been investigated and taken apart process-wise. The second set of hypotheses presented in this thesis (B1, B-2, B3) gives a set of expectations of what an ambitious Commission might look like in an area dominated by the European Council. The next sections will investigate not only the aim of the Commission's ambition, but also how it developed or changed over time.

3.3 Policy episode 1: The hotspots as new instruments for coordinating high migratory flows at the borders

3.3.1 Introduction

In the beginning of the 2015 refugee crisis, the frontline EU Member States faced an enormous number of arrivals causing a state of emergency at their borders. The exact number of people who arrived in 2015 is not known, but it is estimated to be well over one million, with over 4,000 people feared to have been drowned in the Mediterranean (UNHCR, 2015). The available country specific data shows how disproportionate this pressure was among the Member States. In Italy, for example, from 1st of January to 12th of October 2015, the number of arrivals was 593,432 people according to the estimates of the International Organization for Migration (IOM, 2015). The island of Lesbos in Greece alone had 113,411 arrivals between January and August 2015. Comparatively, from January to August 2014, only 6,336 migrants have arrived in Lesbos, less than 6 percent of the number that arrived in the same period the following year. Further 34,000 people have crossed by foot from Turkey into Bulgaria and Greece (UNHCR, 2015). The Figure 8 below shows a much higher number of irregular border crossings into the EU by three migratory routs in 2015 compared with years before and after. Only in the month of October 2015, the number of irregular border crossings alone was over 200,000.

Figure 8 Irregular border-crossings into the EU by month 2014-2018

Source: European Commission (2018a: 3)

This number of arrivals, clustered at only a few entry points, was a new experience for both the EU and the frontline Member States for which they were unprepared. Even the refugee influx in the early 1990s due to the wars in ex-Yugoslavia could not be compared, despite the geographical proximity of the Western Balkans compared with the MENA region.

In the early months of the crisis, the local authorities of the frontline countries could not cope with the pressure and the screening of newly arrived migrants and refugees was mismanaged. This created problems for other EU Member States as well to which these people were heading. A new and coordinated way to deal with the emergencies caused by the migration influx was badly needed, both for reasons of public security and solidarity, depending on how one wants to frame the issue.

3.3.2 Short overview of the policy episode

In response to the refugee influx, one of the key measures of the EU was the introduction of the hotspots, also known as the hotspot approach to migration management. This approach gave several EU agencies the mandate to assist frontline Member States with identifying, registering and

fingerprinting arrivals, in order to distinguish those who need international protection from “regular” migrants. The hotspots are physical centers in which efforts of all the relevant authorities are coordinated by the Commission. Specifically, it is the representatives of the EBCG, EASO, European Union Agency for the Operational Management of Large-Scale IT Systems (eu-LISA), the EUROPOL, Eurojust, the Commission, and of course the relevant Member State’s officers that are present in the hotspots (European Court of Auditors, 2017: 33-35).

The roles played by the EU agencies are various which makes their coordination challenging. The EASO seconds experts from other Member States to work alongside and under full control of the local staff, in order to help identify those that need international protection in line with the EU Asylum Procedures Directive. The EASO support teams also assist in processing legitimate asylum claims as quickly as possible (*ibid.*: 8). The Frontex, which later became the EBCG, coordinates the return of those not eligible for international protection. It also deploys Joint Screening Teams to support the Member States with registration and identification. Investigations regarding smuggling and trafficking networks are done by Europol and Eurojust with the responsible Member State. Finally, eu-LISA provides ICT expertise based on its management of the Eurodac system for fingerprinting of asylum seekers (European Parliamentary Research Service 2018: 2). In reality, the coordination of such a high number of tasks by various actors was a messy and complicated process, and according to some, a bureaucratization of this process was unrealistic in the given circumstances (Pascucci and Patchett, 2018; see also Vradis et al. 2019). However, through the hotspot approach, coordination of these various actors was achieved to a significant degree, especially given the circumstances. Five hotspots were installed in Italy (Lampedusa, Messina, Pozzallo, Taranto and Trapani) and Greece (Chios, Kos, Leros, Lesbos and Samos) as Figure 9 shows.

Figure 9 The locations of hotspots in Italy and Greece



Source: European Court of Auditors (2019)

One of the main issues regarding hotspots has, more or less consistently since their establishment, been their capacity, or lack thereof. The total capacity of the hotspots in Greece in May 2018 was 6.458 with occupancy of 15.201. The lack of shelters for unaccompanied minors together with issues of needs of vulnerable groups remain serious issues in Greek hotspots, that led to protests of refugees in Chios and Lesbos (ibid.: 3). The reception capacity of all the hotspots in Italy in the same period was 1.850 without data on occupancy. The Italian hotspots have had several incidents including arson, procurement irregularities, overcrowding, and use of force that have put up serious questions about the human right aspect of the whole approach (ibid. 4).

The hotspots are governed by Member State law, alongside soft law EU measures that are meant to enhance the coordination and the bureaucratization of the processes within them. The Greek government adopted a law in 2016 that regulated the hotspots (4357/2016). The hotspots in Italy are governed by Standard Operating Procedures adopted by the Member State together with the European Commission.

The hotspot approach has been subject of several policy developments since its inception, especially due to the changing circumstances and new international agreements. The hotspot approach was enhanced, giving the EU agencies more executive rights over time and the Commission more coordinative duties over these new roles of the stakeholders. For example, the EU-Turkey deal which came into force in March 2016 significantly changed how the hotspots operate in Greece. The deal meant that migrants arriving from Turkey to Greek islands would be kept on the island hotspots, where they would undergo a quick admissibility check, and if they were found not to be eligible for asylum, they were sent straight back to Turkey. Thus, after the EU-Turkey deal these hotspots were turned into closed centers, or “detention centers”, meaning that migrants arriving to the Aegean islands were detained on the hotspot premises until their application had been processed. The hotspots were also designed to contribute to the emergency relocation mechanism adopted by the Council of the EU on 14 and 22 September 2015 after consulting the European Parliament, which outlined the transfer of 160,000 asylum-seekers from Greece and Italy to other Member States. Many of these people were present in the hotspots at the time of this deal. Finally, in June 2018, a proposal for creating “controlled centers” on the model of the hotspots was put forward in a concept paper of the European Commission on the basis of the conclusions of the European Council. The controlled centers were thought to be created in order to provide incentives to EU ports for taking in refugee rescue ships. According to this approach, the passengers on a refugee boat that disembarked in an EU port would be given an initial registration and asylum screening on the spot within 72 hours, after which they would either returned to countries of origin, transferred to the first Member State of entry in line with the Dublin procedure, or to the local asylum procedure and reception center (European Commission, 2018b). The EU would also financially support the Member State taking part in the processing of the disembarked with €6,000 per person relocated.

The hotspot approach enjoyed a considerable level of support from the Member States and it has consistently been presented by EU institutions as one of the success cases in EU’s crisis

governance. According to the European Commission (2017a: 12), the hotspot “has shown itself to be a flexible and useful EU instrument that can be adapted to any Member State in the same situation”. Although it was intended as a temporary emergency measure, it evolved into a long-term instrument and the “key element in the EU’s support for Member States on the external borders of the EU” (European Parliamentary Research Service 2018: 2). In 2017, the European Court of Auditors (2017) published a Special Report named “EU response to the refugee crisis: the ‘hotspot’ approach” stating that “the hotspot approach has ensured that most of the arriving migrants in 2016 were properly identified, registered and fingerprinted and their data checked against relevant security databases” (ibid.: 1). In November 2017 the Commission published detailed guidelines on how the hotspot approach can be most effectively used in potential crisis situations in the future (European Commission, 2017b). The hotspot approach to migration management was certainly seen as a long-term approach and new policy instrument, not as a short-term measure.

But what kind of a policy episode is the hotspot approach? Despite the importance of hotspots and the fact that they touch upon such a controversial topic from a variety of viewpoints, the hotspots were surprisingly not a topic of heated political discussions at the time of adoption. They were seen as an instrument urgently required in order to reach a common policy objective of checking who is coming in and who is allowed to stay in the EU. The early documents describing the approach have left the trace of a language of “technocratic managerialism”, with the focus of “making EU migration and asylum bureaucracy more efficient” (Pascucci and Patchett 2018: 326). The governments of the Member States were not particularly divided on the issue and have accepted the need for hotspots in managing the influx of migrants and refugees. The criticisms instead came from humanitarian NGOs that emphasized the need to secure better conditions in the hotspots (e.g. Amnesty International, 2017; IRC, 2017). The European Parliament’s LIBE Committee found that the focus of the Hotspots has shifted from the identification of refugees among the migrants to migration control itself which has led to human rights violations (European

Parliament, 2017: 44). According to Pascucci and Patchett (2018), the hotspots were also an instrument of control over humanitarian aid and solidarity, as their management could decide which organizations can be present on the sites. Some organizations even refused to take part in humanitarian work in the hotspots with ethical objections due to poor standards (Ibid.).

Surprisingly, the issue of the introduction of hotspots was almost not present in the media. A search for the term “hotspots” in one of the leading EU-focused media publications (POLITICO.eu) refined by publication dates between January 1st, 2015 and December 31st, 2015 gives 64 results, yet the number of news articles goes down to 39 after taking out the irrelevant results. Most of the articles focus on the condition in the hotspots and do not present opposing views of any particular Member States. When further refined to results between June 2015 and September 2015, when the approach was designed, presented, and adopted (in Brussels), the search gives zero results. This suggests that the approach was adopted with very little public reasoning and political arguments between the Member States and in the media.

The hotspot approach also did not give new decision-making rights to the Commission or expand the community method. Instead, it gave the Commission a soft coordinative role with clearly defined tasks for the executive actors and most of the new competences, budget, and staff was given to the agencies taking part in the hotspots. Also, legal mandates of the agencies were not enlarged on the basis of the hotspots. The key to solving the problem of the high migratory influx was in the synergy of the existing actors and their competences at the time. Thus, the hotspot approach itself did not give new legal competences to the Commission, nor agencies. It can be considered a technical issue of promptly and correctly managing the registration, fingerprinting and returns in times of a crisis, rather than a political issue.

Unpacking the process in this policy episode will allow for testing the hypothesis regarding the Commission as proactive actor on issues of non-supranational and pragmatic problem-solving (A-2). The ambition of the Commission to build its credibility by providing quick and viable solutions to burning issues was elaborated in Section 2, where it was stated in Hypothesis A-2 that:

“[t]he Commission’s ambition is institutional reform through pragmatic and non-supranational governance solutions”.

This case thus explores the Commission’s ability to act as a policy entrepreneur in technical (un-politicized) cases that do not lead to a competence maximization. This would imply that the Commission’s ambition is not “hard-wired to the idea of ever closer Union” (Hypothesis A), but that it can be an active player in other types of projects as well. The next sub-chapter will closely investigate the process of adoption of the hotspot approach in order to find if their establishment was the Commission’s original idea, and how it developed over time.

Given the European Council’s close involvement in agenda shaping in crisis situations, the analytical framework introduced in this thesis allows for testing how an ambitious Commission can cohabitate with a very much involved European Council. The Hypotheses B-1 and B-2 suggest that the Commission is ambitious, but also ready to moderate its ambition in order to retain credibility. As the policy episode ends in a success – at least measured by the fact that the approach went from proposal to reality quite quickly – the Hypothesis B-3 will not be tested. This hypothesis suggested that a high ambition of the Commission can damage the chances of a deal among Member States – thus it is only suitable for cases of failure to negotiate a deal.

To conclude, the 16 interviews conducted along with careful process tracing based on policy documents and official proposals will give an answer to the question whether the hotspots, one of the most impactful responses to the refugee crisis, came originally as an idea came from the Commission or the Member States. It will also investigate the process through which the idea was advocated for; whether or not (or when and how) the ambition of the Commission was moderated by the Member States. Finally, in section 3.3.3., potential explanatory factors are discussed along with the relevance of the findings.

3.3.3 Focus and level of the Commission's ambition in the policy episode

The timeline of events in this policy episode from the outbreak of the crisis to the proposal and its implementation suggests that it was the Commission that came up with the idea of hotspots. This was done independently or with little involvement of the Member States, which is in line with the Hypothesis B-1: The initial level of the Commission's ambition is not necessarily contingent on the positions of the intergovernmental bodies. Specifically, the hotspots were first officially proposed in the European Agenda on Migration (EAM) as a cooperation of relevant actors in specific areas to help national authorities manage their internal borders, mass arrivals and mixed flows. The EAM was published by the Commission on 13th of May 2015 and it mentioned the hotspot approach twice (European Commission, 2015a).

There was discussion in the Council on the topic of migration management before, but it did not yield specific policy proposals. On 20 April 2015, the Joint Foreign and Home Affairs Council published the "Ten-point action plan on migration" which called on the Commission to publish its proposals in a longer document. HR/VP Federica Mogherini and Commissioner Dimitris Avramopoulos together stated when presenting this action plan: "The dire situation in the Mediterranean is not a new nor a passing reality. That is why the Commission will come forward with a comprehensive European Agenda on Migration in May to address the structural problems." (European Commission 2015b: 1). The ten-points action plan does not mention the hotspot approach and instead called on the Member States themselves "to ensure fingerprinting of all migrants" (ibid.). Thus, although the Council gave a clear mandate to the Commission to prepare proposals, it did not detail what they would look like. The minutes of the Special Meeting of the European Council of 23rd of April 2015 also do not mention the Hotspots (European Council 2015a). The ambition of the Commission to present hotspots as an approach was not contingent on some pre-made consensus of these bodies.

Looking at policy documents, the Commission was the first one to officially propose the hotspots, and not the European Council, nor the Council. The interviews suggest the same.

For example, a Head of Unit in the Commission confirmed how the Commission was the one with the ambition to establish the Hotspots:

“Both Frontex and EASO were in Greece but they were not talking so much, surely not looking for synergies or really cooperating. **And then the Commission has invented the concept of the hotspots - that was the Commission again who took the lead on promoting new ideas.** From now on its not only these two but it is also EUROPOL that is there for the security dimension of those flows, and the Commission also has people on the spot to contribute to the coordination of the activities, because they have different mandates. In the hotpots they are condemned to work together.” (COM_3, my emphasis)

One interviewee from the Commission gave a clear narrative of how the proposal was prepared and the direct relationship between the Commission and the European Council in this process. The interviewee started by saying that the Member States immediately welcomed the Commission’s proposal on the hotspots as “the number of refugee arrivals went up and it was clear Greece would come under enormous pressure” (COM_1). The interviewee also emphasized that the idea was approved already in June at the meeting of the European Council, suggesting once again a high involvement of the EC in day-to-day crisis policymaking. Already by September 2015, the interviewee continued, the Commission started preparing the Hotspot approach - this preparatory stage took the Commission three months and consisted of drafting the Roadmap and Standard Operating Procedures. This was important, according to the interviewee, because clarity was needed among the many different stakeholders, and the Commission was the one to provide it: “one needs to have the necessary mechanisms, tools and procedures agreed upon in advance to make sure all of these actors play things in a synchronized way and not like a cacophonic orchestra” (COM_1). The Commission coordinated this process and finished it in December 2015 when implementation began. From June until December, with direct support of the European Council, the Commission designed, negotiated, and implemented a completely new policy instrument.

This would not have been possible without a close involvement not only of the European Council, but also the relevant agencies and especially the frontline Member States’ governments. A lot of work was done collaboratively – for example, the roadmap about the implementation of

the Hotspots was “drafted jointly with the Member States and with Frontex, EASO, Europol and Eurojust”, according to the Commission’s brochure on the Hotspots published in 2015 (European Commission 2015c: 1). This clearly shows that the Commission worked closely with the relevant stakeholders in the preparation of the approach, which suggests that the Commission’s aim was to take the lead and but also create a joint ownership over the approach. By inviting other relevant actors into the creation process, it ensured quick implementation. The interviews do not suggest a moderation of the Commission’s ambition triggered by the Member States in the preparation process, but one can assume the Commission was flexible as long as its ideational leadership was recognized, and swift implementation would follow. In the end, the core ambition of the Commission to coordinate joint efforts at the borders persevered as it had a strong backing of the actors involved. In this particular case, the Commission hit the nail on the head.

Hence, the hotspot approach as a new policy instrument was pioneered by the Commission as an immediate response to the crisis. This case shows a strong ambition of the Commission to display itself as a problem-solver and build credibility through pragmatic and non-supranational governance solutions. At the same time, it does not expand the prerogatives of the Commission as an autonomous decision-maker. It restricts the Commission’s role to overseeing and soft-coordinating the roles of the relevant actors, without giving it legally binding powers in the policy area of migration control. The Hypothesis A-2 is confirmed with this case: The Commission’s ambition is institutional reform through pragmatic and non-supranational governance solutions.

Another interviewee from the Commission confirmed the Commission’s role in advocating the idea of Hotspots, and how the main goal was to bring the relevant actors together.

“Hotspots were the Commission’s idea. **It is really true – we take here a certain pride because we always said that in case of disproportionate pressure of mass arrivals we need to bundle, create synergies,** bring everyone that can help to focus on the primary task on the border – identification, registration, fingerprinting and screening.” (COM_1, my emphasis).

This interviewee's response shows that the officials in the Commission are quite proud of their leadership in this particular case. The ambition for the Commission, as found in the interviews, was to build credibility as an actor that can solve problems on the ground. It represents a novel instance in which the Commission acts locally and not only sets standards from Brussels. As an interviewee from the Commission explains: "It is true that due to the crisis, it is the first time that the Commission has sent people both to Italy and Greece on long term mission. It's a bit of a shift in responsibility, not just from Brussels deciding what should be the rules and control the implementation, it's also helping on the spot in extreme circumstances." (COM_3).

It is clear from the above that the Commission acted entrepreneurially and provided a novel solution through the hotspot approach. But its leadership on the issue did not stop there; the implementation of the hotspots was also closely monitored by the Commission with more ambition for follow-up reforms. In its Communication of 27th of September 2017, the Commission stated that, on the basis of lessons learned, it will publish technical guidance, including a template for the Hotspot Standard Operating Procedures (H-SOPs) on the implementation of the Hotspot approach (European Commission, 2017a). On 15th of November 2017, the Commission published the "Best practices on the implementation of the hotspot approach" accompanying the document "Progress report on the European Agenda on Migration" (European Commission, 2017b). The document called the approach a cornerstone of the broad range of measures set out by the Commission in the European Agenda on Migration, which is quite a striking description. The hotspot approach was also called a "tangible operational achievement" according to the Commission, which emphasizes the technical nature of this proposal, but also the very real effect it has on the ground (ibid.: 2). Very often, policies developed in Brussels and the institutions themselves are invisible to the common people – in this case of the brick-and-mortar spaces for managing refugee influx it was quite the opposite and the Commission was aware of this. The focus of the document was to ensure that hotspots are functioning effectively and for this reason, the H-SOP presented as a detailed description of what processing of migrants should ideally look

like in the hotspots, step-by-step. The Commission also presented seven best practices, or recommendations, for the further development of the hotspots. The most important of them is the recommendation to initiate return procedures directly from the hotspot, which would then be enforced by the European Border and Coast Guard. This recommendation was accepted and implemented on the ground from 2018 (European Commission, 2018a).

It is important to note that further development of the hotspots was managed more by the European Council and the Member States, than the Commission. Together with the joint creation of the hotspots based on the Commission's original idea in 2015, the next major reforms of the hotspots from 2016 onwards suggest that the Commission was more than willing to allow for moderation of its ambition by the Member States, as one of the claims of this thesis suggests (Hypothesis B-2): The Commission's initial level of ambition is likely to be moderated by the Member States.

First, the EU-Turkey affected the way that the Hotspots operate in Greece without any protests from the Commission. The change fundamentally affected the hotspot approach and, as explained in the previous sub-chapter, turned them into detention centers. While many protested this changed nature of the hotspots on the ground of human right violations (Dutch Council for Refugees, 2016; IRC, 2017; Phillips, 2019), the Commission interpreted this as a proof that hotspots are a "flexible and useful EU instrument" (European Commission 2017a: 12). The Commission thus defended the technical interpretation of the hotspot approach and once again showed its strong ambition to display its usefulness to the Member States. The ambition of the Commission was clearly affected, or even driven, by the intergovernmental bodies once the hotspot approach became operational.

The European Council had a strong agenda-shaping role in the development of the "controlled centers", a policy episode that is so closely linked to the hotspots that it should also be considered here. In the aftermath of a rescue crisis whereby Italy and Malta refused to take in a refugee boat stranded in the Mediterranean sea, which eventually ended in the port of Valencia

in Spain, the European Council (2018a) directly instructed the Commission to prepare the controlled centers on the basis of the hotspot approach. The Commission followed suit and prepared a Communications presenting the idea. Thus, while the Commission's ambition was to create the original instrument, the Member States easily pushed the Commission to moderate the instrument to their own interest when it was deemed necessary. This sort of involvement of the European Council in day-to-day policy making, and in this case even policy implementation, matches the expectations of the new intergovernmentalism. The Commission was complicit with these changes and opted to find some reasonable technocratic justification for both.

To conclude, while there was no evidence of moderation in the preparation of the proposals, the Commission did invite all interested parties in a sort of a task force in order to ensure swift implementation. This approach of joint ownership suggests that the Commission left considerable room for applying pressure for moderation of the approach by the parties involved. At a later stage, the European Council and the Member States easily convinced the Commission to moderate the application of the instrument which unveiled the fluid nature of the Commission's ambition.

3.3.4 Summary of the policy episode

Both the interviews and the official publications analyzed confirm that the Commission was the one that came up with the hotspot approach. Furthermore, they show that the Commission gave great importance to this new instrument, considering it one of the cornerstones of the EU's reaction to the refugee crisis. What allowed the Commission to quickly propose the hotspot approach was its unique position as the only technocratic body with the ability to coordinate the many JHA agencies that had a role to play in managing the migratory influx. The fact that the Commission acted in a technical manner and used technical language as shown above, is largely the reason for success of the Commission's proposal. The Commission stuck to the technical approach even when faced with humanitarian criticisms after the EU-Turkey deal. It completely

avoided engaging with them and instead insisted on the technical nature of its position. The hotspot approach also did not create new competences for the Commission, which was another reason for its swift approval by the Member States. The Commission still managed to keep some hold of the development of hotspots through publishing technical recommendations in the form of soft law, as Communications.

However, the European Council also showed quite some impact on their development through the EU-Turkey deal and the establishment of the controlled centers. These are further arguments for the conceptualization of JHA as an area of joint agenda setting of the European Council and the Commission. Ultimately, this case showed how the ability of the Commission to exert leadership is not tied to the project of ever closer Union. The Commission's ambition can be placed elsewhere, in this case, into problem-solving that enhances its credibility with the Member States. This confirms the Hypothesis A-2, the Commission's ambition was to build credibility and portray itself as a useful actor.

Moreover, the Commission's ambition was not tied to the intergovernmental bodies. It was, instead, the source of the solution. Still, it included both the Member States and the relevant agencies from early on. It invited and allowed for moderation of its ambition by the Member States at a later stage, through accepting their idea of creation of the detention centers, and through the linkage to a high-level EU-Turkey deal. In terms of level of ambition, the hypotheses confirmed are B-1 and B-2, as the initial ambition of the Commission was moderated at the implementation stage. This policy instrument had its trajectory that the Commission could not have full control over. Its legal nature is not supranational but coordinative. This allowed for the Member States to easily intervene when it was necessary, and the Commission accepted to play its role and provide technical support and justification for potentially unpopular decisions along the way. This is certainly in contrast with Juncker's ambition to act politically and suggests that the Commission did not jump on every opportunity to exhibit this type of institutional behavior. In some cases,

like the one of the Hotspots, the Commission still had the luxury to decide its “only” a technocratic body, providing efficiency gains, in order to remain shielded from criticisms.

3.4 Policy episode 2: The establishment and the new mandate of the European Border and Coast Guard

3.4.1 Introduction

This policy episode focuses on another critical aspect of the EU’s migration policy – the control of its external borders. For a long time, the EU’s approach to migration overall has been seen as a balancing act between controlling its borders, which is seen as a restrictive policy often associated with the pejorative term “fortress Europe”, and establishing asylum standards and other policies which are in contrast seen as part of a liberal approach to migration. A critical role in the former – border protection - belongs to an EU agency, the European Border and Coast Guard (EBCG), the mandate of which was significantly enlarged due to the refugee crisis. In this sub-chapter, the development of the EBCG is described, before going into the aim and level of ambition of the Commission in the discussions regarding the EBCG. Understanding the historical context that preceded the refugee crisis is important for understanding the underlying issues and discussions that were ongoing even before the 2015 crisis took place.

The EBCG did not come about as a new instrument or institution, like the hotspots did. It was developed from Frontex, which was originally established back in 2004, and one of its principle aims has always been to curb illegal immigration. In the early 2000s migration was an issue high on the EU agenda as illegal crossings from North Africa peaked along the Spanish coast. For example, in the first year of the new millennium the number of migrants intercepted along the Spanish coast was 17,000. Canary Islands were especially under pressure as arrivals reached a peak of 31,000 in 2006 (Carling 2007 according to Wolff 2008). A common approach to managing the external EU borders, especially the maritime ones, was necessary given that there were no internal borders in the Schengen area. For this reason, irregular crossings were affecting all of the Member

States of Schengen, and especially destination countries such as Germany or Sweden who pushed for the common approach that would make the standards of border protection higher. The border guard was also often seen as a way for the old EU Member States to exhibit some control over “less reliable” Member States’ border policies at the South and the East of the EU.

