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Elena Escalante Block

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# The role of actors in the legitimation or delegitimation of MLG structures

*A claims-making analysis of the politicisation and depoliticisation of  
EU state aid policy*

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## **Abstract**

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The politicisation and depoliticisation of EU policies such as state aid are key to the legitimisation and contestation of the EU. However, the existing literature tends to focus on analysing these processes either in terms of politicisation or depoliticisation, but rarely both simultaneously. Rather, this thesis conceptualises politicisation and depoliticisation as embodying a fluid-like state within Multilevel Governance (MLG) structures, such as the EU, where agents play a key role. The thesis first explores 266 state aid cases labelled “Unlawful with Recovery of Aid” (UWRA) to identify which were appealed, and to gauge the degree of news coverage that each case gained. From the analysis of the 266 cases, the dissertation selects the cases of Apple in Ireland and Ilva in Italy for sustained and detailed analysis. It explores how actors have sought to politicise and depoliticise these state aid cases in the national news media. A claims-making analysis is performed to understand how actors attempt to legitimise or delegitimise their own actions or the actions of the other actors involved (the Commission, Apple, Ilva and the Irish and Italian governments). To perform the analysis, a set of 100 newspapers were gathered from the Factiva database, including two leading quality newspapers (centre-left and centre-right) from Ireland (the Irish Times and the Irish Independent) and Italy (Il Sole 24 Ore and La Repubblica). The results show that a key moment in the trajectory of both the politicisation and depoliticisation of a state aid case is the act of appealing by the member state. More specifically, in the Apple case, TINA (There Is No Alternative) was used as a strategy to discursively depoliticise the action of appealing which, interestingly contributed to the overall politicisation of the state aid case. In contrast, other depoliticising strategies (“appeasing” claims) which intended to calm past tensions between the Italian government and the Commission were used successfully. In terms of politicisation, the Apple case showed an “international conflict trajectory” (Irish government versus the Commission) while the Ilva case raised concerns about the Italian government and the management of the corporation. Overall, this dissertation advances understandings of the differentiated patterns of politicisation and depoliticisation by illustrating that the Apple case followed the “politics against policy” route while this was avoided in the Ilva state aid case.

### **Keywords:**

Politicisation, Depoliticisation, Legitimacy, MLG, EU, State Aid

## Résumé de la thèse

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La politisation et la dépolitisation des politiques européennes telles que les aides d'État sont des facteurs clés de légitimation et de contestation de l'Union européenne. La littérature tend à analyser ces processus soit sous l'angle de la politisation soit sous celui de la dépolitisation. Il est rare qu'elle les appréhende simultanément. Cette thèse considère au contraire que ces deux phénomènes présentent une certaine fluidité au sein de structures de gouvernance multiniveau (GMN) telles que l'UE, dans lesquelles les agents jouent un rôle essentiel. La thèse étudie d'abord 266 affaires d'aides d'État jugées « illicites avec obligation de récupération » afin d'identifier lesquelles ont été portées en appel et d'évaluer le niveau de couverture médiatique de chaque affaire. À partir de ces 266 dossiers, la thèse a sélectionné ceux d'Apple, en Irlande, et Ilva, en Italie, pour une analyse approfondie et détaillée. Ce travail explore la manière dont les acteurs ont cherché à politiser et dépolitiser les affaires d'aide d'État dans les médias nationaux. Une analyse de *claim-making* est réalisée afin de comprendre comment les acteurs tentent de légitimer ou délégitimer leurs propres actions ou celles des autres acteurs en présence (la Commission, Apple, Ilva et les gouvernements irlandais et italien). Un corpus de 100 journaux a été constitué à partir de la base de données Factiva, dont deux journaux de référence (de centre gauche et centre droit) pour chacun des pays concernés : *The Irish Times* et *The Irish Independent* pour l'Irlande ; *Il Sole 24 Ore* et *La Repubblica* pour l'Italie. Les résultats font apparaître que l'appel porté par un État membre constitue un moment majeur dans la trajectoire de politisation comme de dépolitisation d'une affaire d'aide d'État. Plus précisément, dans l'affaire Apple, le TINA (*There is no Alternative*) a été utilisé comme stratégie de dépolitisation discursive de l'acte d'appel. Or, il est intéressant de noter que l'appel contribuait à la politisation générale de l'affaire d'aide d'État. D'autres stratégies de dépolitisation (prises de position – *claims* – dites d'« apaisement »), visant à calmer les tensions du passé entre le gouvernement italien et la Commission, ont en revanche été mises en œuvre avec succès. Du point de vue de la politisation, on observe ainsi deux schémas différents : dans l'affaire Apple, c'est la « voie d'un conflit international » (le gouvernement irlandais opposé à la Commission) qui a été suivie ; quant au dossier Ilva, il a soulevé des interrogations sur le gouvernement italien et la gestion de l'entreprise.

### **Mots clés :**

Politisation, Dépolitisation, Légitimité, GMN, UE, Aide d'État

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## **Part 1: Relevant Concepts, Theories and Methods**

# Chapter 1: Introduction and Research Puzzle

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“Competition policy may seem like a technical thing [for lawyers]. But it’s just about the things we all know as humans. It’s about greed. It’s about fear. It’s about how you use power.” (Margrethe Vestager in Mykkänen 2018)

## 1.1 Introduction

In August 2016, the European Commission slapped Apple with a 13 billion euro fine in unpaid taxes which put the tech giant on notice for tax benefits received in Ireland. It is the largest state aid penalty ever raised against a single company to date. The most notable actor in this narrative, Margrethe Vestager, has been referred to as “Silicon Valley’s dragon slayer” (Keen 2018). The idea that large companies can finally be held accountable by Vestager has allowed her to gain a worldwide reputation as a “watchdog” for tech giants. However, both Vestager and the Commission have suffered a serious backlash as the 13 billion euro fine was received negatively by both Apple and the Irish government who later decided to appeal the decision. Actors from the Irish government labelled the Commission’s action as an “intrusion to Ireland’s sovereignty”<sup>2</sup> and Apple representatives suggested that the decision “defied reality and common sense”.<sup>3</sup> Comments like this demonstrate how actors have tried to delegitimise the Commission’s actions during the politicisation of state aid cases in the media.<sup>4</sup> Across the literature, authors have suggested that the politicisation of EU policies (such as state aid) can result in a negative outcome for the EU’s legitimacy (see Majone 1998; 2014; Moravcsik 2002; 2006). These authors call for a more depoliticised EU which may have the propensity to function more efficiently without having to deal with outsiders questioning the way it works or challenging its legitimacy (see Bartolini 2006; Hooghe and Marks 2009; Laffan 2019; Majone 1998; 2002; 2014; Moravcsik 1998; 2006; 2018). The quotes above made by representatives from Apple and the Irish government would seem to confirm that indeed politicisation can

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<sup>2</sup> See claims made from Irish government officials regarding the Commission’s decision available at: <https://www.irishtimes.com/business/economy/apple-tax-appeal-the-three-arguments-government-to-use-1.2777679>

<sup>3</sup> See <https://www.reuters.com/article/us-eu-apple-stateaid/apple-says-14-billion-eu-tax-order-defies-reality-and-common-sense-idUSKBN1W1195>

<sup>4</sup> Here, the media represents an open forum where actors can contest the governments’ and/or the EU’s actions (Koopmans & Statham 2010).

represent a pretext for challenging the EU's legitimacy. However, others have suggested that politicisation can bring "normalisation" to EU decision making processes by making information more accessible and understandable to wider audiences. As a result, citizens can become more involved in discussing the European Integration project (see Rauh and Zürn 2014; Risse 2015; Schmidt 2013; Statham and Trenz 2015). Thus, for these authors, politicisation can represent a positive opportunity for the EU to legitimise itself.

Past literature seems to only focus on the negative or positive effects that politicisation and depoliticisation may have on the EU's legitimacy. This binary distinction represents the main conceptual puzzle which drives this dissertation. The purpose of this thesis is to show the reader that this assumed dichotomy of seeing politicisation and depoliticisation as only positive or negative for the EU's legitimacy is problematic. The issue is derived from understanding these processes as "all or nothing". Rather, this thesis conceptualises these processes as embodying a fluid-like state within Multilevel Governance (MLG) structures such as the EU. Specifically, actors can attempt to politicise or depoliticise the same EU issue from different levels of governance. Moreover, depending on the actors' political goals, the politicisation or depoliticisation of an EU policy, such as state aid, can also be accompanied by different sets of legitimations and delegitimations. Thus, due to their complexity, one cannot simply assess politicisation or depoliticisation as being only positive or only negative for the EU's legitimacy.

Similarly, the existing literature tends to focus on analysing processes of politicisation *or* depoliticisation but rarely both simultaneously (for depoliticisation see of Beveridge 2012; Buller and Flinders 2005; Burnham 2001; 2006; 2014; Flinders and Buller 2006; Flinders and Wood 2014; 2017; and for politicisation see De Bièvre and Poletti 2020; De Wilde 2007; 2011; 2012; 2015; De Wilde and Zürn 2012; De Wilde, Leupold, & Schmidtke 2016; Hutter and Kriesi 2019; Schmidt 2019; Statham and Trenz 2013; Zeitlin, Nicoli, & Laffan 2019; Zürn 2019; 2014 among many others). Exceptions to this are studies by Bates, Jenkins, & Amery (2014), Beveridge and Naumann (2014), Jenkins (2011), and Kuzemko (2014b) that analyse how politicisation and depoliticisation work but only at one level of governance. Only very recently have studies begun to consider the dynamics that occur between politicisation and depoliticisation as strategic responses by EU actors and institutions (e.g. Bressanelli, Koop & Reh 2020).

By examining both processes together, this thesis aims to understand how actors can legitimise or delegitimise MLG structures, such as the EU. The primary research question is: How do actors attempt to politicise and depoliticise state aid cases and, in so doing, legitimise

or delegitimise MLG structures such as the EU through the claims they make? More specifically, the thesis will use two state aid case studies (involving Apple in Ireland and Ilva in Italy) in the hopes of learning how different actors can politicise and depoliticise these cases while at the same time, legitimise or delegitimise the Commission (and, more generally, the EU) through their claims. The politicisation and depoliticisation of the two selected cases will be analysed using a claims-making analysis, which evaluates the claims that political actors make in order to represent certain policy preferences, constituencies or values (Saward 2006), and to legitimise their actions. Briefly, a claim is a discursive action of verbal or written political communication made by an actor (government, corporation, journalist, social movement, NGO, or other civil society actor) in the media that is an expression of an opinion (Koopmans and Erbe 2004, p. 98). For this dissertation, the claims that are analysed come from the national media as it is here where we can understand how different actors from a variety of levels of governance either politicise or depoliticise a state aid case while at the same time legitimising or delegitimising the EU's and national government's actions (more on the justifications for choosing national media can be found in Chapter 3 of this thesis). Indeed, there seems to be no unified or single European public sphere (see Eder and Kantner 2000; Adam 2015) and, therefore, the national media is a tangible outlet to investigate how different actors' claims are represented in state aid conflicts.

Before I examine how policies such as state aid can become politicised and depoliticised along with how these processes can potentially impact the EU's legitimacy, I will first define the key concepts deployed theoretically in this dissertation (politicisation, depoliticisation and legitimacy). Afterwards, I will show how these concepts can be brought together in a dynamic analytic schema that might help us better understand how politicisation and depoliticisation are linked to the legitimacy of a MLG structure such as the EU. Then, I will further explain the conceptual puzzle that this dissertation seeks to tackle which is whether or not politicisation and depoliticisation are negative or positive for the EU's legitimacy. I will conclude this chapter by identifying the various gaps in the literature and specify my main contribution to the field.

## **1.2 Defining Politicisation and Depoliticisation**

Politicisation and depoliticisation have become increasingly popular concepts to help us understand conflicts and contestations across the literature (Beveridge 2012; Buller and Flinders 2005; Burnham 2001; 2006; 2014; De Bièvre and Poletti 2020; De Wilde 2007; 2011;

2012; 2015; De Wilde and Zürn 2012; De Wilde, Leupold, & Schmidtke 2016; Flinders and Buller 2006; Hay 2007; Hooghe and Marks 2009; Hutter and Kriesi 2019; Jenkins 2011; Kerr, Byrne, & Foster 2011; Kettell 2008; Schmidt 2019; Schmidt 2019; Statham and Trezn 2013; Flinders and Wood 2014; Zeitlin, Nicoli, & Laffan 2019; Zürn 2019; 2014; among many others). A large part of this was reinforced by political analysts becoming more concerned about the future of liberal democracies after the rise of populism across Europe and the world (see Cheneval and Schimmelfennig 2013; Hooghe and Marks 2009; Kriesi 2014). Indeed, populism may have inflamed identity politics as populist parties tended to challenge the EU integration process and create Eurosceptic forces who “smelt blood” (Hooghe and Marks 2009, p. 21). However, it is important to note that, more recently, authors such as Hutter, Grande and Kriesi (2016) have shown that conflicts between more mainstream political parties can also trigger the EU’s politicisation process (as occurred in the UK with Brexit).

At the same time, depoliticisation has also gained interest in political science during the last two decades (Buller et al. 2019) and scholars have attempted to explain how depoliticisation is employed in decision-making process in various policy areas such as economics (Buller and Flinders 2005; Burnham 2001; 2001; 2014; 2017; Goede 2004; Kettell 2008; Rodgers 2009; Strange 2014; Swanson 2007), health (Buller 2018; Wood 2015); energy (Kuzemko 2014b); environment (Bluhdorn 2015; Wood 2016a), immigration (Darling 2014; Kunz 2011), and international development (Harriss 2002; Kamat 2015). In general, both politicisation and depoliticisation have emerged as important concepts to understand contemporary patterns of governance (Foster, Kerr, & Byrne 2014) and have been widely discussed across different strands of political science literature. In the next subsection, I will first discuss the general understandings of politicisation in the literature. Then, I will focus on its counterpart: depoliticisation. Afterwards, both concepts will be understood together to create a working definition that will be used throughout this thesis.

### *1.2.1 Politicisation*

In the literature, there seems to be three streams of thought that contribute to understanding the process of politicisation (see Zürn 2019). The first is the comparative politics stream, which examines the decline of electoral participation as well as the rise of populist movements from the left and the right (Hix 2008; Kriesi et al. 2012; Müller 2017; Sheingate and Greer 2020; Zeitlin, Nicoli, & Laffan 2019). The second is the international relations stream, which focuses on nationalist sentiments (instigated by populist parties and leaders) as

well as the rejection of international institutions (e.g. Della Porta 2007; Della Porta and Caiani 2009; Della Porta and Rucht 2013; Della Porta and Tarrow 2012; Gronau et al. 2009; Nullmeier 2010; Pianta and Zola 2005; Steffek and Hahn 2010; Tarrow 2001; 2005; Zürn 2004; 2007; 2018). More specifically, the international relations stream has analysed how growing resistance to international institutions, and a more intense use of these institutions, has triggered its politicisation. The third stream comes from EU studies and explores how EU institutions and policies are discussed across national political systems (e.g. Follesdal and Hix 2006; Grande and Hutter 2016; Habermas 2007; 2011; Hix 2008; Hobolt 2009; Hooghe 2003; Hooghe and Marks 2009; Majone 1994; 1996; 1998; Marks and Steenbergen 2004; Moravcsik 2004; 2006; Risse 2010; Schmitter 2009; Teney and Helbling 2014; Zürn 2000). Located within this literature on the politicisation of the EU, is the literature which looks at how its institutions have become subject to politicisation. Some of the literature on the EU considers politicisation as a necessary condition for the further democratic development of its institutions (e.g. Rauh and Zürn 2014; 2020; Risse 2010; Sabel and Zeitlin 2010; Zürn 2006). This dissertation locates itself between the third and second streams of politicisation as it aims to evaluate how an EU policy can become subject to public politicisation (as well as depoliticisation) in national media. At the same time, this PhD can have larger implications for other types of Multilevel Governance (MLG) structures such as International Organisations (e.g. WTO, WHO) that are otherwise enveloped in the international relations stream.

Within the EU stream of evaluating politicisation, scholars such as Pieter de Wilde have built a common understanding of how to analyse politicisation (De Wilde 2007; 2011; 2015; De Wilde, Leupold, & Schmidtke 2016; De Wilde and Zürn 2012), which involves three dimensions: salience, polarisation, and actor expansion. In this literature, salience refers to the importance of the EU and the integration process and this can be gauged by counting the number of newspaper articles that report on EU issues or policies (Grande and Hutter 2016; Hoeglinger 2016; Leupold 2015; Schmidtke 2016). Others have assessed salience by gauging the extent to which citizens are acquainted with the EU, its institutions and policies (Baglioni and Hurrelmann 2016). Salience has also been measured by the amount of statements made by party representatives (Hoeglinger 2016) or the number of parliamentary questions regarding EU topics (Wonka 2016).

Polarisation tends to be described as opposing extreme views or positions regarding an EU topic while it can also account for more neutral attitudes towards the same issue (De Wilde,

Leupold & Schmidtke 2016). Authors such as Kriesi et al. (2008;2012) have used party systems to evaluate polarisation, while others have analysed polarisation through the position actors take in public surveys regarding the EU (Van Ingelgom 2014). The last dimension of polarisation is actor expansion, which relates to a growing amount of different types of actors that tend to engage with an EU topic, issue, or policy (De Wilde, Leupold, & Schmidtke 2016). Actor expansion has typically been analysed through the actors that engage with EU topics, which is often restricted to the elites (Hutter and Grande 2014). However, more recently, social media has promoted more direct engagement with citizens and allows them to provide their opinion about the EU and its institutions (De Wilde, Koopmans, & Zürn 2014). These three dimensions will guide this thesis to understand whether or not a state aid case has become politicised in the media. Saliency will be operationalised as the number of news articles and claims made regarding state aid cases; polarisation will be viewed as the amount of extreme opinions and sentiments different actors have towards a specific object (e.g. the European Commission, member state or corporation involved in the state aid case); and actor expansion is observed as the increasing number of different types of people debating the state aid issue.

Zürn (2016) has reviewed how these three dimensions (saliency, polarisation and actor expansion) have been studied across the literature by categorising studies of politicisation into three arenas: the micro (how individuals can politicise an issue), the meso (how protests, groups and mobilisations can politicise an issue), and the macro (how the media can politicise an issue). These three levels of politicisation are shown in Table 1.1. The micro level includes studies focusing on the individual thoughts or beliefs that people can have regarding an issue (see Klandermans 2004). Here, saliency relates to the importance that individuals give to a particular issue. Within the micro perspective, polarisation is the different beliefs that individuals can hold. The expansion of actors is evaluated as the different types of individuals with diverse worldviews and backgrounds.

The second level of analysis from which researchers can evaluate politicisation is the “meso” arena (Zürn 2016). This level involves the engagement and mobilisation of people that can lead to the politicisation of an issue or an event (see Dolezal, Hutter, & Becker 2016; Rauh and Zürn 2016). More specifically, at the meso level, saliency is viewed as the level of importance of an issue that is being mobilised in comparison to other issues that may also be protested concurrently. Polarisation at this level is seen as the degree of diversity between mobilised groups with different views regarding the same topic. The expansion of actors is seen as the range of different group types that an issue mobilises. Lastly, the “macro” arena is



the level that occurs the most frequently in the literature regarding the politicisation of EU issues (Zürn 2016). This arena includes bodies of work that examine debates in the media (e.g. Michailidou and Trenz 2013; 2015; Ponzio and Pogliano 2018; Statham and Trenz 2012). At this level, salience is understood as the amount of attention an issue receives in the media. Polarisation refers to the diversity of the claims that different actors make towards an issue in the media. Finally, actor expansion is the growing number of different types of contributors towards the debate of a particular issue. It is within the “macro” level that this thesis will analyse the politicisation of an EU policy (see highlighted section in Table 1.1).

*Table 1.1 Components and manifestations of politicisation (Zürn 2016, p. 169)*

|              | <b>Salience</b>   | <b>Polarisation</b>   | <b>Actor Expansion</b>  |
|--------------|---|---|---|
| <i>Micro</i> | Importance placed on an issue by individuals  | Diversity of opinions/views that individuals have regarding an issue              | Range of diverse backgrounds and traits in individuals who place importance on a particular issue |
| <i>Meso</i>  | Importance of a protest/mobilisation that groups give to an issue in relation to other movements/manifestations | Diverse group positions in the manifestations or protests of an issue             | Different types of groups who mobilise towards a particular issue                                 |
| <i>Macro</i> | Importance given by the media to an issue   | Magnitude of opposing views by different claimants (actors) reported in the media | Increase in number of different actors who make claims about the contested issue in the media     |

This dissertation will evaluate how a particular issue (state aid) can become subject to contestations by different types of societal actors in the public sphere. As such, the “macro” level is the main lens with which this thesis views the politicisation of issues. The public sphere is a space in which political issues are discussed and where the general public can contest the decisions made by bureaucrats and elites in government (Adam 2015). By studying issues that become politicised in the public sphere, I am not analysing issues that might be discussed by decision makers in private. In this sense, the analytical cost of this thesis is that I am leaving aside heated discussions that might take place behind closed doors. That is, the politicisation that occurs outside of the media will not be covered in this thesis. Indeed, issues that can be discussed in private by decision makers, both at the EU and member state level of governance, might also take place under the radar of the media. Moreover, the media may not cover smaller

protests or activist movements, which can also signal a form of politicisation that will not be captured in the analysis of my dissertation.

Having acknowledged this, one can also understand that it is harder to evaluate the politicisation that occurs behind closed doors or in private discussions. Also, by analysing the politicisation that occurs in the public sphere I will gain a better understanding on how different actors (from politicians, policy makers, citizens, activists) can legitimise or delegitimise complex Multilevel Governance (MLG) structures such as the EU, which is key to answering my main research question (i.e. how do actors attempt to politicise and depoliticise state aid cases and, in so doing, legitimise or delegitimise MLG structures such as the EU through the claims they make?) Moreover, authors such as Zürn (2016, p. 168) have argued that “not all that receives media attention is political. Some strategies of depoliticisation are reflected in the media as well. Equating media reporting with politicisation may skew results to some extent.” Taking this into consideration, I argue that these instances can be evaluated in the media through acts of discursive depoliticisation. Thus, while an issue such as state aid can be politicised, there might be attempts by decision makers and elites to depoliticise an action (such as an appeal against the Commission’s decision). Thus, the analysis in this dissertation aims to evaluate both politicisation and depoliticisation by utilising the media as the place where issues are subject to the deliberation of the exercise of power by public authorities.

In liberal democracies, even the decisions being made by governmental figures behind closed doors have to be subject to collective debate. For this dissertation, the “political” refers to all that revolves around collectively binding rules and decisions, regardless of how it is framed or whether it is deemed necessary. It is when these decisions or rules become part of the public sphere that they become available for a wider range of debates by the public and other actors or interested groups. In public debates, governmental ideas and rules allow for the *possibility* of making collectively binding decisions that can change the status quo (Zürn 2016, p. 17). Thus, when decisions move into the public sphere, it is here where we can see the nature of public debate and in turn the legitimations or delegitimations of governmental powers. Therefore, politicisation is analysed from the “macro” perspective in this dissertation as I can investigate debates surrounding state aid and this, in turn, can tell us how different actors legitimise or delegitimise the actions of the EU, the member state and the corporations involved.

The next section further explains politicisation’s counterpart: depoliticisation. Then, the importance of studying politicisation and depoliticisation together (following Hay 2007) will

be discussed as well as the reasoning for selecting state aid policy as a way of evaluating these processes in Multilevel Governance (MLG).