This need for better management of external border control was first presented in the Conclusion No. 42 of the Laeken European Council of 14 and 15 December 2001, although quite vaguely. The European Council asked the Council and the Commission to work out arrangements for cooperation between external border control services of the Member States and to examine the conditions in which a mechanism of common services to control external borders could be created (European Council 2001: 3). On the Member State level, according to Leonard (2009: 376), it was Italy and Germany that presented a joint initiative to establish a “European Border Police” to the Council, which was much more concrete.

In May 2002, as a response to the call of the European Council, the Commission put forward a very ambitious proposal for an establishment of the European Corps of Border Guards in the mid-term. Their first function would be the common surveillance of the most sensitive places, especially at maritime borders, and later checking functions at border crossing points. The Commission avoided specifying what type of an EU body this new organization would be, whether it would be an EU agency, or a unit within the Commission: “At the appropriate juncture, the Commission will evaluate the institutional and legal nature of this structure.” (European Commission 2002: 24).

Next in line to present an opinion was the Council. On 14th of June 2002 a plan for the management of the external border was adopted by the JHA Council. This plan only mentions a European border guard once, in the last paragraph of the 27-pages long document:

“Based on the experiences of this gradual development, further institutional steps could be considered, if appropriate, following an in-depth legal study addressing the question of the legal basis and identifying the instruments which would be necessary. Such steps could include a possible decision on the setting up of a European Corps of Border Guards, composed of joint teams, which would have

the function of supporting the national services of the Member States, but not replacing them.” (The Council, 2002: 27)

The cold reception of the Commission’s proposal was a sign that border control was a sensitive subject for most of the Member States and that transferring competences to the EU level in this area will not be so easy, despite the functional pressures coming from the abolishment of internal borders in Schengen. Leonard (2009) elaborated how the UK government’s reluctance was central in the discussions at that moment in time, even though the UK is a destination country: “In particular, the British government favoured increased cooperation on external border controls but was reluctant to see any centralisation in that policy area.” (p. 376).

The Member States instead made advances on an intergovernmental basis. In 2002, the Member States adopted an action programme enabling them to initiate joint missions at the EU’s borders. The first joint mission was the Ulysses mission in the Strait of Gibraltar and the Canary Islands (Lutterbeck, 2006: 68). Joint missions became a trusted policy instrument for EU border management, albeit criticized for their lack of effectiveness or for ethical reasons (Cusumano, 2019: 3-5).

In the same year of 2002, the Member States also agreed on an External Borders Practitioners Common Unit, in order to enhance the exchange of information and data between the border control units of the Member States. This Unit was the real predecessor of the border guard that Frontex became. Already in 2003, the actual effectiveness of the original Unit was challenged by both the Commission and the Council which called for creating a more systematic and permanent basis for joint border management activities (European Commission, 2003a). The Unit was too informal and unstructured to provide any proper coordination of activities and standards on the EU’s borders – a proper institution was required to achieve that. European Council met in Thessaloniki in June 2003, endorsed both EU institutions, and asked the Commission to “examine the necessity of creating new institutional mechanisms, including the possible creation of a Community operational structure” (European Council, 2003: 4). Finally, the

European Commission in November 2003 proposed the establishment of the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) and argued that “...the Agency will be in a better position than even the Commission itself to accumulate the highly technical know-how on control and surveillance of the external borders that will be necessary” (European Commission 2003b: 7 according to Leonard 2009: 379). Frontex was created by the Council Regulation EC 2007/2004, with the main tasks of:

- (1) coordinating operational cooperation between Member States regarding the management of external borders;
- (2) assisting Member States in the training of national border guards, including establishing common training standards;
- (3) conducting risk analyses;
- (4) following up on developments in research relevant for the control and surveillance of external borders;
- (5) assisting Member States when increased technical and operational assistance at external borders is required; and
- (6) assisting Member States in organizing joint return operations. (The Council, 2004).

The Frontex solution was not as ambitious as the proposal from the original Communication of the Commission in 2002, which made it acceptable for the Member States. However, the quick establishment of Frontex only a year after the original Unit became operational was a surprise even for the Commission, which envisaged a creation of a permanent body for border management only in the mid-term. The agency itself did not have its own equipment nor border guards, it had only 220 employees in total and a small budget of €80 million from the EU’s annual framework (European Commission, 2010).

While the Council quickly approved the Commission’s proposal of the tasks for the new agency, the main point of dispute was the composition of the Management Board (Leonard 2009: 380). The Commission originally proposed the Management Board to have twelve members from

the Member States and two from the Commission, but the Council amended it with a one Member State - one board member rule, and the Commission was complicit with this change. The European Parliament proposed six members for the Commission and six for the Council, which was disregarded by the Council, that only had to consult the European Parliament on this regulation.

The next five years were characterized by the Commission's ambition to ensure Frontex has adequate staff and equipment to independently pursue its missions and by gradual changes that the Member States were more comfortable with. Very quickly after it came into operation, the way that Frontex operated was changed. For example, after a direct request from the European Council in December 2006, the European Patrols Network (EPN) started in May 2007. Also, the Rapid Border Intervention Teams (RABITs) Regulation of 20 August 2007 provided a "rapid reaction capacity" for a reinforcement of human resources to a Member State in need. 500-600 border guards made up the "RABIT pool", however, these were still employees of the national border guards and not Frontex permanent staff. In February 2010, the Commission proposed enhancing the operational capacity of Frontex, after a request put forward at the European Council meeting of 10-11 December (European Commission, 2011). The Commission stated that the aim of its proposal is "to ensure that Frontex can provide appropriate technical and human resources in the framework of joint border patrols. EU countries would have to ensure that a pool of equipment such as boats and planes are at the disposal of the Agency, which would also be able to acquire its own equipment." (ibid.: 1). However, the financial and debt crisis became too dominant on the EU's agenda and a more substantial reform of Frontex had to wait for the next EU's crisis.

The policy episode that this thesis investigates starts with the Juncker Commission. The primary interest is to investigate the ambition of the Commission after the year 2014. The historical overview above already signals that the Commission was complicit in or supportive of enhancing *de novo* bodies in this post-Maastricht environment that the New Intergovernmentalism describes. The importance of the European Council in the process should also be re-iterated. In

the period after 2014, the policy development in this area was fast-tracked. Serious problems at the borders made it clear that the mandate of Frontex had to be changed, and quickly, if it was to fulfil its mission. What was the Commission's ambition in this reform? And how important was its ambition? Before those questions are addressed by looking into the documents and the interviews, the actual changes to the mandate post-2014 are described in the following sub-chapter.

3.4.2 Short overview of the policy episode

The Commission's European Agenda on Migration of May 2015 discussed Frontex, albeit briefly, yet still in line with the Commission's longstanding approach to the agency. The Commission suggested that Frontex should be able to initiate its own return missions and called for strengthening the role and capacity of Frontex, without details on what that should include (European Commission, 2015: 10). A few months after the European Agenda on Migration was published, the Commission officially proposed enhancing the mandate of Frontex (December 2015) and this was adopted in record time during 2016 by establishing the European Border and Coast Guard Agency, or the EBCG (The Council, 2016a).

The EBCG was founded by the Regulation 2016/1625, replacing the Frontex based on the Juncker Commission's proposal. The reform was quite substantial. While Frontex was entirely dependent on the voluntary and ad hoc contributions of the Member States to its operations, the new regulation created a standing pool of 1500 border guards and technical equipment to which the Member States have committed explicit contributions that may not be withheld (Niemann and Speyer, 2018: 28). Furthermore, the Council is given the right to decide by a qualified majority to dispatch border guards to a Member State, potentially even against its will (*ibid.*). Among other novelties, the EBCG was also given a role in supporting the Member States in the return procedures. What remained the same between Frontex and the EBCG, according to several authors (e.g. Moreno-Lax 2017, Ripoll Servent 2017) was the principle aim of keeping the migrants

out of the EU and the technical approach to border management as an issue of operational capacity and effectiveness.

The next proposal for reform came already two years later. After the calls for EBCG reform featured in the European Council's Conclusions of 28 June 2018, the Commission soon proposed a new standing corps of 10.000 border guards, more efficient return procedures and a strengthened cooperation with non-EU countries (European Commission, 2018c). Both the European Parliament's LIBE Committee and the JHA Council adopted a negotiating position on the EBCG reform quite quickly in February 2019. The new regulation on the EBCG was adopted in November 2019, most importantly, establishing that the "magical number" of 10,000 border guards will be reached gradually by 2027 (EU Regulation 2019/1896).

3.4.3 Focus and level of the Commission's ambition in the policy episode

The process briefly described above already showed that the Commission had a long-standing ambition of empowering the EU's border control agency, which goes back even to the early 2000s. Over and over again, the Commission pushed for enlarging the mandate of Frontex, which confirmed the hypothesis A-1: The Commission's ambition is institutional reform through the creation or empowerment of *de novo* bodies. This section investigates the process and looks into interview data which provided more evidence in line with this claim for the period of 2014-2019.

Also, many instances in which the European Council communicated its positions on the reform of the agency showed that the agenda setting in JHA is one of shared agenda setting between the Commission and the European Council. The choice of taking the theory of the new intergovernmentalism as a starting point for analyzing the Commission's role makes perfect sense. This case is a prime example of crisis decision making, thus, a perfect case for testing a purer version of new intergovernmentalism in which the European Council would be expected to completely take over. Specifically, the section will provide an analysis of the process which will uncover whether the Commission's initial ambition was only to wait and follow the consensus

position of the Member States (Hypothesis B-0) or the Commission's ambition was to be more proactive and set the agenda with an early and highly ambitious proposal (Hypothesis B-1). Finally, the Hypothesis B-2 is also tested, in order to look into when and how a moderation of the Commission's initial ambition occurred.

It is good to start the analysis with some reflections on how the actors saw the level of institutional change in this episode. Thanks to the creation of the EBCG, the management of the EU's external borders is now truly a shared responsibility between the agency and the Member States which is perceived as a tectonic shift in this policy area. In a Commission's Communication of September 2017, the decision to enlarge the mandate of the EBCG was labelled "ground-breaking" (European Commission, 2017a: 11). Or, as one interviewee from a Permanent Representation put it:

"The time we are living in now is one of a very quiet revolution in Home affairs. We see many things changing on many fronts to an extent that would have been unimaginable 5 years ago. The EBCG was science fiction project. It was floated by certain stakeholders from time to time, but it wasn't anywhere close to the political reality we have now." (MS_2).

Indeed, the European Agenda on Migration portrayed the reform of Frontex as a priority for the Commission and announced a proposal for strengthening its mandate. The EBCG proposal was approved on the basis of the Commission's December 2015 proposal in a short amount of time, especially given that it touches upon the highly sensitive issue of border control. An interviewee from a permanent representation pointed out that "it took us half a year to agree, which is very speedy and not Brussels-like." (MS_3).

The Commission presented an ambitious proposal for the reform of Frontex, surpassing the expectations of the Member States. As one Permanent Representation employee suggests, the Commission was forward-looking in its proposal, compared with the nature of discussions in the JHA Council at that time:

"Many of us were surprised with how far EBCG proposal went. In reality, the final regulation is not that far apart from what the Commission proposed. There was a bit of a reaction at first, but Member States came around. The European Council came in and... when the European Council comes into it, the procedure changes

a bit. You have a European Council conclusion saying to conclude the negotiations on this proposal by June next year and then it suddenly becomes about doing it in time. Then Member States are under more pressure to give in on certain points that they might have otherwise continued to insist on.” (MS_1).

Moreover, the interviewee mentions a crucial moment in the process of creating the EBCG - the European Council meeting of 15 October 2015. The conclusions of the meeting, a six-page document, mention Frontex seven times. The leaders of Member States reiterate the Commission’s proposal and call upon the Council and the Parliament to “enlarge the Frontex mandate on return to include the right to organize joint return operations on its own initiative and enhance its role regarding the acquisition of travel documents for returnees” (European Council 2015b: 4). This is a much more detailed instruction of the European Council compared with the ones from the early 2000s. Moreover, the European Council set a deadline to the Council and Parliament to come to an agreement by June 2016. Still, not all that the Commission proposed ended up in the legislation. Specifically, and regardless of the European Council recommendation, the mandate to act independently on returns was deleted after the Council negotiations of March 2016 (Den Heijer et al. 2016: 631). This suggests that even though the Commission prepared a proposal that did not further its own powers, it was even more ambitious than the Member States which have more control over the agency than the Commission does. It was not the Commission that emulated the Member States’ consensus in its proposal, but the Member States that moderated the Commission’s proposal that was over-ambitious.

The Commission’s 2018 proposal for expanding the mandate of the Agency came as a surprise to some Member States. For example, an JHA counsellor in an interview conducted for this thesis in November 2017 stated: “I hope we don’t have another proposal on EBCG in the near future. To go even further than what was agreed upon it is very difficult. We have reached what is very near the maximum. [...] I find it really very difficult to think of where else we could go with further integration. But, the Commission has very good imagination (laughter). They still manage to come up with more every time I think ‘this is it’” (MS_1)

The proposal repeated the Commission's earlier calls for giving proactive return management to the EBCG, more ability to cooperate with neighboring countries, and a larger staff (European Commission 2017a: 20). Furthermore, President Juncker used his 2018 State of the Union speech to advocate for the EBCG and increasing its number of border guards from 1,500 to 10,000 as early as 2020 (European Commission, 2018d). The number 10,000 became the magical number associated with the Commission's advocacy in this particular case. As one Member State official pointed out:

"This is a clear agenda from Juncker to make Frontex very powerful and important and to have them take a task that they think the Union should do." (MS_9).

This proposal turns the border control into an issue of a message of unity as much as it is a technical issue (of efficiency) and takes the policy entrepreneurship of the Commission to the highest level. One could say that the EBCG was a prime success story of the European Agenda on Migration, and Juncker saw an opportunity to turn it into a success story large enough to be one of his mandate overall. There was some fear that the open involvement of the President in the advocacy for the EBCG might prove to be not the best way forward for a case that has been built as a technical one for almost two decades. As a consequence, in late 2018, Hungarian Government started a billboard campaign in the country with the face of Juncker (and George Soros) saying that Brussels wants to weaken member states' right to border protection (Euronews, 2019a). Despite this strong reaction, which was probably there for reasons of domestic politics, the Council and the Parliament agreed on the Commission's proposal in November 2019. The already famous 10,000 by 2020 proposal was labeled unrealistic, and a more gradual timeline was adopted while still keeping the original number. Namely, the EBCG should reach 10,000 border guards by 2027.

With this proposal becoming reality, the EBCG will soon have more employees than the Commission's DG Migration and Home Affairs, which would make it the most staffed EU institution that deals with issues of migration. Moreover, it will become "the strongest and best financed agency in the history of the European Union (EU)." (RS Aegean, 4 December 2019). A JHA counsellor from

a Permanent Representation sees this as part of the trend of general growth of agencies in this policy area: “Agencies are quite keen to establish themselves as more and more relevant and more and more valuable and to grow in size and importance. They dedicate a lot of time and resources to making themselves useful and visible.” (MS_1)

Due to this empowerment, it is not impossible to imagine that potential clashes may occur between the EBCG and the Commission on policy or institutional issues. Yet, insiders from the Commission claimed this will not be the case. For instance, a Head of Unit in the Commission said that the agencies and the Commission cooperate well because they do different things: “the Commission has always respected the expertise of executive agencies, because they can add something to what we don’t have, this is the EU’s operational striking power. The agencies have also respected the division of powers, except in few occasions until they have been banged on their head, that they should focus on implementation.” Thus, even though the Commission advocates strongly for giving more and more implementation tasks to agencies, problems may arise if agencies enter the Commission’s area, which is policy making. Both the Member States and the Commission share an ambition to make sure the agencies do not enter this domain and are thus able to jointly keep them in check. With such powerful allies, the Commission officials have reasons to be certain that agencies will not overstep their boundaries.

3.4.4 Summary of the policy episode

The analysis showed that the Commission acted as a policy entrepreneur for enlarging the mandate of Frontex and turning it into the EBCG. It is confirmed both in the Commission’s proposals that were always a few steps ahead of the Member States, and in the interviews conducted. Instead of the Member States using the agency to stop the Commission from expanding, it was the Commission itself that was the key policy entrepreneur in the case of the EBCG. This confirms the Hypothesis A-1, as the Commission was not only complicit with the European Council’s ideas, but it had an ambition further to empower a *de novo* body that exceeded the expectations of the

Member States time after time. Moreover, both the Hypothesis B-1 and B-2 are confirmed. The Commission proposed, two times, a mandate for the EBCG that was above and beyond what the Member States expected. The timeline of events and descriptions of reactions from the interviewees equally support this. Still, in both cases, the Member States led the Commission to moderate its highly ambitious proposals.

Several factors should be pointed out as especially insightful from this policy episode with regard to the Commission's ambition and its success with the EBCG proposals. These are: the intergovernmental management structure of the agency, the technocratic and de-politicizing discourse focused on efficiency gains in the proposals and discussions, the direct interaction with the European Council throughout the episode, and the continuity of ambition of the Commission that preceded the crisis and can be traced back to the first Frontex proposal from 2002.

Firstly, the fact that each Member State is represented in the management board of the EBCG makes it more acceptable for the Member States to delegate to this body. The Commission showed interest in having common, coordinated policies at the EU level, regardless of their intergovernmental nature. A Head of Unit in the European Commission explains why agency empowerment is a good approach for the Commission:

“This (agency empowerment) has proven to be a good approach because it also makes it easier to buy in the Member States. They see the agencies as one of them, while the Commission is seen as a political animal, with a potentially different agenda and opposite interests.” (COM_1)

Furthermore, what made the Commission a successful policy entrepreneur in the case of the EBCG is its continued insistence on making the issue seem technical. Integration in a policy area that is so connected to state sovereignty thus was able to be moved forward, regardless of the difficulties. While the EU was seen in some Eastern European Member States as being too liberal towards migrants and refugees (BBC, 2015), the international human rights organizations were critical of the Frontex and its role in building a fortress Europe (Human Rights Watch 2015). Furthermore, the issue of Brussels having too much power over the

Member States was looming since the Brexit referendum was announced around the time of the EBCG discussions. The Commission managed to walk on this thin layer of ice and push through an ambitious EBCG reform, partially thanks to the de-politicization of border control and the agreement among Member States that a coordinated effort would bring more efficiency in controlling the borders.

The European Council was also an important actor as it ensured quick adoption by putting additional pressure on the Council and the Parliament through its deadlines. A JHA counsellor explains that “at some point in 2016 there was a need for a success story and the EBCG was the only candidate for this.” (MS_2) This need to show that something is being done was the crucial driving force behind the European Council’s urgent recommendations. The Commission had ready-made proposals, as it already proposed an expansion of Frontex back in 2010. Every time the European Council called the Commission answered with an ambitious proposal that took a step forward. Instead of coming up with consensus solutions in its proposals, the Commission put forward the most ambitious ones, both in 2016 and in 2018. The call for giving the EBCG the rights to act on returns, and 10,000 border guards in the short term is a clear example of this.

This analysis also showed a high level of continuity between the Commissions of different Presidents. It is the Commission’s services and their technical expertise once again, like in the case of the Hotspots, that have played a crucial role in expanding Frontex not only during Juncker’s mandate, but in continuity since Frontex was first established. Another continuity that should be emphasized is one of the active roles that the European Council has played ever since 2002. It called on the Commission to develop proposals and gave deadlines before the crisis, and with the crisis its role intensified. This shows the relevance of the theory of the new intergovernmentalism and the role that the European Council plays in moving integration forward without supranationalization. Still, this role that the European Council plays in agenda setting post-Maastricht has not hampered the Commission’s ambition, but moved it into other directions, and one of them certainly is the empowerment of *de novo* bodies.

3.5 Policy episode 3: The failed reform of the Common European Asylum System

3.5.1 Introduction

The Common European Asylum System (CEAS) is a set of asylum regulations which define the minimum standards for processing asylum applications which all EU Member States should abide to. The standards have been built over the years, by using the Community method. Still the decision on granting or rejecting asylum is still the sole responsibility of the Member States, and the CEAS system remains incomplete in several aspects that have been the topic of debate in the EU for many years. Especially since the start of the refugee crisis, the discussion around CEAS became the topic of domestic politics as Member States quarreled about schemes for relocating refugees from areas of mass arrivals. A series of policy and institutional reforms were proposed at the height of the crisis, putting to the test the viability and real usefulness of the Commission's political character, as well as its ambition to promote the many *de novo* bodies active in this area. This chapter will describe the development of CEAS from its beginnings, before going into what happened since 2014 and how Juncker Commission engaged with CEAS which was perhaps the prime political policy episode of his mandate. The policy episode brings forward an attempt at both policy and institutional reform, some of which failed with a bang, thus the hypotheses that can be tested by it are numerous: A-1 and A-3 on the aim of ambition as the proposals were both political and regarding *de novo* bodies, and all the hypotheses on the level of the Commission's ambition (B-1, B-2, B-3).

The creation of the CEAS began in 1999 with the special JHA-focused meeting of the European Council in Tampere, Finland. The idea for this meeting came from Spain, that had a high number of asylum seeker arrivals at its islands in the south, as well as the European Commission led by President Jacques Santer (Statewatch, 2003: 2-4). The plan was to put JHA and asylum issues in particular at the center of the EU's agenda, in a similar manner that the customs union, then the internal market, and finally the common currency had been before.

There were several reasons why asylum policy was made a priority by the Member States. First is the issue of asylum shopping, a practice in which asylum seekers whose application was denied in one Member State, apply for asylum in another one. The second problem was one of disparate asylum outcomes in different Member States, which led the asylum seekers to gravitate towards Member States that are more likely to accept their application. Finally, the different systems of social benefits led asylum seekers to file their applications in the Member States that had the best benefits (Raithel, 2016). In the conclusions of the Tampere meeting, the European Council called for the creation of a Common European Asylum System that “should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. [...] In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. The Commission is asked to prepare within one year a communication on this matter. (European Parliament, 1999: 2). The Tampere meeting conclusions are perhaps the most detailed European Council’s recommendations to date, and they established the practice of the European Council’s five-year plans for development in the area of JHA.

A set of measures that defined minimum standards for asylum processing in the EU were adopted in the period of 1999-2006, which remained the backbone of the CEAS, despite the reforms that followed. The most important regulations of the EASO then are:

- (1) the *Qualification Directive* which first came into force in 2004 and it established minimum standards for qualification and status of persons as refugees or persons who otherwise need international protection. Its latest version was adopted in 2011.
- (2) the *Reception Conditions Directive* adopted first in 2003 aimed to ensure better and more harmonized standards of reception. According to the Directive, the applicants must have access to housing, food, clothing, health care, education for minors and access to

employment under certain conditions. Thus, the directive also aimed to decrease secondary movements by making sure the Member States give support for integration of refugees in the labor market. The latest Reception Conditions Directive was adopted in 2013.

(3) the *Asylum Procedures Directive* which was first adopted in 2005 with the aim to harmonize procedural guarantees given during the asylum procedure and to uphold the quality of asylum procedures in the Member States. For example, it entitled the applicants to a personal interview (Schittenhelm, 2019). Its reform followed in 2013 and it has strengthened procedural guarantees to safeguard applicants' rights. Importantly, it asked the Member States to establish accelerated procedures based on the concept of a safe country of origin. Thus, the goal of this directive was twofold: to guarantee minimum standards that would give the asylum seekers a set of procedural rights, and to discourage the "abusive claims" from those that would not qualify for asylum but aimed to use the benefits (Costello and Hancox, 2016).

(4) the *Dublin Regulation* that establishes the criteria and mechanisms for determining the Member State responsible for processing the asylum application. The Regulation precedes the existence of CEAS, and it was signed as an intergovernmental Convention on June 15, 1990 that followed the Schengen Agreement. Four rules of Dublin were initially defined. The principle rule is one of the first country of entry – the Member State where the first application is filed is responsible for managing the asylum claim. The only two exceptions to this rule were family considerations and previous possession of a residence permit or visa for one of the Member States. If the applicant entered the EU illegally, it should be the first Member State through which he or she entered that is responsible for the claim. In case the asylum seeker who crossed illegally is found or tries to launch an asylum application elsewhere, he or she is to be returned to the first country of entry, a process known as a "Dublin return". In 2003, the Dublin Regulation became part of the EU law, from then being known as Dublin II. It maintained the core principles

of Dublin I, while extending the possibilities for family reunification among other technical changes. In 2007, the Commission published a Green Paper on the future Common European Asylum System that first brought forward the issue of burden sharing under the Dublin system which “may de facto result in additional burdens on Member States that have limited reception and absorption capacities and that find themselves under particular migratory pressures because of their geographical location.” (European Commission 2007: 10). For the Commission, the solution at that point was in further approximation of national asylum procedures, legal standards, and reception conditions, together with a more detailed Dublin regime that would take into account the Member State’s capacity to offer long-term solution to refugees and its capacity to process asylum applications. (ibid.). This document started a debate which led to the revised and current Dublin III Regulation of 2013. Despite the calls for a deep reform from various stakeholders (ECRE, 2009; UNHCR, 2010), the changes to the Dublin regulations were mainly cosmetic, keeping in place the principle rule of the first country of entry, the practice of Dublin returns, and a lack of solidarity mechanisms for cases of large migratory pressures.

(5) the Eurodac Regulation established the Eurodac biometric database of fingerprints in 2000. Its main purpose is to facilitate the application of Dublin regulation, so it is often bundled together with it into a “Dublin system”. The Regulation was reviewed in 2013 together with the Dublin regulation.

(6) the Regulation establishing the European Asylum Support Office was adopted in 2010 (EUR-Lex 2010). The main roles of this de novo body are to support the cooperation of Member States on asylum matters, to support Member States subject to specific pressures, and to contribute to the implementation of the CEAS. EASO coordinates emergency aid which involves deployment of asylum support teams who provide expertise in translation, application handling, and information on countries of origin. The Management Board of EASO is composed of representatives of each Member State and

associated countries, along with two European Commission representatives from DG Migration and Home Affairs (EASO, 2019).

3.5.2 Short overview of the policy episode

As the crisis unfolded in 2015, the CEAS system proved unable to protect the Member States of entry such as Greece and Italy from disproportionate pressures of mass arrivals. It led to a de facto suspension of the Dublin regulation in 2015, as Member States were unable to stop asylum seekers from passing through to destination countries, while Germany stopped implementing the Dublin returns to Greece for a period of five years.⁵ The disproportionate pressures that Italy and Greece were facing in 2015 (see Figure 2 on Page 51) were putting the issue of solidarity mechanisms into the spotlight, thus relocation of asylum seekers was high on the EU's agenda.

In its European Agenda on Migration of May 2015, the Commission proposed a reform of the whole set of six regulations that make the CEAS (European Commission, 2015a) and the most urgent proposal was one of an emergency relocation mechanism under Article 78(3) of the TFEU. This plan applied to a total of 40,000 people in need of international protection from Italy (24,000) and Greece (16,000). The Council adopted this decision by unanimous vote on 14 September 2015. However, this implementation of this plan was on voluntary basis.

In the same month the Commission proposed the second temporary and this time compulsory mechanism that was swiftly adopted by the Council. According to it, a total of 120,000 persons in need of international protection was to be relocated from Greece and Italy to the rest of the Member States. For each relocated person, the Member State would receive a lump sum of €6,000. Both decisions were adopted with a qualified majority. Due to the salience of migration

⁵ Data from 2018 shows that Dublin returns are back on track as between January and May 2018, the German authorities returned 4,100 asylum-seekers to the EU country responsible for processing their application (DW, 2018).

policy during the refugee crisis, countries of the Visegrad group (Czech Republic, Hungary, Poland and Slovakia) argued that unanimity should be used when taking the decision on relocation mechanisms. They also brought this case to the Court of Justice, yet the Court ruled against them in September 2017 (see European Parliament, 2020).

On 6 April 2016, the Commission also published a Communication with the title “Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe” in which it detailed the rest of its proposals on reforming the whole CEAS system (European Commission, 2016a). The official proposals were sent to the Parliament and the Council in two packages, first in May 2016 containing:

- (1) Proposal for a regulation to reform the Dublin system;
- (2) Proposal for a regulation to amend Eurodac;
- (3) Proposal for a regulation to establish an EU Asylum Agency which is to replace the European Asylum Support Office (EASO).

The second package was published on July 13, 2016 with:

- (4) A proposal for a new regulation to replace the Asylum Procedures Directive;
- (5) A proposal for a new regulation to replace the Qualification Directive;
- (6) Proposed targeted modifications of the Reception Conditions Directive.

The analysis of the Commission’s ambition that follows in the next section will specifically focus on the two most relevant and far-reaching proposals of the Commission – the Dublin system reform (Part 1 of the analysis) and the proposal to establish an EU Agency for Asylum (Part 2).

There are four important points to be made with regards to the relevance of this policy episode for the ambitions of the Commission as defined in the theoretical chapter. Firstly, the institutional ambition of the Commission in CEAS reform should not be associated with the concept of ever closer Union, as it does not aim to give new powers to the Commission but use existing structures (in the case of Dublin IV) and empower *de novo* bodies (in the case of EASO). Secondly, the Dublin system reform was an issue of highest political character (Zaun, 2018;

Thielemann, 2018; Genschel & Jachtenfuchs, 2018; Wolf and Ossewaarde, 2018). The news of the relocation mechanism to be introduced to the Dublin rules dominated the agenda of both domestic and EU-focused publications. The Dublin Regulation has deeply divided the European Council into Member States that are for the solidarity clauses and those that believe this imposes on their sovereignty. This case thus serves for testing the Hypothesis B-1, the ambition of the Commission to act politically and enter into political debates with leaders of the Member States over its proposals. Thirdly, the proposal for an EU Agency for Asylum is used to test the Hypothesis A-1 of the Commission's ambition to give new powers to de novo institutions. Finally, the proposals are also used to test all three of the hypotheses on the level of ambition to find whether the Commission was highly ambitious, if and how the proposals were moderated, and how its initial ambition impacted the chances of success of the proposals that have failed to become reality.

3.5.3 Focus and level of the Commission's ambition in the policy episode

Part 1 – Emergency Relocation Mechanisms

The two emergency relocation schemes proposed by the European Commission and pushed through with qualified majority in September 2015 present the most political type of efforts by the European Commission to influence the migration policy of the Member States. “The European Commission has been consistently and continuously working for a coordinated European response on the refugees and migration front. Relocation is part of a comprehensive approach to deal with the ongoing refugee crisis.” – The Commission stated in a press release following the adoption of the second emergency mechanism (European Commission, 2015: 1). The response from the Member States opposing the scheme was strong, especially from the Visegrad countries which blamed the European Commission for imposing a political solution upon them (Euronews, 2016). The interviews clearly showed the Commission's ambition to persist with the emergency mechanisms, despite the strong opposition from several Member States. According to John

Peterson's (2017b: 363) findings based on interviews with senior Commission officials, President Juncker was pushing the vote on quotas: "this Commission takes political risks in a way Barroso never did ... Juncker is far more ambitious. Barroso never would've proposed quotas." – claims one of Peterson's interviewees in July 2016. "He won't wait for consensus but will push for it" – said another interviewee when asked about the quotas in October 2015. Similar findings followed from interviews conducted for this thesis. After the voluntary relocation scheme that was adopted in May 2015, it was the Commission that acted as a key policy entrepreneur for adopting the compulsory one in September, even at the cost of antagonizing the Visegrad countries (MS_4, COM_6). President Juncker announced the second scheme in a speech to the European Parliament in Strasbourg on 9 September, adding that it "has to be done in a compulsory way.". Thus, in this particular case of emergency relocation schemes, the Commission, led by its President acted in a highly political manner, rallying forces around the relocation schemes that an ideological battle was being fought about between the Member States. According to Smeets and Beach (2020: 133), President Juncker "tried to strong-arm the member states into mandatory and Commission-led refugee relocation schemes". POLITICO wrote about the meeting between Juncker and Hungarian Prime Minister Viktor Orban in September 2015 as a meeting of "two leaders at the center of the political battle" (POLITICO, 2015).

In one corner: Jean-Claude Juncker, the European Commission president who slams the "short-sightedness of those who would like to see a Europe that is divided by anti-migrant walls." In the other: Viktor Orbán, the prime minister of Hungary who has just finished building an anti-immigration fence on his country's southern border with Serbia. (POLITICO 2015)

The relocation plans themselves ran far from smoothly, both due to the fact that many of the Member States including the Visegrad countries are not complying with the quota system, and because many refugees have "disappeared" after finding out their destination country (van Basshuysen, 2017: 3). Three Member States, Czech Republic, Poland and Hungary, refused to accept refugees from Italy and Greece and they were taken to the ECJ. Then President of the

European Council Donald Tusk has also openly opposed the quotas. He described them as “highly divisive” and “ineffective” in his draft letter to EU leaders ahead of the December 2017 European Council meeting (European Council, 2017: 1). “Donald Tusk was brave enough to say loudly what many of us think,” Czech Prime Minister Andrej Babiš told journalists after the meeting took place (EURACTIV, 2017).

By July 2016, the total number of people relocated was only 3056, less than 2% of the total of 160,000 envisaged by the two schemes. It is in this atmosphere that the Commission presented the Dublin reform proposals of May and July 2016. The intended reform of CEAS was indeed announced in the European Agenda on Migration, but not concretely proposed yet. Instead, the Commission signaled that it will propose a reform drawing from the experience of the 2015’s emergency relocation mechanisms. These mechanisms and their lack of implementation are a crucial part of this episode that curtailed the Commission’s ambition to act as entrepreneurially for a political outcome in the period after September 2015.

The objective of the reform proposed in May and July 2016 is to ensure a more harmonized and efficient system in terms of reception conditions, procedures and status determinations, tackling abuses and secondary movements, and, importantly, a fair sharing of responsibility for asylum claims in the EU. With regards to the Dublin regime, instead of a fundamental overhaul, which for example the European Parliament suggested⁶ (European Parliament, 2016: 1), the European Commission proposed an introduction of a “corrective allocation mechanism” to the Dublin rules, now labelled Dublin IV. This mechanism would automatically be activated every time a Member State would face a disproportionate number of asylum claims. The disproportionate number is defined as one that is over 150% of the Member State’s “reference share”, based on its GDP and size population. Furthermore, in case a Member State wishes to

⁶ The fundamental overhaul European Parliament has advocated for, in its resolution of 12 April 2016, would include a full integration of the system in which asylum-seekers would apply for asylum in the EU as a whole and not in individual Member States.

avoid Dublin transfers, it would have to pay a solidarity contribution of 250,000 EUR per applicant. The introduction of “solidarity contributions” is a concession to Visegrad countries, which are given the option to avoid taking in refugees, for a price. The term “flexible solidarity” was first coined in a joint statement of the Visegrad-group and described as enabling “the Member States to decide on specific forms of contribution taking into account their experience and potential.” (Visegrad Group, 2016: 1). In practice, the Commission proposed a voluntary system for relocation of refugees.

Moreover, the Visegrad countries, due to their strong opposition to the political handling of the Commission in the case of emergency mechanisms, have de facto succeeded in making unanimity a rule in future decisions on CEAS reform. A Head of Unit in the European Commission explained that although “a simple legalistic approach of deciding by QMV is possible on the one hand”, it is “not solving the political problems, unless you want to resort to drastic sanctions which no-one wants” (COM_1). Along the same lines, “they were outvoted with QMV, but they don’t put it into practice. They even started a court case against the decision, even though there was a crisis (...) that is why in the case of Dublin IV reform, the Council will only go into trilogues with a consensus” (MS_3). Interview with a senior Commission official in November 2017 also suggested that the Commission adopted a much more nuanced view on the relocation mechanisms:

“The Visegrad countries against the liberal west who would be ready to welcome, it is often presented like this, but it is much more nuanced. You have frontline countries, like Poland and Hungary that’s true – but you have realistic, and economically strong countries like Czech Republic and Slovakia that are not on an ideological crusade but are pointing out to some weaknesses and challenges. These are discovered even in more welcoming countries, like Germany and Sweden who also realized that it wasn’t all angels that came and that there are challenges with integrating people in a proper way to keep social peace and society as a whole functioning without creating ghettos. Germany and Sweden are now tough with further admissions.” (COM_1)

The relocation episode showed that in the short run, the Commission did indeed act politically, but it back-tracked and lowered its ambition substantially after a failure to implement

the emergency mechanisms. Thus, alongside Hypothesis A-3 – the claim that the Juncker Commission has had the ambition to act politically – all three hypotheses related to the level of ambition are confirmed in this policy episode. The Commission initially started with a high ambition (B-1), which was substantially moderated by the Member States (B-2). Moreover, the Commission's over-ambitious attempt to act politically faced a backlash from several Member States that have slowed down the discussions on the CEAS and have actually had a negative impact (B-3), according to several interviewees (MS_4, MS_5). The quarrel with the European Council President at the time shows this clearly, given the crucial role that the European Council has played in other policy episodes such as the hotspots and the EBCG. The Commission was also sidelined in the discussions on relocation as proposals that the Visegrad countries have brought to the European Council became the topic of discussions. The Commission was complicit with them and copied them into its own proposals. Finally, the reason why CEAS reform was slowed down is also the consensus in the European Council that the reform will happen only as a package deal, despite the fact that it is made of six separate regulations.

Part 2 – European Union Agency for Asylum

Even though its implementation is dependent on the package deal on CEAS as a whole, and thus the agreement on the relocation mechanisms, the proposal to reform the EASO is where the Commission was much more successful in convincing the Member States. While the issue of relocation dominated the media agenda, the Commission put forward its most ambitious proposal in the reform, one of creating a European Union Agency for Asylum. This agency would be put in place of the European Asylum Support Office (EASO) and it would record and monitor the number of people each Member State resettles in accordance with the Dublin IV rules. A negotiating mandate was reached both in the Council and the Parliament on this file already by the end of 2017 (The Council, 2017a). A Head of Unit in the Commission further explains how the proposal for the EU Asylum Agency came about and what the ambition was:

“We always wanted to create a new asylum and migration agency that could be the core of a future EU authority that could make the decision for all Member States on who is to enter the EU. The Member States initially didn’t like this idea, so they created the EASO. The crisis has shown they need to do much more and they do much more now, up to and beyond what is their mandate in the strict sense. They need to become much more operational and directly managing. EASO is now sending experts to prepare the case, for the national asylum officer to just have to decide.” (COM_1)

It is one of the steps toward a more long-term ambition, as another interviewee elaborated:

The next step would follow, when there is political agreement, to set up an EU asylum office that could make decisions on asylum claims across the EU. We are now making next steps on this way, by saying that EASO is not enough, we need a proper agency, to strengthen its operational capacity, as they are already doing much more than they were envisioned to do. EAO is the next step and in the next years in can be further developed. (COM_7)

In fact, a new EUAA proposal was put forward by the Commission in September 2018, despite the provisional agreement of the Council and the Parliament on the previous proposal mentioned above. As the Commission explained in a press release: “Learning from the experience of the last two years, today’s targeted amendments build on the 2016 proposal and expand even further the operational and technical assistance the Agency will be able to offer to Member States, including the possibility to assist by carrying out the entire administrative stage of the procedure. The amendments also take into account the new proposal for a reinforced European Border and Coast Guard, to ensure the two Agencies can work in full complementarity.” (European Commission, 2018e: 2). Despite the heated discussions on relocation and different sentiments on migration generally, as well as sovereignty concerns, the Commission, interestingly, put forward a proposal strengthening an EU agency even further. A Commission official contrasts this approach to one of Commission obtaining new powers in migration policy:

“We don’t need more power at this stage, but we are trying to find workable solutions. One example is the European Asylum Office, how you can find creative solutions.” (COM_2)

The Commission was thus so ambitious that it put forward a new proposal adding more to the agency’s repertoire of tasks, after the Member States have already agreed upon the previous

proposal. In this case, the Commission's ambition was high throughout the process and the timeline of events shows that it did not replicate a consensus position of the Council or the European Council (B-1). Moreover, very little moderation of the Commission's original proposal was reported in the interviews and process tracing. The fact that the Council fairly quickly adopted a common position on the new agency also suggest this. The main reason for this is that the European Union Agency for Asylum proposal still leaves the exclusive decision making on asylum to the Member States, and "only" reinforces the operational tasks of the agency (Fernandez-Rojo, 2019: 292-3). The main difference between the old and the new agency for Asylum is in the new monitoring capacities that will allow the agency to analyze the capacity of Member States' asylum or reception systems (p. 288-9). No executive roles would be given to the agency in the area of Member States' asylum policies, despite the ostentatious new name of the agency. Still, the fact that the Commission quickly proposed another reform of the ESMA (future EUAA) showed that the initial ambition of the Commission was just the beginning. Some moderation of its new proposal can be expected to follow later in the process, before the whole package is adopted.

3.5.4 Summary of the policy episode

It is still early to speculate what the final decision on CEAS will eventually be like, as the Council has not yet agreed on a common position on the most important files. However, three points can be made here regarding the Commission's ambition, based on the interview data, documents and proposals.

First, the Commission did not opt for a full-fledged reform of the CEAS, unlike the European Parliament, but for gradual reform of the existing system. This means that already in the beginning of the reform process, the Commission's ambition to lead for "ever closer union" (Hypothesis A-0) as a desired outcome did not exist.

Second, the issue of relocation mechanisms is the most politicized and controversial issue in the Justice and Home Affairs domain (Wolf and Ossewaarde, 2018). The main dispute is

between a solidaristic approach for an automatic permanent relocation mechanism, and a restrictionist approach that would make relocation voluntary. The Commission showed ambition to lead on this highly political issue (B-1 and A-3) early on by pushing through the emergency relocation schemes which were adopted by the Council with a QMV. However, due to high pressure from Visegrad countries in the European Council, and a lack of implementation of emergency relocation schemes, the Commission opted to propose an automatic, but voluntary relocation mechanism which would give Member States an opportunity to opt-out from the scheme by paying “solidarity contributions”. The Commission adapted its CEAS reform proposal to be closer to a consensus position in the European Council (B-2), which is where the Visegrad countries originally proposed the concept of “flexible solidarity”. The European Council has taken full control over agenda setting in CEAS reform after the implementation failure of the mandatory quotas (B-3).

Third, the Commission’s ambition after the European Council’s takeover of the discussions on relocation quotas was mainly directed towards turning the European Asylum Support Office into the EU Agency for Asylum with an expanded mandate. This move gives more evidence to the hypothesis that the Commission has *de novo* body empowerment as a strong ambition even when Member State are divided or do not show strong interest in pursuing this agenda (A-1). In this case, surprisingly, the Commission moderated its ambition to a higher one, after the Member State and the European Parliament quickly approved the initial proposal.

To conclude, the highly debated CEAS reform proposal is another case that shows how the Commission is not hard-wired to ever closer union but shows a variety of ambitions. In the beginning it had an ambition to lead politically and propose a relocation mechanism that several Member States fought against in heated European Council debates. This confirms Hypothesis A-3, that the Commission can indeed have a political solution as a motivation for policy entrepreneurship, and B-1, that the Commission did not simply replicate a consensus solution of the European Council but was highly ambitious. However, this ambition was curtailed and brought

down to a minimalist ambition of locking-in a consensus solution of the European Council – thus confirming the Hypotheses B-2. For the period after September 2015 as the Commission’s ambition was simply to lock-in consensus among diverse actors achieved in intergovernmental venues. In fact, the Commission’s attempt to lead politically on this issue failed and jeopardized future solutions on CEAS reform, as B-3 suggests (see POLITICO, 2016 for an overview). Finally, the findings on EASO show that again the Commission’s ambition alternative to ever closer union is to expand the competences of *de novo* bodies. The interviews suggest that this is a strategic move of the Commission that wants to see more European solutions but is aware of the fact that it cannot be at the center of them as it has been in old policy areas such as the Single Market or EU’s Competition policy.

3.6 Conclusion

The findings of Chapter 3 showed that in the domain of JHA policy the Commission is far from being hard-wired to ever closer union. Neo-functionalism would expect a turn of events like the refugee crisis to produce outcomes that would expand the community method of integration into new areas of EU policy making. Instead, not only did this not happen, the results show how the Commission’s aims with the reforms included all three speculated different ambitions than the ever closer union: agency creation and empowerment, a particular political outcome in a policy reform, and new non-supranational and coordinative governance solutions. These findings are in line with the theory of new intergovernmentalism’s expectations of the Commission’s behavior. They also develop the Hypothesis 2 of the new intergovernmentalism, by giving more detail on what the alternative desired outcomes might actually be for the Commission.

Moreover, the findings suggest that the Commission’s ambition is less dependent on the European Council than classic (or pure) new intergovernmentalism would suggest, or even liberal intergovernmentalism. In all of the cases, the Commission was ahead of the curve, and sought to push through ambitious reform programs before the intergovernmental institutions could agree

on a consensus. Despite of the rise of importance of intergovernmental bodies, policy coordination, and the European Council's policy guidance, the Commission remained the institution that, in most situations, brought the solutions, albeit it was not community method integration, to the agenda. The Member States from their side provided a moderation of the Commission's ambition, sometimes already in the process of preparing a proposal, and sometimes in the Council negotiations or the trialogues.

On a case-specific level, the Commission has shown ambition and leadership in promoting new governance models in the case of the Hotspots. In the case of the mandates of the EBCG and EASO agencies, it was ambitiously pushing for the expansion of their mandates. However, the ability of the Commission to lead in a political way in the long run, at least in the case of migration policy, was quickly put into question by the developments in the CEAS reform. The findings suggest that with issues that are highly controversial, such as the permanent relocation mechanism, the European Council takes the lead role and the Commission shows willingness to support consensus building even when it is not in line with its original political ideas (Hypothesis B-3). The Commission was complicit with this development and has introduced the outcomes of European Council debates into its official proposals, such as the flexible solidarity mechanism.

Table 4 Hypotheses confirmed in the JHA case study

Policy Episode	Hypotheses confirmed
The Hotspots	<p>FOCUS:</p> <p>Hypothesis A-2: The Commission's ambition is institutional reform through pragmatic and non-supranational governance solutions.</p> <p>LEVEL:</p> <p>Hypothesis B-1: The initial level of the Commission's ambition is not necessarily contingent on the positions of the intergovernmental bodies.</p>

	Hypothesis B-2: The Commission's initial level of ambition is likely to be moderated by the Member States.
The European Border and Coast Guard	<p>FOCUS:</p> <p>Hypothesis A-1: The Commission's ambition is institutional reform through creation and empowerment of de novo bodies.</p> <p>LEVEL:</p> <p>Hypothesis B-1: The initial level of the Commission's ambition is not necessarily contingent on the positions of the intergovernmental bodies.</p> <p>Hypothesis B-2: The Commission's initial level of ambition is likely to be moderated by the Member States.</p>
The CEAS Reform – Relocation mechanisms (Part 1)	<p>FOCUS:</p> <p>Hypothesis A-3: The Commission's ambition is to act politically by shaping the substance of salient policies.</p> <p>LEVEL:</p> <p>Hypothesis B-1: The initial level of the Commission's ambition is not necessarily contingent on the positions of the intergovernmental bodies.</p> <p>Hypothesis B-2: The Commission's initial level of ambition is likely to be moderated by the Member States.</p> <p>Hypothesis B-3: The Commission's high level of ambition can lead to its exclusion from discussions or loss of credibility with the Member States.</p>

<p>The CEAS Reform – European Union Agency for Asylum (Part 2)</p>	<p>FOCUS:</p> <p>Hypothesis A-1: The Commission’s ambition is institutional reform through creation and empowerment of de novo bodies.</p> <p>LEVEL:</p> <p>Hypothesis B-1: The initial level of the Commission’s ambition is not necessarily contingent on the positions of the intergovernmental bodies.</p>
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4 THE COMMISSION'S AMBITION IN THE ECONOMIC AND MONETARY UNION 2014-2019

4.1 History of policy area and state of affairs

The Economic and Monetary Union (EMU) is a policy area of paramount importance for the European project. It was established with the Maastricht Treaty in 1992, and its coming into force is considered one of the major steps in European integration, which inspired a plethora of different academic theories and approaches to explain its existence and day-to-day operation. The policy area developed significantly since then, especially after the financial crisis. Today the EMU includes the common currency Euro (which came into force in 2002), a common monetary policy designed and implemented by an independent European Central Bank, rules regarding sound public finances enshrined in the Stability and Growth Pact, soft coordination of economic policies since 2011 known as the European Semester, a bail-out institution called the European Stability Mechanism (ESM), joint representation in international financial organizations, and finally a Banking Union.

The sheer number of policies and institutions does not add to the simplicity of EU policy making. On top of that, the EMU is a policy area of differentiated integration – different Member States participate in different policies and institutions. The EMU is as an umbrella term and, for reasons of unity all Member States are part of the EMU, but only nineteen have the Euro as their currency. This group of “core EMU” Member States is labelled the eurozone. In order to be admitted to the eurozone, Member States need to meet a set of economic and fiscal criteria known as convergence criteria.

Importantly, the eurozone has a parallel set of institutions that make decisions on behalf of the euro Member States, the most high-level ones being the Euro summit and the Eurogroup. The euro summit is a meeting of heads of states and governments of Euro area countries. Just like

the European Council, the Euro summit adopts decisions by unanimity and publishes its conclusions after the meetings. The Eurogroup is an informal group of Ministries of Finance of the eurozone that meets once a month on the eve of the Economic and Financial Affairs Council meeting. This group was proven to be an essential institution for shaping the European economic governance (Puetter 2003; Hodson and Puetter 2016: 374). The Eurogroup meetings are prepared and advised by the Eurogroup Working Group (EWG) that brings together senior bureaucrats from the Euro area Member States.⁷ The EWG has a certain level of institutionalization as it has a President elected for two-year terms and a Secretariat.

The EMU is also a policy area in which the Member States, from very early on, moved beyond the Community method integration and developed new policy procedures and instruments to manage it, such as soft policy coordination (Hodson 2011: 1-9; Zeitlin, 2011: 135-147). Because of this, it comes as no surprise that the case of EMU was used as a starting point of development for the theory of new intergovernmentalism (Puetter, 2012, 2014b). In this introduction, a short historical overview of key moments in EMU creation and development will be introduced with special attention for these new ways of governing. After that, the focus will be on the ways in which EU scholars sought to explain the developments in this policy area.

The very beginning of the EMU's development can be linked to the 1969 Hague Summit where the leaders of the six founding EU Member States discussed the potential of developing common monetary and economic policies. It took Member States ten years from then to make the first substantial step towards EMU, by establishing the European Monetary System (EMS) along with the exchange rate mechanism (ERM) that linked the currencies of the Member States (Lastra & Louis, 2013, 65-77). The objective of the exchange rate mechanism was not to allow the

⁷ An extended version of the EWG that includes all Member States is called the Economic and Financial Committee (EFC). In fact, the EFC is in the TFEU and was the original committee, while the EWG is formally its offspring. Through the euro crisis reform however the EWG received a more formal mandate as specified by the respective decisions by the Euro Summit on eurozone governance.

currencies to fluctuate more or less than 2.25 percentage points from an agreed parity. It also allowed to fluctuation to be as high as 6 percentage points in cases of currency crises, as for example the Italian *Lira* was facing one at the time of the creation of this mechanism. The agreed parity, or a *numeraire* of the exchange rate mechanism, was the European Currency Unit (ECU), a value calculated by combining the values of the national currencies in line with a pre-defined equation.