### *1.2.2 Depoliticisation*

Several streams of the literature have looked at depoliticisation starting from some understanding of its counterpart, politicisation (see Burnham 2001; 2014; Foster, Kerr, & Byrne 2014; Hay 2014). In this sense, the literature has acknowledged the existence of politicisation, in order to understand its absence. There are three points of empirical focus in the depoliticisation literature: “governmental depoliticisation”, “societal depoliticisation” (issues that are left out of the political agenda) and lastly, “discursive depoliticisation” (see Flinders and Wood 2014). First, governmental depoliticisation focuses on how much the government controls a specific policy or issue and how much power it transfers to other institutions or organisation (see Burnham 2001; Flinders and Buller 2006). An example of such depoliticisation in the EU occurs when a member state transfers the responsibility of a specific policy (such as state aid) to supranational levels of governance (such as the Commission). Societal depoliticisation refers to issues that are left out of the political agenda (see Blühdorn 2007; Brändström and Kuipers 2003). In this sense, an issue such as state aid can be removed or displaced from the media news cycle to stop it from being debated.

One of the critics to societal depoliticisation was Peter Burnham (2001, p. 128) who described depoliticisation as the practice of removing the political character from decision-making processes (in this sense, depoliticisation is governmental rather than societal). Societal depoliticisation tends to be studied conceptually and the results from empirical studies investigating how issues can become depoliticised remain unclear (Buller et al. 2019). An exception is the work of Charalambous and Kanol (2019) who attempted to empirically assess societal depoliticisation using the decline of party identification as a proxy to societal depoliticisation. A similar link has also been made between disenchantment with politics and decline in electoral participation (see Flinders and Wood 2014). In their study, Charalambous and Kanol (2019) showed that political dissatisfaction is a component of the anti-politics condition that can influence party identification. However, these studies have not paid sufficient attention to how actors can depoliticise an issue through their claims (see Chapter 7).

The last perspective has been called “Gramscian” (Flinders and Wood 2014, p. 162) given that it emphasises the role that discourse, language and culture play in political debates. This perspective has also been used by authors such as Gamble (2000), Jenkins (2011) and

Flinders and Wood (2014; 2017) who have conceptualised depoliticisation in discursive terms. Discursive depoliticisation focuses on the role that language and ideas play in contributing to an issue becoming depoliticised (Wood & Flinders 2014, p. 165). The concept recognises that humans have agency and that they can be active participants in changing how institutions, practices and social rules work. This type of depoliticisation accounts for the notion that actors can deny or actively try to move topics out of political discussions. Thus, discursive depoliticisation can be seen and analysed through speeches, statements or actions made by various actors in the public or private spheres. This thesis chooses to focus on the latter understanding of depoliticisation as it is interested in understanding the ways in which different actors can attempt to depoliticise an issue through what they say in the public sphere. In this sense, this thesis aims to contribute to the discursive depoliticisation literature by examining it in the same manner as politicisation, via a claims-making analysis. Claims-making analysis has never been used to analyse discursive depoliticisation techniques and this will become one of the key contributions of this dissertation (a more detailed explanation of this contribution is explained in chapters 2 and 3).

### *1.2.3 Analysing movements of Politicisation and Depoliticisation in MLG*

Rather, than seeing it as processes which should be analysed separately, Hay (2007) maps both processes together and he defines politics to include the “realm of contingency and deliberation” (2007, p. 152). These realms include both the governmental and the public sphere where different actors (both governmental and non-governmental) can discuss and debate different issues. The spheres of the political include: the public and governmental sphere, the public but non-governmental sphere, and lastly, the private sphere (2007, p. 153). Each of these is set to be politicised to a lesser extent than the other (2007, p. 153). Meanwhile, depoliticisation is set to operate in reverse and refers to situations in which issues move further away from being publicly scrutinised (2007, p. 158). More on each of these spheres will be explained in Chapter 2 of this thesis where I will expand on Hay’s (2007) framework, recasting it in MLG terms.

Wood (2015) has examined how different authors have simultaneously evaluated processes of politicisation and depoliticisation across the literature. Wood (2015) categorised the studies of both politicisation and depoliticisation also across three levels of analysis: micro, meso and macro (Wood 2015, p. 528). Wood (2015, p. 528) describes the macro level as the theoretical analysis of “the political”. In the author’s categorisation, the macro perspective is

interested in understanding what counts as an act of politicisation and depoliticisation in general terms (Wood 2015). Examples of studies using the macro perspective include Burnham (2014), Foster, Kerr, & Byrne (2014), Jenkins (2011) and Strange (2014).

The meso level includes works that seek to develop an analytical framework for processes of politicisation and depoliticisation. More specifically, works at the meso level tend to be interested in the “set of processes (including varied tactics, strategies, and tools) that remove or displace the potential for choice, collective agency, and deliberation around a particular political issue” (Fawcett et al. 2017, p.5). For instance, authors may examine how different tactics and tools of both politicisation and depoliticisation can influence the change in political institutions (Wood 2016b, p. 528). Works at the meso level also tend to focus on how to conceptualise politicisation and depoliticisation as well as how they can be measured and play out in empirical contexts (e.g. Beveridge 2012; Burnham 2001; Flinders & Buller 2006; Kuzemko 2014; Hay 2007).

Wood (2016, p. 528) describes the micro level as the literature that focuses on how depoliticisation can be empirically evaluated through declines in political debates surrounding an issue. According to Wood (2016, p. 528), the micro level of analysis evaluates the factors that influence politicisation and depoliticisation as well as the effectiveness of different politicisation and depoliticisation strategies. At the micro level, authors such as Buller and Flinders (2005), Kettell (2008), Rodgers (2009), Kuzemko (2014), Beveridge and Naumann (2014), Bates et al. (2014) and Wood (2015) are interested in evaluating the dynamics that take place between both politicisation and depoliticisation to understand the anti-politics that occur in advanced liberal democracies.

Following Wood’s (2015) categorisation, this thesis situates itself between the meso and micro levels of analysis. At the meso level, Chapter 2 conceptually expands Hay’s (2007) framework to understand how issues can become politicised and depoliticised in Multilevel Governance (MLG). The research in this dissertation also fits into the micro level of analysis, as in Chapters 6 and 7, I evaluate the empirical relation between politicisation and depoliticisation and evaluate whether actors are successful or not in their attempts to politicise or depoliticise state aid cases.

So far, I have provided the reader with a general overview of the different levels of analysis (micro, meso, macro) through which the literature has conceptualised and evaluated politicisation and depoliticisation simultaneously. I will now discuss the studies that have specifically adopted or adapted Hay’s (2007) politicisation and depoliticisation schema (e.g.

Bates, Jenkins, & Amery 2014; Jenkins 2011; Kuzemko 2014). Jenkins (2011) developed the work of Hay (2007) and defined politicisation as “exposing and questioning what is taken for granted, or perceived to be necessary, permanent, invariable, morally or politically obligatory and essential” (Jenkins 2011, p. 159). Meanwhile, Kuzemko (2014b) explores the conditions under which a policy (in her case energy) can become politicised and depoliticised in the UK. Lastly, Bates, Jenkins and Amery (2014) have understood both politicisation and depoliticisation processes as dynamics that can take place when analysing the Father’s Clause parliamentary debates in the UK. Bates, Jenkins and Amery (2014) find that a specific moment in time (the birth of Louise Brown, who was the first woman to have ever been conceived by IVF in the world) triggered new political debate (that is, questions surrounding reproduction that had not previously occurred in the societal or political sphere). The birth of Louise Brown generated societal controversy about whether assisted reproductive technologies should be used for reproduction purposes. Thus, through the analysis of discourse, Bates, Jenkins and Amery (2014) examined how the same issue was politicised by some and simultaneously depoliticised by others. However, these authors (as well as Kuzemko 2014 and Jenkins 2011) have only assessed politicisation and depoliticisation at one level of analysis (from the national government perspective). By contrast, I will evaluate how these processes can occur simultaneously by actors that come from multiple levels of governance.

Only until recently have authors like Fawcett et al. (2017), Papadopoulus (2017), or Bache and Flinders (2004) considered movements of politicisation and depoliticisation in Multilevel Governance (MLG). The concept of MLG encompasses a new form of governance, which is different to that of the state. More specifically, MLG is a system of “continuous negotiation among nested governments at several territorial tiers” (Marks 1993, p. 392). What this means is that authority and power is shared both vertically and horizontally across different administrative levels. These levels include the influence of non-governmental actors, corporations (or multinationals), interest groups and civil society (Bache and Flinders 2004).

In their book titled “Anti-politics, Depoliticisation and Governance”, Fawcett et al. (2017) offer insight into how actors at different levels of governance have tended to depoliticise policy-making processes. The authors believe that by analysing the dynamics of politicisation and depoliticisation simultaneously they can assess how these processes “promote or inhibit particular forms of politics” (Fawcett et al. 2017, p. 297). The book also highlights three dimensions of depoliticisation that relate to MLG (technocratic dominance, limited pluralism and “shadow of hierarchy”) design. In the same book, Papadopoulus (2017) examines

depoliticisation in MLG and provides an analytical contribution to the field of depoliticisation by identifying dimensions of governmental depoliticisation in MLG. It is also acknowledged that there seems to be a “dialectical interplay” between depoliticisation and politicisation (Papadopoulus 2017, p. 158) which should be further explored. Thus, the further exploration of this dialectical interplay is one of the aims of this dissertation. I attempt to explore this interplay by evaluating how actors politicise or depoliticise a policy via their claims while legitimising or delegitimising a MLG structure. When actors try to depoliticise a policy and frame it as technocratic and/or remote from national institutions, this can be used to further delegitimise higher levels of governance in MLG structures. In turn, this can further fuel popularity for populist parties or encourage anti-MLG sentiments. These sentiments at the national level can make citizens come to the conclusion that in MLG the unelected, technocrat leaders dominate and democratic legitimacy is significantly lost. In this sense, anti-political<sup>5</sup> sentiments might arise as a consequence of this.

Regarding the EU literature, in 2020, Bressanelli, Koop and Reh among other scholars in the same volume (e.g. Schimmelfennig 2020; Blauberger & Martinsen 2020; Moschella, Pinto, & Martocchia Diodati 2020; Hobolt & Wratil 2020; Bunea 2020; Franchino & Mariotto 2020; Kelemen 2020) attempted to demonstrate that “bottom-up pressures are perceived and processed” and can influence how EU actors make decisions, which might range from “restrained depoliticisation” to “assertive politicisation” (Bressanelli, Koop and Reh 2020, p. 329). Specifically, the special issue evaluated the strategic choices made by actors to politicise or depoliticise different decision making processes at the supranational level (2020, p. 330). The contributions in the special issue focus mostly on the decisions and behaviors of EU actors, institutions, and policies. In the special issue, Bressanelli, Koop and Reh (2020) analysed the dynamics that occur between politicisation and depoliticisation as strategic responses. Their article shows that several depoliticisation strategies could be geared towards “consensus under contestation”. They argue that this can happen through the exchange of arguments or persuasion and warn against the propensity to always equate legitimisation with politicisation and responsiveness (Bressanelli, Koop and Reh 2020).

Similarly, within the same issue, Blauberger and Martinsen (2020) analysed the Court of Justice of the European Union’s jurisprudence regarding freedom of movement and citizens’

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<sup>5</sup> Anti-politics refers to the rejection of practices or attitudes related to traditional politics (see Fawcett et al. 2017).

rights. The authors showed that the court was able to engage in restrained depoliticisation strategies by using the law as both “a mask and a shield” when there were high levels of contestation occurring by the member state and public opinion (2020, p.382). These studies show that certain forms of consensus could be explored when politicisation is occurring. While these studies take both movements into consideration, additional examination of how both processes can simultaneously occur is required, including how actors from different governance levels can politicise and depoliticise the same issue in the public sphere.

The dynamics between politicisation and depoliticisation and their potential consequences on the legitimacy of complex MLG structures needs to be further understood not only theoretically as chapter 2 will show, but also in an empirical way where the actors’ claims are understood and incorporated. By doing this, I aim to provide a more detailed analysis where both politicisation and depoliticisation processes in MLG are empirically evaluated (unlike past examinations) and fill this gap in the literature. The theoretical framework that will be presented in chapter 2 aims to do this by first bringing a model where both politicisation and depoliticisation work together in MLG. This model will show the complexities of MLG and aims to understand where and when politicisation and depoliticisation may occur. Afterwards, the empirical chapters will assess these processes in a way which aims to go beyond an analytical understanding of their consequence on the legitimacy for MLG structures such as the EU.

This section has detailed the way in which certain authors have described and analysed politicisation and depoliticisation processes in MLG. It has also provided the reader with the main contribution to the literature. Specifically, in this thesis, I will evaluate these processes through the dialectic interplay that occurs between them. I define both processes as “discursive strategies employed by various social actors from different levels of the MLG to either discuss or shut down debates of an issue in the public sphere”. As such, I do not define these processes in terms of governing strategies but rather in discursive terms, which are employed by different actors to cause issues to become contested or, conversely, to remove them from discussion.

### **1.3 Introducing the Concepts of Legitimacy and Legitimation**

Now that an understanding of the terms politicisation and depoliticisation has been established, this part will further explore another key concept to this dissertation: legitimacy. This will be important for the thesis as I seek to understand how different societal actors legitimise or delegitimise MLG structures such as the EU while politicising or depoliticising a



specific policy (state aid). In this section, the general concept of legitimacy will be provided along with some of its most common understandings. Explicit connections between legitimacy and politicisation are discussed in the next section of the dissertation (section 1.4).

For Weber, the concept of legitimacy rests on the notion of “belief”. Weber explains that “the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige” (Weber 1978, p. 382). That is, legitimacy is borne when the subordinate *believes* that those in power are entitled to govern. In “Economy and Society: An Outline of Interpretive Sociology”, Weber (1978) explains the role of domination in legitimacy. He defines domination as “the probability that certain specific commands (or all commands) will be obeyed by a given group of persons” (Weber 1978, p. 212). Domination (or authority) relies on compliance by the subordinate group (Weber 1978). The power of the dominant group ultimately relies on those who believe; therefore “legitimacy derives from people’s *belief* in legitimacy” (Beetham 1991, p. 8). When politicisation or depoliticisation happens, then different questions regarding the authority of a dominant structure can arise.

While Weber’s work is one of the most recognised references in social sciences, his ideas have also received certain criticism for distorting the “essential meaning of legitimacy” (Grafstein 1981, p. 456). The main criticism Weber has received is that his definition of legitimacy relies too heavily on *belief* (Beetham 1991). Critics such as Beetham (1991) suggest that Weber’s reliance on belief does not consider the justifications behind those beliefs; that is, what are the necessary conditions for power to be (considered) legitimate. Beetham (1991, p. 11) explains that a “power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of* their beliefs”. For Beetham, power can become legitimate because people can *justify* power in different ways. When an individual believes that someone is powerful it is because there are certain justifications made, which make it seem that they deserve that position of dominance in society. These justified beliefs can be created by society along with pre-existing rules that the subordinate group continue to follow. However, these justifications can also be destroyed if the subordinate group decides that the government’s performance is not justifiable. The justifications (and reasons) behind the state’s exercise of coercive power are some of the key elements of legitimacy. Through politicising and depoliticising, some actors might paint MLG structures such as the EU in a positive light while others might do the opposite. This process of justification is what is understood as legitimation and delegitimation. Delegitimation instances occur when different

actors show discontent towards whoever holds the power, either by protesting or by discursively stating their discontent (Tallberg and Zürn 2019). These actors can protest their dissatisfaction with an authority figure even if they believe that the power's ruling or action is justified. Meanwhile, legitimation is the discursive process of justifying the authority or the actions of a specific governmental figure. Thus, legitimation is claiming that a governmental actor, their policy choices or actions, is legitimate.

Overall, to be considered legitimate is to be permitted to conduct your responsibilities and to exercise one's powers. This notion encompasses the idea that a legitimate authority is understood as having the right to yield their political power by those whose authorisation counts. Actors can legitimise a certain power (in the case of this thesis, the Commission or more broadly, the EU) or delegitimise it via their justifications. The concept of legitimacy deals with questions of "right" to rule as well as the justifications behind those rulings. Through the media, a certain type of politicisation can occur that leads people to question the authority of a certain rule. For example, regarding the Apple state aid case in Ireland, when reading the newspaper, citizens can ask themselves: is it legitimate for the Commission to ask Ireland to collect 13 billion euros from Apple? People may wonder whether the Commission's authority is illegitimate and whether Ireland should deal with the taxation of multinationals on their own terms. The media in this sense, provides different arguments, legitimations and delegitimations for the public to digest. In combination with this, justifications that are found in the media can say something about whether the EU or the Commission has the "right" to rule when it comes to state aid matters.

More specifically, justifications about the EU's (or the Commission in the case of this dissertation) right to rule is understood in this thesis as legitimation, while the challenging of the EU's policies or overall polity is seen as delegitimation (see Bexell 2014; Hurrelmann, Gora, & Wagner 2013). Legitimation is "characterized by actors seeking to justify their identities, interests, practices, or institutional designs. These justifications constitute legitimacy claims" (Reus-Smit 2007, p. 159). Thus for this thesis, legitimation is understood as the act of justifying the decisions made by actors involved in a politicised issue. More specifically, this occurs when actors from either the EU or the member states perform an action or make a decision and choose to legitimise their choices in the public sphere to wider audiences. Legitimation often occurs in MLG structures, where supranational levels of governance tend to justify their existence and their legitimacy to larger audiences through communicative acts (see Zürn 2018). In the case of the EU, these forms of communication can occur in different

ways but are mostly found in press releases and press conferences that the Commission holds, or through EU parliamentary debates both of which can be covered by national news media.

#### **1.4 The (De)politicisation-(De)legitimation Linkage**

This section explains how politicisation and depoliticisation relate to legitimation practices. This is done in order to contextualise the more specific linkages between processes of (de)politicisation in MLG structure such as the EU. The following section will first start by evaluating the link between politicisation and legitimacy and then it will do the same for depoliticisation. Lastly, this section will look at the links between politicisation, depoliticisation and legitimacy in MLG structures.

##### *1.4.1 Politicisation and Legitimacy*

There are different sources of legitimacy and, thus, legitimations (or justifications) (Tallberg and Zürn 2019). For example, a power can gain legitimacy by obtaining the majority of votes. This is what tends to happen in democratic processes for establishing legitimacy. Democratic legitimacy is the ability of governments to rule and to respond to citizens' preferences, policy concerns and social values through voting or, indirectly, through having access to policymaking (Schmidt 2015, p. 10). Democratic power structures can also maintain their legitimacy through transparency measures which ensure that corruption does not play a role in the way that governmental structures work. When an issue or policy becomes politicised in a democratic context, the issue can then become subject to public debate. By opening debates to the public, this allows for instances of politicisation to occur. These instances often support democratic legitimacies as the public tends to demand more justifications from the supranational organisations with authority (Rauh 2016, p. 7). More recently, it seems that democratic governments have tended to choose to depoliticise their decision making processes and “normalise” the placing of issues from the political agenda into the hands of technocratic experts (Hay 2007). This in turn results in less legitimations and thus can decrease the public's interest in politics. More on this will be discussed a bit further in section 1.4.2 of this chapter.

Returning to politicisation, Rauh (2016) explains how decisions and issues enter the “political realm” once they are communicated. The “political realm” for this thesis is a space that includes state actors who are consciously motivated by their beliefs and convictions. It is also a space located in the public sphere, where debates can be carried out by other actors who are not part of the elites. It is in this political realm where agency and deliberation about a

specific area or topic can take place (more on this in chapter 3 of this dissertation). As Rauh (2016) mentions, the act of communication is what makes issues or policies able to become part of the “political”. For example, when there is a specific holder of authority over a particular policy or issue, this leads the institution that holds the power (in the case of this dissertation the EU) to communicate its decisions. These communication practices create instances where different actors (from any level of a MLG) can contest such decisions and the discourse, issue or policy can become politicised. Certain communication practices allow for institutions to legitimise and delegitimise themselves as well as create opportunities for other actors within these legitimisation and delegitimation practices. We will see the communication practices as well as the justifications of higher levels of governance in this thesis when the Commission justifies making a specific decision regarding state aid.

#### *1.4.2 Connecting Depoliticisation and Legitimation*

The depoliticisation and delegitimation linkage is made across the literature on political disengagement (Beveridge 2017; Fairclough 2013; Hay 2007; Moraitis 2019). Depoliticisation is understood as a strategic communicative action that seeks to actively remove an issue or policy from public debates. This creates instances where political disengagement can occur. For example, if a member of the elite frames an issue as something that has no alternative or prevents people/citizens from participating in or debating an issue, this could lead to political disengagement. This happens as elites and decision makers remove the political character from decision-making processes (Burnham 2001) and make policy issues, that could otherwise be discussed, appear as inevitable or as matters of ‘fate’ (Gamble 2000). Thus, policy makers remove the citizens’ ability to exercise their political engagement and agency in decision-making processes (Jenkins 2011). Furthermore, political disengagement can create legitimacy problems for the government. Hay (2007) makes this point stating “ostensibly democratic political systems require at least a minimal level of participation if the democratic legitimacy they claim is to be anything other than a façade” (2007, p. 25). For instance, if elections have a low turnout and people are not engaging, this might suggest that whoever wins the election will not necessarily hold full legitimacy. If one lives in a democracy, then the majority should elect the party or candidate to govern. However, if the turnout is low, it may not be the majority who is speaking or electing this specific political party or leader.

Through depoliticisation, politicians and decision makers can shift the political character of decision-making processes (Burnham 2001). This shapes people’s preferences by

making otherwise contestable policy agendas appear inevitable or simple matters of ‘fate’ (Gamble 2000). If the public cannot see why engaging with politics would concretely change anything – how can it enable them to exercise their political agency? (Jenkins 2011). People need to participate in politics if institutions and governments want to hold some form of democratic legitimacy especially if they claim to be democratic. Here lies the link between depoliticisation and overall legitimacy in a political system. But what about the links between discursively depoliticising an issue or policy and legitimising or delegitimising an institution?

When actors are trying to justify their actions, they may use discursively depoliticising techniques. This can also occur as a tactic to divert public attention away from the issue. Actors can try and frame an issue as having “no alternative” (TINA). If they are successful at discursively depoliticising an issue, then the same negative consequences described above can also occur (lack of public engagement creates a lack of democratic legitimacy). Thus, it is expected that TINA depoliticisation practices could have negative consequences on the overall legitimisation of MLG structures, such as the EU, when particular discursive depoliticisation strategies are used (e.g. framing an appeal against the Commission’s decision as imperative). However, there might also be other instances where depoliticisation is expected to positively impact the EU’s legitimisation (e.g. when actors try to resolve past tensions between the member states and the Commission).

#### *1.4.3 Legitimacy of MLG Structures*

This dissertation focuses on the legitimacy of MLG structures such as the EU as it seeks to understand how politicisation and depoliticisation might influence the way certain actors legitimise or delegitimise a complex governance structure when one of its policies becomes subject to debate in the public sphere. MLG regulatory bodies like International Organizations (IOs) or the EU are asked to justify their existence and legitimacy (Zürn 2018) through communicative acts. This is because complex MLG structures do not have direct legitimacy like national governments. Rather, they rely on their members to legitimise their role (see Lindseth 2010). Thus, MLG structures, like the EU, gain legitimacy indirectly (Lord and Beetham 1998, p. 11) or borrowed (Lindseth 2010) from their member states. At the same time, these MLG structures are still expected to communicate and justify their actions and governance role. The act of exercising authority in International Organization’s (IO’s) seems to be a “communicative act” where the institution has to explain discursively why it must be “obeyed” (Zürn 2018) and why it must exist. When IO’s gain more responsibilities, this creates

more a higher demand for justification from countries and from the public. Once these demands occur, institutions must justify themselves and their existence through acts of communication.