The ERM was indeed a cornerstone in EMU development. It was the first time that the currencies of the Member States became a part of a common European system. According to Amy Verdun (2016: 298), by the end of the 1980s, the ERM became “an important symbol of successful EU integration”. However, it was also far from fulfilling its full potential. High budgetary deficits, allowed by a lack of convergence of fiscal policies, caused tensions and put a burden on monetary policies at the time (Committee for the Study of Economic and Monetary Union, 1989: 8). For this reason, the Member States invited then Commission President Jacques Delors to lead a group of national central bank governors and come up with a plan for the future of EMU.⁸ This group was called the Committee for the Study of Economic and Monetary Union. The Committee presented the “Delors Report” to the Madrid European Council on 17th of April 1989 which proposed the creation of the EMU in stages, including the introduction of the single currency and the European Central Bank at the final stage. The final decision of the Member States was then, by and large, in line with the Committee’s proposals. The EMU was also a big part of the Intergovernmental Conference which closed in Maastricht in 1991. It brought about the “Maastricht convergence criteria”, which countries that want to adopt the common currency will have to meet, in the areas of inflation, interest rates, and exchange rates. Albeit with serious

⁸ In fact, since the beginning in 1979, Member States had declared an objective of “progressive realization of economic and monetary union”, which was also re-emphasized in the Single European Act of 1987 (Committee for the Study of Economic and Monetary Union, 1989: 3).

ratification difficulties, the Maastricht Treaty came into force in 1993, enshrining the rules of EMU and the plan to create a common currency in due time.

However, in this initial EMU design, there was no fiscal rules to protect the system from crashing. Already in 1997, several Member States ran high deficits and public debts, putting the EU economy as a whole at risk. Following a proposal of then German Finance Minister Theo Waigel, the EU Member States agreed to a set of fiscal rules for participating members of the EMU, the so-called Stability and Growth Pact (SGP). According to the Pact, Member States promised not to run annual budget deficits of over 3% of GDP and let the total public debt exceed 60% of GDP. In case of breaches of the deficit rule, an Excessive Deficit Procedure (EDP) could be launched against the country that could lead to financial sanctions in case the Member State fails to comply. This procedure is known as the “corrective arm” of the Stability and Growth Pact. The motion could be put forward by the Commission, but it was subject to a qualified majority vote of the Council. In 2005, after the failure of Germany and France to comply with the rules of budgetary deficits, a revision of the SGP followed that introduced more flexibility in the corrective arm. The decision to change the rules of the game only after the most highly influential Western Member States were in breach was seen as hypocritical (Schlosser, 2019: 235). Policy-wise, it allowed “more room for economic judgements” (Verdun 2016: 302) and left open the possibility of extending the previous one-year deadline for correcting the excessive deficit to two years.

In 2000, the EU also adopted an economic development plan called the Lisbon Strategy (which would later become Europe 2020) with a wider set of tools for economic policy coordination such as the “Broad Economic Policy Guidelines” that were issued by the Council after the Commission’s recommendations (see Borrás & Radaelli, 2011). This allowed for a more proactive approach in fiscal and economic policy, instead of only reacting ex-post when the Member State is already in economic troubles. The approach was based on soft law and peer pressure between the Member States.

The global financial crisis of 2007-08 was a big test for the EMU's fiscal governance mechanisms. The Member States were hit hard - most of them entered 2009 in recession. This led the governments to spend more than they could collect through taxes, and thus amounting high levels of public debt (Verdun, 2016: 305). For example, in 2009, Spain and Ireland had budget deficits of over 10 percent GDP (Hodson and Puetter, 2016: 368). Moreover, by the end of 2010, Greece, Portugal, Ireland, Spain and Cyprus could not borrow from the international financial markets in order to re-finance their debts anymore. The Member States ran high levels of public deficit to cover the debt payments. Implementing the SGP in such a situation was immensely difficult as in 2011, 23 out of 27 Member States were in the Excessive Deficit Procedure.

Several EU governments needed bailout. The need for the EU to have its own bailout institution was thus paramount at that time, and it resulted in the creation of the European Financial Stability Facility (EFSF), which in 2012 became the European Stability Mechanism (ESM). The ESM was based on an inter-governmental treaty outside of EU law, established with a start-up capital of EUR 500 billion. As a permanent agency based in Luxembourg, it can provide financial assistance in form of loans to Member States, or new capital to banks facing financial difficulties (see Bojovic et al., 2019). The attempts to reform the ESM after Juncker came into power will be one of the policy episodes in this thesis.

The SGP was also subject to major changes, as its inability to put breaks on rising public deficits and debts was deemed one of the reasons why the sovereign debt crisis escalated in the first place. Two sets of legislations were adopted in response to the crisis, the so called "six-pack" and the "two-pack" (see Laffan & Schlosser, 2016). The six-pack is set of secondary legislations which reformed both the preventive and the corrective arm of the SGP and entered into force in 2011. Most notably, it introduced a new surveillance tool called the Macroeconomic Imbalance Procedure (MIP) and changed the voting procedure for sanctions in the EDP from simple qualified majority to reverse qualified majority voting. In 2013, a set of two regulations called the "two-pack" was introduced which tackled budgetary policies of the Member States. Under these

new rules, each Member State of the eurozone has to present a budgetary plan for the following year to the Commission and the Eurogroup in mid-October. This is supposed to ensure that the discussion on budgets at the EU level starts early on. The draft budgetary plans are assessed by the Commission as either compliant, broadly compliant, or at risk of non-compliance (Regulation EU No. 473/2013).

Another important response was the Fiscal Compact, or the “Treaty on Stability, Coordination and Governance in the EMU” (see Fabbrini, 2012). It was an intergovernmental treaty signed by all EU Member States (originally, UK opted out). The treaty entered into force in 2013 and stipulated that the national budgets of its signatories should be in balance or in surplus. A balanced budget was defined as one that has a deficit of less than 3% of GDP. Moreover, it also defined that structural deficit should be less than that the Medium-Term Budgetary Objective (MTO) of 0.5% GDP for countries that exceed the 60% Debt-GDP ratio, otherwise it should be less than 1% GDP. If a Member State does not have a structural balance in line with the MTO, it must ensure rapid convergence towards it, in line with the time frame for adjustment specified by the European Commission. The MTOs are part of the preventive arm of the SGP, which allows for the Commission and the Member States to react early on to structural imbalances and prevent them from escalating into high levels of public debt.

Economic policy coordination of the Member States was also strengthened as a response to the crisis. The Lisbon Strategy of 2000 was substantially reformed in 2010 and replaced with the Europe 2020 strategy. Most notably, it introduced the European Semester - a yearly cycle of economic policy coordination. Due to its complexity, this cycle is not layman-friendly. The European Semester starts with the Commission publishing an Annual Growth Survey (AGS) every autumn, which sets out the economic and social goals for the Union. The AGS is adopted by the Council at the start of each year, after a consultation with the EP. In February, the Commission publishes individual analyses of each Member State’s economic and social policies and how much they are in line with the AGS. Between May and July, each country receives Country Specific

Recommendations on economic and social policy of the Member States drafted by the Commission, amended and adopted by the Council. The European Semester and the reform of the SGP, have substantively deepened both the policy coordination and the fiscal monitoring practices in the area of economic and social policy, enhancing the proactive and reactive capacities of the Commission and the Council (see Verdun & Zeitlin, 2018; Bekker, 2015).

But this is not where the reforms of the EMU governance, and especially of the euro area, ended. Another reform triggered by the crisis was the establishment of the Banking Union which was first agreed in the European Council in December 2012 (Hodson and Puetter, 2016: 372). The Banking Union became operational in 2014. Its aim is to align the “responsibility for supervision, resolution and funding at EU level and force banks across the euro area to abide by the same rules” (European Parliament 2019: 1). There were three basic elements of the Banking Union at the time of establishment: the Single Supervisory Mechanism (SSM) which gives the European Central Bank supervisory tasks over the financial system of the EU; the Single Resolution Mechanism (SRM) which is the EU’s central institution for bank resolution; and a Single Rulebook that sets out legal acts that EU banks, and other financial institutions, must comply with.

In November 2014, the same month that the Banking Union became operational, Jean-Claude Juncker became President of the European Commission. He came into power at a moment in time when the EU Member States were just getting used to numerous reform measures adopted from the crisis. Still, President Juncker made further EMU reforms one his main political goals, namely a “deeper and fairer economic and monetary union combining stability with fairness and democratic accountability” (European Commission, 2017c: 1). The EMU governance reform proposals during Juncker’s mandate were many and quite ambitious, such as:

- a) Strengthening the European Semester. The Five Presidents Report (European Commission, 2015d) especially emphasises the need to strengthen and simplify the European Semester, to make the CSRs more concrete and ambitious while allowing the Member States a degree of freedom with choosing the exact way of implementation. The

five presidents also call for a more systematic usage of peer review and a bigger coordinative role for the Eurogroup (European Commission 2015d: 9).

- b) Introducing more flexibility to the SGP. In January 2015, very early in President Juncker's mandate, the Commission made a move to embed more flexibility into the SGP in order to "make the best use of the flexibility within the existing rules of the Stability and Growth Pact" (European Commission 2015d: 1). The declared goal of the Commission was to give more room for promoting structural reform and investment, thus indicating a move away from austerity policies associated with the Barroso Commission. In reality, the less automatic the SGP is, the more room for politics there is in its implementation, as the Financial Times put it in an article on the incoming Commission and SGP points out: "Hawks led by the Netherlands want the new commission to provide no 'political' discretion when applying the (SGP) rule book." (Financial Times, 2019).
- c) ESM Revamp. The Commission put forward an ambitious proposal to turn the ESM into a European Monetary Fund, anchored within the EU law. Furthermore, the Commission proposed a European Minister of Economy and Finance to head the future EMF and represent the EU and Euro area.
- d) Completing the Banking Union and introducing the Capital Markets Union. In 2016, the Commission put forward a set of proposals including a Common Fiscal Backstop and a European Deposit Insurance Scheme (EDIS). The Commission also proposed establishing a Capital Markets Union with rules that improve access to funding and promote private risk sharing. The two proposals are often linked together by the Commission, as a "strong Capital Markets Union is also necessary to complement the Banking Union" (European Commission, 2019b: 1).

The Economic and Monetary Union is a dynamic policy field that has seen many reforms since its inception. At the same time, it has not changed its fundamental character as an area of soft coordination and mixed competences of supranational and intergovernmental institutions of

the EU. It also includes substantial roles for *de novo* bodies such as the European Central Bank and the European Stability Mechanism. Furthermore, the coordinative role of the Eurogroup, and the signing of intergovernmental treaties outside of the EU law, are potential signs of disbalance in favour of intergovernmental modes of decision making in this policy field.

The empirical analysis presented in this thesis will focus on three cases of reform ambition in the area of EMU: introduction of additional SGP flexibility (Policy Episode 1), integration of financial services through completing the Banking Union and the Capital Markets Union (Policy Episode 2), and the ambition to revamp the ESM (Policy Episode 3). The three policy sub-fields, at the time of writing, are at different developmental stages: the proposed SGP flexibility is being implemented since 2015, the Banking Union and Capital Markets Union proposals are still not agreed upon in the Council, and the Commission lost the battle to control the agenda on ESM reform. The three cases will illustrate the Commission's ambition and ability to act entrepreneurially in different stages of the policy process. The ESM reform was still in the agenda setting stage when the Commission entered with its proposals. The Banking Union only came into force in 2014, thus it was in early implementation stage when the Commission already proposed enhancements to its architecture. Finally, the SGP was in a continuous re-evaluation stage at the point when the Commission proposed to go beyond austerity and use it to promote public investment as a tool for growth in certain situations. The three cases will be used to test the different aims and levels of ambition of the Commission outlined in the theoretical chapter of the thesis. The respective hypotheses to be tested are identified at the beginning of the case studies. Before that, a review of political science literature that tried to explain the EMU, and its subsequent reforms, is presented with the goal of establishing a research gap that this study filled. Special attention will be given to studies that have looked into the reforms that were implemented or proposed in the post-Lisbon EU.

4.2 Review of literature in the field of EMU

After a period of stagnation of EU integration in the 1970s and 1980s, the Maastricht Treaty and the institutionalization of the EMU brought a revival of the EU integration theories. According to the neo-functionalists, the EMU and the single currency was a product of spillover effects created by the single market integration (Sadeh & Verdun, 2009: 283). Furthermore, the role of transnational actors was also a theme of interest for the neo-functionalists, which is in the language of the theory called a mediated spillover. For example, Dyson et al. (1995) and Cameron (1995) pointed out the role that Central Banks and their governors had to play in the events leading to the Maastricht Treaty, while Verdun (1999), Sandholtz and Stone Sweet (1998), and Van Assche (2005) emphasized the role that the Commission President Jacques Delors and various expert committees within the Commission played in the ideological fight for the EMU. According to Dyson and Featherstone (1999), Delors' leadership was a crucial variable for explaining how EMU was revived and negotiated in the late 1980s. His influence, authors argued, came from his personal authority and achievements that pre-date his period as Commission President. However, not all of Delors' suggestions made it to the final version of the EMU at the time, especially with regards to the economic aspects. For instance, he "had in mind a conception that embraced the fiscal and structural requirements of a viable EMU able to deal with asymmetric shocks and to promote growth and employment." (Ibid., 53), which had not made it past the Member States.

The decisiveness of Delors and functional influences were expectedly put into question by the liberal intergovernmentalist approaches which emphasized sectoral interests, national preferences, and bargaining between the great powers as the strongest forces shaping the EMU. In "The Choice for Europe: Social Purpose and State Power from Messina to Maastricht", Moravcsik (1998) took monetary unification as one of the five cases in which he analysed the domestic preference formation process in major Member States and their bargaining. According to the analysis, the final outcomes can be linked to the preferences and the trade-offs between the Member States.

Both theories have their merits and the empirical studies that used them offer plenty of useful insights into the process through which EMU was created. Liberal intergovernmentalism sheds light on important intergovernmental aspects of grand deals, such as Treaty changes, which were crucial for EMU creation. Neo-functionalism reminds us to look at gradual long-term changes, and the roles that supranational institutions play in shaping both the norms and the processes, which ultimately may lead to Treaty changes. However, neither of the theories are enough to explain the post-Maastricht, and especially post- (or during-) crisis institutional changes in the EMU.⁹

These novel EMU reforms were analysed using both new and traditional perspectives in EU integration studies. Bickerton et al. (2015) emphasized these reforms as prime examples of “integration without supranationalization” which characterises the new intergovernmentalism. Puetter (2012: 176-8) argued that the role of the European Council and the Council was crucial in designing the response to the crisis and explained that this phenomenon is not entirely new. The usage of policy coordination in the Lisbon Agenda, the role of the European Council as agenda setter, and the proliferation of informal working methods have set the stage for the types of outcomes that the negotiations on EMU governance produced. Hodson (2013) and Warren (et al., 2017; 2018) all argued that the European Commission was complicit with the intergovernmental nature of EMU reforms and that it had showed limited reform ambition during the crisis years. Instead of seeing the different institutional actors as competitors, Nielsen and Smeets (2018) focused on the collaborative efforts the EU institutions employed during the crisis. Specifically, they took the case of the Banking union and pointed out the dynamics between the ECB, the Commission, and the European Council, as crucial for understanding its establishment. Bauer and

⁹ Overall, neo-functionalism is often criticised for being unable to explain setbacks in EU integration, and reasons why spillover happens at certain points in time rather than other. Liberal intergovernmentalism’s insistence on the two-level game between domestic and international bargaining was seen as overly simplistic (Verdun 2000, Sadeh and Verdun 2009, Bickerton et al. 2015).

Becker (2014) looked into the outcomes instead of the process of the EMU reform as a whole and they saw the Commission as the key and unexpected institutional winner of the crisis. However, according to the authors, instead of expanding its traditional roles, the Commission obtained new ones, while giving the agenda setting powers during the crisis to the European Council and intergovernmental institutions (p. 225), thus shifting from policy entrepreneurship to policy management (Laffan, 1997). The salience of the implementation process of these policies should not be understated, authors claim, as it “might show more political weight than what has been studied under the heading of policy entrepreneurship so far” (Bauer and Becker 2014: 227). This aspect is especially important for the thesis, as the Commission’s ambition to use its powers to act in a political manner is tested on more recent cases. Finally, in a more traditional fashion, Schimmelfennig (2015), departing from liberal intergovernmentalism, focused on the political process of arriving to solutions in the crisis. The author argued that crucial factors driving national preferences were the fiscal position of the Member States, and the common preference for preservation of the Euro. In the end, author claimed, the negotiations produced an institutional design that predominantly reflected German preferences.

While crisis reforms that were agreed on during Barroso’s mandates have been analysed from many different perspectives as shown above, the reform proposals put forward by President Juncker or other actors during this time period (2014-2019) have not received that much scholarly attention (see e.g. Schout & Nunes, 2019; Bassot & Hiller 2019). On the one hand this is due to the fact that the reforms preceding Juncker’s proposals are more far-reaching. The contextual factors of the financial and debt crises triggered a comprehensive reform that the Juncker Commission could not initiate. On the other hand, there is also a bias in the studies of policy entrepreneurship towards studying success stories, including those that focus on the Commission. Taking the reform proposals themselves as the object of investigation, instead of the final outcomes, will add to our knowledge of the Commission’s actual and self-perceived role in the

EMU governance reforms. The theoretical framework outlined in the Chapter 1 allows for such an analysis.

While the Commission's complicity with the outcomes of new intergovernmentalism during the was already described, it has not been investigated in the post-crisis years of the EMU. An analysis of both the aim (Hypotheses A-1, A-2, A-3) and the level (B-1, B-2, B-3) of the Commission's ambition that follows will provide a detailed account of the Juncker Commission's ambition in three cases of EMU reforms.

4.3 Policy episode 1: Flexibility in the Stability and Growth Pact

4.3.1 Introduction

The Stability and Growth Pact (SGP) was introduced in 1997 as a way to ensure certain rules of fiscal stability are respected between the eurozone Member States. In fact, the eurozone before that was the first monetary union to be established without any common fiscal policies. This created significant risks of moral hazard which could lead to national fiscal or debt crises spilling over across the Euro area. This is exactly what happened in the early 2010s.

The SGP was reformed several times in its short history, with the key dispute being between those that think that the Pact should automatically apply sanctions for those that break the deficit rules, and those that think there should be flexibility in the Pact, allowing for higher deficits under various "special circumstances". It is often believed that the more flexible the Pact is, the more opportunity there is for its political usage or a loose interpretation of the rules by the Commission (Heipertz & Verdun, 2010: 64-84; see also Buti & van den Noord, 2004; Contexte, 2015). Moreover, even in the definition of the special circumstances, there can be some political or at least ideational influences. For example, the belief that higher levels of public investment can be used to spur growth can be a fiscal policy to recommend or punish, depending on the economic school one subscribes to. Flexibility in the SGP is considered politically controversial by both those that are afraid of the Commission's power grab, as well as those that are closer to ideas of

Ordo-liberalism and fiscal austerity (*vis-à-vis* Keynesian economics) as a recommended path out of crises (see Leblond, 2006; Romp & De Haan, 2007).

This sub-chapter presents and analyses the Juncker Commission's ambition in the reform of the SGP implementation. Thus, it tests the Commission's ambition to act politically, at a policy implementation stage (A-3). Furthermore, it is an important precondition to establish whether the Commission, as well as other actors, indeed saw the implementation of SGP post-2014 as "more political". Finally, by looking into the process that preceded the review of flexibility rules and the start of their application an answer emerges on the question of the level of ambition of the Commission in this policy episode. It was hypothesized in the Theory section that an ambitious Commission in new intergovernmentalism starts with a high ambition (B-1), which is subsequently moderated by the Commission after the discussion with or between the Member States (B-2). Since the Commission's proposal was successful, this episode does not test the hypothesis B-3, that a high ambition of the Commission in new intergovernmentalism can lead to side-lining or failure to negotiate a deal. Before assessing all these questions in the analytical part of the sub-chapter through the use of interviews and policy documents, a brief overview of the SGP and its previous reforms is here presented.

In the Madrid European Council of 1989, it was noted that the criteria for joining the eurozone should be accompanied by certain fiscal rules in order to keep the deficits and debts of Member States under control (European Council, 1999). The underlying reason was the need to "address the risk of negative spillovers from the budgetary positions of individual Member States into the common monetary policy" (Fischer et al., 2006: 5). The importance of keeping the deficit levels low was in fact so important it had made its way into the Maastricht treaty itself (Article 104c): "Member States shall avoid excessive government deficits." As Germany was giving up on its stable and strong Deutsche Mark in exchange for the Euro, it needed guarantees on the stability of its future currency that could be now impacted by governments of other Member States (see Buti and Sapir, 1998).

In 1995, German Minister of Finance Theo Waigel, proposed a Stability Pact for Europe (SPE) to strengthen the commitment to fiscal stability. According to the Stability Pact proposal, government deficits Euro area Member States should not exceed 1% of GDP in medium-term, in “normal economic conditions”, and 3% of GDP in “economically unfavourable periods” (Europe Documents, 1995). The annual debt level ceiling was also defined as 60% of GDP in the proposal, the same as in the Maastricht convergence criteria. If a Member State was found to be exceeding the deficit limits, it would have to make a “stability deposit” of 0.25% of GDP which would be refunded when the government budget is back in normal or turned into a fine if it is still above the reference values after two years. This would essentially make the sanctions in the SPE automatic. The proposal also suggested founding a “European Stability Council” that would be in charge of evaluating the SPE commitments (see Costello, 2001). The main objections to Waigel’s proposal came from the Southern Member States and the Commission that found the proposal to be too strict and not allowing for any flexibility in application because of the automatic sanctions.

The final agreement on the Stability and Growth Pact that came out of the European Council meeting in Amsterdam in 1997 is different to Theo Waigel’s Stability Pact proposal in several key aspects. Firstly, in the final agreement, the maximum deficit level itself was fixed at 3% GDP regardless of the economic situation in the Member State. If the Member State is found to be having a larger deficit, an Excessive Deficit Procedure (EDP) - a corrective part of the SGP - would be launched by the Council following a recommendation of the Commission. Secondly, it was agreed that the EDP should be avoided under certain exceptional conditions. Exceptional conditions according to the final agreement are those of severe economic downturns. An annual fall of GDP of 2 percent or more is defined as a benchmark for establishing them, but there is space left for the Council to make decisions on exceptionality in other cases as well, as long as the fall is at least 0.75% GDP. Thirdly, with regards to the European Stability Council, the Member States have decided not to establish such an institution, but to give the European Commission and the Council the lead roles in SGP monitoring and implementation. The European Commission

established the existence of excessive deficits and recommended decisions to the Council. The Council made final decisions on sanctions through a qualified majority voting procedure. Fourthly, an early warning mechanism through which eurozone Member States needed to submit stability programmes was put into place in order to strengthen budgetary surveillance. This early version of the preventive arm of the SGP was introduced to make sure the Member States are aiming towards a medium-term budgetary position that is “close to balance or in surplus” (Fischer et al. 2006: 5). The Member State’s medium-term budgetary objective (MTO) would be specified in the programme that is evaluated by the Council which could issue recommendations to them (Buti and Sapir, 1998: 83-4).

The effect of the SGP on controlling the deficit levels of the eurozone Member States was far from satisfactory. According to Langenus (2005: 73), the SGP “certainly did not produce the desired effect on the fiscal policy of all the Member States”. While it was off to a smooth start in the 1997-2001 period, signs of alarm started to display in 2001 when the economies stopped growing at the rapid pace, they had in the 1990s (Fischer et al., 2006: 7-9). In early 2002 the Commission proposed the Council to issue an early warning to Germany and France as their deficits were approaching the reference value (see Buti & Pench, 2004). However, the Council decided not to accept the Commission’s recommendation in its meeting in November 2003, which resulted in SGP being interrupted (Verdun, 2016: 301).

In September 2004, the Commission published a Communication “Strengthening economic governance and clarifying the implementation of the SGP” proposing changes that would put debt and sustainability into focus, take more economic factors and circumstances into account, make earlier preventive action possible, and ensure country-specific medium-term targets could be specified (Fischer et al. 2006: 11). The SGP reform of 2004-5 prompted by the deficits of large Member States thus allowed for more flexibility over the circumstances that would allow deficits. As Verdun (2016: 302) explained, “the SGP’s corrective arm was also adjusted by allowing

more room for economic judgements and leaving open the possibility that the one-year deadline for the correction of an excessive deficit could be increased to two years.”.