The literature has debated what happens when MLG structures, such as International Organisations (IOs), are subject to further legitimations and, thus, further politicisation (see Zürn, Binder, & Ecker-Ehrhardt 2012; Zürn 2019; Binder 2008). Political authority in IO's require legitimation due to the nature of how its MLG works. These legitimations open the possibility for politicisation to rise (Zürn, Binder, & Ecker-Ehrhardt 2012). This is because as IO's legitimise themselves, they also receive further resistance and thus further polarisation and politicisation. This is what is known as the "authority transfer hypothesis" (De Wilde and Zürn 2012). The authority transfer hypothesis explains how the more authority or power a supranational body has, the more likely it is to become politicised (De Wilde and Zürn 2012). Therefore, this hypothesis describes how the transfer of authority between different governmental levels can provoke politicisation.

Similar to Baglioni and Hurrelmann (2016) and Hurrelmann and Wagner (2020), this thesis argues that the relationships between politicisation/depolicitisation and legitimation/delegitimation are not unidirectional in MLG. Thus, trade-offs may exist for the actors who are trying to legitimise their authority. The sustainability of the authority transfers that occur from states to higher levels of governance depend on how far the actors involved can provoke politicisation. That is, while authority transfer does not guarantee that the policy will be politicised, it makes it more likely that the issue will become politicised. Therefore, the sustainability of these transfers of power depends on how likely the actors are to provoke contestation along with the type of politicisation that they provoke (more on this in section 1.7 of this chapter).

## **1.5 Connecting Politicisation and Depoliticisation to the EU's Legitimacy: The Conceptual Puzzle of this Dissertation**

The European Union (EU) is a type of MLG structure. The EU is also an economic and political union composed by 27 member states (after Brexit). The governance levels include the supranational (EU), national (member states) and subnational levels (local governments and municipalities). This division is covered in more detail in chapter two with the idea of including the interactions that occur between the European, national and local regulatory processes. The European, national and subnational levels play an important part in drafting, formulating and enforcing the rules and regulations of the European Union (Asare, Cairney, &

Studlar 2009). The complexity of the EU could be a primary cause for producing tensions toward its legitimacy. This complexity arises from the EU being the main regulator of the MLG structure who ensures that member states apply the right rules. Much like other MLG structures, when lower levels of governance (such as the national level) have a disagreement with supranational governance levels (such as the EU), this can further the need for legitimising the functioning of MLG. Importantly, this is also a key moment for politicisation to occur.

In their book, *Politicising Europe Integration and Mass Politics*, Hutter, Grande and Kiresi (2016) analyse more extensively the topic of politicisation in the EU and evaluate public debates with over four decades of data. The authors were able to observe the politicisation of the European Integration process in six Western European countries (Germany, Austria, France, Sweden, Switzerland and the UK). They argue that the politicisation of the EU has become more prominent as a result of “new structural conflicts over national sovereignty, national identity and transnational solidarity” (Hutter, Grande, & Kiresi 2016, p. 6). These structural conflicts come from the MLG nature of the EU (Hutter, Grande, & Kiresi 2016). This means that a decision made in one level of governance is likely to be contested by another governance level. The contestations arise as different levels have different interests and roles regarding how the EU works. Other authors, however, believe that the EU should be politicised to the point of public elections being held for both the executive and legislative powers (Follesdal and Hix 2006). These authors demand a European public sphere where citizens can discuss issues across borders and reach a “European wide consensus” (Eder and Kantner 2000).

I have briefly highlighted the complexities that are associated with MLG structures, such as the EU, and how conflicts and politicisation can occur in these structures. The EU can be subject to contestations and conflicts between different governance levels and this can also have repercussions on how different actors legitimise or delegitimise the MLG structure. Across the literature, there are two major contrasting attitudes in relation to the effect that politicisation has over the EU’s legitimisation processes. Both of which are rejected by this dissertation as I see both processes of politicisation and depoliticisation as dynamic. On the one hand, there is a negative view that politicisation can be a threat to the EU’s legitimacy, as it is led by populist actors with nationalistic discourses who may seek to damage the European integration project (e.g Halikiopoulou et al. 2012). Other authors also believe that the effectiveness of the EU can be tampered with if there are too many contestations regarding how it works. Therefore, these authors call for a more depoliticised EU that can function more efficiently without having to deal with outsiders questioning the way its MLG structure works

(see Majone 1998; Moravcsik 2006; 2018). On the other hand, other scholars believe that politicisation can bring a “normalisation” of EU decision making processes and that citizens can become more involved in discussing the European Integration project (Schmidt 2013; Rauh and Zürn 2014; Risse 2015; Statham and Trenz 2015). This thesis aims to understand the effect of the politicisation of EU policies on the EU’s legitimation and delegitimation through an evaluation of the actors who are making claims. Will the grim prediction of Majone (1998) and Hooghe and Marks (2009) about the role of politicisation and dissensus end the European Integration project with a legitimation crisis? Or rather, would it give the EU an avenue to legitimise itself? The next two sections will describe these 2 views more extensively and in section 1.8, I will provide the reader with the way in which I formulate an answer to this conceptual puzzle.

### *1.5.1 First Normative and Empirical Views: Politicisation is Negative For the EU’s Legitimacy*

This section will first describe scholars who see the politicisation of the EU as negative from a normative and empirical standpoint. These scholars tend to see the European public sphere as being made up of multiple “demois” with a weak sense of a “demos” (Cheneval and Schimmelfenning 2013) and believe that unlike nation-states, the EU does not have a unified demos or identity (Lindseth 2010). This collection of “demois” and “demos” has been perceived by citizens of the union as an elitist project (Lindseth 2010). This perception has further increased with the politicisation of the European integration project (Cheneval and Schimmelfenning 2013). According to a large part of the literature, the politicisation and salience of the EU has benefited populist parties from the right (Cheneval and Schimmelfenning 2013; Hooghe and Marks 2008; Kriesi et al. 2006), suggesting the EU’s politicisation has not been as positive as expected. A clear connection therefore exists between the politicisation of the EU and its increase (and decrease) in legitimacy. This is because politicisation can affect how citizens perceive the EU: the less legitimate the EU is perceived, the more likely populist leaders appeal.

The causes of politicisation are also controversial for authors who see politicisation as problematic for the EU’s legitimacy. Some have argued that structural changes within the European integration process cause politicisation (Hooghe and Marks 2009), whereas others suggest that controversies over singular events (e.g. negotiations over Turkey’s membership) result in politicisation (Hutter, Grande, & Kriesi 2016). Debates also exist on the consequences



of politicisation for the EU. For some, politicisation is the cause of the crisis in European integration (Hooghe and Marks 2009), while others view it as a necessary precondition for European integration (Delanty and Rumford 2005). This thesis does not see politicisation as the cause of the crisis but rather aligns itself with the latter view, which sees politicisation both as a normative and causal precondition for further integration as it allows citizens to be more informed about the EU, including its problems and benefits.

Lindseth (2010) believes that the EU obtains its legitimacy indirectly from its member-states. This means that by accepting and deciding to be part of the EU, they are indirectly legitimising it. What used to be nation-states now become member-states (Bickerton 2012). This creates a scheme of cooperation (Rawls and Van Parijs 2003) where member-states must obey EU rules. The mere consent act of participating in EU decision-making and its rules also form part of the member-states internal government along with its economic and societal structures. The danger of this structure arises when the involved actors disagree about decision making processes and these disagreements become politicised as tools for the delegitimation of the EU. Majone (1998) believes that in order to obtain more influence, the Commission needs to expand its regulatory capacities. Supranational policies have been key to the growth of the EU as a “regulatory state”.<sup>6</sup> Therefore, the EU obtains power by rule making and regulating its member states. As such, the EU faces a big issue: it must develop a general framework with common rules that all member states should obey. Therefore, the depoliticisation of policies such as state aid remains essential to the way the EU works.

Existing studies have provided strong evidence to suggest that attitudes towards national institutions affect attitudes towards the EU (Hutter, Grande, & Kriesi 2016). There appears to be a positive relationship between regime support at the two levels of government. That is, any satisfaction with EU democracy is the result of satisfaction with how the nation-state is governed (Sanchez-Cuenca 2000). Citizens therefore appear to take cues from the national level when forming opinions about European democracy. Similarly, Hooghe and Marks (2009) believe that the main problem with politicising the EU is that it comes embedded with national identities and is framed from the member-state perspective, which can distort the decision-making processes that occur in the different levels of governance. Politicisation is argued to be driven by extreme right political parties who oppose European integration because it weakens the nation-states sovereignty as well as its sense of national identity and community

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<sup>6</sup> A regulatory state is one that focuses on the regulation of policies.

(Hooghe and Marks 2012). Hooghe and Marks (2009) see politicisation as a process which can be explained through the interaction of leaders of political parties. This means that political parties and actors instrumentalise how the EU can become politicised. Political actors can interact with one another and this in turn (if polarised enough) can make an issue politicised. However, this viewpoint has little to say about the role that the media plays in public debates (Statham and Trenz 2013). When Hooghe and Marks (2009) make reference to the media, they tend to portray it in a negative light. They also suggest that the media tends to be nation-state driven. Therefore, the audience develops a stronger sense of attachment to the nation state. This argument makes the media seem “one dimensional” (Statham and Trenz 2013). Hooghe and Marks (2009) also suggests that the media could never change public opinion in a way that it is positive towards the EU. However, the media can bring debates and public contestation to light, which then opens the possibility for audiences to form their opinion and learn about the EU. I will later demonstrate how this occurred in certain state aid cases where the claim makers delegitimised the aid given to the corporation by the member state rather than the Commission’s decision (see Ilva case in Chapter 6).

The debate on politicisation and its consequence on legitimacy, has also taken into account the consociational<sup>7</sup> nature of the EU. Here, scholars have debated whether politicisation is beneficial or not for the EU. The consociationalist perspective also emphasises the lack of a single “demos” of the EU. For consociationalist academics, there is insufficient solidarity, unity and deeper understanding about the EU for the polity to function in the face of controversies and public scrutiny. Therefore, in consociationalism, politicisation can affect the mechanisms and exacerbate further differences between the interests of each member state as well as the national values that hold together the EU polity. For authors such as Bartolini (2005), the consociational nature of the EU means that politicisation cannot be good for its legitimacy. Bartolini (2005) sees the multilevel governance aspect of the EU as the main problem. This type of complex governance has electoral cycles at the national and EU level with different schedules. Therefore, a scenario where majorities would converge is rare (Bartolini 2005). The author also believes that political parties at the EU level are too weak to have a voice at nation-state level debates when politicisation is occurring (Bartolini 2005).

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<sup>7</sup> In consociational debates, the EU is understood as a heterogenous polity which shares similar socio-cultural practices and structures as well as institutional systems with nation-states such as Belgium or Switzerland. These societies tend to be representative and are consolidated by an institutional architecture which is designed to hold the different interest and segments of societies.

However, for this study, both analysed state aid cases saw different members from EU political parties involved in public discussions (e.g. members from the EU's Centre left Socialists or European People's party). Meanwhile, authors such as Papadopoulos and Magnette (2010) argue that Bartolini (2005) failed to mention the risks of depoliticisation on the EU. The authors highlight the fact that Bartolini's work (2005) mostly focuses on politicisation, as is the case for a large part of the EU literature (e.g. Ares et al. 2017; Blagioni and Hurrelmann 2016; Bartolini 2006; Bauer and Ege 2012; Bouza Garcia 2017; among many others). One might expect that studies that analyse the EU's politicisation without evaluating movements of depoliticisation might miss certain parts of the process. Thus, this dissertation aims to contribute to filling this knowledge gap by investigating how processes of politicisation *and* depoliticisation can affect the EU, its member states and the (de)legitimation of these entities in the media.

### *1.5.2 Second Normative and Empirical Views: Politicisation can have a Positive Impact on the EU's Legitimacy*

A more optimistic view of how the public can enhance decision-making and democratic performance comes from the public sphere tradition. This tradition has its beginnings in Habermas and sees the public sphere as key for democracy and for advancing the European integration project. Risse (2010) developed the concept of "transnational communities of communication" to explain how Europeanised public spheres enable cross-border communication and can aid policymaking processes beyond the member states borders. Therefore, the media can help citizens make more informed decisions about what the EU is and how it works (Risse 2010, p. 232) as well as to help the Commission (or the EU more broadly) test arguments in public debate. This "transnational community of communication" is the first step in the politicisation of European politics (Statham and Trenz 2012).

Leca (1996) suggests that in order to understand democracies, we can identify two types of politics: "politique d'opinion" and "politique des problèmes". The first term refers to electoral politics and the other refers to technocratic policy making processes. In the EU, the "politique d'opinion" seems to be absent (Papadopoulos and Magnette 2010). Similarly, Schmidt (2013) believes that the EU is a polity based on "policies without politics" (and, more recently, "politics against policy" or, in more extreme cases, "politics against polity" – see Schmidt 2019). Schmidt (2006) suggests that democracy requires politics to decide which policies and/or legislation to implement and this is what the EU is lacking. The empowerment

of the EU without a pan-European debate creates “politics without policy” at the national level and “policy without politics” at the EU level. This in turn creates a multilevel democratic deficit (Schmidt 2015). Hence, politicisation may aid the EU with connecting to its citizens by creating a sense of politics about the polity (see Schmidt 2006; 2015).

Other authors such as Hix (2008) suggests that a left-right politicisation in EU politics should occur in the European Parliament, the Commission and the Council in order to increase political competition and choice over the use of the EU’s powers. Hix (2008) also suggests that this politicisation can strengthen public debate, create policy innovation and increase the EU’s legitimacy. The author believes that if politicisation takes place with a left-right polarisation focus, then the EU’s legitimacy can be strengthened, as most of this polarisation would also divide those who are for or against the EU (Hix 2008). He also recognises the consociational characteristic of the EU. However, in contrast to Bartolini (2005), Hix (2008) argues that politicisation of the EU can alleviate issues related to its consociational nature. This is because electoral competition is good at resolving differences among citizens. Therefore, when politicisation happens, electoral competition is created which in turn gives voters a sense that there is a fair procedure.

Statham and Trez (2012; 2013) suggest that the more public discourse expands, the greater the politicisation of the EU. The authors see value in having an increasing amount of public discourse as it allows for executive decisions to be more transparent, include a bigger number of civil society actors, and provides critique of how policies and societies are governed (2012; 2013). Mass media gives audiences and the public access to information about decision-making processes, political actors and those who challenge governmental decisions (Statham and Trez 2012). Therefore, politicisation can take place when public debate is being carried by the mass media. The mass media is considered to be a space where actors from a wide variety of backgrounds can have their voices heard and where there is an audience who can further expand the conflict (Trenz and Eder 2004). In this sense, the media exposes citizens to elite conflicts and allows them to learn and form a public opinion on a specific matter (Trenz and Eder 2004). This shapes political behaviour and can also create further societal changes. For EU policies and debates, this means that the more political actors and decision makers debate the EU and its policies, the more likely this can contribute to a “Europeanised space of communication” (Statham and Trez 2012). This, in turn, creates a space where criticism about decision-making processes can occur and therefore creates a space where change in policy making can occur as a consequence of politicisation.

As previously mentioned, public spheres are the spaces where political issues are discussed and where the general public become informed about the decisions made by bureaucrats and elites in government (Eder and Kantner 2000). One of the most common mechanisms for citizens to learn about political issues is through the public sphere (Adam 2015). The literature on the public sphere is mostly related to nation-states. Since the creation of the EU, a debate has sparked as to whether European politics have navigated further from discussions held at the elite level and reached the average citizen (Eder and Kantner 2000). More specifically, the debate relates to whether the public sphere has become Europeanised in each of the member states or not. Most authors would agree that the Europeanisation of the public sphere is not uniform among member states and that it is still very nation-state dependent. This means that the European public sphere is framed with a national focus by the media organisations of each member state (De Vreese 2001) that often cover news about the EU. As such, politicians and news stories from the “home” member state where the news is being covered will gain more coverage than those from other member-states (Lloyd and Marconi 2014) or from the European Commission. Hence, “international polarisation exposes citizens to one side of the story only” (De Wilde 2010). The literature seems to suggest that national actors will defend a “common national interest” together, which is presented as diametrically opposed to the opinions, interests or values of the other member states or supranational institutions” (De Wilde 2010, p. 137). On the other hand, “transnational polarisation” can result in citizens obtaining different perspectives from several member states rather than maintaining one’s own (De Wilde 2010). This dissertation analyses national newspaper coverage to understand how politicisation (and depoliticisation) occurs. However, special attention will be paid to EU actors and their roles in politicising (as well as depoliticising) the state aid case.

To summarise, I have described two contrasting normative and empirical perspectives on the impact of politicisation on the legitimacy of the EU. The first perspective sees the EU as an instrument in the hands of its member states. According to this perspective, the EU itself is dependent on the legitimacy of its member states (Moravcsik 2006). Therefore, politicisation is seen negatively as it would jeopardise the current functioning of the EU while providing room for the depoliticisation of EU policies such as state aid to be preferred. The second view on the consequence of the politicisation of the EU’s legitimacy suggests that the EU’s politicisation can have a positive impact on the EU (Schmidt 2013; Hix 2008; Statham and Trenz 2013). Scholars who encourage politicisation suggest that the EU should be politicised

to the point of public elections being held for both the executive and legislative powers (Follesdal and Hix 2006). These authors demand a European public sphere where citizens can discuss issues across borders and reach a “European wide consensus” (Eder and Kantner 2000).

This thesis demonstrates that politicisation can provide avenues for the EU to be seen and be subject to contestation in certain state aid cases, which in turn can create opportunities for change and improvement. Moreover, politicisation provides the EU with the opportunity to legitimise itself and its action. This is important as it allows wider audiences to understand how the polity and its policies work. However, this is not to say that the politicisation of an EU policy cannot have negative consequences for the EU (as will be covered later in this thesis through the analysis of the Apple state aid case). Politicisation can indeed be negative for the EU’s legitimacy if several actors from the national state align themselves against the EU. However, if politicisation takes a different format where the main polarised actor is not an EU institution, then the EU can act as a regulator and serve as an actor that can aid and promote sustainable competition. Also, it is important to note that both of these processes are not “all or nothing”, but rather fluid in MLG structures such as the EU. Due to their complexity, one cannot simply assess them as being only positive or only negative for the EU’s legitimacy.

## **1.6 Connecting EU policies to studies of Politicisation and Depoliticisation**

The way in which this dissertation will analyse the puzzle of whether politicisation is negative or positive for the EU’s legitimacy, is through a detailed consideration of a particular EU policy. This part of the chapter observes some of the main literature on what happens when an EU policy becomes politicised or depoliticised over time.

### *1.6.1 Studies on the Politicisation and Depoliticisation of EU Policies*

In his book “A Responsive Technocracy? EU Politicisation and the Consumer Policies of the European Commission”, Christian Rauh (2016) finds that the European Commission tends to intervene when it gains more salience in the media regarding consumer policy. That is, when an issue related to the Commission is highly salient and politicised, “the European Commission responds with more interventionist policy positions” (Perez-Seoane 2016). Politicisation allows for a different type of input into policy-making processes (Rauh 2016), as public opinion can drive input legitimacy (responsiveness by the government regarding citizens’ concerns) from the Commission. When an issue becomes highly politicised by actors in the nation-state and the EU, the Commission tries to obtain more output legitimacy (the

effectiveness of policy outcomes for citizens) and responds with a more interventionist policy (Rauh 2016). This is done in an attempt to be seen by the public as a beneficial institution (Rauh 2016). When an issue has low salience, there is lower input legitimacy [Input legitimacy refers to people's demands and support; for example, people can obtain input legitimacy through elections (see Scharpf 1999; Schmidt 2013)] and therefore the opposite occurs where public opinion does not influence policy decision-making processes (Rauh 2016). Similarly, Coen and Katsaitis (2013) believe that the Commission is a "chameleon" as each Directorate General (DG) for competition has different policy domains and therefore demands different types of output legitimacy [the policies and decisions made by the government based on the inputs from voters (Scharpf 1999)]. The authors conclude by stating that "policy domains that place higher utility on output legitimacy demand more technical expertise and as a result show a stronger presence of business interests and associations. On the other hand, policy domains that place higher utility on input legitimacy demand more political information and show a stronger presence of civil society type groups" (Coen and Katsaitis 2013, p. 117). The Commission is therefore a "responsive technocracy" (Rauh 2016) which responds to issue salience, politicisation and output legitimacy. What does this mean for the DG Competition and for its legitimacy? As previously stated, competition policy is the most supranational institution and its contested cases are likely to become politicised. State aid cases that are highly salient and politicised might have consequences for the legitimation of the actions of both actors (the Commission and the nation-state).

Regarding the analysis of the depoliticisation of EU policies, studies have focused on the "governmental depoliticisation" (how much the government controls a specific policy or issue and gives powers to other institutions or organisation) of the EU. For example, Moraitis (2019) looks at how transnational depoliticisation has worked in EU industrial policies. Other authors have argued that EU integration through the depoliticisation of its policies does not necessarily change the way in which the EU as a policy is perceived (Genschel and Jachtenfuchs 2016). Rather, the depoliticisation of its topics and policies can lead to a more fragmented EU (Genschel and Jachtenfuchs 2016). Similar to this thesis are studies which have looked at how policy discourses serve to depoliticise a particular policy. More specifically, Remling (2018) has looked at how the EU depoliticised its discourse regarding environmental and adaptation policy. These studies show how the EU can be the driver in depoliticising its policies through discourse which is key to the analysis that will occur later on in this dissertation. Similarly, the study of this dissertation looks at how a policy such as state aid can

become not only politicised but also discursively depoliticised through the claims that different actors make in the media. My analysis advances past studies such as Remling (2018) and Flinders and Wood (2017), by assessing the process of depoliticisation through the same mechanism used to analyse politicisation: claims-making analysis. This also represents a key contribution to the field of discursive depoliticisation and depoliticisation studies more generally.

### **1.7 Competition Policy, State Aid and Importance to the Study**

Now that I have provided the reader with some of the main literature on what can happen when EU policies become politicised, this section will concentrate on the specific policy which I decided to explore for this dissertation: state aid. In order to understand state aid, I first have to give an overview of competition policy which is the umbrella policy in which state aid belongs. The main objective of competition policy is to “enhance efficiency” in terms of consumer welfare, individual markets and the promotion of economic competitiveness (Craig and de Búrca 2015, p. 1001). For Western European countries, competition policies were introduced after the Second World War (Cini and McGowan 1998). The creation of the European competition policy was influenced by the need for stronger market integration in the era of the European Coal and Steel Community in the 1950’s (Resch 2005). In other parts of the world, competition policy started after the 1980’s when the regulation of competitive behaviour between companies was deemed important (Cini and McGowan 1998).

The European Single Market has been key to the European Integration process by increasing competition in the market place through the variety of goods, services, capitals and people.<sup>8</sup> The goal for staff members in the Directorate General (DG) for competition is to “facilitate the correct functioning of the [European] Single Market” (Szczepański 2014). Competition policy ensures that companies of each of the member states are able to compete with one another in the EU (Szczepański 2014). Competition policy is one of the most integrated and supranational policies of the EU (Murray 2004) and has been perceived as a “success” story of the European Integration process (Cini and McGowan 2009). The key body that oversees competition policy for the European Union is the European Commission, which remains the dominant player in relation to competition policies (Cini and McGowan 2009).

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<sup>8</sup> See [https://ec.europa.eu/growth/single-market\\_en](https://ec.europa.eu/growth/single-market_en)



Competition policy is comprised of 4 pillars (Szczepański 2014):

- A. *Antitrust & cartels*: These are a group of similar, independent companies that join forces to fix prices, limit production or share markets/customers between them. Cartels allow companies to rely on each other. However, companies may not have the same incentives to create new (or better) products to compete against adversaries at competitive prices. Indeed, collusion among companies is a source of welfare loss to consumers who have to pay higher prices or face restricted choices. Therefore, cartels can restrict competition and be a barrier to new providers entering the market. The European Commission has implemented fines for companies involved in cartels. The goal of this policy is to prevent companies from making agreements that can restrict competition (e.g. to avoid price fixing and other possible abuse from firms who might hold a dominant position in the market place).
- B. *Market liberalisation*: The second pillar involves the introduction of competition in previous sectors that used to be monopolised (such as energy supply, retail banking, postal services, mobile telecommunications and air transport).
- C. *Merger control*: This pillar involves the investigation of mergers and take-overs between firms. This occurs when two large groups or corporations merge and dominate the market.
- D. *State aid control*: These measures ensure that aid given by member states to corporations does not distort the level of competition in the Internal Market. State aid helps the European Union protect consumers' welfare and aims to protect medium to small size companies, as well as further European market integration.<sup>9</sup>

State aid regulations were first established in the 1957 Treaty of Rome. The treaty of Rome referred to state aid as “any form of intervention made by the state which could distort competition law” (Hoffman and Micheau 2016, p. 6). This was later updated in the 2007 Treaty on the Functioning of the European Union (TFEU). The new update states that “any aid granted

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<sup>9</sup> See <https://www.williamfry.com/docs/default-source/2015-pdf/the-eu-state-aid-regime-an-overview.pdf?sfvrsn=0>

by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market” [Art. 107(1) TFEU; Doleys 2009]. State aid was created with the intention of preventing industrial favouritism that might provoke tensions between member states, which was seen as unfavourable after the Second World War (Cini and McGowan 2009). Historically speaking, the idea was that the Commission had to oversee the different aspects of state aid policy in order to ensure that competition remains stable within the Internal Market. In this way, through the treaties, the Commission (more specifically, the DG Competition) was able to obtain the majority of the power in overseeing, drafting and ensuring that state aid rules were being complied with (Cini and McGowan 2009). Thus, the treaties allowed for a transfer of power from the member states to the Commission when it comes to state aid policy and rules.

Before the Commission can approve a state aid (case), there must be “some form of contribution by the beneficiary, over and above the normal play of market forces, to the attainment of Union objectives set out in the derogations from Article 107(3)” (Craig and de Búrca 2015, p. 1131). This means that according Article 107, member states can give aid to a beneficiary in order to restructure, rescue or help with operating costs under specific circumstances. In order for the aid to be granted, the Commission must verify that “visibility is restored, that it is in proportion to the restructuring costs and benefits, that undue distortions of competition are avoided, and that the restructuring plan is fully implemented” (Craig and de Búrca 2015, p. 1131). The Commission serves as a “policeman” whose aim is to achieve common objectives for all member states and ensure a level playing field (Murray 2004). The main goal of state aid is to regulate subsidies and other forms of aid from public institutions to any industry (Murray 2004). This ensures that trade and competition in the Internal Market is not disturbed.

According to the European Commission’s Directorate General (DG) for competition website, state aid is defined as “an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by this prohibition and do not

constitute state aid (examples include general taxation measures or employment legislation)”<sup>10</sup>

For a case to be considered state aid, it must include the following four characteristics<sup>11</sup>:

1. Intervention by the state – either through giving state resources for a business, a grant, interests and tax reliefs, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms.

2. The state gives an advantage to the recipient over others – either because they choose to give state aid to certain companies over others or by choosing to give aid to a company located in a specific location or region.

3. The competition has the potential to be distorted.

4. Trade between member states is compromised.

When Jean-Claude Juncker entered into office as President of the European Commission, one of his primary goals was to make the Commission “more political” by stating “the Commission is not a technical committee made up of civil servants who implement the instructions of another institution. The Commission is political. And I want it to be more political. Indeed, it will be highly political. Its make-up must reflect the plurality of the majority of ideas which take shape.”<sup>12</sup> However, a spokeswoman for Juncker later stated that “being political should not be confused with politicised. For him, fighting tax avoidance had been a “top priority” since before he took over the EU executive two years ago” (Macdonald and Yun Chee 2016). It is important to note that tax avoidance is also connected to state aid in that if governments provide benefits to corporations by reducing taxes, this can be considered by the commission as “state aid”. In this sense, the spokeswoman is suggesting that Juncker is not trying to politicise this part of state aid even though he will continue to focus on companies that do not pay their taxes.

This is not the first time that the European Commission has been said to be politicised. Several scholars have addressed the potential politicisation of the European Commission (Bauer and Ege 2012; Ege and Bauer 2018; Hartlapp 2015; Rauh 2016; 2018; Wille 2012; van der Veer and Haverland 2018; Schmidt 2019). These studies have shown that within the

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<sup>10</sup> See European Commission’s Directorate General (DG) for competition website, available at: [https://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](https://ec.europa.eu/competition/state_aid/overview/index_en.html)

<sup>11</sup> Ibid.

<sup>12</sup> See Jean Claude Juncker’s “A New Start for Europe. Opening Statement in the European Parliament Plenary Session”, July 2014, available at [https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf)

Commission “we thus see an ever less politicised civil service in an ever more politicised organizational context” (Bauer and Ege 2012, p. 419). However, this might not be true for all of its departments. The Commission is composed of 53 departments/executive agencies, known as the Directorates-General (DGs). Each department is responsible for different policy areas.<sup>13</sup> Each of the Directorates-General (DGs) work independently and do not necessarily follow the same direction or procedure (Perez-Seoane 2016). As such, the politicisation of each Directorates General (DGs) might be different and therefore investigating the politicisation of the European Commission as a whole might not be useful.

Within competition law, this dissertation will only evaluate the politicisation of one of its policies: state aid. This is in order to understand how the Commission, member states and other involved actors choose to politicise their actions. State aid disagreements (or contestations) are investigated to determine how they might compromise the legitimation of the EU. There are several reasons why state aid cases are used in this thesis. First, state aid cases form part of the most supranational policy of the EU (competition policy), as well as being one of the most powerful types of policies (Cini and McGowan 2009). This means that there is a form of authority transfer from the member state to the Commission in state aid cases. In the literature, it has been hypothesised that a policy is more likely to become politicised if authority transfer occurs (see De Wilde and Zürn 2012). As previously mentioned, this happens as a consequence of supranational levels of governance having more powers over national levels which in turn creates contestations and questions of legitimacy about this transfer of power. In state aid, the authority transfer happens throughout the general legislative acts and guidelines, where member states delegate the powers to limit state aid to the European Commission. Thus, the act of transferring authority occurs when member states delegate the powers of regulating state aid to the Commission. Yet, it is only when the European Commission makes the official decisions on the individual state aid cases that it has to communicate and legitimate those decisions. Therefore, the authority transfer creates further opportunities for the Commission to legitimise its actions. Moreover, as state aid is one of the most integrated policies (Cini and McGowan 2009), it is interesting to analyse how the dynamics between the member state and EU occur.

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<sup>13</sup> For more information about how the Commission is organised see: [https://ec.europa.eu/info/about-european-commission/organisational-structure/how-commission-organised\\_en#departments-and-agencies](https://ec.europa.eu/info/about-european-commission/organisational-structure/how-commission-organised_en#departments-and-agencies)

The second primary reason for selecting state aid is that the policy has been a critical factor in the Commission's creation of a common Single Market (Heim et al. 2017). Indeed, state aid policy directly limits member states from giving illegal aid to corporations to prevent possible distortions to the European market. In this sense, state aid has been used as "an important tool of government policy in the European Union reflected in overall (non-crisis related) transfers of about 64.4 billion Euros in 2013" (Heim et al. 2017, p. 194). That is, any problems arising from state aid cases may affect the way in which the Commission's authority is perceived.

The third reason for selecting state aid pertains to the transparency measures established by the European Commission on July 1<sup>st</sup> 2016 that enable the public to view state aid cases. The Commission's website allows the public to see the "name of the beneficiary, amount, location, sector and objective".<sup>14</sup> Transparency measures are also critical for the politicisation of a policy. Indeed, transparency measures implemented by the Commission allow for state aid cases to enter the public domain.<sup>15</sup> This moves state aid into the political realm where different actors can debate the policy. Also, it is important to note the fact that in state aid cases, there can be two or more opposing sides. Most often, the two actors involved are: the nation-state versus the European Commission; or, the corporation involved in the state aid case versus the Commission. Other times, multiple actors might be involved (e.g. local governments, civil society groups, NGO's, citizens, journalists, etc). This makes state aid policy a very "politically sensitive" matter (Blauberger 2011, p. 28). The tensions that arise from state aid conflicts tend to attract considerable public attention at the national level (Alitalia and Alstom to the Gdansk shipyard or Opel) (Blauberger 2011). Given this, it has been said that the credibility of state aid and the Commission lies in avoiding political conflict (Blauberger 2011). Because the Commission is a non-majoritarian EU institution, avoiding conflict in state aid allows the EU institution to continue its work in state aid matters without having its authority or role in state aid brought into question (Blauberger 2011). Thus, a state aid case that is appealed and subject to politicisation, could raise possible questions about the legitimacy of the Commission's decision at the national level of governance and these delegitimations could be used to fuel anti-EU sentiments.

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<sup>14</sup> See European Commission's Directorate General (DG) for competition website, available at: [https://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](https://ec.europa.eu/competition/state_aid/overview/index_en.html)

<sup>15</sup> See the European Commission's transparency measures available at: [https://ec.europa.eu/competition/state\\_aid/overview/transparency\\_and\\_evaluation.html](https://ec.europa.eu/competition/state_aid/overview/transparency_and_evaluation.html)

## **1.8 The Differentiated Nature of the Politicisation and Depoliticisation of State Aid Cases**

I will now elaborate my understanding of what can happen to the EU's legitimacy when state aid policies become politicised and depoliticised. I have explained that most early theorists seem to suggest that politicisation can be exclusively good or bad for the EU's legitimacy. For example, in terms of competition law (of which state aid forms part), Majone (1998) explains how, over the last few years, member states have followed rules that resemble the EU's and have deployed experts who work closely with the DG Competition. The author states how the EU has forced member states to create regulatory bodies at the member state level to be able to tackle and implement the rules determined by the EU (Majone 1998). Therefore, Majone (1998) concludes that the EU's regulatory powers work best when the decision making powers remain "apolitical". However, I will show throughout this dissertation that the effect of politicisation or depoliticisation on policy such as state aid and the EU's legitimacy is not merely negative or positive. Rather, this is context dependent. I am not the first one to understand that there seems to be a differentiation in politicisation which depends on where it occurs. The study of De Wilde and Lord (2016) highlights that politicisation can have different consequences on the EU's democratic legitimacy depending on the context and measures of politicisation. Indeed, politicisation can behave differently depending on the country's context as well as the way in which politicisation is measured, as not all scholars see or measure politicisation in the same manner. In this sense, the approach I use to simultaneously measure politicisation and depoliticisation impacts how the legitimacy of the EU is understood in this dissertation. Similarly, authors such as Baglioni and Hurrelmann (2016), also state that, when analysing the politicisation of the EU, one must take into account the various domestic factors. Depending on the context, politicisation can trigger different types of domestic mobilisation, which can affect the perception of the EU's legitimacy. Leupold (2016) has also suggested a similar argument by examining the politicisation of the Eurocrisis. In her study, Leupold (2016) highlights how the domestic cleavages found within member states can create diverse perceptions regarding the EU. As I will show throughout the thesis, the analysis of both politicisation and depoliticisation also seems to align with a form of differentiated politicisation (Baglioni and Hurrelmann 2016, Leupold 2016 and De Wilde and Lord 2016). Indeed, the two state aid cases that were analysed yielded different findings and conclusions that further contribute to this literature.

De Wilde and Lord (2016) have defined three trajectories of politicisation: domestic, remote and international conflicts. Critically, each of these trajectories “offers challenges and opportunities to the democratic legitimacy of the Union” (De Wilde and Lord 2016, p. 145). A lot of the time, a domestic conflict is one where European Integration becomes internally politicised and is usually framed as the opposing opinions of those who want to remain in the EU against those who are euro-sceptics (De Wilde and Lord 2016). In these types of conflict, the EU issue is assimilated, internalised and the conflict often becomes politicised (De Wilde and Lord 2016). Domestic conflicts can also be less drastic and can occur between those who are supportive for the further developments of EU powers versus those who are not. Remote conflicts refer to EU issues that are portrayed in the media as “foreign”. Leopold (2016) and De Wilde and Lord (2016) cite Austria’s media framing of the debt crisis as an example of a remote conflict. That is, while the crisis was occurring within the EU, Austria was not directly affected by it. As the remote conflict unfolds outside of the nation state, the politicisation of the conflict remains limited (De Wilde and Lord 2016, p. 151). International conflicts are those that deal with either broad topics like European Integration, or with a specific policy that advances EU governance. These conflicts are presented to citizens in two contesting views: the nation-state versus the supranational institution (EU). Nationality and the protection of the nation-state become a key signature of this trajectory (De Wilde and Lord 2016).

Schmidtke (2016) uses the example of the international conflict between Ireland and the Commission with respect to corporate taxation. This conflict first became politicised in Ireland in 1998 (Kneafsey and Regan 2019). Since then, attempts by the Irish government to align with European regulations have been regarded as an offense to the country by several coalitions of Irish politicians and civil society members (Schmidtke 2016). In Ireland, the politicisation of the EU governance on tax has been framed by both the media and politicians as evoking cultural concerns about maintaining Irish sovereignty (Schmidtke 2016; Kneafsey and Regan 2019). For this dissertation, the apple state aid case is expected to behave in a similar manor to the examples found in the study by Schmidtke (2016) and Kneafsey and Regan (2019). By politicising these state aid issues, the government might frame the international conflict of “us” (the nation-state) against “them” (EU), which could result in the polarisation of society. By examining state aid disagreements between the nation state and the Commission, this dissertation aims to further contribute to the “international conflict” trajectory (De Wilde and Lord 2016).

Overall, this thesis will show that context can be a major influence for the way in which

politicisation and depoliticisation occur. To achieve this, I will examine a single policy area (state aid) to determine how appealed and non-appealed cases can create different legitimations and delegitimations towards the Commission and the EU more generally. Thus, by gauging the fluidity of both processes, one can reach different assessments about how actors at different governance levels in the public sphere can influence the (de)legitimation of EU policies and actors.

## **1.9 Structure of the Thesis and Conclusion**

### *1.9.1 Thesis Structure*

The thesis is divided in two parts. First, relevant concepts, theories and the methods will be described. The second part includes the analyses, discussions and conclusions of the thesis. More specifically, in chapter 2 a new predictive model is formed in order to understand how state aid policies function and how they are politicised and depoliticised. This model follows Hay's (2007) framework, which is expanded to include how these processes occur simultaneously in a MLG. Chapter 3 explains the methods applied in Chapters 4, 5, 6 and 7 of this thesis.

Part 2 of the thesis starts with chapter 4 which collates all the state aid cases labelled "unlawful with recovery of aid" between January 1<sup>st</sup> 2000 and January 1<sup>st</sup> 2018 from the 28 member states. The data was collected from the year 2000 for two main reasons. First, the European Commission decided to make all state aid cases available from January 2000 onward (this decision was taken in 2016<sup>16</sup>). Second, this date is also theoretically important as transparency measures taken by the European Commission are subject to delegitimations by actors who are involved in the conflict (Heldt 2019). This means that published decisions are more likely to be contested and delegitimised. For example, in a neighbouring field (trade), this has shown to be the case as the Transatlantic Trade and Investment Partnership (TTIP) negotiations became more likely to be politicised after the Commission made trade negotiation texts publicly available (Heldt 2019).

The analysis in Chapter 4 determines when a state aid case is "contested" or not by the member state. A case is considered to be "contested" if the member state appealed or ignored the Commission's decision. This chapter aims to reveal which member states tend to contest

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<sup>16</sup> See EC's transparency measures available at:  
[https://ec.europa.eu/competition/state\\_aid/overview/transparency\\_and\\_evaluation.html](https://ec.europa.eu/competition/state_aid/overview/transparency_and_evaluation.html)



the Commission's decision more often and which countries tend to provide more illegal aid. The rulings of state aid policies across member states (pre, during and post financial crisis) are also discussed.

Chapter 5 examines which cases obtained media attention. This chapter answers: What triggers the national news coverage of state aid cases? How often are these cases covered in the media? And, finally, which of these state aid cases can be used to conduct a claims-making analysis? A Factiva search is performed to determine whether contested cases had more media coverage than those that were not contested. The period for collecting news sources is from the "notification date" to six months after the "decision date." The "notification date" is the day that the European Commission notifies the member state that it is initiating a procedure to investigate whether or not state aid is occurring in the chosen member state. A regression analysis is used to reveal which state aid cases gain the most media coverage and whether appealing a case is a determinant factor in the amount of media attention. The analyses conducted in this chapter are used to select two state aid cases for the claims-making analysis conducted in Chapters 6 and 7.

Chapter 6 uses the Apple and Ilva state aid cases to understand how they became politicised through the use of claims-making analysis. Claims-making analysis is a standard method for analysing the contents of public debates and news-sources. It differs from regular content analysis as it considers the relations between the actors who are making the claims and the addressees (Statham and Trenz 2013). The objective of this chapter is to understand how actors choose to politicise as well as (de)legitimise the Commission's, Italy's and Ireland's actions. This chapter analyses the following question: how do actors legitimise and delegitimise the EU when they become politicised?

Chapter 6 is quickly followed by the analysis of its counterpart: depoliticisation. Chapter 7 evaluates how different actors in the two state aid cases choose to discursively depoliticise their actions by using distinctive tactics. It draws on the works of Flinders and Wood (2014; 2017) and adapts their schema to propose a claims-making analysis as an avenue to study discursive depoliticisation. This chapter answers: How do actors attempt to discursively depoliticise either their actions or the actions of the Commission through their claims? This chapter demonstrates how discursive depoliticisation instances can occur during politicisation and, therefore, confirm Flinders and Wood's (2017) understanding of discursive depoliticisation. It also uses claims-making analysis to further identify and analyse discursive depoliticisation instances in the media, which will also highlight the usefulness of this approach

in the field of depoliticisation. Lastly, this chapter aims to determine whether discursive depoliticisation can impact the delegitimations of the Italian or Irish governments and, ultimately, of the Commission.

Finally, Chapter 8 discusses the results and provides conclusions based on the empirical chapters. The chapter also provides trends and patterns from the politicisation and depoliticisation of state aid cases that were identified in the claims-making analysis. It is shown that the potential repercussions of politicisation and depoliticisation on the EU's legitimacy mainly depend on the state aid case that is being debated. I argue that the indirect legitimacy and authority of the Commission as an EU institution was put into question in the Apple state aid case. This could potentially have negative future consequences for the EU as other member states, who also rely on providing multinational low taxes, might use similar arguments during their appeals against the Commission (e.g. cases like Amazon or Starbucks). Thus, the differentiated patterns of politicisation and depoliticisation showed that the Apple case followed the "politics against policy" route while this was avoided in the Ilva state aid case. In terms of depoliticisation, the results also show that discursive depoliticisation is not necessarily always detrimental to the EU's legitimacy. Instead, depoliticising strategies can be used to focus on the cooperation between parties and on calming any pre-existing tensions. In contrast to the literature, it appears that politicisation and depoliticisation do not necessarily always affect the EU polity in a similar manner. Rather, the varying degrees of politicisation and strategies of depoliticisation can fluctuate across time and across claimants even within the same policy field.

### *1.9.2 Conclusion*

To conclude, this thesis uses a particular supranational policy (state aid) to evaluate how actors use their claims, how the politicisation processes occur, and what their possible consequences are for the EU's legitimacy. Studies that look simultaneously at processes of politicisation and depoliticisation remain rare. Hay (2007) was the first to bring a framework that includes both politicisation and depoliticisation while others have since adapted this framework (Beveridge and Naumann 2014; Jenkins 2011; Kuzemko 2014a; Kuzemko 2014b). Yet, none of these adaptations have investigated how processes of politicisation and depoliticisation work in MLG by examining claims that might occur simultaneously at different governance levels. Moreover, recent studies on the politicisation of state aid cases (Schmidtke 2016) and competition policy (Coen and Katsaitis 2013; Rauh 2016) do not

consider both levels of analysis (the Commission and the nation-state) and how actors legitimise (or justify) their claims.

As such, this study aims to contribute to the literature by considering the MLG nature of the EU and how the politicisation of certain policies at the EU level are used by the actors involved to try and legitimise their actions against one another in national news media. The dissertation will explore: (a) the claims made by different actors involved in the politicisation and depoliticisation processes (including EU and national decision makers as well as journalists in the media); (b) how state aid issues become (de)politicised; (c) how the different actors involved legitimise their own actions and delegitimise others; (d) the links between the (de)politicisation of issues and the legitimation of actors/institutions/states as well as their overall legitimacy; and (e) the role of the news media and the journalists involved in the process.

Overall, this thesis aims to contribute to the current debates on politicisation by studying politicisation together with processes of depoliticisation. Several gaps have been identified in the literature. First, a more detailed analysis of politicisation and depoliticisation processes in MLG is required. Most of the literature has focused on the conceptualisation of both process from a merely theoretical standpoint and at one level of governance (Hay 2007; Beveridge and Naumann 2014; Jenkins 2011; Kuzemko 2014b; Berkhout 2012) rather than taking an empirical approach. For example, studies by Fawcett, Flinders and Wood (2017) and Papadopoulos (2017) have tried to understand how both process work in MLG. However, the authors only theorise three dimensions of depoliticisation related to MLG (technocratic dominance, limited pluralism and “shadow of hierarchy”). While these authors do acknowledge the existence of politicisation, they do not examine how policy issues can become politicised or depoliticised in MLG *per se*. Nor do they examine the impact of depoliticisation or politicisation on the legitimacy of the complex MLG structure that is the EU. As such, in this dissertation these processes will be explored simultaneously, and not only theoretically but also empirically, which will provide a broader picture than one produced by analysing either process alone.

Second, this thesis aims to evaluate discursive depoliticisation through claims-making analysis and therefore chapter 7 aims to provide future researchers with tools on how to spot several discursive depoliticisation strategies. Analysing discursive depoliticisation is a novel approach and aims to provide a systematic method to analyse both processes in the public

sphere. This approach also highlights that, rather than being completely opposing processes, politicisation and depoliticisation can be analysed simultaneously.

Third, the role of actors involved in the politicisation and depoliticisation of state aid cases has never been studied. Similar studies have focused solely on the politicisation of corporate taxation (Schmidtke 2016). By contrast, this dissertation will provide a broader analysis of the state aid cases in order to understand how politicisation or depoliticisation can shape the evolution of different cases. By doing this, the study not only evaluates corporate taxation but also other types of aid given to the banking sector, the steel industry, telecommunication, and transport among many others. Thus, this thesis brings a novel understanding to the study of state aid, including how state aid cases become politicised as well as discursively depoliticised.

Finally, and closely related to the last point, existing studies have not paid sufficient attention to whether the politicisation of state aid and competition policies have been successful or not in how actors legitimise or delegitimise the Commission's actions (Blauberger 2011). Most of the literature on competition policy and politicisation does not link the two together (Cini and McGowan 1998; Craig and de Búrca 2015; Finke 2020; Zahariadis 2013). Therefore, this thesis investigates how a policy such as state aid, which is often thought of as "technical" policy, can also become the subject of media debates.

## **Chapter 2: Politicisation, Depoliticisation and Legitimacy - Towards a MLG Theoretical Framework**

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### **2.1 Introduction**

Chapter 1 explained the main conceptual puzzle of this thesis which ties questions of legitimacy to processes of politicisation and depoliticisation. Over the years, solving this puzzle has been the aim of several scholars and, most recently, Schmidt (2019) attempted to answer whether “politicisation is a good thing or a bad thing for the EU as a whole” (Schmidt 2019, p. 5). To recapitulate, in the literature, some authors see the democratic legitimacy of the EU resting indirectly on its member states (see Moravcsik 2006; Majone 1996; 1998; Lindseth 2010). More specifically, these normative debates focus on the idea that the EU is an instrument in the hands of its member states and, in this sense, the EU does not have to be democratic. Rather, its legitimacy relies on the affiliation of its member states (Moravcsik 2006). Thus, for these authors, politicisation might represent a problem as it can create contestations that can highlight the EU’s lack of direct democratic legitimacy. As such, the politicisation of the EU and of its institutions could be considered detrimental as this may affect the way in which actors perform their functions within the Multilevel Governance (MLG) system and diminish the overall capacity for supranational levels of governance to act or mandate. Indeed, politicisation of decision making processes has a “disruptive potential for the EU” (Moravcsik 2018, p. 1659).