Finally, the financial and sovereign debt crisis had prompted several important reforms of the SGP. On 29 September 2010 the Commission proposed a reform package containing two major blocks of proposals. One focused on strengthening the SGP and the other proposed a new surveillance procedure. Most of the Commission’s proposals were adopted in the six-pack, two-pack and Fiscal Compact which, as mentioned in the previous section, have introduced several important changes to the SGP. First, instead of a QMV, a reverse QMV rule was introduced for sanctions resulting from EDP. This means that a qualified majority of the Member States should oppose the sanctions in order for them not to be introduced. Second, a Macroeconomic Imbalance Procedure (MIP) was introduced as a way to “identify, prevent and address the emergence of potentially harmful macroeconomic imbalances” (European Commission, 2020: 1.). The MIP allows the Council to, in line with a recommendation from the Commission, declare that an excessive macroeconomic imbalance exists in a Member State that can potentially jeopardise the proper function of the EMU. The said Member State would be subjected to more intensive peer-pressure and will have to adopt a corrective action plan and roadmap of policy measures addressing the imbalance in order to swiftly reach the MTO. If the Member State does not comply, this could lead to sanctions in the new Excessive Imbalance Procedure (EIP). This reform has added teeth to the preventive arm of the SGP. Third, budgetary surveillance was made even tighter, thus also further strengthening the preventive arm of the SGP. The Euro area Member States are now required to send national draft budgets for review by the Commission and the Eurogroup. Finally, the European Semester was established, which also had an impact on the way the SGP works. It streamlined the fiscal and economic coordination of Member States as it incorporated the SGP with the MIP, and the CSRs issued by the Council (European Fiscal Board, 2019). To conclude, the crisis measures have made the SGP tighter with stricter rules for sanctions, more surveillance,

and a year-round peer-review of Member States' budgetary policies, as well as social and economic policies within the European Semester.

Several conclusions can be made from this short overview of the SGP's history:

- (1) The SGP has been through several reforms that have made it into a very complex policy instrument. Simplifying the SGP was discussed as both a positive and a negative thing in the past, with ex-Commission President Romano Prodi famously calling it “stupid” for its (then-) ignorance of the cyclical nature of the economies (The Guardian, 2002).
- (2) Connected with the previous, the SGP is a potential matter of high politics between the Member States, with strong disagreements about how it should be used and for what economic or political objective.
- (3) The SGP is a hybrid governance area. Both the Council and the Commission are jointly monitoring the SGP. A crucial role is given to the Euro group, while the European Council and individual Member States have had a large say in SGP reforms in the past. This among other processes (see Hodson & Puetter, 2016, Puetter 2014a, Hodson, 2011) showed the relevance of the approach of new intergovernmentalism for the SGP reforms and day-to-day implementation.

4.3.2 Short overview of the policy episode

Three years after the European Semester and the measures of the six-pack came into force¹⁰, Jean-Claude Juncker became the President of the European Commission. After a comprehensive reform of the Stability and Growth Pact, resulting from long and complicated negotiations in the period between 2010 and 2013, one certainly would expect a potential weariness of future reforms. Indeed, the period of the Juncker's Commission did not bring a discussion of a revamp of the

¹⁰ The Two-pack that regulated the budgetary surveillance mechanism came into force only in May 2013 (Hodson & Puetter 2016: 372).

system as a whole. However, one of Juncker's first initiatives did relate to the SGP, namely the expansion of flexibility rules in the pact. The flexibility has been "embedded" into the SGP during Juncker's mandate, to use the language of an EMU booklet published by the Commission in 2018 ahead of the June European Council meeting (European Commission, 2018f: 3). The following section will analyse the ambition for reform of the SGP that was identified in the interviews (COM_8, COM_10, COM_11) and the Commission's documents as one of the first and central priorities of the Commission (European Commission, 2017c).

The first official step in the reform process was the Commission's communication "Making the best use of the flexibility within the existing rules of the Stability and Growth Pact", issued on 13 January 2015 (European Commission, 2015e). The flexibility was designed to reflect the "three-pronged economic strategy of the new Commission, namely investment, structural reforms and fiscal responsibility in support of jobs and growth as well as to take better account of changes in the economic situation." (European Commission 2018d: 1). Consequently, the Commission proposed three flexibility clauses in its Communication.

The first was the cyclical conditions clause. The Commission proposed to oblige itself to using a matrix to specify the fiscal adjustment necessary and take better account of the cyclical situation of the Member State in the preventive arm of the Pact. The MTO required from the Member State in the preventive arm can thus be made higher in good economic times, or more limited in bad times.

The second was the structural reform clause, according to which the Commission would allow temporary deviations from MTOs in case of reforms that are (1) major, (2) have long-term positive budgetary effects, and (3) are fully implemented. The European Semester and the MIP are to be used as tools for monitoring the structural reforms (European Commission, 2015e: 10-11).

Finally, the third was the investment clause. This proposal is connected with the establishment of the European Fund for Strategic Investment (EFSI). Following the European

Council's endorsement of December 2014, the Commission proposed the establishment of the EFSI, as a partnership between the Commission and the European Investment Bank (EIB). The proposed clause's aim is to make sure that the public investments of the fund are not taken into account when calculating the attainment of the MTO in the preventive arm, nor the deficit ceiling of 3% in the corrective arm (the EDP). Furthermore, some investments that are "deemed to be equivalent to major structural reforms" may also qualify for exceptions if conditions of slow or negative growth are established (p. 8).

While the first two clauses relate to the preventive arm of the pact, the third one relates to both the preventive and the corrective arm. All three of the conditions were backed by the European Council and became part of the way the Commission implements the SGP. It is important to note that the new guidance of the Commission does not change the rules of the SGP itself (Manasse, 2015). From an institutional point of view, this reform is very modest. From a technical point of view, it adds more transparency to the way the Commission makes decisions in the SGP. But the most important is the political aspect of this reform. The reform acknowledged the need to go beyond austerity based fiscal policies in the SGP and significantly expanded the room for manoeuvre within the existing rules. For these reasons, this policy episode tests the Hypothesis A by investigating Hypothesis A-3: The Commission's ambition is to act politically by shaping the substance of salient policies. Before that, a look into the process will show how the Commission pushed for this reform, testing the level-related Hypotheses B-1 and B-2 in order to show how the Commission was more ambitious than the intergovernmental bodies in this policy episode (Hypothesis B).

4.3.3 Focus and level of the Commission's ambition in the policy episode

As mentioned, in order to investigate the level of ambition, a closer look into the process is essential. It reveals that the ambition to reform the SGP came from the Commission. President Juncker and the College of Commissioners had a big role in this reform, and the fact that the

proposal came only two months after he came into power is no coincidence here. A senior official of the Commission confirmed this in an interview:

“The new college wanted to provide flexibility for investment. The Commission came up with it in January 2015, at the time when we were not fully out of the crisis and there was still some lingering doubts about how strong this recovery was. Then **the idea was very much top-down in the sense that the political part of the Commission wants to give more room for manoeuvre for us** to take into account in our fiscal surveillance, both structural reforms and also investment.” (COM_10, my emphasis)

In fact, Jean-Claude Juncker had been an advocate for a more flexible application of the SGP rules long before he became the Commission President. For example, in his Foreword to Martin Heipertz and Amy Verdun’s seminal work on the SGP, “Ruling Europe: The Stability and Growth Pact”, he wrote “(...) it is crucially important that the flexibility provided by the Pact is used with economic intelligence and political guile in order to ensure that it is still around when we need to address the next crisis.” (Heipertz & Verdun, 2011: x). Politically, President Juncker had strong support of the Italian and French government that wanted to see a more active role of the EU in promoting structural reforms and public investment. The European Council also discussed flexibility the year before (in 2014) and, without much detail, noted the need for a reform:

"We respect the Stability and Growth Pact. All our economies need to continue to pursue structural reforms. Very clearly, our common strength hinges upon each and every country's success. That is why the Union needs bold steps to foster growth, increase investments, create more and better jobs and encourage reforms for competitiveness. This also requires making best use of the flexibility that is built into the existing Stability and Growth Pact rules." (European Council 2014)

The Commission saw this as an opportunity to offer its definition of what the new flexibility should look like, also building on the initial success of President Juncker’s Investment Plan for Europe (see Marinescu, 2019). It was also very proactive in its implementation of the flexibility rules. After the publication of the Communication in January 2015, the reform was discussed in the Economic and Financial Committee (EFC) between January and April. President Juncker attended the meeting and told the representatives that the new interpretation of flexibility

will immediately be introduced in the Commission's management of the SGP. This was confirmed in the Commission's report: "At the meeting of the EFC on 8 April 2015, the President [of the Commission] noted that for the preparation of the 2015 European Semester CSRs, the Commission would use its interpretation of the rules of the SGP as expressed in its Communication on flexibility" (European Commission 2018f: 174). The fact that the Commission went forward and started using the new rules on flexibility before the Council came to an agreed common position shows that the Commission started the process with a high level of ambition, as Hypothesis B-1 suggests: The initial level of the Commission's ambition is high and not necessarily contingent on the positions of the intergovernmental bodies. Moreover, one senior official from the Commission also points out that when "the Member States received this Communication, it was a surprise for them, rather unexpected." (COM_10)

A closer look into the process that followed after the Commission adopted its January Communication shows a high intensity of discussions between the Member States and the Commission, and some moderation of the proposal. One interviewee – a Member State representative – noted on the nature of the discussion and the political importance of this proposal:

"During the discussions at EFC level, the Commission came with the proposals. There was a lot of tough discussions, with a North-South division. In the end we ended with flexibility... Italy benefited the most from it... and Baltics on the pension reform." (MS_11)

The EFC and the EFC-alternates were given the task by the Member States, to come to an agreement on flexibility that the Council could support. President Juncker attended the EFC meeting on the 8th of April 2015 (Ibid.), which is an exceptional incident, and underlines his determination and the understanding of how important the EFC is. The fact that the Commission President attended the EFC in the preparation of a common position of the Member States on flexibility shows that there was a favouring for co-creation of the flexibility clauses, instead of political turf battles. The common position of the Council was finally presented on 30 November 2015 by the Council secretariat (The Council, 2015). Even though it took the Council over 10

months to come to an agreement, it is mostly in line with the Commission's proposed clauses and it provides more details regarding the process.¹¹ First, a number of process related changes were made compared with the Commission's original January Communication. The Member States agreed that the clauses should be activated in advance, upon request in the Stability or Convergence Programmes of the Member States and could be granted in the context the European Semester's CSRs. The Commission would then have the role to assess if the Member State's economic circumstances make it eligible for the clause it applied for. Finally, the ECOFIN Council would have the final vote on the clause, just like it has in the other CSRs. Second, the most important changes were to limit the amount of flexibility to less than 0,75% of the GDP. This means that the flexibility rules defined that the deviation from the mid-term budgetary objective should not exceed this value, even under special conditions of structural reform and investment clauses. This was not clear in the January Communication, but after the discussions in the EFC it made its way into the final version (The Council, 2016b). Also, according to a senior Commission official, the discussions led to tighter conditions for applying flexibility in the investment clause: "The Member States also requested a review of the matrix of adjustment which led to identifying that, for example, the investment clause had very tight condition - only if the Member State is facing very bad times - so it limited a lot the flexibility. A group of hawkish Member States was very concerned that the flexibility would be used not to implement the rules." (COM_10)

The same interviewee was closely involved in the process, and s/he explained how most of the work on the common position in the EFC was collaborative between the Commission and the Member States:

"The EFC spent a year requesting the Commission to give the information on the specific issue of limits to flexibility. Then the Member States discussed it, and they would go back to the Commission to ask for even more information and numerical examples. After this lengthy process, this common position was born and was endorsed by the ECOFIN. **The changes were also kind of the result of this**

¹¹ The reason for the delay was most probably because the Member States wanted to see how the European Semester will play out for that year, including the flexibility clauses, before they publish their position.

inter-relation, this dialogue between the more technical levels of the Commission and the Member States. Each time of course the Commission would need to get validation from the political level and whether they would be willing to agree to those developments. I think this approach also led to a more collaborative approach with the Member States on this common position.” (COM_10)

Common position adopted by the EFC was endorsed by the ECOFIN Council in February 2016 (The Council, 2016b). The Code of Conduct of the SGP was officially updated with the flexibility clauses in July 2016 as part of ANNEX 5, thus finalizing the reform process after one year and a half (European Commission 2018f: 36-40).

The second hypothesis on the level of ambition that stated that the pressure of the Member States will most likely lead to a moderation of the Commission’s highly ambitious proposals still holds in this case. But, why so little moderation, given the potentially highly contentious nature of flexibility? This is for at least three reasons. First, the political reason is the strong backing of the European Council, as its endorsement for changes and clarifications of flexibility rules came even before the proposal was put together. Second is the highly collaborative nature of decision making that existed in the EFC, as described above. Despite the political nature of the proposal, and the Commission’s insistence on its political character in its public communication, the Commission had the opposite approach in the discussions themselves. It acted as an expert, providing examples of how the new rules would work in practice and technical information. The technical side within the Member States should also not be forgotten, as the interview quote above suggests. Finally, the third is the institutional reason, which has to do with the specific nature of the SGP and the co-implementation practices between the Council and the Commission allowed for a more proactive approach of the Commission – act first, see what the Council thinks later. The SGP allows for this as it is the Council that adopts or challenges the CSRs and decisions on flexibility in the end anyway. The large role given to the EFC and the EFC-alternates suggests that even though the Commission pushed for the reform in its own interpretation of the flexibility, it

participated in the creation of the joint position of the Council, which later made it into the Code of Conduct.

In April 2018 the Commission published a Communication on the review of the flexibility under the Stability and Growth Pact which showed “that the key objectives of the Commission Communication and the commonly agreed position on flexibility have been met to a large extent.” (European Commission, 2018d). Thus, the Commission’s ambition to add more flexibility to the SGP turned into one of the early policy successes of President Juncker’s mandate. Over time, it expanded well into the preventive arm of the pact. For example, already in 2016, the Commission used a wide understanding of flexibility to decline proposing sanctions to Spain and Portugal, despite strong pressures from hawkish Member States. The same year, Italy used the investment clause to apply for an extension on reaching its MTO.

In terms of the focus of this ambition, the interviews, as well as media articles by top Commission officials suggest that the reform of the SGP had strong political implications and is part of the Commission’s aim to be a more political bod as was hypothesized by A-3: The Commission’s ambition is to act politically by shaping the substance of salient policies.

In this context, European Commissioner for Economic and Financial Affairs, Taxation and Customs Pierre Moscovici wrote in an opinion piece to Financial Times:

“In the case of EU rules, is a mechanistic application by “faceless” technocrats really what these times demand? Nowhere is this debate more acute than when it comes to the application of the EU’s fiscal rules, for which I have been responsible since 2014. Some claim the commission should apply these rules quasi-automatically, using only data and procedures that would leave no space for discretion. This is a fantasy. [...] And to those finance or foreign ministers who criticise the commission for being too political and not democratic enough, I would invite them to boost the transparency and accountability of decision-making in the Eurogroup (...).” (Moscovici, 2019)

A senior Commission official confirmed this from a bureaucratic point of view and contrasted it clearly with the approach of previous Commissions:

“While before there was more strict implementation of the rules and very tight approach, the new Commission came with this political angle that indeed fiscal

policy should support economic growth, including investment. That has been evident.” (COM_11)

While its clear that the Commission officials themselves saw this as a political reform, what did the Member State representatives think? In an interview for this thesis, an EMU counsellor of a Permanent Representation explained the point of view of a smaller MS on this reform:

“There are a lot of parts in the whole system where you can put the political factor in. The Spaniards were left out last year, they should have been punished under the SGP. It was a political decision of the Commission not to do so. Why? Smaller countries, they punish and tell them to come back next year. If you are Germany, then you have to consider other political issues... That’s how it works in reality and the system is very complex, and in certain elements it is not crystal clear how the rules should be implemented.” (MS_8)

Another interviewee also pointed out the amplified potential for political usage of SGP due to flexibility rules:

“It is also very complex, and the Commission is sometimes blamed that they can now do it in a whatever way they like. They can count different things if they want to or not. It is not really transparent how these relevant factors are taken into account. It can be used as a politically based decision in a less objective manner.” (MS_10)

The interviews were conducted in November 2018, in the same week when the Commission decided to start an Excessive Deficit Procedure against Italy. It was a good time to talk about the Commission as a political actor in the SGP. A few interviewees saw the EDP decision against Italy as a political act, against the new right-wing populist government.

“You can clearly see how political the Commission is because now they don’t like Rome, now it’s allowed to go all the way and use all the powers, to say to Italy this is not the way we do things. I am a bit surprised how strongly they are acting with Italy at the moment. It was always there, like the elephant in the room that we didn’t want to touch, and we always let it be. And now you see it turns the other way around.” (MS_9)

The flexibility push of the Commission obviously took a side in the ongoing debate between the hawks and the doves. Moreover, it also altered the objectives of the SGP as a policy. As the Commission Communication of 2015 suggests,

In its 2015 Annual Growth Survey (AGS), the Commission identified investment, structural reforms and fiscal responsibility as key elements of the European Union's economic policy strategy to create jobs and growth. [...] The Commission also announced that, in order to strengthen the link between investment, structural reforms and fiscal responsibility, it would provide further guidance on the best possible use of the flexibility that is built into the existing rules of the Stability and Growth Pact (...). (European Commission 2015e).

Thus, the Commission's policy proposal to introduce more flexibility into the SGP is not a simple change of a policy instrument. Instead, it added additional objectives into the SGP, other than fiscal discipline, it would at least allow, if not promote investment and structural reforms. This is connected strongly to other initiatives of President Juncker, especially the Investment Plan for Europe and the establishment of the "European Fund for Strategic Investments" (EFSI).

4.3.4 Summary of the policy episode

This policy episode confirmed that the Commission's ambition was to reform policies, acting politically by taking a side in a debate about policy objectives that is at the centre of EMU politics. The Juncker Commission pushed strongly for adding new objectives and a more positive look and outlook to the existing SGP infrastructure. From austerity, it tried to move the debate to public investment and support for structural reforms through the new funds, and the flexible approach to SGP. The focus of the Commission was in line with the expectations that this Commission would have political ambitions (Hypothesis A-3). On the question of the level of ambition, the process tracing showed a highly ambitious actor from the start, and throughout the process. The institutional and political reasons allowed for the Commission to push for an ambitious proposal and work on the details together with the Member States in the EFC and the EFC-alternates meeting. This confirmed the B-1 hypothesis, as the Commission was more proactive than the intergovernmental institutions as well the B-2 hypothesis, albeit with some limitations as there was little post-proposal moderation due to the aforementioned approach of "collaborative leadership" (Nielsen & Smeets, 2017).

4.4 Policy episode 2: Deeping the EU's financial integration by completing the Banking Union and establishing the Capital Markets Union

4.4.1 Introduction

This policy episode focuses on two elements of the EU's integration of regulating financial services - the so-called Banking Union (BU) and the Capital Markets Union (CMU). As de Boissieu (2018) noted, these projects are the two major integration programmes of financial Europe. The BU on the one hand is already operational since 2014 and it presents "one of the most significant developments in European integration since the Maastricht Treaty" (Nielsen & Smeets, 2018: 1238). The BU is often labelled incomplete because, even though the Single Resolution Fund (SRF) is in place, a common European Deposit Insurance Scheme (EDIS) is still missing. The CMU on the other hand is a proposal to enhance more than a dozen directives and regulations that regard the functioning of capital markets in the EU. The Member States in the Council have, by the time of writing, already agreed on most of them but not all. The importance of this initiative brought forward by the Commission has become paramount since Brexit, given the importance of the City of London for the financial markets and the struggle of other financial centres in Europe such as Frankfurt to catch up with London and other global hubs. The two projects, completing the Banking Union and establishing a Capital Markets Union, have been emphasized already in the Five Presidents Report (European Commission, 2015d: 5) as crucial for completing the EMU.

This policy episode is significant both for assessing the Commission's stance towards expanding the powers of de novo bodies and for its role as a political actor pursuing policy reform. On the former, a crucial role in the Banking Union is played by the Single Resolution Board (SRB), a de novo body established to manage the Single Resolution Fund (SRF). On the latter, the aspect of the BU that the Juncker Commission proposed – the European Deposit Insurance Scheme - has caused large political rifts. The Capital Markets Union is also a substantial policy reform without much change on the institutional front except for the new roles for the European

Securities Markets Authority (ESMA), a *de novo* body in this policy field. It also had a large political potential, given its promise to ease the transfers between the financial markets of the Member States. This sub-chapter looks into the Commission's reform proposals to assess its ambition in terms of both level and focus in the case of financial integration in the EU post-2014.

Neither of the two recent proposals have been in focus of many academic publications. As an exception, Howarth and Quaglia (2018) display the divergent national preferences on EDIS as reasons for why this proposal has failed. The very creation of the Banking Union, however, was analysed from many different points of view. For example, Nielsen and Smeets (2018) see it as a result of collaborative leadership of various EU institutions and actors. Moreover, Glöckler et al. (2017) employ various new institutionalist frameworks to explain how common banking supervision was abruptly created after a "critical juncture" of the financial crisis. Moreover, Epstein and Rhodes (2016) show how it was the Commission that advocated for the European Central Bank to gain the prerogative of Euro area bank supervision – suggesting that the Commission's advocacy on behalf of *de novo* bodies precedes the Juncker Commission. The introduction that follows here provides a historical overview of financial integration in the EU. Then, the post-2014 ambition of the Commission is analysed through its publications and interviews with Commission officials and EMU Counsellors of Permanent Representations.

The first step towards the creation of the Banking Union was the Single Rulebook for all financial actors in the EU, proposed by the European Council in response to the financial crisis in 2009 and implemented from 2013. Its objective is to harmonize the banking supervision laws across the EU Member States, including the regulation of bank capital requirements, recovery and resolution and deposit guarantees. The Single Rulebook was updated with another set of directives in 2014. However, agreeing on common rules for banking supervision was not enough of a response to the crisis, given the scale of the problems caused by the lack of regulation and supervision of the banking sector.

In 2012, the first calls for a Banking Union to be developed on the foundations of the Single Rulebook followed. The European Council of 27-29 June 2012 was the crucial event where this proposal was discussed and prepared (Epstein & Rhodes, 2016). A day before that, Commission President Barroso gave a speech at the European Policy Centre in Brussels, saying that “For a genuine Economic and Monetary Union to be established, I think that we need a banking union, a fiscal union and further steps towards a political union. The first of these building blocks that can be achieved quickly without Treaty change is an integrated financial framework, a banking union.” (EURACTIV, 2012: 1). The Four President’s Report that the European Council commissioned for preparation in May 2012 was also presented in this European Council meeting. The Report, named “Towards a Genuine Economic and Monetary Union”, proposes three central elements building on the single rulebook: a single European banking supervision, a common deposit insurance and a resolution framework (European Council, 2012).

Building on the agreement of the Member States in this European Council meeting to create a Banking Union, the Commission prepared a Roadmap in September 2012. This Roadmap proposed a Single Supervisory Mechanism (SSM) that would transfer the specific supervisory tasks from the Euro Area Member States to the European Central Bank, including

“authorizing credit institutions, assessing qualifying holdings, ensuring compliance with the minimum capital requirements, ensuring the adequacy of internal capital in relation to the risk profile of a credit institution, conducting supervision on a consolidated basis and supervisory tasks in relation to financial conglomerates.” (European Commission 2012a: 2).

The Member States and the European Parliament reached an agreement on the SSM in March 2014, and it finally came into force in November 2014 marking the start of the Banking Union.

The European Council also called for the Commission to submit a proposal for a Single Resolution Mechanism (SRM)¹², which was already mentioned in the Commission's 2012 Blueprint for Deep and Genuine EMU (European Commission, 2012b). The SRM proposal, also known as the second pillar of the Banking Union, came in July 2013. The SRM gave the ECB the role of signalling when a bank needs a resolution due to financial difficulties. After the ECB makes this decision, the Single Resolution Board (SRB), which is established as a new EU agency, adopts a resolution scheme determining the resolution tools and the use of the Single Resolution Fund (SRF), a new fund established for the purpose of bank resolution (The Council, 2019). The original Commission's proposal from 2013, as well as the Blueprint, wanted to give Commission the jobs that were eventually given to the SRB (European Commission, 2013). Thus, it was the Member States that originally decided to create this *de novo* body, and the Commission was complicit. After an agreement between the Council and the Parliament in November 2015, the SRM entered into full force in January 2016.

The SRB is set up from the representatives of the ECB, European Commission, and national authorities. The SRB controls the SRF, which is financed by the banking sector and which ensures the funding support while the bank is restructured. It also plans and oversees the resolution, which is implemented by the national authorities (The Council, 2019). The Commission only has the ability to propose to the Council to object to the SRB's resolution scheme, and only within 24 hours after the decision of the SRB. If the Council does object, after Commission's proposal, the bank would then be resolved under the national law.

That was the state of affairs when President Juncker took the helm. The Banking Union had two pillars: the SSM and the SRM. Large roles in the BU were given to the ECB and the ESB, both *de novo* bodies, instead of the Commission. The Capital Markets Union was still not a topic

¹² A bank resolution is a process of restructuring a bank that is failing, ensuring that it does not harm the taxpayers and the broader economy in the process

on the agenda and would come later, as a reform closely connected to finishing the Banking Union project. In the following sub-section a short overview of what happened during Juncker's mandate on both the BU and the CMU follows before an analysis of what it was that the Juncker Commission wanted and a judgment on how ambitious its proposals were.

4.4.2 Short overview of the policy episode

The Juncker Commission made it quite clear from the very beginning that it considers the financial integration of the EU to be incomplete and that it will make progress towards its completion one of its main political priorities. In 2015, the Commission's Report "Completing Europe's Economic and Monetary Union", prepared by Juncker in close cooperation with presidents of four other EU institutions, stated that "to complete the Financial Union, we need to launch a common deposit insurance scheme and the Capital Markets Union." (European Commission 2015d: 12). The two proposals are flagged by the Commission as the most important cases and the process behind them is tracked in this section.