For the aforementioned authors, complex governance structures can only function efficiently and effectively if they are not contested by different actors in the public sphere. Simply put, if politicians, citizens or other actors question the way in which a MLG structure works, this can hinder the way in which higher levels of governance function as regulatory bodies. Thus, for these authors, the depoliticisation of routine policy making processes and decisions processes remains the ideal scenario for complex MLG structures such as the EU. Moreover, these authors also believe that the institutions within supranational levels of governance gain their legitimacy based on how effectively they function (Majone 1996; 1998; 2014; Moravcsik 2004; 2006; 2018). More recently, Laffan (2019) has also argued that EU integration, in terms of salience, polarisation and actor expansion, has created a “multilevel politics trap” that constraints national leaders at the EU level from reaching compromises regarding EU policy issues (see also Zeitlin, Nicoli & Laffan 2019). This is also confirmed by studies showing that non-majoritarian EU institutions, such as the Central Bank or the Court

of Justice of the European Union (CJEU), hold higher legitimacy rankings in surveys compared to other institutions such as the European Parliament, where citizens vote for their party members.<sup>17</sup> Based on this view, political institutions might enjoy legitimacy because their decisions are made in an efficient and expert-driven manner. However, this view has also been widely contradicted in the literature with authors such as Genschel and Jachtenfuchs (2016) arguing that depoliticisation does not necessarily result in a more coherent polity but can actually further fragment the EU.

Other authors believe that the EU is a polity in the making to which democratic standards should be applied (see Eriksen 2009; Kohler-Koch and Rittberger 2007; Lord and Beetham 1998; Risse 2010). In this sense, the notion of democratic legitimacy should also apply to this polity. It is here that some authors might argue that the EU, its institutions and policies, should be debated as it can help form opinions on the MLG governance structure and also hold those that are in power at higher supranational levels of power accountable (see Rauh and Zürn 2014; Risse 2015; Statham and Trenz 2015). Thus, for authors such as Rauh and Zürn (2014), Risse (2015) and Statham and Trenz (2015), debates about the EU can improve democratic legitimacy by holding the EU accountable. Thus, these authors see value in having an increased amount of public debate and scrutiny. This in turn allows for a bigger number of civil society actors to contest the MLG structure as well as provide these actors with the opportunity to critique how policies and societies are governed (Statham and Trenz 2012; 2013). In this sense, the depoliticisation of MLG policies might result in citizens becoming increasingly unaware of what is happening in their political systems, which may encourage disinterest and distrust in the functioning of these systems.

The summary above shows that the literature remains divided on whether politicisation or depoliticisation is positive or negative for the EU polity. However, as previously explained in chapter 1, the goal of this thesis is to contest this claim and seek to show how these processes are more complex than previously understood. This is especially true for MLG structures such as the EU as this is where actors at different levels can either politicise or depoliticise an issue which in turn can affect the legitimacy of any of the governance levels. By critically engaging with, and building on, past works on politicisation and depoliticisation, the goal of this chapter is to provide a theoretical framework for these processes in MLG as well as their possible effect

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<sup>17</sup> See literature on trust in institutions (van der Meer and Hakhverdian 2017) or on 'stealth democracy' (Hibbing and Theiss-Morse 2002).

on legitimacy. While attempts have been made to understand whether politicisation is “good or bad” for the EU’s authority, I will contribute to this literature by simultaneously evaluating both processes through the claims that different actors make regarding a state aid case. In this sense, I evaluate instances of politicisation *and* depoliticisation through claims and I also attempt to understand how the dialectic interplays that take place can help us understand how an EU institution, such as the Commission, is legitimised or delegitimised by different actors via a policy (state aid). Non-majoritarian EU institutions, such as the Commission, have become more aware of how they are perceived by the public and have tried more recently to engage in public discussions about particular decision making processes in an attempt to improve the public’s perception of their legitimacy (see Hartlapp et al. 2014, p. 229-230; Rauh 2016 in Schmidt 2019). Thus, I will show throughout my proposed framework that actors at the EU level can attempt to engage through press releases and conferences to inform the public and justify their decision making processes (such as state aid decisions) and actions (Biegón 2013) in terms of both throughput and output legitimacy (Schmidt 2012).

While this chapter will provide the main general expectations drawn by the literature for this dissertation, there are smaller expectations and hypotheses which will arise during the first two empirical chapters (Chapters 4 and 5). The goals of these secondary expectations and hypotheses are to first understand how state aid cases arise; and second, to understand how state aid cases can become subject to media attention before they become publicly politicised. Meanwhile, the first step in order to achieve this chapter’s goal is to conceptualise how processes of politicisation and depoliticisation can come and go from one realm to another. This involves issues that may originate as apolitical and then become contested or vice versa. To begin with, I use Hay’s (2007) framework of politicisation and depoliticisation to map out how these processes occur. Hay (2007) maps both processes together and includes both the governmental and the public spheres where different actors can discuss and debate different issues. The spheres are: the public and governmental sphere, the public but non-governmental sphere, and lastly, the private sphere (2007, p. 153). As they are presented here, each of the spheres are set to be politicised to a lesser extent than the previous (2007, p. 153). In a similar fashion, depoliticisation operates in reverse from politicisation and shows issues moving further away from being publicly scrutinised (2007, p. 158).

Hay’s (2007) framework has three main gaps which I seek to fill in this dissertation. First, Hay (2007) analyses both processes from the perspective of a single level of governance, being the state level. However, here I aim to evaluate how these processes might be thought to

take place in a MLG structure, which includes actors from different governance levels (supranational and local) and how these actors interact with those at the member state level. By understanding that actors from different levels of governance can attempt to politicise and depoliticise the same issue, I understand that these processes are played out in a context that is multi-layered. Thus, an EU policy might become politicised or depoliticised at different governance levels and Hay's (2007) framework should be expanded to MLG in order to understand how this occurs. This will become the first novel contribution to the literature that this thesis will make.

Second, Hay's (2007) work was never intended for evaluating how these processes work empirically and this is my second contribution. Other authors have tried to tackle this issue such as Bates, Jenkins and Amery (2014), Beveridge and Naumann (2014) or Kuzemko (2014b). However, these two works barely pay attention to agency and how actors themselves choose to politicise or depoliticise an issue in MLG. Third and closely linked to this point, is the notion that actors' motives and actions are disregarded in Hay's (2007) work as well. Thus, the works of De Wilde (2011) and Flinders and Wood (2017) are used not only to empirically analyse politicisation and depoliticisation but also to understand the role of agency in politicisation and depoliticisation. Both of these works rely on empirical assessments of how actors use their claims to either politicise or depoliticise an issue in the public sphere. The public sphere allows this thesis to have a better understanding about how a variety of different actors (from politicians, policy makers, citizens, activists) can legitimise or delegitimise Multilevel Governance (MLG) structures such as the EU which is key to answering my main research question (how do actors attempt to politicise and depoliticise state aid cases and, in so doing, legitimise or delegitimise MLG structures such as the EU through the claims they make?). The three gaps in Hay's (2007) work that I seem to rectify will be explained after theorising how politicisation and depoliticisation processes can work in MLG. Furthermore, by adding the works of De Wilde (2011) and Flinders and Wood (2017), this thesis will be able to examine the role of actors in politicising or depoliticising an issue through their claims.

## **2.2 Mapping Politicisation and Depoliticisation**

In his book, *Why We Hate Politics*, Hay (2007) explains how over the years, western societies have become accustomed to depoliticising decision-making processes and this has contributed to the disenchantment with politics. Hay (2007) argues that this phenomenon has not only occurred in a number of western democracies but also possibly in other countries



(2007, p.146-163). Thus, politicisation could serve as a solution towards re-establishing or reviving debate and engagement in politics. Having this in mind, Hay (2007) conceptualises that movements of issues (or policies) can occur between different arenas of necessity (non-political) where nothing can be done, to an arena where change in policy can occur (politicisation) through deliberation and action. It is important to note that these movements work in a continuous manner; issues that reached a level of politicisation can also become depoliticised and vice versa. For example, issues that were once politicised can become depoliticised over time or for other reasons (e.g. political actors trying to calm tensions and render issues no longer political).

Figure 2.1 represents schematically the different arenas or spheres according to Hay (2007). The politicisation process develops from the outer realm of necessity<sup>18</sup> (non-political) to the private sphere (politicisation 1). Then, from the private sphere to the public sphere (politicisation 2) where issues can be subject to deliberation over the exercise of power by public authorities and is a domain in social life where public opinion can be formed (Habermas 1991, p. 398). Finally, politicisation 3 occurs when issues are debated in the governmental sphere which is where governmental actors can presumably take action in regards a politicised issue (when this occurs, the topic can still be simultaneously debated in the public sphere). The depoliticisation process proceeds in a similar manner but in the opposite direction, i.e. from the inner to the outer realms. As shown in Figure 2.1, depoliticisation 1 refers to the “demotion from the governmental to the public’s sphere” (Hay 2007, p. 195-196). This type of depoliticisation takes the responsibility away from the government and transfers it to the market (as certain industries become privatised and no longer need to be a matter of public knowledge) which involves little change to policy. Also, this can mean that politicians are no longer accountable to the public about a particular issue (2007).

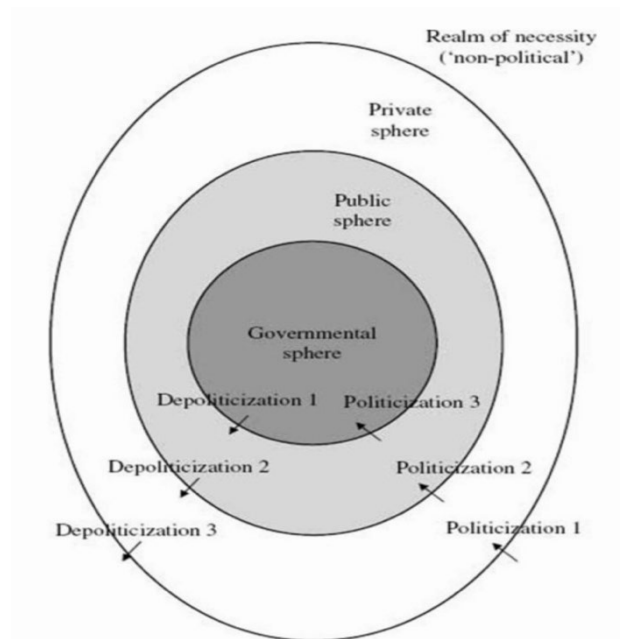
Depoliticisation 2 is the reduction from “the public to the private sphere” (2007, p. 196). These issues are seen as a matter that should be dealt with by private actors (and also through consumers’ choice) rather than the government (Hay 2007). The debates that would have previously occurred in the public sphere now occur in the private sphere, meaning that these issues are no longer subject to public debate and occur behind closed doors in informal settings. Finally, depoliticisation 3 is the reduction from the “private sphere to the realm of necessity”

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<sup>18</sup> The realm of necessity is a space where an issue is completely depoliticised and citizens are not aware of it (Hay 2007).

(2007, p. 196). This type of depoliticisation includes governments that tend to deny political responsibility. This might happen when governments decide to categorise an issue as “non-deliberative” and state that certain topics are non-negotiable (e.g. globalisation in liberal democracies). Overall, Hay’s (2007) model represented in figure 2.1 shows how processes of depoliticisation can move away from public scrutiny to the non-political realm. Depoliticisation can have negative consequences on public disaffection whereas politicisation can become a driver for change and promote greater engagement in politics (Hay 2007).

*Figure 2.1 “Politicisation and Depoliticisation” (Hay 2007, p. 183)*



*Four realms, as described by Hay (2007), which include the non-political and the political. The political realm includes “both the governmental and public spheres” (2007, p. 183).*

Several scholars have adopted (Beveridge and Naumann 2014), or adapted (Jenkins 2011; Kuzemko 2014b), Hay’s (2007) schema for mapping politicisation and depoliticisation processes. For example, Beveridge and Naumann (2014) used the partial re-municipalisation of the Berlin Water Company in 2012 as an example to assess how government strategies can switch from depoliticised to politicised. By contrast, Jenkins (2011) evaluated how these processes occur and applied the politicisation and depoliticisation framework to genealogical

(Foucaultian) strategies.<sup>19</sup> Genealogy is a critique that uses historical materials to document how humans (or societies) have become what they are and what we must become (Foucault 1984). Jenkins (2011, p. 159) uses this framework to argue that to politicise is to make an issue or topic become exposed and debated. Conversely, to depoliticise is to form permanence or immobility and closure surrounding an issue (Jenkins 2011, p. 159-160). That is, to depoliticise is to remove the contingency or contestation of said issue (2011, p. 160). More similar to this dissertation are studies such as Kuzemko's (2014b) who explore the conditions under which a policy (e.g. energy) can become politicised and depoliticised in the UK. These three studies consider both processes from one level of analysis. Moreover, they tend to concentrate on the "governmental" type of depoliticisation and, thus, pay little attention to human agency.

As explained in Chapter 1, analyses of governmental depoliticisation focus on how much the government tends to monopolise the decision making processes of a specific policy or issue and how much power the government decides to transfer to other institutions or organisations (see Burnham 2001; Flinders and Buller 2006). This thesis focuses on how actors can depoliticise (as well as politicise) an issue through their claims. This novel approach applies Hay's (2007) work to MLG and examines how politicisation and depoliticisation processes can occur simultaneously by evaluating the way in which actors politicise or depoliticise a specific policy (state aid) through their words. This thesis argues that, while an issue can be politicised by one level of governance (e.g. the nation-state level), the issue can also be simultaneously depoliticised by other governance levels (e.g. the Commission or the EU more broadly). That is, actors at different governance levels who make claims might use their words to politicise or depoliticise the same issue at the same time. This depends on the political/policy outcome that they want to achieve as sometimes different governance levels have different political and policy interests (this will be discussed further later in the dissertation).

Overall, as previously suggested, this dissertation makes its contribution to the literature by adding a MLG analytical framework to understand movements of politicisation and depoliticisation and the role of agency in this framework. Thus, as explained in Chapter 1, I aim to explore the dialectical interplay that occurs when actors at different governance levels politicise or depoliticise a policy through their claims, while at the same time legitimising or delegitimising a MLG structure such as the EU. Through the use of state aid, my study

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<sup>19</sup> See David Owen's (2002) interpretation of genealogy.

represents a novel approach to understanding and evaluating how these processes function and how they could be assessed through the claims that varying actors make in the national media.

## **2.3 Human Agency and the proposed framework: How (de)politicisation functions in MLG**

To build the proposed framework, I will explain some of the key concepts that will help illustrate how I am expanding Hay's (2007) processes of politicisation and depoliticisation in MLG. First, I will describe MLG and I will then explain how input, output and throughput legitimacy functions in MLG structures such as the EU. I will also further emphasise the role of agency and address how different actors can frame an issue in order to politicise or depoliticise a policy or an action (e.g. in the case of state aid policies and appeals).

### *2.3.1 Multilevel Governance (MLG)*

Multilevel Governance (MLG) is a complex form of governance which deals with the negotiation between different levels or territorial tiers (Marks 1993). In here, tiers refer to different governance levels: the supranational, national and local. For example, in the EU, the supranational level of governance is responsible for ensuring that EU rules and policies are followed by its member states. Meanwhile, member states (or national governments) are expected to follow the rules, which allow them to be part of the Internal Market. While the local level can also follow rules and implement key EU legislation. Overall, the concept of MLG encompasses a new form of governance, which is different to that of the state. This is because in MLG structures, power and responsibilities are distributed among different governance levels. MLG has its roots in both neofunctionalism and federalism. Like neofunctionalism, the theory of MLG also pays strong attention to how power shifts from the national to the supranational level (Borg 2012). Hooghe and Marks' (2001) MLG theory suggest that there are two types: type 1 is based on federalism. Here, power is shared between a limited number of governance levels (Hooghe and Marks 2001). The second type of MLG relates to how the EU system works. In the EU, citizens are not only served by one government but rather they have different levels of public administration and public service industries (Hooghe and Marks 2001). While I have provided a brief explanation of the theory of MLG, I tend to understand the term as a description of a governance system with several tiers rather than a theory per se, which is consistent with other authors (e.g. Aalberts 2004; George 2004, p. 116).

The concept of “Multilevel regulation” is critical for this dissertation. Multilevel regulation can be defined as a phenomenon that occurs over several levels of governance and includes an increasing number of actors who play a role in designing, implementing, enforcing and negotiating norms (Chowdhury and Wessel 2012). This approach can help to understand how norms, their enforcement, and their implementation appear at different levels of administrative governance (Chowdhury and Wessel 2012). During the last two decades, regulatory processes have changed dramatically (Chowdhury and Wessel 2012). While the state was once the most important regulator, several private and public actors are now involved in the process of creating and enforcing different norms across a variety of governance levels (Chowdhury and Wessel 2012). In MLG, there are a variety of actors constantly negotiating the different norms that should be accepted. Thus, authority and power is shared among different administrative levels both vertically and horizontally. It is because of this shared authority and power that tensions can arise and lead to different policies or issues to become politicised. The dynamics of politicisation and depoliticisation which can happen across different governance levels simultaneously can promote a certain goal or strategy by someone at a governance level (e.g. the nation state level) and hinder it at another level. This in turn can also create legitimacy issues at either of the governance levels. I will now explain the role of agency in politicising or depoliticising an issue in MLG structures such as the EU. This will be followed by a description of how different actors can frame an issue and, while doing so, legitimise or delegitimise a MLG structure in terms of input, throughput or output legitimacy.

### *2.3.2 The Public Sphere in MLG*

As explained in chapter 1, the public sphere is a space where political issues are discussed and where the general public can contest the decisions made by bureaucrats and elites in government (Adam 2015). The growing number of discourses of a MLG, such as the EU, arises from a large and varied set of actors who attempt to construct a European public sphere. However, it has also been argued in the literature that there no real European public sphere (Eder and Kantner 2000; Baisnée 2007; Adam 2015). Rather, if there is some form of European public sphere this is framed or constructed by the media organisations of each member state (De Vreese et al. 2001) that often cover news about the EU with a national focus. While some recent studies (Hänška and Bauchowitz 2019) have questioned whether social media can facilitate a European public sphere, journalists from EU-focused media have suggested that “there is no significant transnational European public sphere, no communicate Eurozone” (see

Lötsch, Techet, & Boeder 2019). Thus, while it seems that policy decisions in Europe (such as state aid) can be taken at the supranational level of governance, the national level still remains the main primary focus of identities and citizen participation within the EU (Koopmans and Erbe 2004, p. 97). This illustrates a discrepancy between the European Union developing its institutions (and framing policies) and the national spaces where discussions and debates occur (Koopmans and Erbe 2004, p. 97). This deficit in European public sphere has perhaps been created by the lack of direct accountability that office holders at the EU level have over citizens in the member state level (Gerhards 2000). Thus, this “democratic deficit” allows for no singular unitary European public sphere (Gerhards 2000).

I argue that the lack of European Public sphere is not the result of a “democratic deficit” but, rather, is a consequence of the citizens being nationally bounded by what is directly important to them (issues that occur at the regional/national level) and feeling too far from the interests of the supranational level of governance. Thus, it is only when the national level is affected by EU decisions that the national media tends to pay attention to the EU and its institutions. For example, when the Commission rules against a member state giving aid to a company and this company must return the money to the national government, this can lead to worries by citizens about losing their employment, which, in turn, causes the national media to cover the story as it directly affects national citizens. Overall, given that there is no singular European public sphere, this dissertation tends to focus on what the national media transmits to their audiences regarding EU policies such as state aid.

For this dissertation, the media is seen as a medium that transmits information, political messages, analysis and opinions to the people. Without the media, larger audiences would not be aware of EU issues. Moreover, a political system and its policies can gain legitimacy through interactions between its citizens. Citizens can acquire information about their political system and policies through the public sphere and mass media. This means that citizens can form opinions about political affairs and understand how their political system functions through the media. This is what Dahl (1989, pp. 111-112) calls the “enlightened understanding” and it can only occur when information is made available to the public (McNair 2003, pp. 18–19). In this sense, the media represents a space where information is made available and is a connection between the elites and its citizens. Thus, the public sphere is a medium from which a political system can gain, maintain or lose legitimacy. This highlights the importance of analysing how different actors use the media to legitimise or delegitimise a political system, for example, the

EU. It is in the media that different actors or agents can use their claims to push for a particular action or decision. This will be further described in the following section.

### *2.3.3 Agency and Framing in MLG*

Hay (2007) explains how in rational choice theory, agents are perceived as decision makers with the rational capacity to make strategic choices (see Hay 2007, pp. 100-101). From the rational choice perspective, actors (especially those among the elites) can use their agency to make strategic governance decisions. Hay (2007) believes that, under this perspective, politicians are often and perhaps increasingly assumed to be “self-interested rational utility maximisers” (2007, p. 200) by citizens, fellow policy makers and scholars alike. Thus, under rational choice theory, Hay’s (2007) describes how these actors (scholars, policy makers and citizens) could assume the worst of politicians. Hay (2007) argues that if we associate these negative qualities to politicians, then this may create (or indeed may already have already created) a self-reinforcing negative dynamic where political parties are assumed to be rational or genuinely interested in the public good when in reality this might not always be the case. However, this means that actors’ motives and actions play little role in how they decide to politicise or depoliticise an issue in Hay’s (2007) framework. With that being said, I argue that actors can still strategise to make an issue apolitical during politicisation and vice versa. For example, if a politician is trying to frame a topic/policy response as having “no alternative”, then this actor is actively trying to depoliticise the issue. Thus, I argue that actors can still attempt to politicise or depoliticise an issue through their claims to advance a political or policy goal. This does not necessarily mean that actors are acting in the interest of the public but rather that they claim to be doing so in order to advance a specific policy or political action. Note that whether they truly believe that they are acting for the public good or not is not relevant to this study. This will be further explained when evaluating how actors can politicise or depoliticise an issue or action in state aid (e.g. appealing against the Commission decision) as a way to achieve their goals. This brings me to the second concept I would like to discuss in this section: framing.

Framing theory explains that the media focuses its attention on certain events and then places them within a field of meaning (see Goffman 1974). The theory of framing suggests that the media can choose how an issue is presented to an audience. Frames are usually abstractions that can be constructed to make a message hold a particular meaning. These frames can influence the perception of the audience about a particular topic and can form an agenda (as

they can tell the audience what to think about), including what audiences should think of an issue. Of particular interest to this thesis is how frames (or justifications as I will show in chapter 6) and framing can be used by actors in their claims. Actors can justify or frame their claims in a manner that can influence the perception of an audience.

Gamson and Wolfsfeld (1993) have shown the interaction between actors making the claims and the media interpreting those claims and giving them meaning. These claims can be direct quotes by specific actors within the media or they can be paraphrasing by the journalist writing the news article. When actors make a claim regarding a particular topic (e.g. a state aid case), they can use a particular frame or discursive strategy as an attempt to justify what they are claiming. These justifications or frames can also reveal the actors' own decision making processes (if they are part of either of the government levels in MLG) and how they might delegitimise the action of others. Specifically, in MLG, actors can use their frames to delegitimise other governance levels to push their own agendas or they might use specific frames and justifications to legitimise their own past or current actions. As I will show later in this thesis, the Apple case was used by members of the Irish government to delegitimise the Commission's state aid decision.