In November 2015, the Commission officially proposed setting up the European Deposit Insurance Scheme (EDIS) for the Euro area, as the third pillar of the Banking Union. The Single Rulebook already introduced rules regarding establishing the national Deposit Guarantee Schemes (DGSs), that harmonized the minimum level of deposit protection at €100,000. However, the rationale in the Commission's proposal for common, European DGSs is in the vulnerability of depositors to large shocks that could overwhelm the existing national DGSs (European Commission, 2015f). Consequently, the EDIS proposal of the Commission suggested creating a European Deposit Insurance Fund (EDIF) that would complement the national deposit funds. The fund would be financed by contributions from the banking sector, specifically by deducing from their contributions to national DGSs over time. The EDIS proposal includes both a large role for the SRB, the de novo body that got the roles the Commission originally wanted for itself when the BU was created. It also was a topic of political discussions between the Member States,

as the proposal ran opposite to the German (and other hawkish Member States) views against the mutualization of risks and “moral hazard” that the EDIS would create. This policy episode tests Hypothesis A, by looking into the Commission’s ambition to integrate by creating or empowering *de novo* bodies (A-1) and to lead politically by shaping the substance of salient policies (A-3). Moreover, on the level of the Commission’s ambition, as the proposal for EDIS eventually failed, it can be used to test all three of the level-related hypotheses (B-1, B-2, B-3).

In September 2015, the Commission published an action plan for creating the Capital Markets Union (CMU) to complement the Banking Union. Importantly, while members of the Banking Union are countries of the eurozone, all EU Member States would become part of the Capital Markets Union in the Commission’s proposal. The 2015 Action Plan of the Commission named the CMU as one of President Juncker’s key priorities (European Commission 2015g: 14-5). The principal aim of the CMU is to overcome the fragmentation of financial markets in the EU. This would also ease the ability to transfer savings from Member States with financing capacity to those in need of financing, which is “often presented as monetary transfers from the North to the South of Europe” (de Boissieu 2018: 3). Other aims of the CMU project are to ensure that SMEs have more financing opportunities, increasing choices for retirement saving for EU citizens, enhance the capacity of banks to lend through standardised European securitizations and other.

The Commission suggested that CMU is an ideal, that will be reached through cumulative steps: “There is no single measure that will deliver a Capital Markets Union. Instead there will be a range of steps whose impact will cumulatively be significant.” (European Commission 2015g: 2). The CMU in reality is a set of legislative and non-legislative acts that are part of the ever-lasting Single Market unification project. The Commission had quite an optimistic time frame in mind: having the CMU in place by December 2018: “This is a long-term project, but we will move quickly.” (European Commission 2015g: 5). The CMU Action Plan was a significant, or even grand, policy reform comprising 33 initiatives. The aims of the CMU were defined by the Commission (2017c: 14) as:

- “1. Strengthening supervision and building capital markets capacity in the EU;
2. Financing for innovation, start-ups and unlisted companies;
3. Making easier for firms to raise money on public markets;
4. Strengthening banking capacity to support the economy;
5. Investing for long-term, infrastructure and sustainable investments;
6. Fostering retail investment; and
7. Facilitating cross-border investments”

The link of the Capital Markets Union to the EMU is emphasized by the Commission from early on and its restated in the 2017 mid-term review of the CMU which aims to strengthen the Economic and Monetary Union (EMU) “by supporting economic and social convergence and helping absorb economic shocks in the euro area” (European Commission 2017c: 2). An interview with a Member of Cabinet also confirms the importance of CMU for the Economic and Monetary Union:

“We tend to think, not always say, that the capital markets union should be part of that (EMU), as referred to in the reflection paper on financial union which would encompass both things.” (COM_8)

It is important to note that the CMU was originally proposed in 2015, before Brexit, and with an implicit thinking that the City of London will remain one of the central points of an integrated financial market of the EU. After the Brexit decision, the CMU proposal needed a reboot and was taken more as an immediate priority by the Member States (see Xafa, 2017). Thus, after the mid-term review in 2017, the Commission strengthened the CMU proposal with additional proposals, for example like one on a Pan-European Personal Pension Product (PEPP) that aims to create a more efficient pan-European market for voluntary pension savings. Importantly, the Commission also proposed to strengthen the European Securities and Markets Authority (ESMA), granting direct supervision to support a functioning CMU (European Commission 2017c: 11).

“Within the EU-27, in particular ESMA’s ability to ensure consistent supervision across the EU should be strengthened. This should ensure that the single rulebook is implemented in a uniform way across the Single Market. Therefore, financial entities with similar business size and risk profiles should be subject to the same standard of supervision regardless of where they are located in the EU and to avoid regulatory arbitrage.” (p. 8).

In 2018 the Commission also put forward three additional directives regarding sustainable finance. In total, the Commission presented a total of 16 legislative CMU proposals, 12 of which have been agreed upon by the European Parliament and the Council by December 2019 – a year after it was supposed to already have been in place according to the original plan. Regardless, it could be said that the response to the CMU was initially positive by both the Member States and the European Parliament (European Commission, 2019c).

Building on many policy reforms, the only institutional reform in the CMU proposal is the significant strengthening of the European Securities and Markets Authority (ESMA), an agency that would be in charge of monitoring and implementing the new rules. As a grand policy reform case, and one that strengthens a *de novo* body, this case is used to test the Hypothesis A by looking into the same two types of focus of ambition like the EDIS proposal (A-1 and A-3). On the level of ambition (Hypothesis B), it is suitable for looking into the first two (B-1 and B-2), as the CMU proposal is, by and large, on its way to adoption by the legislative bodies. As both policy episodes are part of the same Commission’s push to complete the EU’s Finance Union, they are investigated together in this section, but the main focus will be on EDIS as the more high-profile case of the two and one that more of the policy makers interviewed for this thesis had participated in.

4.4.3 Focus and level of the Commission’s ambition in the policy episode

It is important to start with the fact that neither of the proposals aim to strengthen the position of the Commission in the EMU in terms of neither novel-coordinative nor traditional community roles. However, they both have enormous policy implications, and aim to strengthen the *de novo*

bodies. Both of the proposals analysed are clearly perceived in the interviews as highly ambitious, and as a top priority for the Commission in EMU.

“The key priority is to complete banking union, that is clearly at the top of the agenda. [...] We recognize that the bar and the level of ambition of EDIS is much higher compared with the backstop, but the priority for December would be to be get an agreement for the launch of serious political talks on that topic.” (COM_8)

According to several interviewees, the EDIS proposal also had a strong political ambition, as it envisaged potential transfers between the Member States. Regardless of the fact that the EDIS proposal was tested in the Eurogroup Working Group according an interviewee (COM_8), the Commission put forward the proposal despite the reluctance of several Member States. This shows how the ambition of the Commission in EDIS was high – a look into the process displays a Commission that is way ahead of the Member States’ potential consensus on an issue. When asked about EDIS, in an interview for this thesis a Head of Unit in the Commission said:

“The question of why one country’s taxpayer’s money should be on the hook for economic errors or accidents of other countries is where we really are. We are at the stage when, because of the history of the crisis, we have a reluctance in Netherlands, Finland, and Germany, although Germany is open to persuasion if the case is well made and system is well-designed, but really you are now at the hard edge in the EMU. Taking it forward is going to be about countries willing to write checks for other countries. It is going to be hard. Juncker’s ambition for the EMU has collided with political reality. Hence the lack of real meaningful progress on implementing the President’s report.” (COM_9)

Furthermore, a Financial Counsellor of a Member State’s Permanent Representation in Brussels said how “The banking union package itself was quite of south-oriented.” (MS_10). All of this suggests that the Commission’s initial ambition was both political (A-3) and high (B-1). However, the EDIS debate was eventually blocked – as the interviewee above explained, it collided with political reality. Before that happened, the Commission attempted to offer a moderated approach, like the hypothesis B-2 of this thesis predicted – the Commission can be expected to be complicit with moderation of its initial ambition. Specifically, it offered the Member States a gradual approach to EDIS. This is reminiscent of the famous gradual approach to 10,000 border guards in the case of EBCG, yet this time,

the Member States did not bite this hook. Instead, the proposal seems to have been pushed off the agenda. The Commission tried to keep the discussion on EDIS going by publishing a Communication on 11 October 2017 called “Completing the Banking Union” (European Commission, 2017d). The Commission there suggested:

“Two years after the presentation of the European Deposit Insurance Scheme proposal, which remains on the table unchanged, the time has definitively come to move ahead, since without the European Deposit Insurance Scheme, the Banking Union may still be vulnerable to future crises. To reinvigorate the negotiations, it could for example be considered by the European Parliament and the Council, in the current negotiations, to introduce the European Deposit Insurance Scheme in a more gradual manner, commensurate to progress achieved with regard to risk reduction and the tackling of legacy issues, **starting with a more limited re-insurance phase and moving gradually to co-insurance.**” (p. 17) (my emphasis)

The re-insurance phase meant that the national DGSs would remain in charge of deposit insurance while EDIS would only provide additional liquidity to them when needed. The Commission thus tried to make the proposal less ambitious, due to pressures notably by German and Dutch governments (COM_8). However, a common agreement on EDIS was not reached during Juncker’s mandate, despite the recommendations from the IMF (Euronews, 2019b) and the Commission’s new, gradual proposal that is supposed to be a compromise solution. Thus, it is found that the Commission’s ambition was not only high initially, but also that the shift from high to moderated does not guarantee success. Once an issue is off the agenda, partially due to the fact that the initial proposal was too ambitious, it is hard to bring it back to the agenda even with a more strategic approach. This process behind the rise and fall of the EDIS proposal is thus in line with all three of the level-related hypotheses. The Commission was such a highly ambitious actor in this episode (B-1), not only did it admit to moderating its proposal (B-2), it was in the end sidelined (B-3) and left in waiting for other actors to come up with something different. A COREPER counsellor also shared this view in an interview:

“It was ambitious to have EDIS finalized by December 2018, now we see it will not be finalized and we will have the progress report again. The Commission is trying their best, of course, but their ambitions are counter played by other players.

They don't have the wheel in their hands, they are not the ones who can make the final decisions and make things happen. **Everybody is waiting for the German-French deal and something to happen, but they also have differences among each other. Ambitions of Macron and political situation within Germany have much more influence on the future of EMU than the Commission.**" (MS_8, my emphasis)

As for the aim of the Commission in the EDIS, the interviewees and additional policy documents analysed confirm that the Commission indeed sought to empower a de novo body and pursue a "political" policy reform. The Commission called for a strong and independent central authority to be created from the SRB to be in charge of all BU matters:

"A strong and independent authority at Banking-Union level would be required to administer EDIS, decide on the risk-adjusted contributions from the banks, monitor contribution inflows and manage pay-out cases. This role could be played by the Single Resolution Board (Board), with an appropriately modified governance structure for its new DGS tasks in order to manage any potential conflict of interest between the resolution and deposit guarantee functions. The Board could administer the SRF and the Deposit Insurance Fund together, thereby creating synergies when combining responsibilities for resolution and deposit insurance." (p. 3)

The highly political nature of this proposal was clear for the Commission from the start. The EDIS proposal built on previous policy discussions that originated from Commission's proposals during the time that the Single Rulebook was adopted in 2010. Building on this early optimism, the Commission suggested to amend the DGS directive in July 2010 and called for full harmonization of national schemes and a compulsory mutual borrowing facility in which a depleted fund would have the right to borrow from another DGS (Howarth & Quaglia 2018: 193). However, German hostility towards the proposal had forced the Commission to take it off the agenda in 2012 (House of Lords, 2012). The EDIS proposal of 2015 was also, as mentioned above, quite early on blocked by the Member States that oppose the possibility of transfers within the Union¹³. Again, it was Germany that was especially against the EDIS, as the proposal was perceived

¹³ Furthermore, the Commission also called for developing a common fiscal backstop for the Single Resolution Fund. A backstop is essentially a safety net in cases when the SRF would not have enough

as opposed to the German Ordo-Liberal economic principles (Financial Times, 2017). If it was put in place like the Commission proposed it, the EDIS would put the well-funded German national DGS at risk of having to fund the DGS in other Member States where a banking crisis would happen. Thus, EDIS caused concerns over moral hazard, incentivizing the Member States with underfunded DGSs to rely on possible support of those that are already endowed with more substantial financial amounts. To conclude, the EDIS proposal aimed to add an additional objective to the Banking Union project: making a common effort to ensure that deposits are guaranteed even at the cost of potential transfers, which was a step too far for the northern Member States. On the basis of the evidence presented here, the hypothesis A-3 is confirmed: The Commission's ambition is to act politically by shaping the substance of salient policies.

The Capital Markets Union was also a highly ambitious proposal that followed the Banking Union, albeit it was less politically charged. The Commission used the opportunity to link the CMU with the BU and present it as a package deal. Yet, this might have hurt the Commission's ambitions as later, political battles stalled the progress on BU, which had an effect on the progress made in the CMU (de Boissieu 2018: 7). Several interviewees (MS_12, COM_11, COM_12) confirmed that it was the Commission that took the lead on the CMU Action Plan in 2015, which is also supported by the process tracing above. It was also quick to react to new developments, such as Brexit, and develop the proposal further by adding additional 8 proposals and supporting a larger role for ESMA in 2017.

It was recognized that the proposal could have the possibility of North-South transfers (de Boissieu 2018: 3): "If the Germans no longer want to pay for 'others', this implies that the

financial resources to orderly resolve the banks in difficulties. The Eurogroup and Ecofin ministers agreed that creation of a backstop is necessary already in a meeting in December 2013 (The Council, 2013). The Commission revived the discussion with the proposal in 2017 that would make the backstop part of the European Stability Mechanism. The Member States adopted a common position on the backstop in December 2018. For the reason of this issue linkage, this specific proposal will be further elaborated in the next section on the ESM revamp.

reinvestment of savings within the EU, whether through private networks or public institutions, will prove to be more complicated than initially posited in the CMU's Action Plan". The original Commission's Action plan for creation of the CMU was indeed moderated after an intervention of the Member States (Hypothesis B-2), yet it is hard to say what the final deal will look like. Experts on capital markets, Lanno and Thomadakis (2019: 42) noticed that "on some of the key measures, such as the STS, Prospectus, PEPP and the ESAs review, the view is that rules are too complex and/or that member states had too much of a hand in the final outcome." It is true that the Member States agreed quite early on the idea that CMU is a necessity both for reasons of diversifying the financing sources for EU companies and for reasons of strengthening the European financial hubs. However, it also seems like the Member States are not buying the alleged urgency of the CMU, as the original Commission's idea was to have it implemented by the end of 2018. Unlike the EDIS proposal, in this case, the process seemed politically smooth on the face of it (as it was not present on the media agenda) but still it was both moderated and purposefully slowed down by the Member States. The initial ambition of the Commission was, as expected by Hypothesis B-1, above and beyond an imagined consensus position of the Council.

Finally, regarding institutional change proposed in these reforms, the only institutions that profit in terms of adding new roles to their repertoire, are the *de novo* bodies. As mentioned, the EDIS proposal suggests the Single Resolution Board should manage both the SRF and the Deposit Insurance Fund. In the Capital Markets Union proposal, the Commission proposed to strengthen the role of the European Securities and Markets Authority (ESMA) and give it direct supervisory roles over the CMU. The ESMA will become, according to the proposal, a body similar to the SRB in the Banking Union. Thus, this shows that as the new intergovernmentalism explains, when new powers are being transferred to the EU level, they are given to the *de novo* bodies instead of traditional supranational actors and the Commission is complicit with that. In fact, not only is it complicit, it comes up with the proposals and is ready to swim against the tide if necessary. The

analysis in this chapter showed that the Commission is an active proponent, or the main policy entrepreneur, in support of new roles for the *de novo* bodies (Hypothesis A-1).

4.4.4 Summary of the policy episode

The financial market integration of the EU was analysed here in two parts, first focusing on the EDIS as a way to complete the Banking Union for the eurozone, and the second being the Capital Markets Union as a step towards integration of the EU's fragmented financial markets. Both of the proposals touched upon highly political issues involving the possibility of transfers, and both aimed to empower *de novo* bodies. In both cases, the Commission was highly ambitious in its proposals. In the case of EDIS, it had cost the Commission a lot, as it first moderated its proposals, but was then side-lined anyway. In the case of the CMU, the Commission managed to drive the debate with a highly ambitious proposal of six action plans. The Member States manage to get the Commission to moderate it after the negotiations with the European Parliament. The proposal remains on a good path to adoption, although a few authors see the new version of the CMU after the intervention of the Member States as a step back from a proposal that would have otherwise been more efficient (Lanno and Thomadakis, 2019: 42-3). The Commission also actively sought new roles for the *de novo* bodies, while not gaining new coordinative nor traditional (Community method) roles in both of the cases investigated in this policy episode.

4.5 Policy episode 3: The revamp of the European Stability Mechanism and the euro area governance

4.5.1 Introduction

The European Stability Mechanism (ESM) is a *de novo* institution, a fund that acts as a lender of last resort for the eurozone Member States. It was established through an intergovernmental treaty, with a defined mandate and clearly intergovernmental decision-making procedures. As such, it is

a classic *de novo* body in the understanding of the new intergovernmentalism. This sub-chapter will assess the kinds of reforms that the Commission advocated for since 2014 when it comes to the development of this potentially quite controversial institution.

Moreover, it is impossible to understand the Commission's proposal for ESM revamp without considering the clear link that the Commission was making between the ESM proposals and its other proposals for reforming eurozone governance at large. Namely, not only is the differentiated integration making the EMU affairs complicated, the Euro area itself with various treaties and institutions in place outside of the EU law was becoming overly complex as well, especially since the Euro crisis. In 2017, the Commission proposed a re-structuring of Euro area governance that would make it more straightforward, and as part of that, it proposed turning the ESM into a European Monetary Fund (EMF). For this reason, the two issue areas, one generally institutional and the other regarding a particular *de novo* body within it are analysed together in this sub-chapter.

In the beginning, a historical overview of the ESM is presented here to provide some context for the Commission's more recent proposals which will be in the focus of analysis. The ESM was preceded by the European Financial Stability Facility (EFSF), also a bailout fund established in May 2010 with a base in Luxembourg and initial capital of EUR 440 billion in Member State guarantees. The EFSF was created in response to the Greek debt crisis that began in 2008 and by 2010 "had the potential to spread rapidly to the rest of Europe and cause the demise of the euro" (Gocaj and Meunier, 2013: 241). In February 2010, Greece was in debt of 119 USD billion only to the French and German banks, thus a default would have caused significant impact on the financial system across the EU (see Fuhrmans and Moffett, 2010).

Given the urgency and potential harm of vital national interests, it comes as no surprise that the process of negotiating possible Greek bail-out was heavily intergovernmental (Ludlow, 2010). After a short period of painstaking negotiations, Euro area Member States' first responses were in the form of bilateral loans, supported partially by the IMF. However, the first Greek rescue

package of 2nd of May that consisted of EUR 80 billion provided by the eurozone Member States, and EUR 30 billion provided by the IMF, did not nearly do enough to calm the markets and ensure trust in the Greek economy. Instead, the crisis was becoming viral and threatening to spread well beyond Greece. According to Gocaj and Meunier (2013: 242-3), the Member States had five possible options for addressing the issue of Greek and future debt crises in the eurozone:

- 1) Continuing with bilateral loans. This option was initially proposed by Germany, but the fact that the amount had to be very large in order to ensure credibility made this proposal less viable.
- 2) Creating a European Monetary Fund (EMF). The EMF was initially proposed by the German Finance Minister Wolfgang Schäuble as a fund providing emergency aid for liquidity of Euro area Member States facing the risk of default. While Merkel endorsed the idea of the proposal, she pointed out that it would require Treaty change because of the no bailout clause of the Maastricht Treaty (Peel, 2010).
- 3) Creating a European Debt Agency (EDA). In March 2010 the Belgian Prime Minister Yves Leterme proposed the EDA that could centrally issue debt denominated in euros at a common interest rate.
- 4) Creating a Commission-backed facility. The Commission's proposal was to establish a stabilization fund with the function of selling bonds backed by Member States' guarantees (the European Investment Stabilization Function, EISF). This proposal was supported by France and the Southern Member States; however, it was heavily opposed by Germany. EU legal experts also warned it may be against EU law (Barber, 2010 according to Gocaj and Meunier 2013: 243).
- 5) Creating an Intergovernmental Special Purpose Vehicle (ISPV). The EFSF that the eurozone Member States ultimately decided to create in response to the debt crisis was an ISPV that could issue bonds backed by guarantees of the Member States. The importance of the European Council in the creation of the EFSF was paramount as on May 7 it called

the Commission to propose it to the Ecofin Council that was preparing for an extraordinary meeting scheduled only two days after the European Council. An important role was played by Germany that actively sought an alternative to the Commission's proposal. Ultimately, the EFSF was established as a "corporation under Luxembourgish law" (Gocaj and Meunier 2013: 245) with Member States as shareholders and the Commission and the ECB as observing institutions. Already at the time of establishment the EFSF was defined as a temporary fund which would be active for three years, thus expiring in June 2013.

However, the EFSF was even shorter lived than the Member State initially thought it would be. Already by Autumn 2010 it became clear that a more permanent institution was needed, with a larger lending capacity (Ibid.: 247). The four main issues in the debates around turning the EFSF into the ESM were (1) the size of the fund, (2) the scope of the fund or instruments and activities that the fund would be allowed to use or perform, (3) terms and conditions such as the interest rates, maturity, and conditions for providing loans, especially conditionality attached to them, (4) decision-making procedures (Smeets et al. 2019: 6). An agreement was reached and formalized in the March 2011 Euro Summit. It was agreed that the ESM would be a permanent mechanism based on an international treaty outside EU law, that it would have a lending capacity of EUR 500 billion, and ability to gain funds in primary markets (European Council, 2011). The ESM was also further enhanced in July 2011 when it was allowed to operate in secondary markets and recapitalize banks (Gocaj and Meunier 2013: 248). It finally came into full operating capacity in September 2012.

The ESM is thus an institution created to assist eurozone Member States facing severe financial problems through the provision of assistance programmes. Each programme consists of one or several credit lines and a set of binding guidelines on how to adjust domestic economic policy, the so-called "conditionalities". The Euro area Member States provided the baseline paid-in capital of the fund, which was in turn used as the basis for ESM debt issuance in international

financial markets. This way the ESM reached a total nominal capital of around EUR 700 billion, which has multiplied several times the initial paid-in capital of around EUR 80 billion. Comparatively, this amount is more than two-times the size of Germany's and about nine-times of Austria's annual budget in 2017. The sheer size of the ESM lending capacity thus serves to send a strong message that the lender of last resort of the eurozone is credible and reliable.

The ESM is managed by a Board of Governors, which is comprised of finance ministers of the eurozone and chaired by the Eurogroup president. It thus matches the structure of the Eurogroup completely. Decisions on the provision of credit lines to eurozone Member States require unanimous agreement of the Board. In practice, ESM lending is authorized and negotiated in the context of the Eurogroup and so far, has been subject to European Council approval in almost all instances.

The ESM's lending toolkit has six different instruments: loans within a macroeconomic adjustment programme, precautionary credit lines, loans for indirect bank recapitalization, direct recapitalization of institutions, as well as primary and secondary market purchases. The ESM's maximum lending capacity is capped at EUR 500 billion. The Commission has no role in ESM internal decision-making as the EU is not a stakeholder in it - it is established through an intergovernmental treaty outside the scope of EU law. Still, the Commission together with the ECB and if relevant the IMF negotiates and monitors the conditions attached to ESM loans.

The creation of the ESM was an interesting case for many EU scholars. The EFSF was created as a temporary and intergovernmental mechanism, which according to several authors had a large impact on the ESM structure itself which remained intergovernmental (Gocaj and Meunier 2013, Verdun 2015). Smeets et al. (2019) describe the decision on creating the ESM as a result of an institutional interplay between the political "control room" (European Council) and the technocratic "machine room" (Eurogroup/EWG/Task Force on Coordinate Action). This excellent usage of process tracing showed how mutually dependant all EU institutions are and how these institutional decisions are made jointly at the EU level – not at the interplay between two

levels as liberal intergovernmentalism would suggest. Similarly, Bojovic et al. (2019) have found little impact of domestic interest groups and Parliaments on the creation of the ESM (see also Csehi and Puetter 2020). The ESM creation was also used to showcase the Commission's decline (da Conceição-Heldt, 2015), as keeping the ESM outside the EU law was strongly opposed by the Commission.

There is a research gap when it comes to the proposals and potential reforms of the ESM post-2014. They are interesting because these would be the hardest case for the Commission's policy entrepreneurship. Simply put, the Member States do not need the Commission to reform the ESM – it is outside its reach. This section thus presents an original contribution that fills a significant research gap. After the historical overview, the following sub-section analyses the level and aim of ambition of the Commission during Juncker's mandate in the case of ESM revamp, and its link to Euro area governance at large.

4.5.2 Short overview of the policy episode

The ESM can certainly be considered a *de novo* body of the European Union. It is far from a traditional supranational institution, given the management structure, internal procedures, and the fact it is outside of the EU law. Moreover, it delivers a function that could have been done, in theory, by the European Commission, as the Barroso's Commission initially proposed. Moreover, the process through which the ESM was established is also relevant for this analysis, as it was a creative way to avoid decision making through the Community method. As such, the process of negotiating and creating the ESM certainly fits the idea present in the Hypothesis A-2, that EU integration can sometimes happen through creative and non-supranational solutions. In this sub-section the focus will be on the proposals for reform that followed during President Juncker's mandate. Furthermore, the revamp of the ESM was linked with Euro area governance proposals by the Commission, so they are also investigated here.