#### *2.3.4 Input, Throughput and Output Legitimacy in MLG*

Chapter 1 detailed several of the key concepts regarding legitimacy which are important to this dissertation, as well as their links to politicisation and depoliticisation. For this dissertation, to be considered legitimate is to be allowed to conduct your responsibilities and powers. This is the idea that a legitimate authority is understood as having a permission to use political power. As explained in chapter 1, the more authority or power a supranational body has, the more likely it is to become politicised (De Wilde and Zürn 2012). Thus, the passing of responsibility to higher levels of governance creates instances where policies can become subject to politicisation and in turn to legitimations or delegitimations. In this sense, the more politicised an issue or a policy is, the more likely the MLG is going to be questioned about its legitimacy. This will be important to note throughout the elaboration of the proposed framework as questions of legitimacy start arising as an issue or policy becomes politicised or depoliticised in MLG.

The concepts of "input", "output" (Scharpf 1999) and "throughput" (Schmidt 2013) are also key to understanding the ways in which claim makers and actors justify or frame their actions or the actions of different governance levels (such as the member state or the EU). More



specifically, input legitimacy is based on the people's demands and support; for example, people can obtain input legitimacy through elections (Scharpf 1999). Output refers to the policies and decisions made by the government based on the inputs from voters (Scharpf 1999). To understand the distinction between input and output legitimacy, Scharpf (1999) examined legitimacy from "two different strands of democratic theory in the history of normative political theorising" (de Jongh and Theuns 2017, p. 1287). Input is focused on "governing for the people" and output is the legitimacy to govern "by the people" (Scharpf 1999 p.6). More specifically, input legitimacy refers to elections and to the majoritarian rule (or other forms of inputs, such as public consultation) and output refers to the outcomes that a government may produce (for example, policies) (Bistagnino 2016). Scharpf's inputs and outputs are adopted across a wide range of analyses about European policies (Skogstad 2003; Borrás 2006) and European institutions (Borrás, Koutalakis, & Wendler 2007; Lindgren and Persson 2010).

Then, Schmidt (2013) added the concept of "throughput legitimacy" which can be understood as the efficacy, accountability, transparency and openness of a government in the decision-making processes. For Schmidt (2013), decision-making processes are part of the throughput legitimacy. Throughput legitimacy is the deliberative dimension where decision-making processes occur and where "accountability and transparency are to be fostered" (Bistagnino 2016, p.8). Schmidt (2013) has argued that the quality of the processes (throughput) is important for understanding the EU's legitimacy as well as the participation of citizens (input) and the effectiveness of policies (output). According to Schmidt (2013, p. 3), bad throughput "consisting of oppressive, incompetent, corrupt or biased governance practices – regularly undermines public perceptions of the legitimacy of EU governance" (2013, p.3). This is key as claim makers (whether these are members of national governments, citizens, journalists or NGO's) can use a specific justification or frame that can delegitimise the EU in terms of their throughput legitimacy, which can undermine public perception of the EU powers (Schmidt 2013).

Overall, the research in this dissertation will attempt to understand how justifications (frames) made by claim makers might inform the input, output and throughput legitimacy of either the local, national or supranational governance level as well as that of the corporations involved in the state aid conflict. By using the previous concepts of input, output and throughput, this dissertation also makes a contribution to the literature on politicisation and depoliticisation by adding these categories to the proposed framework, which expands on Hay's (2007) schema of these processes.

## 2.4 The proposed model: Adding the pieces together

The proposed MLG framework explicitly expands on Hay's (2007) work by adding two levels of governance (the supranational and the local). While Hay (2007) indirectly touches on some similar concepts and issues by discussing globalisation in his book, I aim to explicitly expand his schema in MLG structures using the EU as an example. Moreover, the proposed framework extends Hay's (2007) work on politicisation and depoliticisation by providing a mechanism to assess how different actors can politicise or depoliticise an issue across a multitude of governance levels through their claims.

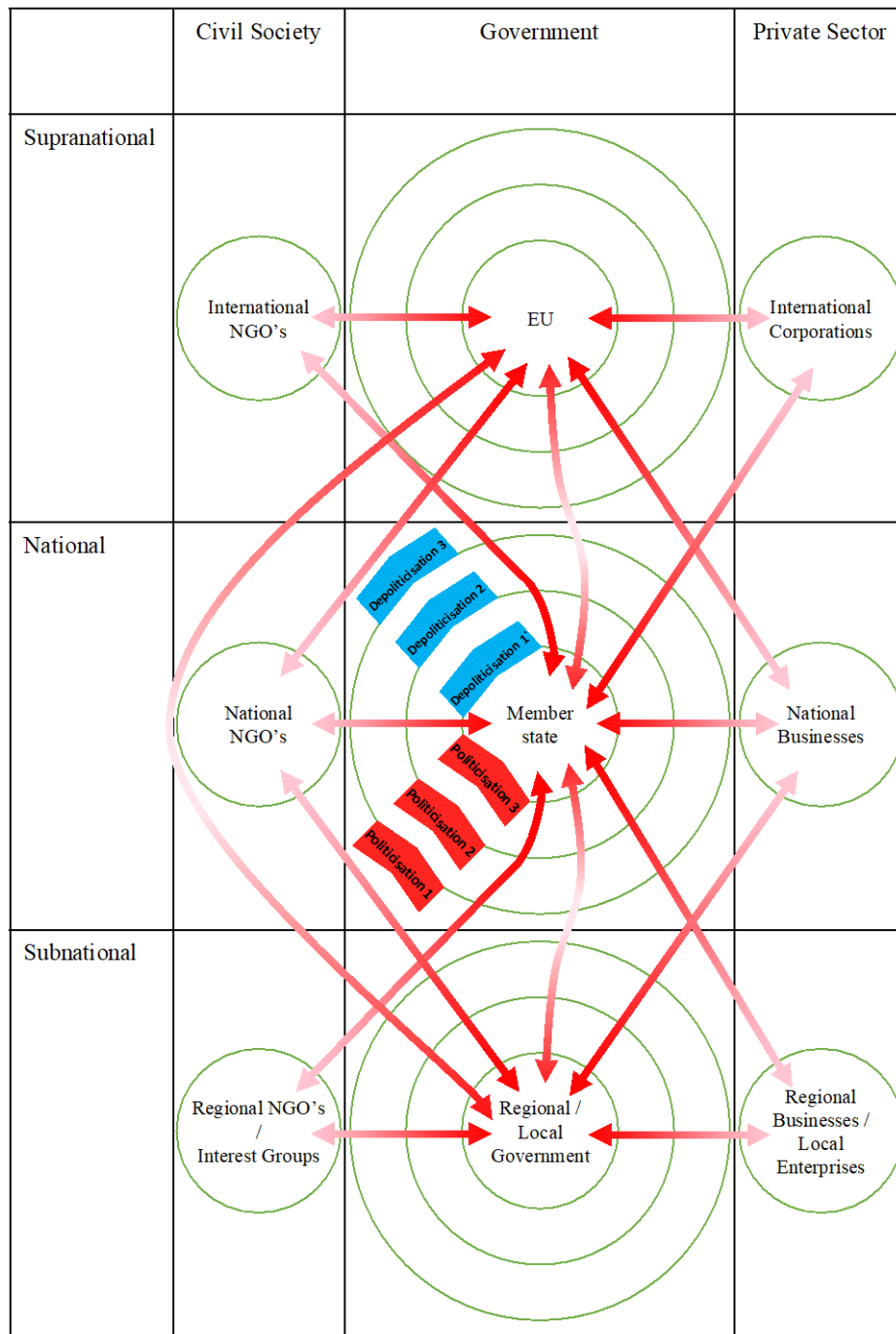
The EU, in combination with its member states, is a form of multilevel governance and regulation where the decision-making powers not only rest within the nation state but also at other levels of governance (such as EU bodies or local levels within the member states). This type of governance involves further cooperation and coordination from different actors (such as European regulators, national industry associations, multinational companies, competent authorities of member states and private standardisation organisations) not only at different levels of governance but also in different territories (Chowdhury and Wessel 2012). EU policy implementation (member state/local governance) and enforcement (Commission) also occur at different levels of governance. This means that the powers of supranational bodies operate with national and sub-national actors.

It is important to note that while I use the proposed framework for the EU, this framework can be generally applied to other different MLG structures, including International Organisations such the World Trade Organization (WTO), the World Health Organization (WHO). It should also be acknowledged that there are differences between MLG structures, such as International Organisation (e.g. WTO or WHO), and the EU. One of the key differences, which is represented in the analysis of how movements function, is that the EU has the power to engage in legislation and has a more direct engagement with its member states. Moreover, when it comes to state aid, the Commission at the supranational level holds the majority of the power and can push the member state to recover any unlawful aid given to a corporation (see Cini and McGowan 1998;2009). This does not occur in International Organisation. While International Organisations can sign agreements and can apply sanctions on national governments, the direct relationship between legislation and policy implementation that occurs in the EU does not occur to the same extent in International Organisations. In this sense, in the EU, member states have sub-contracted some of their sovereignty and decision-

making to bodies at other levels (who also perform a similar function for other member states at the same time). Thus, this can create problems with legitimations and delegitimations that are specific to the EU.

In the next few paragraphs, I will demonstrate how movements of politicisation and depoliticisation function between each level of governance. These movements (represented as arrows) are depicted in Figure 2.2, which illustrates how politicisation and depoliticisation might occur in a MLG structure such as the EU. Here, the different levels involved in the politicisation and depoliticisation processes (supranational, national and subnational) are shown as well as the different actors involved (civil society, governments and businesses). The processes of politicisation and depoliticisation are depicted in the red arrows with politicisation in red and depoliticisation in light pink. The schema also shows the government at each of the levels as the central point as well as other actors involved such as the Civil Society (e.g. NGO's) and the Private Sector (e.g. businesses). I will now outline how these movements occur between the three governmental levels. First, I will explain the movements that occur between the supranational (EU) and national levels (member states), then I will detail the movements that take place between the national (member states) and the local/regional level of governance and, finally, I will describe the movements between the supranational and the local levels of governance.

Figure 2.2 Processes of Politicisation and Depoliticisation in MLG such as the EU



#### 2.4.1 Movements between the Supranational (EU) and National level (Member States)

Some of the regulatory institutions within the EU, such as the Commission and the European Central bank, have not experienced the same degree of politicisation as other majoritarian institutions of the EU (Schmidt 2019). However, these non-majoritarian

institutions can still become subject to politicisation as they are now more aware of public sentiments regarding the EU. This has allowed for institutions such as the Commission to appear more responsive to salient issues (see Hartlapp et al. 2014, p. 229-230; Rauh 2016) as well as more transparent (especially in state aid issues). Thus, the politicisation that tends to occur at the national level of governance has allowed EU officials to directly communicate more often with their public and to inform citizens about decision making processes in a transparent manner in order to legitimise their decision making processes (Biegón 2013; Schmidt 2019). Thus, the politicisation which occurs between the EU and the national level takes place when EU claim makers justify some of their decisions to the public. More specifically, when actors from the EU perform an action or make a decision which affects the national member state, this in turn can cause legitimations (by the EU) and delegitimations (by other actors at the national level towards EU).

When politicisation occurs between these levels, actors within the supranational levels tend to justify their existence and their legitimacy to larger audiences through communicative acts (see Zürn 2018). These forms of communication can occur through different forms but mostly occur through press releases and press conferences that the Commission can hold or through EU parliamentary debates. Indeed, when the EU (or, more specifically, one of its institutions such as the Commission) makes a decision, it must justify this decision to its member states [who provide the EU with indirect legitimacy (Lindseth 2010)] and to the public. The justifications provided by EU institutions, such as the Commission, can be framed in terms of throughput and output legitimacy. This is because EU institutions will show transparency (throughput) legitimacy in how their decisions were made as well as how the outcome legitimacy of those decisions can benefit the greater good of the European Integration process. These throughput and output legitimacy justifications can create further politicisation as they might be subject to contestation by the public and other political actors from national countries who might disagree with the decision. These contestations are made by different actors through their claims and they can be observed in the national media. Thus, once the national media pays attention to the politicised issue, further legitimations or delegitimations can take place (e.g. whether a particular action by the Commission was deemed as correct or not by actors at the member state level of governance). Politicisations between these levels can also occur when member states perform an action that is in direct relation to the supranational government level; for example, a state aid decision with which the member state does not agree and it decides to

take the Commission to court. This also creates further legitimations/delegitimations about the role of the member state and the EU and overall about how the MLG system works.

Depoliticisation between these two levels takes place when issues begin to be resolved or when a decision has been taken by the EU or the member state involving an EU policy. This might involve discursive depoliticisation strategies where members from EU institutions aim to calm any tensions with its member states (or vice versa). As I will show later in this thesis with the Apple case (chapter 7), depoliticisation can also occur when member states attempt to depoliticise an action (e.g. appealing a Commission's decision) in order to take a state case to court, which can also simultaneously fuel the overall politicisation of the state aid case.

Depoliticisation between these levels can also take place when the EU or member states claim that certain responsibilities and duties belong to a civil society organisation, a corporation or a nation-state either at the same level of governance (supranational) or below its level (national/local). EU issues can also become completely depoliticised and this can happen when an issue is no longer relevant due to time passing, other more salient events take place or when some of the actors involved decide to frame the issue as no longer important. This ultimately occurs when attempts of depoliticisation strategies turn out to be successful (such as the supranational or national levels of governance framing an issue or decision as "too technical" or as having "no alternative" by either - more on this in section 2.5.2).

#### *2.4.2 Movements between the National (Member State) and Local Governance Levels*

Politicisation and depoliticisation might also exist between the national and the local level. This politicisation can occur when a decision that is being taken by the national government affects a particular region or location. This allows actors from the national governments to claim that actions taken at the national level might be beneficial for the local level of governance. This in turn can create more claims from actors of the local level of governance who might or might not be happy with the decisions made at the national governance level. Decision by the national level can be debated in national press but those who are more directly affected are more likely to contribute to the politicisation of a specific local issue (as I will show in Chapter 5 with some coverage of state aid cases). This can also result in the issue being covered mostly in local/regional news reports who will show the decision to those directly affected by it. Full politicisation can also take place when local governments claim to take action regarding an issue, such as the implementation of a policy or policy change or when they claim to go against the decision being taken by the national governmental level.

Meanwhile, depoliticisation occurs when issues are no longer part of the debate at the local government or when issues are no longer part of the public sphere at the local level. This can occur when actors attempt to discursively depoliticise debates between the two levels of governance or when national actors attempt to shut down any issues raised by local levels of governance.

#### *2.4.3 Movements between the Supranational (EU) and Local Governance Levels*

Movements can also occur between the supranational and local governance levels. Similar to the movements between the supranational and the national levels of governance, politicisation can take place when the EU makes a decision that affects regional levels of governance. This decision can also be debated in public in the public sphere, which can occur both at the national level or through local news covering the story. Depoliticisation between these two levels also occurs when decision-making processes are put in place by either the supranational and/or the local level and discussions are no longer occurring. This can also include depoliticisation claims by either party suggesting that the different levels of governance are cooperating with one another, which can be seen as an attempt to normalise or appease past tensions between the actors.

It is important to note that, in this framework, issues can start at any of the levels of governance and move to other realms. For example, an issue might become politicised at the local level of governance and then jump to either the national governmental realm or the supranational governmental realm. Also, different types of politicisation and depoliticisation can occur simultaneously at each of the levels of governance. Politicisation and depoliticisation can also occur at different rates or variances (e.g. an issue might be highly politicised at the local level but not as much at the supranational or national level) as well as at different points in time (e.g. an issue might be politicised at the local level before it becomes politicised at the national level).

#### *2.4.4 How Politicisation 1,2,3 and Depoliticisation 1,2,3 are affected by working in a MLG system*

I have described the politicisation 1, 2, 3 and depoliticisations 1, 2, 3 that occur in Hay's (2007) schema. I will now describe how these types of politicisation and depoliticisation function within the EU at the member state level. As I have previously argued, there is no singular European public sphere (Eder and Kantner 2000). Given this, I will take into account

how different governmental levels may influence the politicisation and depoliticisation that can be observed in national news media.

Politicisation 1 takes place when issues are being privately deliberated among national actors. However, in this type of politicisation, politicians from the member state may not have begun debating the issue in public in the national media (e.g. when governmental officials debate among themselves on what their response should be in regards to a Commission's decision). Politicisation 1 can also occur when, for example, the EU drafts a rule outlining how councils should buy goods and services. Thus, national/local actors might start discussing these rules in private but are not yet subject to public debates in local news media. Politicisation 2 occurs when national coverage of an EU issue emerges and becomes publicly debated in national media. We can also expect that several news sources at the national level rely on newswire services or correspondents in Brussels to provide them with further information about what is occurring with an EU policy related story. Indeed, there is an increasing amount of newswire journalists based in Brussels who have a large impact on the content of the news cycles in national contexts when it comes to EU issues (Baisnée 2004 in Bijsmans and Altides 2007). This is expected to be an important factor in whether or not national media covers state aid (see Chapter 5 of this thesis for more on this).

In politicisation 2, actors from both the member state and EU claim makers have a voice in national news articles and they become more visible to citizens at the member state level. They also have the agency to justify their actions and the decision-making processes of EU institutions. It is during politicisation 2 that, at any governance level, public legitimations and delegitimations towards the EU start to occur in the public sphere. It is important to consider that if the EU is to be indirectly legitimated by its member states' democracies (see Chapter 1), then we can anticipate the argument that politicisation at the national level might be a problem for the EU. This is because the EU has proven to have difficulties in fitting into national news values due to its supranational nature (see Bee & Bozzini 2010, p. 130), unless there is some conflict between the governance levels (see De Vreese & Tobiasen 2007). While conflict can engage citizens, it can also create political cynicism and attitudes among citizens towards the EU (e.g. Cappella and Jamieson 1997; De Vreese 2005). Thus, if conflicts about the EU polity or its policies arise in the media, this might have a negative impact on maintaining an image of a well-balanced and functioning polity (De Vreese 2004). In turn, I expect that conflicts such as state aid cases may negatively impact the way in which a wide range of actors make negative



claims about the EU in the national media (as I will further explain in this chapter). This is also one of the key theoretical reasons why this thesis focuses on national news coverage.

Finally, politicisation 3 occurs when governmental actors debate EU issues or policies. The advancement of an issue into this realm expands the ways in which decision makers at the member state level can respond and communicate (e.g. when the member state decides to appeal a state aid case such as Apple, which has been subject to controversy). Now, politicians at the member state level can, and are often obliged to, legitimise their decisions to their citizens. It is here where I expect to see more polarisation, especially in instances involving actors on opposing sides of an issue (e.g. one actor sides with the member state and the other sides with the EU). Polarisation is expected to have the highest possible risk factor for delegitimations against the EU and it allows for the “international conflict trajectory” as explained by Schmidtke (2016) and De Wilde and Lord (2016) to take place in an EU policy (such as state aid for this dissertation). What this means is that when an issue/policy reaches level 3 of politicisation, it can then be framed as “us” (the member state) versus “them” (the EU).

Depoliticisation 1 occurs when an EU issue is drifted off the agenda as it is seen as resolved, unimportant or as no longer being political. It can also take place when actors at the member state claim that a certain policy is the responsibility of the EU level in the public sphere. This means that actors might attempt to shift the responsibility of a certain policy via their claims. Here, leaders or politicians from the member state can also try to appease (or resolve) any tensions in the media by suggesting that they are collaborating closely with the EU. This also includes instances where EU representatives tell the media that there are no tensions between the supranational and the member state level (e.g. when Former President of the EC, Juncker stated that the Commission and Italy have had “pretty heated debates” but that those discussions are now in the past).<sup>20</sup> By resolving any past tensions, EU representatives can try to attenuate any polarised opinions. Overall, politicians can attempt to depoliticise an issue by using discursive depoliticisation techniques, which aim to remove the “political” aspect of the debate. For example, when political actors frame issues as “too technical”. When this occurs, political actors might push for issues to be resolved privately and discussed by technocratic individuals who hold the expertise on how to handle certain issues.

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<sup>20</sup> See Juncker’s comments available at: <https://www.ft.com/content/37eb2136-bf7a-11e5-846f-79b0e3d20eaf>

Depoliticisation 2 involves EU issues that are slowly starting to no longer be covered across national media. Depoliticisation 2 also happens when actors choose to depoliticise specific decisions through their claims. For example, actors frame issues as too technical or resort to other techniques (these techniques will be discussed in further detail in section 2.5.2 of this chapter). Finally, depoliticisation 3 happens when EU issues are no longer debated in national news media. This could be the result of issues being resolved or simply due to the passage of time. Depoliticisation 3 can also occur when attempts to discursively depoliticise an issue by EU or national politicians have been successful. Thus, depoliticisation 3 is characterised by politicians at the member state level ceasing to speak or deliberate about an EU issue in public. Depoliticisation 3 can also happen when politicians at the member state level decide to use depoliticisation techniques, in relation to the government's response to an EU issue (e.g. by stating that politicians or other relevant actors do not need to deliberate EU issues or policies).

#### *2.4.5 How the MLG Model can be Applied to a Specific State Aid Case: Using the Ilva case as an Example*

I will now use the Ilva state aid case as an example of how the proposed framework can be applied to state aid cases. After receiving multiple complaints from steel competitors in 2014 and 2015 across Europe (Eurofer, Thyssenkrupp and the British division of Tata Steel), the Commission decided to investigate Italy's largest steel company, Ilva, located in Taranto. The Investigation into Ilva was announced in January 2016 and on December 21st 2017, Italy was ordered to collect 84 million euros from Ilva.<sup>21</sup> At the time the decision was made, the company represented 80% of the town of Taranto's economy and, following the state aid decision, news articles about the possibility of further employment cuts started to emerge.<sup>22</sup> The company had also been held to account for environmental hazards in the Italian town (Johnson and Ghiglione 2019). Vestager described the company as having "a very long history of non-compliance with environmental standards".<sup>23</sup> Therefore, if this particular state aid case becomes politicised, it is expected that actors might use the environmental hazards when debating the state aid decision.

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<sup>21</sup> See Press Release of the Ilva decision available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_5401](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5401)

<sup>22</sup> See <https://www.linkiesta.it/2019/11/crisi-arcelor-mittal-ilva-lavoro-stato-investimenti-agevolazioni-indus/>

<sup>23</sup> See <https://phys.org/news/2016-01-eu-probe-italian-aid-polluting.html>

So far, I have provided the reader with a brief overview of the Ilva case (more information on this case is provided in Chapter 6 of this dissertation). Now, figure 2.3 shows how the Ilva case can be theorised using my proposed MLG model. At the supranational level, in the civil society, we have organisations such as WWF that have expressed interest in the Ilva plant and could have an opinion on the state aid decision. Regarding the supranational government, I have added “the Commission” as it is the main actor in state aid decisions and the primary institution dealing with the member state. Finally, at the supranational level (private actor), we have TATA steel who is a multinational corporation that complained about Ilva to the European Commission in 2015 regarding the potential use of unlawful aid from the Italian government (European Commission Press Release, 21 December 2017).

At the national level, from the civil society side, I have included Peacelink as an example of another not-for-profit corporation that has complained about the Italian government providing aid to Ilva. Indeed, Peacelink was also involved in the Commission investigation (see Commission’s official Decision on the Ilva case 2017<sup>24</sup>). One of the main comments expressed by Peacelink in the official document made by the Commission states: “Peacelink considers that the doubts expressed by the Commission in its Opening Decision are fully justified” (see Commission’s official Decision on the Ilva case 2017, p. 20). This demonstrates that the non-governmental organisation was highly involved in official process and is also likely to be involved in the politicisation of the state aid case. Then, I added the Italian government to the government sphere and Ilva as the national corporation on the member state level of analysis.

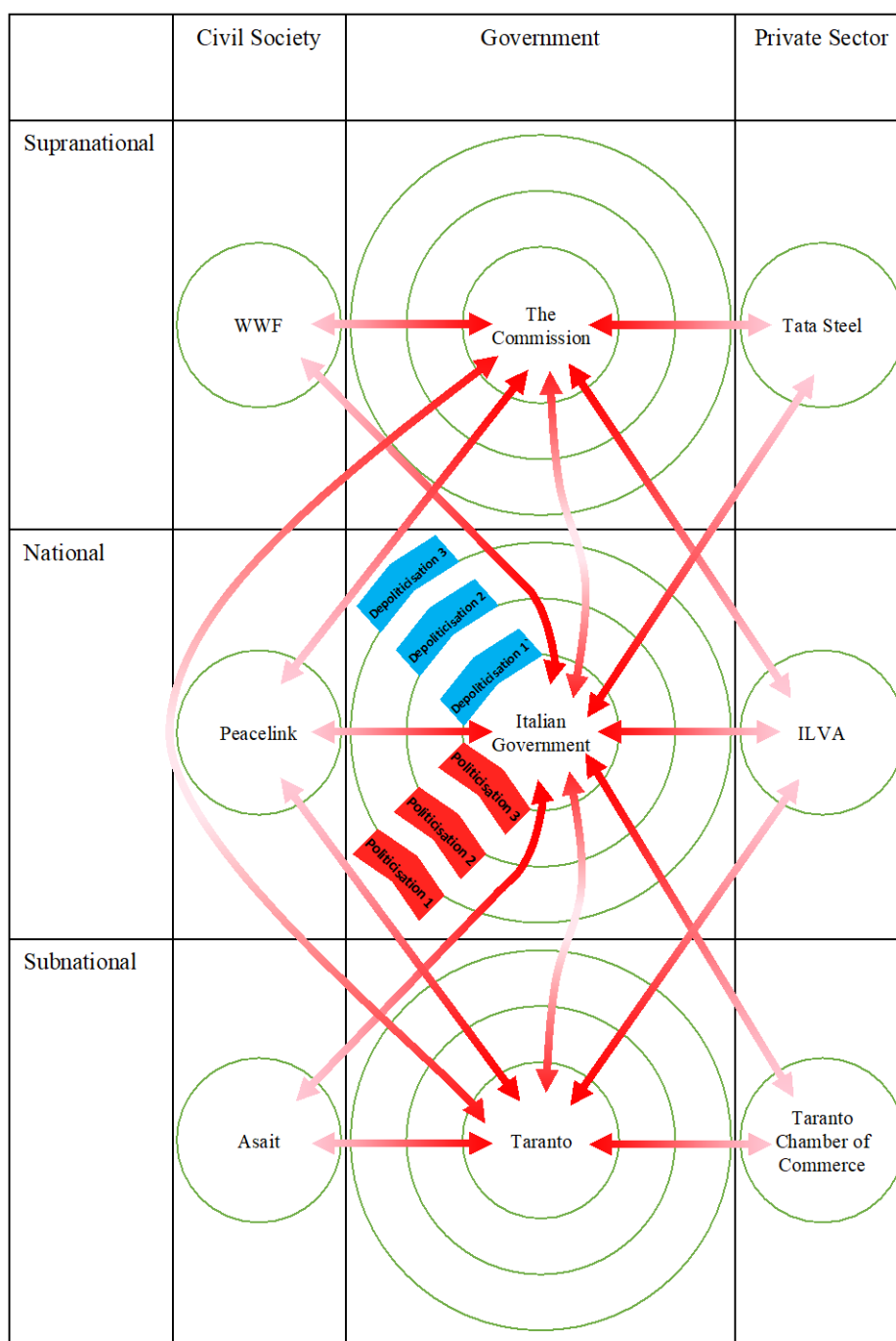
At the subnational level, from civil society I have added Asait into the diagram. Asait is the Association of Economic Operators for the Development of the Industrial Area of Taranto and could also be potentially involved in politicising the issue of Ilva. Then, the Taranto government which is where Ilva is located and the Taranto Chamber of Commerce was added as the private sector actor. While, the figure does not show all the actors who could be involved in the politicisation/depolicitisation of a state aid issue at the national governance level (such as citizens, journalists, lawyers, etc), these actors are taken into consideration when I evaluate politicisations 1, 2, 3 and depolicitisation 1, 2, 3 in state aid cases at the national level.

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<sup>24</sup> See Commission’s official decision to Ilva:  
[https://ec.europa.eu/competition/state\\_aid/cases/262365/262365\\_1966498\\_473\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/262365/262365_1966498_473_2.pdf)

The movements of politicisation and depoliticisation that occur between levels would function in a similar manner to those described above. Specific to state aid, movements between the supranational and the national levels occur when the Commission either officially notifies the member state that it is evaluating a state aid or when the Commission makes its final decision regarding a case. This can create the potential for politicisation as press releases or conferences by the Commission can further public debate about the state aid case. As previously mentioned, the movements of politicisation and depoliticisation can also occur when the member state decides to appeal the Commission's decision (note, however, that this was not the case for the Ilva example provided in this chapter). Also, movements that occur between the national and the local level occur when those who live in the local region (e.g. Taranto in the Ilva case) might agree or disagree with the Commission's and or the national government's action. Finally, movements between the supranational and local/regional level occur in state aid cases when the Commission makes a state aid decision and the corporation that is regionally or locally based might be threatened to cut jobs as a consequence of the state aid verdict (e.g. Ilva). This can create contestations at the local/regional level that also spread to the national level of governance.

Figure 2.3 Example of the MLG schema using a state aid case



The process of European integration has increased the powers of supranational bodies, which now operate with national and sub-national actors across boundaries (Buonanno Mather and Nugent 2003, p.4). Therefore, all levels of governance are interconnected most of the time and the political developments at one level impact the others (Buonanno Mather and Nugent 2003). In terms of state aid, the Commission makes a decision regarding a particular case, therefore affecting the way a member state provides aid to a specific corporation. Thus, patterns

of politicisation and depoliticisation are determined by specific institutional conditions related to the member state, including how the national government decides to reply to the Commission's decision. For instance, if one case is appealed and another is not, this can affect the way in which the case becomes politicised or depoliticised by the different actors involved. Also, depending on how both the national government and the corporation involved in the state aid case are perceived a priori, the state aid case investigation and decision can influence the patterns of politicisation and depoliticisation. That is, if the public perception is already negative towards the member state and/or the corporation involved this might affect trust in the national institutions and can help the European Commission to justify its throughput and output decision making processes that relate to state aid.

However, there is also a possible scenario where public perception may be low for both the national/local governments and for the Commission. This then could allow for delegitimations by different actors (citizens, journalists, etc) towards different governance levels (e.g. member state and the EU). This illustrates that the politicisation that occurs in one-member state is not necessarily the same as the politicisation that occurs in another country (as also explained by De Wilde, Leupold & Schmidtke 2016). This makes country and context specific factors into plausible explanations for how the authority transfer<sup>25</sup> is perceived among different people. It is therefore important to take into consideration national contexts in order to really understand and gauge the full politicisation of the EU. Thus, the “politicisation of European Governance in the singular is untenable. Rather, we face differentiated forms, degrees and manifestations of politicisation depending on the time, setting and location in which it unfolds.” (De Wilde, Leupold & Schmidtke 2016, p. 15). In this sense, there seems to be no real “universal pattern and no simple linear trend of politicisation” (2016, p.9) in the EU. The politicisation of EU governance is differentiated across settings, countries and time. Therefore, patterns of politicisation are determined by the specific institutional conditions of the member states and the actions of the member states towards the state aid decision. This is important to note as different actors across all governance levels are likely to make different claims, which can politicise or depoliticise the state aid case in a different manner. More specifically, claim makers are likely to pursue different strategies depending on whether the member states decides to appeal the Commission's decision.

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<sup>25</sup> Chapter 1 explained the authority transfer hypothesis. This hypothesis theorises that the more authority or power a supranational body holds, the more likely it is to become politicised (De Wilde and Zürn 2012).

Appealed cases are likely to achieve the highest level of politicisation (politicisation 3). This could occur as appeals might influence the amount of news attention that is drawn to EU claimants versus national claimants. Indeed, when the member state decides to appeal the Commission's decision, it must justify this decision to its citizens and the decision might also need to be passed in parliament and further debated. As such, it is theorised that the appeal could become the main politicising force in state aid cases. This does not mean that non-appealed cases cannot become politicised but, rather, that their politicisation might take a different form. More specifically, in non-appealed cases, it is expected that the delegitimisations towards the EU might not necessarily come from the member state after decision date (as the member state is not questioning the EU's throughput or output legitimacy of making a particular state aid decision). Therefore, for cases that are not appealed, I predict that politicisation will occur during the investigation phase as, if the member state does not contest the Commission's decision, this often calms tensions between the national and supranational levels of governance (reaching politicisation 2).

Agency can also be affected in state aid cases depending on whether or not the case was appealed. Claim makers from the national level of governance are likely to make more delegitimising claims if the member state decides to appeal the decision. This can also create further politicisation domestically as parliamentary debates could be initiated by those who do not believe that appealing the Commission's decision is the best way forward. Meanwhile, in non-appealed cases, agency from the member state could help to legitimise the EU's state aid decision as they might justify the Commission's decision-making processes (i.e. throughput legitimacy). Moreover, actors might be more likely to use sovereignty-based frames or justifications in appealed cases compared to non-appealed cases. This is because, if the member state wants to argue that giving aid to a particular company might be in their national interest, then the state aid decision might be framed as an infringement to the member states' sovereignty (see Schmidtke 2016).

In terms of depoliticisation, I also theorise that appealed and non-appealed cases are likely to cause claim makers from different governance levels use distinct discursive strategies to depoliticise either an action or the state aid case in general. Thus, member states can use discursive depoliticising techniques to achieve a specific action (e.g. the appeal). This means that they can use "there is no alternative" to suggest that the member state has no other choice but to appeal the Commission's decision (discursive strategies will be explained in further detail in section 2.5.2 of this chapter). If the issue is framed in this way, the national government

is more likely to convince its constituencies that the best option is to appeal. For non-appealed cases, there might be strategies by actors from the different governmental arenas that also seek to politicise or depoliticise a case.

In terms of media attention, it is likely that in appealed cases, the media is more likely to focus on claim makers from the national level, including actors from the national government (or local governments), rather than actors from the European Commission. This is because the appeal represents a contestation that is likely to trigger news coverage. This means that the national news is more likely to focus on the legitimations/delegitimations given by national actors in appealed (contested) state aid cases. In terms of non-appealed cases, it is more likely that the media focuses on the voices of EU actors compared to appealed state aid cases, which allows more space in the national press for EU claim makers to justify their actions. If claim makers from the EU government can justify their actions more often in national press, in terms of throughput and output legitimacy, this allows them to justify their role in MLG and, in turn, their overall legitimacy.

## **2.5 Utilising the MLG Framework in this Thesis**

Hay's (2007) work serves as a foundation to understand the processes of politicisation and depoliticisation for this dissertation. However, there are three main gaps in his approach that I seek to address. The first gap has already been addressed in this chapter by incorporating a MLG dimension to a framework which understands politicisation and depoliticisation as fluid processes. Second, Hay's (2007) work was never intended for empirically evaluating processes of politicisation or depoliticisation. Thus, this dissertation uses proxies through which one can empirically evaluate politicisation and depoliticisation. Specifically, De Wilde's (2011) work of three dimensions will be used to facilitate the study of politicisation and focus on European governance (see also De Wilde, Leupold & Schmidtke 2016). In addition, Flinders and Wood (2017) understanding of depoliticisation as a discursive technique will be adopted by examining the actors' claims. Third, one of Hay's (2007) main arguments is that scholars and citizens should not assume the worse of politicians. Indeed, as previously mentioned in this chapter, Hay (2007) believes that politicians are often and perhaps increasingly assumed to be "self-interested rational utility maximisers" (2007, p. 200) by citizens, fellow policy makers and scholars alike. Thus, Hay (2007) argues that if we associate these negative qualities to politicians, then this may have created a self-reinforcing negative dynamic where political parties are assumed to be rational or genuinely interested in the public good when in reality



this might not always be the case. However, this means that actors' motives and actions play little role in how they decide to politicise or depoliticise an issue in Hay's (2007) framework.

With that being said, actors can still strategise to make an issue apolitical during politicisation and vice versa. For example, if a politician is trying to frame a topic/policy response as having no alternative then this actor is actively trying to depoliticise the issue. Thus, this thesis expands Hay's (2007) framework to examine how different political actors can impact the politicisation and depoliticisation of an issue by using De Wilde (2011) and Flinders and Wood's (2017) work. Specifically, De Wilde (2011) and Flinders and Wood's (2017) works can help illustrate how different actors use their claims to either politicise or discursively depoliticise an issue. Hay (2007) demonstrates how these processes can be analysed simultaneously and move from the non-political and political realm, where an issue such as state aid can be contested and debated. De Wilde (2011) and Flinders and Wood (2017) also highlight the actors' agency in making an issue political or not. By building on these works, I allow the dialectic interplay that occurs between the two processes to take place in my analysis. This is especially important as I define both processes as "discursive strategies employed by various social actors from different levels of the MLG to either discuss or shut down the debating of an issue in the public sphere".

The next subsection will first explain De Wilde's three dimensions (salience, actor expansion and polarisation), followed by a description of Flinders and Wood's (2017) understanding of depoliticisation and, finally, the tensions that arise from blending De Wilde (2011) and Flinders and Wood (2017) with Hay's (2007) work will be resolved.

### *2.5.1 Politicisation and its Three Dimensions*

There are three proxies used to analyse politicisation in this dissertation based on De Wilde (2011): media salience, polarisation and actor expansion. To recapitulate, this thesis understands media salience as the amount of news coverage and claims made about a specific state aid case. Polarisation is the amount of extreme opinions and feelings different actors have towards a specific actor. Lastly, actor expansion is understood as the increasing number of actors debating the state aid case.

Various studies have examined how politicisation occurs in MLG structures such as the EU (De Wilde, Leupold, & Schmidtke 2016; De Wilde 2011; De Wilde and Zürn 2012; Green-Pedersen 2012; Hutter and Grande 2014; Statham and Trenz 2013; Zürn, Binder and Ecker-Ehrhardt 2012). For this dissertation, politicisation can be measured through the growing

amount of coverage of the EU, which involves several differing or polarised opinions regarding an issue. Furthermore, politicisation is also measured through the growing number of actors who engage in debates that contest EU issues, which is assessed by the amount of actors making claims about a particular issue (e.g. state aid case). The growing number of actors involved in debating an issue becomes possible thanks to the public sphere, which is the primary arena in which debates are analysed in this dissertation. In this sense, the growing number of discourses of the EU by a large and varied set of actors enables the construction of a European public sphere. Here, as previously stated the media is seen as a medium that transmits information, political messages, analysis and opinions to the people. Without the media, larger audiences would not be aware of EU issues.

Moreover, a political system and its policies can gain legitimacy through interactions between its citizens. Citizens can acquire information about their political system and policies through the public sphere and mass media. This means that citizens can form opinions about political affairs and understand how their political system functions through the media. This is what Dahl (1989, p. 111-112) calls the “enlightened understanding” and it can only occur when information is made available to the public (McNair 2003, p. 18-19). In this sense, the media represents a space where information is made available and is a connection between the elites and its citizens. Thus, the public sphere is a medium from which a political system can gain, maintain or lose legitimacy. This highlights the importance of analysing how different actors use the media to legitimise or delegitimise a political system, for example, the EU.

Salience, polarisation and actor expansion have been used across the literature for the sole analysis and interpretation of politicisation (and, thus, not for depoliticisation) (Börzel and Risse 2018; Grande and Hutter 2016; Hutter and Grande 2014; Hutter and Kersch 2014; Hutter and Kriesi 2019; Rauh 2016; 2018; De Wilde, Leupold and Schmidtke 2016; van der Veer and Haverland 2018; among many others). A large portion of these studies also focus on the evaluation of these dimensions through the analysis of claims (see Statham and Trenz 2013; De Wilde 2011; 2013; De Wilde, Koopmans and Zürn 2014). However, all of these studies examine the varying degrees of politicisation while disregarding its counterpart: depoliticisation. Indeed, an issue can be one day politicised and another day depoliticised (Hay 2007) and, therefore, it is useful to study the two processes together. For example, this can occur when issues are debated by a wide range of actors but, over time, other issues or debates might become more topical or subject to polarising opinions by different actors. As such, I will attempt to analyse both processes together. Thus, the next subsection will further explain the

literature on depoliticisation and how it can be added to a framework in which both politicisation and depoliticisation are studied simultaneously.

### *2.5.2 Discursive Depoliticisation*

As argued in chapter 1, depoliticisation has been used as a concept in the literature to analyse public disengagement as well as political participation in politics (Burnham 2001). Burnham first defined the term as the removal of the political character of decision making processes (2001, p. 128). Debates surrounding depoliticisation ask whether there has been a “shift in the political character of decision making” (2001) and examine how policy agendas are made to be seen as inevitable or matters of pure “fate” (Gamble 2000). The shifts in how policy agendas and decision making are framed can lead to public disengagement (Hay 2007). This can happen when politicians present an issue to be outside of the realm of public debate or of effective political action. For example, if the government states that they are taking care of an unlawful aid, the public should not be concerned. Governmental actors might also suggest that their management of the case is the *only* possible response. In this way, governments can try to discursively depoliticise an issue to make people unaware of certain situations. If people are unaware, they cannot engage in politics (Jenkins 2011). Thus, if a policy or issue is not debated, unaware citizens can refrain from joining political debates in society. In this sense, depoliticisation can be used as a mechanism to create greater consensus in MLG structures, such as the EU. Again, the less issues are debated, the easier it is for policies and regulations to function (Smith 2003; Crespy 2015).

Previous studies on depoliticisation have relied on qualitative methodologies and have focused on how government structures (and the shifting of governmental decision-making processes) have impacted public engagement (or disengagement) with political issues (Gamble 2000; Jenkins 2011). Authors such as Mair (2013) have examined how technocratic governments with decentralised governments can lead to public disengagement and disillusion with politics. For others, depoliticisation is a complex process that needs to be broken down into different forms or categories in order to analyse it (Flinders and Wood 2014). This is why this thesis adopts Flinders and Wood’s (2014; 2017) understanding of depoliticisation. That is, while De Wilde’s (2011) three dimensions are used as proxies for measuring politicisation, Flinders and Wood’s (2017) understanding of depoliticisation is used to empirically evaluate depoliticisation as a discursive process.

Flinders and Wood (2017) believe that their conceptualisation is a “distinct form of depoliticisation, separate from ‘governmental depoliticisation’ (the extent of government control over arm’s-length bodies) and ‘societal depoliticisation’ (policy issues are simply left off the agenda)” (Flinders and Wood 2017, p. 608). Depoliticisation is analysed by focusing on the discourse; that is, how language and ideas can depoliticise a specific issue or policy. For example, the authors use former UK Prime Minister David Cameron’s party conferences to study the how he uses his speech to depoliticise taxation issues. Indeed, political actors can use specific words to make an issue apolitical and this can have negative consequences for the legitimacy of a complex MLG structure. Previous studies have shown that politicians can try to depoliticise decision making processes and this, in turn, may have an impact on the growing public disengagement and disaffection domestically (Hay 2007). Hay (2007) also explains that public disengagement does not necessarily come from voters (demand side of politics) but from what politicians decide to do or say (supply side of politics). Thus, actively choosing to depoliticise an issue, a policy or any type of debate that can become “political”, can have a negative consequence on how the public engages in politics. Therefore, if politicians decide to keep an issue “under the radar”, citizens do not know about these issues and cannot engage in politics. As such, this thesis focuses on analysing depoliticisation through discursive means and not through other conceptualisations of the terms (such as the governmental or societal depoliticisation types), as this helps to see how actors depoliticise an issue or policy through their claims. Moreover, elites can use their discourse to change the political nature of decisions. In this sense, it is clear that both politicisation and discursive depoliticisation can occur, possibly even simultaneously or in relation to the same political/policy process. If an issue is politicised, other actors involved in the conflict might attempt to put the issue “under the radar” and, therefore, try to depoliticise it.

In addition to Flinders and Wood (2017), previous authors such as Jenkins (2011), Bates et al. (2014) and Wood (2015) have also used the term “discursive depoliticisation”. In the literature, there is a consensus that discursive depoliticisation refers to some form of political “denial”. In their work, Flinders and Wood (2017) try to conceptualise this negation by using Teun van Dijk’s (1992) schema on forms of denial (Flinders and Wood 2017, p. 608). These forms of denial are used in van Dijk (1992) study to understand how different actors use discursive denial strategies in regards to racism. The forms in which denials can take place in van Dijk (1992) study are the following:

- 1) Act denial (‘I did not do/say that at all’)

- 2) Control denial ('I did not do/say that on purpose', 'It was an accident');
- 3) Intention denial ('I did not mean that', 'You got me wrong');
- 4) Goal denial ('I did not do/say that, in order to...') (van Dijk 1992, p. 92)

Van Dijk's (1992) framework has also been extended by Glynos and Howarth (2007, p. 134) who include the denial of the past, the present and the future. Glynos and Howarth (2007) state that discourses are set in a specific context and time where specific "laws" apply to them. Political logics allow the researcher to understand how social practices are constituted as well as contested or defended (Glynos and Howarth 2007). Flinders and Wood (2014) explain how analyses on negations have been applied to the individual, meta and macro levels of analysis. For example, Mitchell, Every and Ranzijn (2011) have evaluated the different denial strategies provided by individuals who do not want to challenge racist statements in everyday conversations. Other authors like Hansson (2015) have applied negations to the study of public administration. Hansson (2015) identifies different forms of denial that politicians and policy makers use to win arguments and their strategies to offer excuses and justifications (2015, p. 305). At a macro level, Wodak and Cilia (2007) have shown in their study that denial can have an impact on political/psychological traumas from a societal perspective. The authors used as an example how the post-1945 Austria had an impact in how public discourses were constructed (Wodak and Cilia 2007). In their study, the public discourse was able to frame the "nation" as a "newly born child" after the Second World War (Wodak and Cilia 2007).

In this dissertation, the three negations are applied as follows:

1. Negations of the past: Previously dominant political paradigms which 'failed' in the past. More specifically, these are arguments which suggest that an issue/policy/country was worse before and, therefore, the present is not as bad. When relating to the past, politicians or actors may frame the issue as: it used to be worse and therefore we are not doing as bad as the Commission suggests. For example, politicians from the member state might try to suggest that a corporation (such as Ilva in Italy) is in a better position than before because it has received aid from the government.
2. Negations of the Present: These are arguments based on supposed social 'rules' that cannot be broken at a particular moment (denial in relation to the present). This can refer to instances where actors from the Commission, EU or any of the member states involved in the conflict suggest that rules cannot be broken.

3. Negations of the Future: Arguments based on the assumption that change could lead to societal chaos and collapse (denial in relation to the future). Politicians, policy makers or other actors might try to suggest that if they fail to do something or if they change the way they deal with an issue/policy, there will be negative consequences for the future. For this analysis, governmental actors might resort to this strategy when they wish to appeal the Commission's decision. For example, if national leaders believe that it is in the nation's best interest to appeal a decision, then they are more likely to suggest that. In doing so, they will avoid any future negative consequences for the member state (e.g. by encouraging a multinational to invest in their country). Otherwise, if they fail to do so, the member state might run the risk of losing future business ventures with multinationals and risk becoming unappealing to investors in the future.

There are other ways in which actors could try to discursively depoliticise an action or an issue that do not relate to negations of the past, present or future. This section explains some of the literature on each of the three further strategies that will be evaluated as part of the discursive depoliticisation analysis. Each of these strategies represents an addition to Flinders and Wood's (2017) work on discursive depoliticisation and, thus, a further contribution to the literature. The first technique is when issues are framed as too "technical" or complex for citizens or even politicians to understand. The second technique refers to the normalisation of past tensions and the third technique relates to framing issues as having no alternative (TINA).