The Commission published three documents with which it tried to drive the ESM reform discussions post-2014. In 2015, the Five Presidents Report (European Commission, 2015d), in May 2017 a Reflection Paper (European Commission, 2017e), and in December 2017, a Roadmap for deepening the EMU (European Commission, 2017f). An analysis of these documents showed that the Commission proposed an empowerment of *de novo* bodies, but not only that. The Commission's proposals also had elements of ever closer union reminiscent to Commission's proposals from before Maastricht. The Commission's proposals also had implicit political elements, yet they were not about policy reform as such – mostly they were about institutional reforms. For this reason, even though some Member States saw a potential for politics of solidarity in some of them, most of the Commission's proposals rather had an institutional nature. They will be used to test the Hypothesis A, by analyzing the ambition to empower *de novo* bodies (A-1), as an alternative ambition to being hard-wired to ever closer union (A-0). Moreover, having in mind that the ESM was created by consciously avoiding community decision-making, Hypothesis A-2 is also relevant for this policy episode. Namely, what was the view of the Juncker Commission on the “outside of EU law” character of the ESM?

Finally, in December 2018, an agreement on ESM reform was reached in the Eurogroup, with very little to no involvement of the Commission (Euro Summit, 2018a). The Commission's proposals on eurozone reforms were mostly put to the side; ultimately a minimalist proposal on the eurozone budget was agreed upon by the Member States. As the process was completed, what can it tell us about the level of ambition of the Commission, its contingency and effect on the intergovernmental institutions? An analysis across the hypotheses related to the level (B-1, B-2, B-3) will reveal how a too high ambition of the Commission can be detrimental to its standing in the debates between the “real” decision makers.

4.5.3 Focus and level of the Commission's ambition in the policy episode

First of all, the Five Presidents Report of 2015 proposed several reforms that regarded the ESM (European Commission, 2015d). One of them was on the ESM's policies, as the document proposed less strict eligibility criteria for the bank recapitalization instrument. More controversial than this were the two institutional reform proposals. The first and most important one is the integration of the ESM into the EU law. This showed that there it at least one thing in the new intergovernmentalism that runs counter to the Commission's ambitions. The limit to the de novo body developments that is identified in this case is that the Commission still prefers these bodies to be within the institutional architecture of the EU. This clearly shows that the Commission in this case preferred traditional decision making instead of new and pragmatic governance solutions (A-2). As one cabinet member from the Commission noted:

“The Commission has the obligation to support community-based proposals and we do not want to give intergovernmental solutions more sway or more influence. We believe that this would strengthen fragmentation inside the EU rather than unity. On the contrary we've come forward with a proposal that is designed to return the ESM under the umbrella of EU institutions.” (COM_8)

This does not imply that the Commission wants de novo bodies to be weaker, or that it wants to take over some of their roles. In some of the later proposals on ESM reforms, especially ones in May and December 2017, the Commission actually proposed further strengthening of the mandate of the ESM (together with reinforcing its belief that it should be within EU law).

The second ESM-related institutional proposal from the 2015 Five Presidents Report aimed to strengthen a de novo body as well, but a different one. This was the proposal to create a common backstop to the Banking Union's Single Resolution Fund through a credit line from the ESM. The backstop essentially would ensure that in case the SRF runs out due to a banking crisis,

the ESM could lend additional funds to the SRF.¹⁴ The proposal not only strengthens the policy instruments available for bank resolution, it also clearly empowers the SRB that is governing the SRF of the Banking Union as it expands the instruments it can use and the potential funds it could access. Moreover, the linkage of the backstop to the ESM makes this issue significant for this policy episode that examines the proposed ESM reforms. The Member States agreed on the backstop in December 2018, so this was one of the Commission's (rare) entrepreneurial successes in ESM reforms post 2014 (Euro Summit, 2018a).

In May 2017, the Commission's Reflection Paper on the Deepening of the Economic and Monetary Union expanded the ESM proposals and linked them to Euro area governance (European Commission, 2017e). As mentioned above, some of these proposals aimed to further empower *de novo* bodies (A-1). However, not only was the Commission against the basis of the ESM outside the EU law, which can be seen as a finding against A-2, some proposals could also indeed be considered close to the traditional ideas of ever closer union (A-0). For example, the Commission proposed to turn the ESM into a European Monetary Fund (EMF), in order to "give the euro area more autonomy from other international institutions, when it comes to financial stability." (p. 28). This change would not only be linguistic or symbolic. In December 2017, the Commission in its "Roadmap for deepening Europe's Economic and Monetary Union" provided more details on the EMF proposals that show why the link to ever closer Union as an ambition is made here (European Commission 2017f). According to the Commission's EMF proposal:

- 1) The EMF should be part of the EU law, accountable to the EU institutions.
- 2) The EMF should provide a common backstop to the SRF

¹⁴ The backstop would also be fiscally neutral – it would not affect the taxpayers – as the banking sector would re-finance any contributions from the SRF in the period after the bail-out. The backstop was proposed in order to ensure the credibility of the Banking Union.

- 3) Faster decision making should be made possible in urgent situations. A reinforced qualified majority voting is proposed for specific decisions on the deployment of the backstop, stability support and disbursements.
- 4) The EMF should be more directly involved in the management of the financial assistance programmes, along with the European Commission.
- 5) The EMF should have the possibility to develop new financial instruments that could supplement or support other EU programs (Ibid.).

On the one hand, the first and the second proposal above are a repetition of previous calls from the Five Presidents Report, which once again showed that the Commission did not support the fully intergovernmental character of decision-making in the ESM. Thus, absolutely no finding that would suggest the Hypothesis A-2 was found in this case. The Commission was not even complicit with this new non-supranational method of integration, but it actively tried to put it back in the tracks of supranational decision making.

The fourth and the fifth proposal aim to strengthen the ESM even further. The fourth one even suggests that a role that the Commission does, should now be shared with the EMF. This proposal shows that the Commission had the ambition to empower this *de novo* body even to a point of sharing the management of policy instruments with this institution (Hypothesis A-1).

On the other hand, the third proposal can be flagged as support for ever closer Union, which would be a finding in line with Hypothesis A-0. The move from unanimous voting to a QMV is a clear example of moving from an intergovernmental to a Community method way of decision making. This is not the only proposal from the Commission's December 2017 paper in which there are elements of the concept of ever closer Union. The future EMF is projected there by the Commission as part of a novel Euro Area Treasury that would not only simplify the existing institutional architecture, but also strengthen the European level of economic decision making substantially. The Treasury would be in charge of existing instruments such as the economic and fiscal surveillance and liquidity assistance to the Member States. The Commission takes a step

further here and proposes that it should also encompass a future Euro area budget that would perform macroeconomic stabilization functions, and the “coordination of issuing a possible European safe asset” (European Commission, 2017f: 28), which was in previous discussions called a Eurobond (see European Parliament, 2011). In the final and perhaps the most supranational element, the Commission also proposed the creation of a new job in the EU, the Finance Minister for the eurozone. This person would be in charge of the Treasury, EMF included, as well as coordinate the work of the Eurogroup and ECOFIN. Juncker’s State of the Union of 2017 gave more details on the proposed Euro governance reforms (European Commission, 2017g). Juncker also spoke there about who should be the Finance Minister of the eurozone, a crucial information missing from the December paper. According to Juncker, a person within the Commission should be the Finance Minister and this is another clearly supranational element of this package proposal:

“We need a European Minister of Economy and Finance: a European Minister that promotes and supports structural reforms in our Member States. He or she can build on the work the Commission has been doing since 2015 with our Structural Reform Support Service. The new Minister should coordinate all EU financial instruments that can be deployed if a Member State is in a recession or hit by a fundamental crisis. I am not calling for a new position just for the sake of it. I am calling for efficiency. The **Commissioner for economic and financial affairs – ideally also a Vice-President – should assume the role of Economy and Finance Minister**. He or she should also preside the Eurogroup.” (Ibid.: 7; my emphasis)

The Commission ended the 2017 reflection paper with the words “It is time to put pragmatism before dogma, to put bridge-building before individual mistrust.” (European Commission 2017e: 29). Pragmatism in this case would be creating a more effective governance architecture for the eurozone, while dogma could be the fear of further supranationalization and risk sharing that has led to such a complex system of governance in the first place. As an analysis of the European Parliament noted: “If wishes of the Commission were to come true, such as that of a Commissioner also being elected at the helm of the Eurogroup, then the its role within the EMF might be substantial, to the expense of the national ministers of economy and finance and possibly also of national parliaments.” (European Parliament 2020: 1).

This case clearly combined strengthening both the de novo and the traditional bodies of the EU in a set of new and quite grand institutional proposals. The policy episode of the ESM and the Euro area governance reform proposals that were linked to it, can thus confirm the Commission's ambition both for de novo body empowerment (Hypothesis A-1), and the Hypothesis A-0, its ambition to pursue the idea of ever closer Union. In both of these, the process will now be traced in more detail order in to find how high the Commission's ambition was (Hypothesis B-1 suggested it would be high), how it changed over time (Hypothesis B-2 suggested it would be moderated), and if it potentially high level had a negative effect on its future standing in the debates (Hypothesis B-3 suggested that, if too high, it would lead to sidelining of the Commission by the Member States).

As elaborated above, the Commission put forward proposals of the ESM and the Euro area governance that had the aim of strengthening both the de novo bodies and the Community method. This case suggests that the Commission was not strategic in its EMF and euro area governance proposals, instead it put forward a very ambitious proposal, as Hypothesis B-1 suggested. According to a senior Commission official, the EMF proposal was not even tested with the Member States before it was announced:

“On the EMF proposal, it was announced that the Commission wanted to do this in the State of the Union speech. This was done to give the idea some kind of impetus and, on the back of that, we were as a technical service instructed to prepare the proposal and act quickly. Shortly after the State of the Union, we published the proposal on the 6th of September, so there was very little time to test the waters there. There was no EWG to examine it.” (COM_9)

When one looks at the reaction of Member States to the proposal, this becomes even more clear. A Head of Unit in the Commission explained in an interview how and why certain Member States were strongly opposed to the Commission's proposals on the ESM:

“Others like Germany and the Netherlands are fiercely protective of ESM as independent and that takes account the needs of the creditor countries as biggest contributors, that their money is lent on good conditions, so they want a strong, objective ESM, not necessarily the politics of solidarity coming to play. So, they don't want the ESM in the Union framework. Another standoff there, and that

side is winning that argument - the ESM is staying outside the Union framework. We have put on the table the proposal, but it is stillborn. The Parliament has picked up the proposal because they also want transparency and accountability, but the Member States didn't organize a single meeting on the proposal, which is very rare." (COM_9)

Sadly, for the Commission, the Member States did not base their discussions on the ESM around the Commission's proposal. Moreover, the fact that was revealed in the interview citation above - that the Member States didn't organize a single meeting on the Commission's proposal - goes to show that the Commission did not act as a strategic policy entrepreneur that only goes ahead with proposals when a necessary majority is secured. Instead, this proposal can be identified as highly ambitious. Regardless of the low chances for success, some interviewees saw the ESM as one of the central pieces of the Commission's EMU reform proposals. A Head of Unit emphasized this clearly: "There is one key reform which is the anchor of the whole EMU package - the ESM. Many elements of what we are discussing, go through the ESM intergovernmental agreement. Like the backstop to the banking union. You need to change the ESM treaty for this. And there we have no say. It's the Member States who are running the show." (COM_12)

The Commission's ability to set the agenda of EMU reform is thus challenged the most in the case of the ESM. However, this has not led the Commission to step out of the debate, instead the Juncker Commission did the opposite, they came forward with some of the most ambitious proposals, delivering it as a package in December 2017 (European Commission, 2017f) that focused on the Euro area as a whole. Moreover, this was perhaps the first time that the Juncker Commission went headfirst and proposed ever closer Union in EMU reforms. Even from early on in this case, but most clearly in the December 2017 reflection paper (Ibid.), the validity of Hypothesis B-1 on the level of the Commission's ambition stands out: The initial level of the Commission's ambition is high and not necessarily contingent on the positions of the intergovernmental bodies.

At the same time, this high ambition certainly led to disappointment, as one interviewee elaborated:

“There are big ideas and big proposals from the Commission, last December package with the European Finance Minister, ESM turning to EMF, and other such ideas, **but nobody deals with them.** [...] The pace is really very slow, and **the ambition is much lower than the earlier ambition of the Juncker Commission was.** They say every time; the next European Council will have a real breakthrough. Then the European Council comes, and the ambition is going lower and lower and then nothing happens. Now we are again saying we are going to very deeply reform, and then December comes, and nothing will really happen. The roadmap of the Commission is not taken. **The ideas they proposed is put into drawers, nobody deals with them.**” (COM_12, my emphasis).

The interviews thus suggest how with time the Commission’s ambition became lower and lower. The following interview quotes illustrate this shift of ambition:

“In the ESM proposal, you see that many people in the Commission aspired to a more ambitious proposal. There were several rounds, several meetings of the committees on this. It was clear that a very ambitious proposal would never have a chance to see the light of the day. What came out in the end was not what the Commission would have ideally wanted. It also reflected a realization of the discussion of the Member States in the committees and bilaterally.” (COM_12)

“There are some minor activities which are more about the reform of the ESM toolkit. It is not that ambitious as the Commission wanted to reshape and transfer the ESM into the EMF and shrink into the EU legislation. It is out of the question now.” (MS_8)

The Commission’s ambition did not just get moderated (B-2), but the Commission also soon lost its space at the discussion table. Some Member States were “not really trusting the Commission” (MS_9), after it tried to ambitiously push for a comprehensive and far-reaching ESM reform. After December 2017, this was most clear. Already in June 2018, the Euro summit gave the mandate to the Eurogroup to “work further on all the elements of the Economic and Monetary Union (EMU) reform” (Euro Summit, 2018b). The input from the Commission to these meetings was minimal – what mattered the most on both the ESM and the Euro area governance reforms were the German and French proposals (MS_8), often presented at the highest level in the European Council. The Meseberg declaration of June 2018 was especially important, when France and Germany published a common position under which, among other things, the ESM would remain intergovernmental (Die Bundesregierung, 2018). The New Hanseatic League led by the

Netherlands published a plan later in the same year opposing the Franco-German initiative (EURACTIV, 2018). The Commission stayed mostly silent. An interviewee from a Permanent Representation elaborates on this dynamic in which the agenda setting role of the Commission is snatched by other actors:

“In real terms, a lot of proposals or ideas of the Commission in the latest years, delivered in the 2017 Juncker’s speech or the Five Presidents Report, were just put in the drawer, nobody dealt with them, and other directions were taken. (...) Moreover, sometimes other players came up with totally different ideas, like the Franco-German initiative on the Eurozone budget. The picture is much more complicated, and I think that the Commission is getting sometimes in the defensive and reactive position, trying to face their own powers, but sometimes they are pushed back as Merkel and Macron bring something to the table of the European Council – and what can they do? They cannot say ‘that’s not the way we are doing it guys, because it’s the Commission that has the monopoly to put forward the proposals and you have to discuss what we are presenting’.” (MS_8)

The final agreement on ESM and Euro area governance was achieved by the Eurogroup and published in December 2018 (Euro Summit, 2018). It is a minimal consensus solution between the Member States that completely ignored the Commission’s push for ever closer Union. The proposal for the macroeconomic stabilization function was not even discussed at this occasion, even though it was seen by several Member States as a moderate proposal:

“Commission proposal on stabilization function reflects political realities because it is not super ambitious, but it is something. They have listened to the Member States to see where the political will is.” (MS_12)

The Member States have also agreed on creating a small Euro area budget within the EU budget, but it would not perform the macroeconomic stabilization function, meaning that the Commission would not be able to borrow money on behalf of the Member States (Bassot, 2019: 17). It would also not be controlled by a European Minister of Finance within the Commission, but by the Eurogroup. A European Parliament’s analysis confirmed that the Franco-German initiative took over the control of the agenda from the Commission and that the plan was finally adopted in the Eurogroup:

“On 19 November 2018 a more detailed French/German plan was presented to the Eurogroup, with a euro area budget that is embedded in the European budget.

On 3 December 2018 the Eurogroup concluded that a euro area budget supporting convergence and competitiveness should be established within the EU budget, but it would not include a stabilisation function. These conclusions were endorsed by the Eurosummit on 14 December 2018, thus casting a serious doubt on the future of the Commission's EISF proposal. In its MFF negotiation box, the Council did not include any amount for an EISF, nor is the fund mentioned.” (European Parliament, 2018: 2)

With regards to the other proposals, especially ones with supranational aspects, the Commission's proposals were largely ignored as the interviews above confirm. Instead, the Member States led the process and completely avoided any discussion about further supranationalism, or as it is called in this thesis following the hypotheses of the new intergovernmentalism - an ever closer union. Instead, the only Commission's proposal that was picked up and approved by the Eurogroup was the backstop to the SRF. This proposal drafted by the Commission empowers the SRB substantially, as was elaborated previously.

4.5.4 Summary of the policy episode

In this policy episode, the Commission put forward ambitious proposals in a very unfavorable situation given the fact that the Member States have full control over the ESM treaty reform. The proposals of May and December 2017, the 2017 State of the Union Address, and interviews conducted for this thesis serve as evidence of Commission's high level of ambition (B-1) both for making eurozone governance more supranational (A-0) and for empowering *de novo* bodies (A-1). Qualified Majority Voting and the insistence on EU law application with the ESM, combined with the proposal that a Commissioner should be a Finance Minister for the eurozone, as well as the proposal for the stabilization function, this policy episode showed that the Commission was indeed advocating for something more than new intergovernmentalism, but was then subsequently ignored by the Member States. It was clear that the Member States in this situation were “not willing to provide the Commission with new prerogatives” (Bassot, 2019: 16). Moreover, the important aim of the Commission to bring the ESM back into EU law, which Member States

dismissed, showed that the Commission was not complicit with this pragmatic (from Member States' point of view) and coordinative aspect of the ESM.

This policy episode ultimately does not prove that the Commission is still hard-wired to ever closer union (A-0), despite the fact that some of its proposals indeed supported more supranational solutions. Instead, it shows that various ambitions can exist in parallel in the Commission, and that even though it can be found to be pushing for some Community method elements, it can also in parallel favor other types of institutional reforms. The concluding Chapter 5 will look into potential reasons of why the ever closer union ambition was present only in this particular case, among all of those investigated.

4.6 Conclusion

The findings of Chapter 4 are in line with the new intergovernmentalism's expectations of the Commission's ambition. Moreover, the analysis also adds a lot to the NI's understanding of the Commission as an institution that is not anymore hard-wired to seek ever closer union (A-0).

First of all, the alternative aims of the Commission are clearly present in the cases investigated. Strengthening *de novo* bodies is in focus of many institutional proposals. It also tried to lead politically by reforming the SGP in line with its President's political understanding. No cases were found to be in support of the Hypothesis A-2, that the Commission presents novel and non-supranational governance solutions. One such case could have been the European Semester that gradually entered new domains during Juncker's mandate, especially in areas of social policy. However, this change in the European Semester was not found significant enough to be investigated in this thesis, and the Commission's support for the creation of the European Semester in 2010 was already established by Copeland and James (2014). Such new solutions are more likely to emerge from crises when new solutions are desperately needed for developing or coordinating common policies, but without supranationalism. In these situations, the Commission can be expected to come up with these solutions even though they are not "ever closer union"

proposals. In this case, the Commission's strong advocacy for de novo bodies such as the Banking Union's Single Resolution Board, and the European Stability Mechanism, as well as its political orientation against austerity, showed that the Commission does not lack ambition in the NI. This is not in opposition to the theory but reinforces the claim that the Commission has other aims in mind, not only ever closer union. Because the Commission wants to remain relevant and useful for the main stakeholders of the EMU – the Member States – its ambition is mostly aimed at these other outcomes.

Second, one finding contrary to a potential claim that the Commission has completely given up on pursuing ever closer union, was that the Commission did indeed propose several ideas that are in line with the concept of ever closer union as it was defined in the Section 2. These were present in the ESM and the Euro area governance – perhaps the most intergovernmental parts of the EMU. Especially supranational were the proposals from May and December 2017, as well as President Juncker's 2017 State of the Union. Moreover, the Commission was strongly against the ESM's basis outside of EU law but couldn't do anything about it. Why Hypothesis A-2 was confirmed in the JHA empirical chapter, but not in the EMU will be a topic for the last chapter.

Still, this is not enough to suggest that the Juncker Commission in its EMU related policy entrepreneurship was hard wired to the idea of ever closer union. Instead, it can rather be seen as an exception that proved the rule, especially as the Commission's ambition shifted to other aims such as the backstop rather quickly.

Third, the European Council (and the Euro summit) remained an incredibly important institution during Juncker's mandate, despite the fact that the EMU entered a post-crisis, post-(grand) reform phase. In many situations in the policy episodes investigated, the Commission cited calls from the European Council when developing proposals. However, while these serve as impetuses for the Commission, they were certainly not detailed enough, and they left the Commission a lot of room to develop and show its own ambitions. The Commission's ambition was always moderated, because the Commission's initial ambition was almost universally ahead of

the Member States discussions, even on cases of mandates of de novo bodies, hypothesized sometimes as the Commission's competition for EU-level prerogatives. The idea that the Commission's role in new intergovernmentalism is to wait for consensus is pretty far from truth. However, its (over) ambition can also hurt its own chances for influence, especially if it crosses the line into traditional supranational entrepreneurship like it did with the ESM and the Euro area governance reforms. The future Commission Presidents might learn from the fiasco that happened with these proposals and be even more weary of attempting to pave the way for an ever closer, supranational Economic and Monetary Union.

Table 5 Hypotheses confirmed in the EMU case study

Policy Episode	Hypotheses confirmed
SGP Flexibility	<p>FOCUS:</p> <p>Hypothesis A-3: The Commission's ambition is to act politically by shaping the substance of salient policies.</p> <p>LEVEL:</p> <p>Hypothesis B-1: The initial level of the Commission's ambition is not necessarily contingent on the positions of the intergovernmental bodies.</p> <p>Hypothesis B-2: The Commission's initial level of ambition is likely to be moderated by the Member States.</p>
Financial Integration (Completing the Banking Union and Capital Markets Union)	<p>FOCUS:</p> <p>Hypothesis A-1: The Commission's ambition is institutional reform through creation and empowerment of de novo bodies.</p> <p>Hypothesis A-3: The Commission's ambition is to act politically by shaping the substance of salient policies.</p> <p>LEVEL:</p>

	<p>Hypothesis B-1: The initial level of the Commission's ambition is not necessarily contingent on the positions of the intergovernmental bodies.</p> <p>Hypothesis B-2: The Commission's initial level of ambition is likely to be moderated by the Member States.</p>
ESM Revamp and Euro Area Governance Reform	<p>FOCUS:</p> <p>Hypothesis A-0: The Commission's ambition is institutional reform in line with the concept of ever closer union (Tested positive against Hypothesis A-2).</p> <p>Hypothesis A-1: The Commission's ambition is institutional reform through creation and empowerment of de novo bodies.</p> <p>LEVEL:</p> <p>Hypothesis B-1: The initial level of the Commission's ambition is not necessarily contingent on the positions of the intergovernmental bodies.</p> <p>Hypothesis B-2: The Commission's initial level of ambition is likely to be moderated by the Member States.</p> <p>Hypothesis B-3: The Commission's high level of ambition can lead to its exclusion from discussions or loss of credibility with the Member States.</p>

5 CONCLUSION: MAIN FINDINGS AND IMPLICATIONS

5.1 Overview

The two empirical chapters focused on the Commission's ambition in specific policy episodes of the JHA and EMU reforms that were proposed or adopted during President Juncker's mandate. The aim was to examine both the focus and the level of the Commission's ambition in these new areas of EU activity, the integration (without supranationalization) of which was explained by the theory of new intergovernmentalism. The point of examining the focus of the ambition was to look into the second hypothesis (out of six) of the new intergovernmentalism, that claims that the Commission is not hard-wired to ever closer union. This hypothesis is directly tested in the thesis as its Hypothesis A, opposed to a Hypothesis A-0 that claimed how the Commission is (still) hard wired to this concept, which was operationalized as official or unofficial proposals to expand Community method integration into new areas of EU activity. Three alternative ambitions were hypothesized in the theory section, as possible ambitions that the Commission may *focus* on: an ambition to empower de novo bodies (A-1), to be a political actor (A-2), and to develop and lead with new governance solutions (A-3). This thesis does not only build on the NI on the issue of the Commission ambition's focus, but also on the level of the Commission's ambition, something that has not yet been in the focus on the scholars of the NI. The hypotheses that relate to the level of the Commission's ambition in the NI suggested that it may start with highly ambitious proposals (B-1), moderate them after consulting the Member States or after following their discussions (B-2), and finally that its highly ambitious proposals may lead to deadlock or its own sidelining (B-3). This is an original contribution that tackles the question of the level of ambition of a supranational entrepreneur when it proposes something that does not lead to its own empowerment in the traditional neo-functionalist sense. An assumption could be made that such proposals come from other actors that want to diffuse the power in order to avoid centralization or federalization, yet it was hypothesized here that the Commission itself would enthusiastically offer such solutions. This was assessed through process tracing, by looking into how the proposal developed and whether it was contingent on a consensus solution of the Member States, or the Commission went ahead and

tried to drive the agenda forward. Finally, its enthusiasm for solutions described in A-1, A-2, A-3, which all may stand opposed to the solution of A-0 that is ever closer union, may even turn into over-enthusiasm (or lack of strategy), as it may lead to negative outcomes of Member States not taking the Commission's proposals seriously anymore. Still, this end-result even further proves the point that the Commission did not wait for consensus solution in new areas of activity to emerge from, for example, the European Council, but it had its own agenda.

The findings on all of the questions above were described in the respective empirical chapters above. The analysis has indeed shown a Commission that is not hard wired to ever closer union (Hypothesis A), and a Commission that is a highly ambitious actor when proposing different types of policy or governance solutions (Hypothesis B). In this final chapter of the thesis that concludes the analysis, a short comparative overview across the hypotheses and sub-hypotheses is presented. This exercise holds both empirical and theoretical relevance. It is important to compare across the cases in order to find out what were the reasons for the Commission's choices of pursuing different ambitions, as well as to understand the difference in outcomes across the policy episodes. Another empirical significance is in the potential lessons learned for the Commission from these episodes of entrepreneurship. The theoretical significance is in the new research questions that are opened by these explorative insights. For this final comparative overview, interview statements that uncovered details regarding the reasons behind the Commission's ambitions in particular policy episodes or reasons for certain outcomes are used, along with other public statements of EU officials.

5.2 Hypothesis A: A comparative overview of findings

5.2.1 Hypothesis A: The Commission was not hard-wired to ever closer union

As mentioned above, both case studies (JHA and EMU) have shown that the Commission has had a diversity of ambitions (Hypothesis A) in the areas of new intergovernmentalism, rather than a hard-wire to ever closer union (Hypothesis A-0). In the area of JHA, this was the case regardless of the refugee crisis that, in theory (of neo-functionalism), would gradually lead to more supranationalism. Instead, it did not lead the Commission even to proposing such governance reforms. One interviewee from the European Parliament working closely on JHA affairs, explained how the Commission tested the waters on a more supranational solution for the reform of the CEAS (JHA Policy Episode 3):

“Before proposing the Dublin IV reform, the Commission sent a Communication to the Parliament and the Council with two options for potential reforms, one being more and the other less integrative. This was due to the fact that they were in a rush to put something on the table, as there was no time for Impact Assessments. In the end they decided to put forward the less integrative one... Most of the time however, these things are done through informal consultations.” (EP_1)

However, the Commission instead focused on a political solution that was within the existing structure in the case of CEAS, while in other episodes it proposed empowering de novo bodies (EBCG and EAM proposals) and pragmatic governance solutions (the Hotspots). Overall, the Commission was not empowered through these reforms in the traditional sense that an ever closer Union model would entail. One interviewee from the Council, working closely with both the Member State and the Commission officials, confirmed that this was not the ambition to begin with:

“I wouldn’t say that the Commission’s goal is to empower itself in asylum and migration. It is not an easy area.” (GSC_1)

The situation was very similar in the EMU policy episodes investigated. The interviews with the Commission officials focusing on the EMU and the Member State

representatives suggest that the reason why the Commission has moved away from ever closer union is a pragmatic response to the context that was described as post-functionalism (Hooghe and Marks 1999) or new intergovernmentalism (Bickerton et al. 2015). There is no will for such solutions that would ultimately require a treaty change, yet the Commission tries to remain relevant, a leader even, within these constraints. Several interviewees within the Commission explicitly mentioned this lack of political will for more supranationalism:

“Our proposals need to be within constraints of the existing treaties. That automatically rules out a number of the proposals and the extremes.” (COM_8)

“I don’t think we strive for a federal model, that would be a jump that would need a political support which is not there.” (COM_11)

Instead, the Commission has found an ambition for integration that is not an ambition for ever closer Union, as two senior officials from the Commission pointed out:

“Ambition for integration is not the same as ambition for ever closer union. It’s not necessarily “Union” and it is not necessarily for more power.” (COM_12)

“It is not a question of being guided by this overarching objective of ever closer union but keeping the show on the road.” (COM_9)

How this type of supranational leadership translates in practice was described above and it will be comparatively assessed in the remaining sub-chapters below, together with the outliers, those rare cases (within the EMU) in which the Juncker Commission did propose something reminiscent of ever closer Union, instead of the pragmatic (and non-supranational) governance solutions that were previously in place.

5.2.2 Hypothesis A-1: The Commission proposed and actively supported the empowerment of de novo bodies

Instead of trying to pursue ever closer union, in many instances the Commission tried to convince the Member States to delegate to de novo bodies instead. This was seen as a creative solution, to keep the integration process going one way or the other:

“We (the Commission) don’t need more power at this stage, but we are trying to find workable solutions. One example is the EAO, how you can find creative solutions.” (COM_2)

The Commission tried to, and in some cases successfully managed to, empower the de novo bodies across both policy areas – namely the EAO, the EBCG, the SRB, and the ESM. Looking into the interviews conducted for this thesis, there were three types of reasons voiced by the Commission officials regarding the Commission’s ambition to expand the roles of these actors. The first is that the Commission understands that it cannot do everything and that some of these bodies have specialized expertise or would be given tasks that would require an extra level of independence.

“You cannot have all these elements inside the Commission, I think that does not make sense.” (COM_8)

“There needs to be a reallocation. Not everything has to come to the centre. In fact, many things are no longer relevant to be decided in the centre.” (COM_12)

The second reason is that it is easier to buy in the Member States with such a proposal, rather than a proposal that would further empower the Commission. The reasoning behind this is clear, as the internal decision making of de novo bodies make it easier for the Member States to keep a check on them after they are formed:

“As they participate in the management board, Member States are more willing to give powers to the agencies that the Commission.” (GSC_1)

The third reason is that de novo bodies are still part of an overarching network of EU bodies. This implies on the one hand, the Commission can expect to have an ally in them in some future policy or institutional struggles, and on the other hand that it can exert at least some level of control over them, as the central EU bureaucratic powerhouse.

However, some limits to the growth or direction of development of these bodies were also clearly identified, especially in the case of the ESM. Namely, while the Commission during President Juncker supported the de novo body empowerment across the board, it actively sought

to have this happen within the EU law, or in the cases when it was already done outside of it (the ESM), it tried hard to bring it under it. As one senior Commission official pointed out:

“Whenever it is within the community method, the Commission is more than happy to have them. The risk is when you start to have a lot of the intergovernmental ones, like the ESM. The Commission had proposed to bring it into the community method, which we think would be best for all parties, you can have the QMV, the European Parliament can have a say...” (COM_11)

Moreover, the Commission would like to preserve a clear division of power between the Commission and the *de novo* bodies. One interviewee from the Commission said how “then where the Commission might not be so supportive of roles given to them (*de novo* bodies) is when there’s a danger of overlapping.” (my addition). A senior Commission official explained how for the Commission these bodies are not a threat as long as their roles are clearly defined:

“It is not a comfortable position for the Commission to have all these entities growing around it and at some stage creating their own power base at our expense, but they all have a clear role. The interaction of these entities which are all independent never adds to a coherent policy and that is going to be a challenge. The Commission’s role there needs to be defined, and the next Commission college will have a task there. The institutional landscape has changed a lot, it is so complex.” (COM_9)

While no such hard case of overlap and struggle between the Commission and a *de novo* body was identified in the analysis of policy episodes, one interviewee mentioned that such a situation existed in the past between the Commission and the European Investment Bank (EIB):

“In the discussions between the European Investment Bank and the Commission we see clear tensions where the Commission does not want to let the EIB do everything like they would like to do. For the new MFF, the Commission wants to expand implementing partners for different financial instruments to other partners than the EIB and they want some functions that were previously in the EIB in the Commission instead. There have also been discussions for a couple of years about who manages guarantee funds for such instruments, the Commission wants to have those functions, EIB says no, as they see themselves as the EU bank.” (MS_12)

This case warrants a separate analysis as a potential outlier to the Commission’s support for the expansion of *de novo* bodies.

The aim of this thesis was “only” to investigate the ambition of the Commission, not to define the pathways for impact of the Commission, or to claim the situations in which it would be successful. However, interestingly, interviews and document analysis led to one commonality in all of the cases of the Commission’s argumentations for de novo body delegation which have led to success, either in terms of agreement in the Council on a common position, or actual reform. This is the Commission’s emphasis on the technocratic character of this delegation in the official proposals and other communication with the stakeholders. Despite President Juncker’s insistence on the political nature of the Commission, the ingredient that led to success in the cases of the EBCG or the SRB was the de-politicizing language and the insistence on efficiency gains that would come out of this delegation. This is not to imply that an apolitical approach is enough *per se* to persuade the Member States. The reviews in empirical chapters showed how it can take decades to convince the Member States to delegate more powers to agencies, despite the technical character of the proposals.

These findings are not only relevant for further developing the theory of new intergovernmentalism, but also for the literature on agencies and the role of the Commission in their empowerment. Findings suggest that the Commission is a central body advocating for the empowerment of not only agencies as suggested previously by, but other de novo bodies as well, under some potential limitations elaborated above.

5.2.2 Hypothesis A-2: The Commission’s pragmatic approach to different governance solutions was there but had its limits

When traditional supranationalization is not an option, but common policies need to be (urgently) made by the Member States, devising some new and pragmatic way of decision making is what remains as the way to attempt to solve collective policy problems. The Commission’s traditional powers are not enlarged then, but rather it develops new sorts of roles, usually in policy management rather than agenda setting (Laffan 1997). The Hypothesis A-2 stated that the Commission will actively seek to propose and convince the Member States into such solutions.

Such were the Hotspots, the proposal that the Commission designed, and a way to enhance the collaboration between the frontline Member State, the relevant agencies, and the Commission at the spots of mass refugee arrivals. Indeed, the Commission was found to be proud of coming up with such a concept, under extra time pressure. One interviewee within the Commission (senior official) mentioned that the Commission's ambition was "not to get more power, but to get things done" (COM_03). This was a prime example of such thinking, whereby the Commission tries to be seen as a relevant and useful actor that can come up with pragmatic solutions, and not as a self-centered and laggard bureaucracy. On the proposal for the hotspots, one Commission official described how was the Commission "took the lead on promoting new ideas". Finally, a third person within the Commission said how "The Commission just wants to go forward and tries to find solutions. The problem comes from some Member States who clearly don't want to move forward."

However, the Commission's pragmatism and the desire to be seen as useful to the Member States showed its limits in the case of the eurozone governance reforms. The Commission clearly wanted the Member States to make a move towards supranationalism, this was especially clear in the 2017 State of the Union, and its proposals from May and December 2017. It is hard to tell what prompted the Commission to make such ambitious proposals at that time. The fact that Emanuel Macron became President of France in May 2017 may have given the Commission some courage, given Macron's initial high level of optimism for pushing Euro integration forward.

Looking broadly, the Commission's eurozone proposals from 2017 are an outlier. In most cases, the Commission avoided putting forward proposals that sound like ever closer union. The fact that the eurozone governance proposals were the ones from which the Commission suffered the most, by being side-lined from further debates that focused on the Franco-German proposals, might make the next Commission even more careful in the future about ambitions that involve further supranationalization.

5.2.3 Hypothesis A-3: The Commission's political ambitions were high but also easily ignored

President Juncker's announcement that he would lead a political Commission, and his continued insistence on this approach during his Presidency, attracted attention from the media and academics alike. The concept of a political ambition was in this thesis connected with strictly policy, not institutional, reform. Specifically, several policy episodes served to test the Commission's ambition and ability to drive high level policy reforms in the new areas of activity. It was also hypothesized in this thesis how this sort of ambition can stand opposed to one of ever closer union (A-0). Several senior officials from the Commission confirmed the logic used in this thesis:

“Being political gets more difficult or dangerous for the institutional reputation of the Commission and the EU in the areas where the Commission should have a more neutral role. If you are political, you are not neutral anymore. You decide with a political discretion what you should or should not do. This is a difficult ground to enter, but they have done it.” (COM_1)

“The move towards political Commission was to some extent understandable but overall, it was the wrong thing to do, at least in this way. Priority setting – yes – but it should have been limited to this. Discretionary infringement approach in the last 2-3 years will probably be stopped after Juncker. We are damaging our own reputation.” (COM_2)

The Commission's ambition to act politically on policy issues was confirmed in three episodes – the reform of CEAS in the JHA, the SGP flexibility, and the completion of the Banking and the Capital markets Union. However, the Commission was fully successful only in the case of the SGP flexibility, due to its early involvement of all the parties involved and the collaborative approach to defining the new rules. Moreover, institutional reasons also allowed the Commission to propose a more political approach to SGP implementation, as it does not have the power to make final decisions in the SGP anyway. Things were much different in the case of solidarity relocation mechanisms in the CEAS. The Commission's attempt to be a strong political actor and try to fight the political turf battles with Visegrad countries has not led to any success on its part. Instead, it has even led the European Council then President Donald Tusk into an open

confrontation with the Commission, which is very opposite to a collaborative approach between the EU institutions that existed in the past or in other policy areas. The Commission in the end had to give in to Visegrad countries and it involved the flexible solidarity mechanism in its proposal. Its own ambition was less important as finding consensus between the Member States became the priority.

This failure to act politically might have sent the Commission on another learning curve, at least with regards to migration issues. In June 2020, Vice-President of Ursula von der Leyen's Commission, Mr. Margaritis Schinas gave an interview to POLITICO in which he touched upon the lesson's learned from this episode (POLITICO 2020). He also announced a different approach of the new Commission that would see the relocation mechanisms as a third and final level of a common migration policy, which comes after the external dimension of migration (first level) and protecting the borders (second level). "There will be something in it for everyone", Schinas said, before calling the new relocation proposal one of "permanent effective solidarity". The Vice-President, and the Commission, has not yet (as of August 2020) published the announced "New Pact on Migration and Asylum", and very few details are known about it. It remains to be seen what the Commission's ambition to reform this policy area will look like and what kind of discussions will follow, but it still looks like the Commission is willing to take the lead and come forward with new proposals to restart the debates.

The episode of the European Deposit Insurance Scheme (EDIS) within EMU is very similar to the JHA's solidarity mechanisms. The Commission came up with a highly political and ambitious idea that would involve transfers between the Member States, which was a clear red line for Germany and other Member States at the time. It has similarly led to the Commission being almost ignored by the Member States. In the same policy episode, the Commission also tried to push for an ambitious policy reform of the EU's capital market policies that would create a proper system called a Capital markets union. While less political than the EMIT, this proposal was also slowed down by the Member States which did not believe the urgency that the Commission

insisted on. Still, the reaction of the Council to the ambitious proposal of the Commission was overall positive and the proposal remains on the policy agenda. What is clear, and enough for the aim of this thesis, is that a high and political ambition of the Commission was clearly present in this case.

Some preliminary conclusions can also be drawn regarding the potential for success of a political ambition of the Commission. Most importantly, they are more likely to be successful if they are part of a collaborative effort, like in the case of SGP flexibility where the Commission included all the relevant actors in the process and took very seriously the role of the EFC. Also, part of this is the fact that political discussions were held behind closed doors and not through public meetings or the media. The opposite was the case with the EMIT and the flexibility mechanisms. Second, the Commission is more likely to be seriously taken as an actor with political clout at the implementation stage rather than at agenda setting stage. The example of the Commission's state aid fines against Apple (European Commission, 2018g) and Google (European Commission, 2016b) in the policy area of Competition (see McGowan & Wilkins, 1995) led by Commissioner Margrethe Vestager showed this ability, alongside the SGP flexibility clauses analyzed in this thesis. The problem is that most of the Commission's roles are in agenda setting, where its ability to be political is significantly limited by the Member States. Third, the less politically charged the area is in which the political proposal is being made, the more likely it will have some positive reception of the Member States. The case of the CMU, despite it being a political one, showed how the Member States can react positively to large scale policy reforms when the policy area itself is less controversial and when common benefits are clearly presented. Still, what will happen with the CMU proposal remains to be seen.

The analysis would not be complete without at least some reflection of the other side of the concept of the political Commission, which is how the decisions are made internally. According to some authors (Kassim et al. 2013, 2017), as well as the interviewee quoted on page 200, political Commission is also about priority-setting, not only about the nature of its proposals.

There was no comprehensive analysis in this thesis of the way the Juncker Commission was setting and tracking the delivery of its priorities internally. However, the interviewees did reflect on the process and from this, it seems like the process of Presidentialization was even more intensified during Juncker's mandate. For example:

“The political Commission helped us get it done and quickly. Better Regulation is slowing down the preparation, but we skip the initiatives that are not that interesting politically. We can fast track initiatives. It is much easier today to get more HR, more financial resources from the Berlaymont to do the work that is needed. It is easier for Juncker's staff to reallocate and steer, and that's what you see in the last 2-3 years, it's a big difference.” (COM_4)

This Commission is the most politicized Commission in history. Everything is centralized with the President and the Sec-Gen. The DGs have much less autonomy. It is also very sensible in the Semester process, how for example these documents are made. The drafting is going in the DGs but in the very end, Sec-Gen takes away the text and the DGs don't know what is happening with them. (MS_8)

To conclude, in several cases, across both policy areas investigated, the Juncker Commission tried to come forward with ambitious political proposals. However, the most important ones were squashed by the opposing Member States, putting into question the Commission's political clout. The Commission was much more successful in cases like promoting *de novo* bodies and new governance mechanisms (Hotspots), than its political ambitions. The former involved technical, objective, and sometimes de-politicizing language, which seemed to be the pathway to success, as opposed to the political and confrontational approach of the latter.

5.2 Hypothesis B: A comparative overview of findings

5.2.1 Hypothesis B: The Commission was not a passive actor in the JHA and EMU reforms

The analysis of policy episodes revealed that the Juncker Commission was a highly ambitious actor in JHA and EMU, which are new areas of EU activity where the new intergovernmentalism applies. Process tracing and interviews clearly showed how its ambition was not contingent on the

consensus-making bodies, such as the European Council. Instead, the Commission had its own ambitions described in the Hypotheses A-1, A-3, and A-3, for which it pushed sometimes against the will of some of the Member States. This process was described in the Hypothesis B-1, according to which the Commission's initial ambition under new intergovernmentalism is high. Next, the Hypothesis B-2 claimed that the Commission's initial ambition would be moderated by the Member States, and finally, the Hypothesis B-3 claimed that if the Commission's ambition is too high vis-à-vis the Member States, it may lead to negative effects for the Commission itself. All three hypotheses suggested that the Commission is not a passive actor in the new intergovernmentalism, for which plenty of evidence was found in the policy episodes.

The aim of this final section is to presents a final review of the findings regarding the level of ambition across different policy episodes. Moreover, interview statements of Commission officials and Member States representatives are once again used to reveal more details about the way the Commission's level of ambition developed over time.

5.2.2 Hypothesis B-1: The Commission was more forward looking than the intergovernmental bodies and forums

The Hypothesis B-1 suggested that the Commission's initial ambition is high and not necessarily contingent on the consensus-seeking intergovernmental bodies. This hypothesis was a direct response to a pure or extreme version of new intergovernmentalism in which the European Council, or some other intergovernmental body, would discuss what should be done in response to a problem, and instruct the Commission in a very detailed fashion about what it should put forward in an official proposal. In this case, the Commission would be a very passive actor, a translator of sorts that takes the political agreement of the Member States and turns it into legal language to be signed off by the co-legislators. The evidence from all of the policy episodes investigated in this thesis suggest that this was not the case, and that it was the Commission that would propose before any consensus between the Member States was achieved. One interviewee

from the Commission, when asked about the scenario in which the European Council delegates solutions to the Commission, said that “this was clearly a crisis modus”.

The Commission, at least initially, was not even hunting for a minimum consensus solution, but, in all cases, went above and beyond it in its initial ambitions. Moreover, the Commission tested its proposals with the Member States in many instances, yet it did not give up on them if one or several of Member States were against.

“We have seen cases where it was very obvious that some Member States would not like it at all. But other Member States will like it and the European Parliament will be, so there it is.” (MS_1)

“If we would limit ourselves to dossiers that everybody can live with, we wouldn’t do a lot. (COM_6)

The Commission thus counted on moving some of the initial preferences of the Member States. This was confirmed by an interviewee from the General Secretariat from the Council:

“Once we start the negotiations the positions are quite firm, but then they see that during the negotiations it’s impossible to keep that positions, so there’s tendency to be more flexible.” (GSC_1)

Even though the European Council did not give full instructions to the Commission on what it should propose, it still had an important role in many of the policy episodes. In JHA policy episodes, the European Council was calling the Commission to prepare proposals on issues of highest political importance, and importantly, it was setting deadlines to the Member States to agree on common positions with regards to the first EBCG reform and the CEAS.

“You have a European Council conclusion saying to conclude the negotiations on this proposal by June next year and then it suddenly becomes about doing it in time. Then Member States are under more pressure to give in on certain points that they might have otherwise continued to insist on.” (MS_1)

However, despite several deadline setting instances of the European Council, the impasse on the relocation mechanisms could not be overcome. This showed some limitations to the idea that the European Council can drive the EU policy making process from above. Similar was the

case in the EMU policy episodes, where the European Council meetings were seen not only as venues where proposals would be discussed, but also as moments by which agreements should be made.

“Many things depend on the December European Council. Closing the Banking Union package, Capital Markets Union...” (MS_11)

“There is one European Council meeting in particular in December, which is hopefully going to provide important decisions and guidance.” (COM_12)

However, in many high-profile cases, this did not happen, which led to some frustration with the parties involved in the negotiations.

They say every time, the next European Council will have a real breakthrough. Then the European Council comes, the ambition is going lower and lower, and then nothing happens. Now we are again saying we are going to deeply reform, and then December comes, and nothing will really happen. (MS_8)

5.2.3 Hypothesis B-2: The Commission moderated its ambition after feedback on its initial proposals

These European Council meetings were not only important as moments when deadlines were set, thus potentially giving impetus to negotiations, or as meetings by which or at which important decisions needed to be made. They were also, together with discussions in other forums, moments in which the Commission’s initial high level of ambition collided with reality, and after which it was moderated. This is very well documented in the policy episodes, such as the time when the Commission had to propose a gradual approach EBCG empowerment, or the attempt to reach agreement of the Member States by moderating its EDIS and relocation mechanism proposals. One interviewee from the Commission described this very well on the case of the Commission’s euro area governance:

“They had some ideas that clearly went over the red line of many member states. They took a step back. Their ambition is much higher than the ambition of most of the Member States. But I don’t believe that they were really thinking of a federal model in economic policy.” (MS_8)

The Commission initial ambition was not moderated only after the European Council meetings, but also through various discussions with the Member States in which it tested its proposals. The Commission actively used SCIFA in JHA, the EWG and the EEC in EMU to discuss the viability of its proposals, ask Member States for feedback, and get an idea of the Member States' preferences and red lines.

“All the proposals of May 2017 have travelled through the EWG and have been tested there. Maybe to give a concrete example, the setting up of the EMF, the EWG pretty quickly said well this is not our priority for the time being and set it aside. The EWG is a very important vehicle, usually it still happens somewhat below the radar of the national media. It gives space for a franker discussion. Ministers, when they discuss, typically they have to go to parliaments before their meetings and to report afterwards again, it attaches a lot more media attention.” (COM_8)

“In SCIFA, the Commission's Head of Directorate is present. It is below COREPER (political) but above the working groups (technical). We wanted to “kill it” a few years ago but it didn't work. Because you don't need discussion forums in policy area that is not ‘third pillar’ anymore. We use it now as a forum to test specific issues.” (COM_2)

Thus, the way that the process goes in new areas of activity is that the Commission is still at the center of agenda setting, as the institution that brings up ambitious proposals and tests them in intergovernmental bodies. In the end, the Commission, as a rule with some limitations (see the EUAA proposal, JHA Policy Episode 3), moderates them to less ambitious proposals, as coming up with agreeable reforms proved to be more important than being right. For some interviewees, this was a strategic move on the Commission's part.

“At some points the Commission is super ambitious. But this could be a strategic behaviour. (...) This is quite obvious from the Commission: they present more than could be accepted in order to meet somewhere in the middle. So, the Commission should be super ambitious to have something in the near future and something more later in the future. Many of the current proposals will be rejected because they are super innovative but maybe in 10 years it will be the reality.” (MS_10)

“This is also a political choice. You may start with a very ambitious proposal, knowing that it's going to be watered down, but running the risk that it is cued immediately. Or go with a less ambitious proposal and hope that at least this is passed. With fiscal stabilization this is what we see, we have France who would be on the side of a very ambitious proposal, and those who would start with

something small rather than very ambitious and very big. All these sensitivities are quite well taken into account.” (COM_11)

5.2.4 Hypothesis B-3: When moderation of the Commission’s ambition was not enough, the Member States continued without the Commission or shifted their focus

In three out of six policy episodes investigated, being over-ambitious did not pay off for the Commission. Even after moderating its ambitions, there was no way forward on its proposals. These are the CEAS reform, specifically the part on relocation mechanisms on which the whole reform depends, the ESM and euro area governance proposals, and the EDIS that would complete the Banking Union.

“In the EMU the banking union must be finished but it is happening very slowly, and it is not happening according to the path that the Commission put but it is happening in a different way by different very powerful actors.” (MS_8)

“The driving force is coming from the European Council and it’s more Member State driven, which is a bit of a change.” (COM_12)

Interestingly, no proposals to empower the de novo bodies (Hypothesis A-1), or to integrate through non-supranational means (Hypothesis A-3, the case of the Hotspots in this thesis) led to a deadlock and sidelining of the Commission. Instead, this happened when the Commission tried to play a big role on highly political (EDIS and relocation mechanism) issues, as well as its attempt to further supranationalize the euro area governance and the ESM. Empowering de novo bodies was a “playing it safe” approach for the Commission. It even brought some success in general failures as the agreements on the EAM and the SRB had been made, while waiting for the tricky elements of the reforms to be agreed upon. The EBCG reform itself was the biggest reform success that came out of the refugee crisis.

It is hard to say what would have happened in these high-profile cases if the Commission had used a different, less ambitious strategy. The principle aim of this thesis was not to investigate this sort of causality. However, what is clear is that the Juncker Commission’s ambition in areas of new intergovernmentalism was more often focused on other projects than ever closer union, and also very high, often too high for the Member States to get on board with it.

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