#### *2.5.2.1 Framing issues as "Technical"*

Schiappa (2003, p. 165) explains how experts might frame an issue as "too technical" because they believe that even if the topic is of societal importance, it might still be regarded as "too complex" for larger audiences and even for politicians themselves (Schiappa 2003). Thus, for this study, actors from the national government might suggest that state aid is "too complex" and, therefore, national experts should be trusted in dealing with any related state aid matters. Thus, officials who deal with state aid at the national level might suggest that they are conducting the appropriate level of investigations regarding the state aid case and are handling the case accordingly, thereby removing any potential questions on decision making processes at the national level. In this sense, national leaders might make claims such as: "the national government is the *only* one with highly skilled knowledge to deal with state aid issues".

### 2.5.2.2 Normalisation of Discussions and Cooperation Between Actors

Studies in political psychology have examined how politicians try to normalise their behaviour. For example, a study has shown how Donald Trump has been able to normalise certain behaviours which once would have been labelled as “outlandish”.<sup>26</sup> Politicians are able to change the way people view their reality and what is perceived as “normal” by familiarising citizens with certain types of behaviours (Bear and Knobe 2016). Normalisations do not always have to occur with populist leaders such as Trump. These types of behaviours can be used by a wide variety of political actors who may seek to normalise certain types of behaviours or relationships. This discursive strategy can also be used by non-majoritarian EU institutions, such as the Commission, which might respond to any type of political conflict by deflecting attacks or seeking member states to side with the supranational institution in order to calm tensions. For example, actors from either the Commission or the member state can use this discursive depoliticisation strategy to “normalise” the relationship between the member state involved in a past state aid conflict and the Commission, or between the corporation and the Commission. By normalising certain situations, actors can attempt to discursively depoliticise an issue as they do not want people to talk about any type of conflictive behaviour.<sup>27</sup>

Berkhout et al. (2012, p. 5) divided politicisation and depoliticisation processes into quadrants. The politicised quadrant shows high levels of salience and polarisation, while the opposite is a choiceless democracy where there are no options and a predestined political power (see Ferguson 1990; Harriss 2002). Therefore, one can imagine that in the less extreme version of depoliticisation lies cooperation. If politicisation is regarded as a way of discussing and debating polarising and contradicting ideas, then the cooperation and harmonisation of a policy would follow as a method to depoliticise (Flinders and Wood 2014). Cooperation occurs when there is not necessarily any type of discussion between contrasting parties. Indeed, making it appear as though relationships are stable or that past tensions have been resolved could be considered a discursive depoliticising strategy. For example, claims that highlight the willingness of a member state to cooperate with the Commission in order to resolve past tensions and to avoid further politicisation of the state aid case.

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<sup>26</sup> See <https://www.bbc.com/future/article/20170314-how-do-we-determine-when-a-behaviour-is-normal>

<sup>27</sup> It is also important to highlight that it is also feasible to comprehend that discursive depoliticisation can occur in a less “conscious” manner.

### *2.5.2.3. Framing Issues as Having No Alternative (“There Is No Alternative”: TINA)*

The TINA literature began in the 19<sup>th</sup> century with Herbert Spencer who was a British intellectual advocate for classical liberalist ideas (Neuhäuser 2018). Herbert Spencer believed in “laissez-faire”, which is the complete separation of government from the economic sector. Herbert argued that “there is no alternative” to capitalism and the free markets (Neuhäuser 2018). However, more recently, the term became associated with British Prime Minister Margaret Thatcher. The strategy was not only important for Thatcher but was also used during the management of the European crisis (Séville 2017). The term has been associated with economic liberalism and one that adheres to free market, trade and a minimal role of the state in the market (Vandeveldt 2016). This is because there have been proponents like Herbert or Thatcher who believed that there were other alternatives to economic liberalist ideologies. Most of the literature on TINA focuses on the discourse of politicians who tend to adhere to neoliberalist ideologies (Munck 2010; Merrifield 1993; Queiroz 2018; Andersson 2012). However, this specific body of work mostly focuses on TINA as a political discursive strategy, which different political actors (no matter their ideology) can use to depoliticise a state aid case.

More recently, it has been argued that TINA has re-entered politics as a technique to vindicate giving financial aid to Greece and to propose that this is the only solution that should be made by European Monetary Union (EMU), the European Central Bank (ECB), and the European Commission (Neuhäuser 2018). This also occurred in the UK with David Cameron citing Thatcher and justifying the rejection by other political parties to cut taxes in 2013 (Chapman 2013). Authors like Flinders and Wood (2017) see TINA as a “mantra of depoliticisation”. This means that different depoliticising strategies will encompass different types of TINA. However, for the analysis of this dissertation, TINA is regarded as a strategy in itself rather than a part of all the other discursive depoliticisation strategies so far presented. TINA is the only technique that makes reference to an act which must be done and where there is no alternative. All of the techniques presented here aim to remove the political aspect or element for debate.

To summarise, Flinders and Wood (2017) framework explains how discursive depoliticisation works rather than whether it exists or whether there is causal evidence for it (2017, p. 609). The empirical work in this dissertation aims to further contribute to the literature on depoliticisation by identifying claims that show the discursive depoliticisation strategies previously described (e.g. framing issues as too technical or TINA) via claims-making analysis.



Claims-making is typically used to measure politicisation. However, I argue that claims-making analysis can also be used to measure discursive depoliticisation techniques and can reveal how different actors might try to actively politicise and discursively depoliticise the same issue. The politicisation of an issue such as state aid also allows actors to try and make the topic less “political”. In this way, the thesis uses claims-making analysis not only in instances of politicisation, but also to identify claims that actors use to discursively depoliticise the exact same issue. Examples of depoliticisation claims might come from national leaders stating: “there is no other way but to appeal the Commission’s decision” or members from the Commission claiming that “there are no tensions currently existing between the EU and the member state involved in the state aid case”.

### *2.5.3 Tensions that arise from this thesis’ understanding of Politicisation and Depoliticisation*

In this section, I attempt to identify and resolve some of the main tensions that arise from the conceptualisations that occur between Hay (2007) and De Wilde’s (2011) use of politicisation as well as Flinders and Wood (2017) depoliticisation.

In regard to politicisation, the main tension that arises is that Hay (2007) sees both processes as fluid and believes that public debates that occur in mass media may or may not be the result of politicisation. This is because rules and decisions can be collectively debated by different actors across a variety of platforms, which do not necessarily include the public sphere (including actors outside of the “elite”). In this sense, to politicise something is to make it subject to debate even if it occurs privately (e.g. if different actors in government have diverse or polarised opinions about how to tackle an issue or a policy they might discuss this in private). To this extent, Hay’s (2007) approach claims that politicisation can occur both in the private and the public spheres. For example, an issue can be politicised in private via discussions between several actors behind the scenes, which could cause extreme tension between different political groups. The opposite can also occur; that is, when an issue is mentioned in the media without it being fully politicised. This can happen as a consequence of an issue being mentioned but not discussed or debated in the media per se. Thus, for Hay (2007), not everything that occurs in the public sphere has been politicised and not everything that occurs in the private sphere is “apolitical” either.

By contrast, De Wilde’s (2011) three dimensions only evaluate what happens in the public sphere through media debates and does not account for the issues which occur behind

the scenes. In this sense, by measuring politicisation through the three proxies, I am leaving outside debates which occur in the private sphere. This is because De Wilde's (2011) work fits into one specific type of manifestation of politicisation. To recall, chapter 1, Figure 1.1 explained the different manifestations of politicisation. The first manifestation of politicisation is the "micro" where politicisation is assessed by individual thoughts or beliefs that people have regarding an issue. The "meso" level involves measuring politicisation through the engagement and mobilisation of people that can lead to the politicisation of an issue or an event. Finally, the "macro" perspective evaluates politicisation from public debates. The "macro" level is the main lens through which De Wilde (2011) analyses politicisation and it is also how this thesis measures the politicisation of an EU policy. I do this, as the best way to evaluate actors' agency and intentions is through what they say in the public sphere. Analysing the public sphere allows this thesis to understand how claims can be used as a mechanism for political power to maintain its democratic legitimacy. In addition, this sphere represents an avenue for citizens to debate these topics and to form a public opinion of the state's handling of certain situations or policies. Most of the public debates occur in the mass media (and more recently in social media - see Hänska and Bauchowitz 2019) and citizens become aware and can even be part of the debate once the politicisation becomes fully public.

For this dissertation, I am analysing and focusing on the politicisation dynamics which can have the highest level of impact on citizens as they are subject to reading news articles and forming their own opinions about complex MLG structures such as the EU. Overall, media exposure is more likely to gain the attention of the government and can potentially incite "change". For example, an issue can become highly covered in the media: this might reveal certain practices conducted by the state (e.g. providing low taxes to a certain company or giving incentives to certain corporations over others) and citizens may agree or disagree with such practices. In this sense, the state might consider public opinion during the politicisation of these cases and change their current policy behaviour. Therefore, the media serves as a place where public discourse is created and re-created through news-making processes (Entman 2004). Thus, it is important to evaluate the way in which actors allow for issues to become politicised and depoliticised in the media and how they can legitimise or delegitimise MLG structures such as the EU. Scholars such as Hooghe and Marks (2008) suggest that the media could never change public opinion in a way that it is positive towards the EU or that it helps to legitimise it. However, I argue that the media can bring debates and public contestation to light, which then opens the possibility for audiences to form their opinion and learn about the EU. I also

argue that studying public debate in the media represents a good strategy for evaluating the claims and debates which take place in the public sphere regarding a particular issue such as state aid. The media also helps to illustrate a range of different opinions and schematise how different agents can strategically politicise or depoliticise an issue. By doing this, one of my main priorities is to evaluate the role that actors' claims have in politicising or depoliticising an issue. In doing this, I also contribute to Hay's (2007) framework by providing a stronger role to agency and actors' motivations.

As previously explained, one of Hay's (2007) arguments is that politicians are assumed to be rational or genuinely interested actors in politics by citizens, fellow policy makers and scholars alike. Hay (2007) argues that this may create a self-reinforcing negative dynamic where these assumptions might not always be true. As such, Hay (2007) focuses less on agency and actors' motives in his politicisation and depoliticisation framework. However, I argue that agency still plays a key role in how actors (not only politicians) can politicise or depoliticise an issue through their claims (even if they do so without rationalising their actions at times). This dissertation takes into consideration the claims made not only by politicians but also by other actors (e.g. citizens, NGO's, lawyers), who also contribute to how a policy, such as a state aid case, can become politicised. These actors can still attempt to strategize to make an issue apolitical during politicisation and vice versa: make an issue political during depoliticisation. This in turn can be measured through the claims in the media and through salience, polarisation and actor expansion. The analysis of this dissertation will provide certain strategies of politicians and governmental leaders but it will also assess the role of other actors who might politicise or depoliticise an issue unknowingly. This represents a key contribution to Hay's (2007) framework and to the overall literature as I take into consideration the agency of not only political actors but also others who might allow the politicisation or depoliticisation to occur.

Hay's (2007) definition of politicisation relies on more general notions of politicisation (contingency), while De Wilde's (2011) definition is more specific and includes salience, polarisation and actor expansion. This means that issues can presumably be in the realm of contingency without ever producing salience, polarisation or actor expansion. I solve this tension by using Hay's (2007) schema to generally understand how processes of politicisation and depoliticisation can move from the political to the non-political realm and vice versa. Meanwhile, I use De Wilde (2011) and Flinders and Wood (2017) to *assess* these processes in the public sphere. Moreover, in my definition of politicisation and depoliticisation, I emphasise

the dialect interplay that occurs from actors at different government levels who have the agency to attempt to politicise or depoliticise the same issue (which, in the case of this thesis, is state aid).

In terms of depoliticisation, the tension also relies on the fact that the term discursive depoliticisation mainly focuses on the role that language and ideas play in contributing to an issue becoming depoliticised (Flinders and Wood 2014, p. 165). The concept recognises that humans have agency and that they can be active participants in changing how institutions, practices and social rules work. This type of depoliticisation accounts for the notion that actors can deny or actively try to move topics out of political discussions. As a result, discursive depoliticisation can be seen and analysed through speeches, statements or actions made by various actors in the public or private spheres. Similar to De Wilde (2011), attempts at discursive depoliticisation can be evaluated when they are being covered in the media (or in real time via interviews). This dissertation chooses to focus on the media to evaluate how different actors can try to depoliticise an issue through their claims. Just as with politicisation, it is easier to evaluate the moments when an actor is trying to make an issue “apolitical” through their speech rather than identifying the moments when the issue is not being discussed at all. This way of measuring depoliticisation does not specify how much responsibility has been taken away from one level of governance to another. However, it can analyse whether a specific political actor wants to remove itself or the government that it works for from certain responsibilities through their claims. In this way, it also contributes to Hay’s (2007) framework in analysing the possible motives and agency of political actors in trying to depoliticise an issue.

Processes of politicisation and depoliticisation can occur simultaneously and political actors can have different agendas in wanting to either politicise or depoliticise an issue. An example of this can be actors from the Commission attempting to shut down any type of politicisation of a state aid case by suggesting that “past tensions have been resolved”, while actors from the national level (e.g. non-governmental actors) might attempt to politicise a state aid issue to pursue a specific goal. This can range from citizens wanting the member state to address their concerns about how the repayment of the state aid might affect their employment in the corporation, to other non-governmental actors addressing the Commission’s decision as fair and stating that the member state should not have provided the aid in the first place. Indeed, actors have different interests and might try to avoid a topic becoming political. Thus, looking at how actors politicise or depoliticise a policy or an issue can be best observed in the media.

Politicians tend to appeal to their audiences in the media and their speeches are frequently done with intention. When a politician or an actor speaks in the media, this can have a consequence for a power structure's legitimacy which is ultimately what this thesis seeks to understand. This is because once an issue reaches certain level of notice in the public sphere, politicisation or attempts to depoliticise an issue may have an effect on the legitimation and legitimacy of a power structure. By examining how actors attempt to politicise or depoliticise an issue, this can reveal how they may seek to legitimise or delegitimise power structures in complex governance structures such as the EU.

## **2.6 Conclusion**

This chapter has been able to develop a theoretical framework for the processes of politicisation and depoliticisation in MLG. The presented MLG framework in this chapter contributes to the wider literature on politicisation and depoliticisation by providing a theoretical model that extends Hay's (2007) work to MLG structures and can be applied to other complex structures outside of the European Union, such as International Organizations (e.g. WTO, WHO). To answer the main research question, this chapter used the EU as an example of how this MLG framework can be applied. This proposed theoretical framework guides the methodology of this dissertation by explaining how each of the processes and actors involved might politicise/depoliticise and legitimise/delegitimise the EU.

This chapter first presented the reader with Hay's (2007) understanding of politicisation and depoliticisation which helps this thesis map how the dynamics of these processes function. However, this framework presents three gaps which I have sought to address. First, Hay's (2007) work is one dimensional as it only evaluates one level of governance: the state. This was resolved by adding a multilevel layer to how these processes function in section 2.3 of this chapter. This allows for a theoretical understanding of how both processes of politicisation and depoliticisation can function simultaneously in complex governance structures that go beyond the state. The proposed framework has three governance levels: the supranational, the national and the local. In each level, politicisation and depoliticisation are linked and movements can happen at different levels of governance simultaneously. This framework was later used with the EU as an example of MLG. Here, the EU is the supranational level, the member state is the national and the municipalities within the member state are the local level of governance.

I used a state aid case as an example of how my theorised model could function using a specific EU policy. In here, I also theorised that appealed state aid cases are likely to become

politicised and depoliticised by different actors involved in a different manner than non-appealed cases. Once I have outlined how politicisation and depoliticisation can work in MLG (and more specifically how it works within the EU) there remains one particular issue: how to assess politicisation and depoliticisation. To resolve this, the chapter brought concepts of politicisation used by De Wilde (2011), and concepts of discursive depoliticisation used by Flinders and Wood (2017). By using the two works combined with Hay (2007) this filled the two remaining gaps in Hay's (2007) work: allowing for a way to empirically assess a purely theoretical framework and provide a stronger role to agency and actors' motivations.

However, using the concepts of De Wilde (2011) and Flinders and Wood (2017) to measure politicisation and depoliticisation brings some tensions, which must be mentioned. First, according to Hay (2007) even if an issue is not reported in the media, it does not mean that it is not politicised in the private realm. However, this dissertation only measures instances which occur in the media and are therefore, made fully public. As such, in this dissertation, politicisation is measured through claims made by actors in news articles in the public sphere, as this information is more accessible. Saliency, polarisation and actor expansion are used in this thesis to evaluate the extent to which states aid cases have become politicised in the media. Meanwhile, depoliticisation is the opposite of politicisation: it is essentially framing an issue as not for debate or as "apolitical" through claims and discourse. Overall, this dissertation is explicitly interested in public politicisation and discursive depoliticisation as this is what ultimately might have an impact on the broader legitimacy of a MLG system such as the EU. The next chapter will explain the methods used to empirically analyse these processes in the public sphere.

## Chapter 3: Methods of the dissertation

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### 3.1 Introduction

In the previous chapters, I have examined the various mechanisms through which policies within a Multilevel Governance (MLG) structure can become politicised or depoliticised by a variety of different actors. To summarise, in “Why we hate politics”, Hay (2007) brought the terms “politicisation” and “depoliticisation” together and argued that analysing both processes helps to understand how these movements take place between the realms of necessity (non-political) and deliberation (the political). Hay’s (2007) framework was expanded in Chapter 2 to explain how politicisation and depoliticisation processes function in MLG structures, like the EU, and how they can affect the legitimacy of the EU and the member states.

The aim of this dissertation is to demonstrate that politicisation and depoliticisation cannot be seen as purely negative or positive for the EU’s legitimacy. Rather, they are movements that may influence how the EU’s legitimacy is perceived depending on who is trying to politicise or depoliticise an issue. These movements can behave differently even within the same policy and can therefore have different consequences in how actors legitimise or delegitimise the EU or member states involved in the conflict. Thus, the objective of this dissertation is to address this research problem by using the policy of state aid. As previously mentioned in Chapter 1, state aid was chosen as it is one of the most supranational policies of the EU where the Commission rules which member state has committed an unlawful act and has to collect the money given to a particular industry or corporation (Cini and McGowan 1998). That is, member states entrust a supranational authority (the Commission) with the task of deciding whether or not any aid provided to a specific industry is in the interest of the community as a whole. Interestingly, this type of system does not exist outside of Europe (see Ibañez Colomo 2016). Because of its unusual nature, state aid is also fragile. Indeed, member states can be tempted to abandon or relax rules by floating the idea of loosening state aid rules or decentralising it (Merola et al. 2007). Therefore, state aid creates a situation where member states must trust a supranational authority to decide to whom they can provide aid and how much, and this can lead to conflicts. For instance, the Commission might rule that a particular member state (e.g. Germany) cannot provide aid to a corporation (e.g. Deutsche Post). However, when it comes to the ruling, the government at the national level of governance might believe that giving the aid is still in their best interest. This, in turn, can create a conflict

between the member state and higher levels of governance. The authority transfer from the member state to the Commission is one of the reasons why state aid was selected for this dissertation. To recapitulate, theories in the field of politicisation suggest that the more authority the EU has, the more likely the EU is to become politicised (authority transfer hypothesis) (De Wilde and Zürn 2012, p. 140). In state aid, the Commission's objective is to promote the Single Market and the European Integration process through ensuring that the level of competition is equal among all member states (McGowan and Cini 1999). On the other hand, member states must follow EU norms and implement state aid policy appropriately at the national level. Thus, since actors at the EU and member state have different goals and objectives they may also have different legitimisation strategies. This means that the EU is more likely to be contested by member states and other actors where it is the main decision-making authority in any one policy. This makes a policy such as state aid highly contestable and, therefore, it has a higher likelihood of becoming politicised (based on the authority transfer hypothesis – see De Wilde and Zürn 2012).

Regarding methodology, there are several reasons why state aid was an appropriate choice for evaluating how different actors can politicise and/or depoliticise an EU policy. First, state aid offers a number of cases with extremely similar situations; that is, instances where the Commission orders the member state to recover the aid. However, what differs is how the member state reacts to this decision: whether it decides to appeal, not appeal or simply not do anything regarding the aid and, thus, be referred to court by the Commission. This allows for a comparison to be made between countries that decide to appeal the Commission's decision and those who do not, and this could also affect how the state aid case becomes politicised or depoliticised (as well as how the actors might legitimise or delegitimise the Commission).

Second, as previously mentioned in Chapter 1, in state aid policy, the member state is constrained from providing illegal aid to corporations and this prevents possible distortions to the European market. However, because of these constraints, problems can arise and this may affect the way in which the Commission is perceived. This makes state aid a key policy to answer the research question of this thesis: How do actors attempt to politicise and depoliticise state aid cases and, in so doing, legitimise or delegitimise MLG structures such as the EU through the claims they make?

Third, state aid was chosen due to its transparency measures established by the European Commission on July 1<sup>st</sup> 2016 that enable the public to view state aid cases. Transparency measures are critical for the politicisation of a policy. Indeed, transparency



measures by the Commission allow for state aid cases to enter the public domain and to become subject to politicisation.<sup>28</sup> Thus, this allows the dissertation to examine how the Commission becomes the main actor in politicising decision-making processes in EU policies (e.g. when the Commission makes a final decision regarding a state aid case and it is announced through press releases or conferences). It is also important to note the fact that in state aid cases, there can be two or more opposing sides: the nation-state versus the European Commission; or, the corporation involved in the state aid versus the Commission. As previously mentioned, this makes state aid policy a very “politically sensitive” matter (Blauberger 2011, p. 28). The tensions that arise from state aid conflicts tend to attract considerable public attention at the national level (e.g. Alitalia and Ilva cases) (Blauberger 2011) or International level (e.g. Apple, Deutsche Bank state aid cases). As such, it has been argued that the credibility of state aid, and of the Commission, lies on avoiding political conflict (see Blauberger 2011). This is because the more contested the Commission is, the more likely it is to stop working efficiently and in turn, lose some of its legitimacy (see discussions on how politicisation can affect the EU polity in chapter 1).

As I will also explain in Chapter 4, in state aid, there are several types of cases: positive decision (no aid is discovered by the Commission), conditional decision (even though the aid is compatible with EU market regulations, the implementation might be subject to further monitoring) or negative decision (the measure is not compatible with EU state aid rules and cannot be implemented).<sup>29</sup> Negative decisions can be categorised into 2 groups: 1) cases where the aid does not need to be recovered and 2) the cases where it does. When the decision regarding a case is negative and the aid needs to be recovered, the case is labelled “negative decision with the recovery of aid (Article 14)”. These are the state aid cases where member states were found to have unlawfully provided aid to a corporation and, therefore, must recover that aid from said corporation. This last type of cases where the corporation needs to repay back the member state are labelled “Unlawful with Recovery of Aid” (UWRA). This type of decision made by the Commission is more likely to create some form of confrontation between the member state and the European Commission as it creates an awkward situation where the member state has to recover back the aid previously given to a specific sector, corporation or

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<sup>28</sup> See the European Commission’s transparency measures available at: [https://ec.europa.eu/competition/state\\_aid/overview/transparency\\_and\\_evaluation.html](https://ec.europa.eu/competition/state_aid/overview/transparency_and_evaluation.html)

<sup>29</sup> State Aid Manual of Procedures. Available at: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/sa\\_manproc\\_en.pdf](http://ec.europa.eu/competition/state_aid/studies_reports/sa_manproc_en.pdf)

scheme. Conflict may arise as a consequence of either the corporation or the member state disagreeing with the Commission's decision and therefore resulting in them appealing the Commission's decision. Thus, this type of state aid case is more likely to become subject to politicisation (more on this in chapter 4 of this thesis).

There are, of course, some issues with selecting state aid as the main policy to analyse processes of politicisation and depoliticisation. The findings of this dissertation show how actors can politicise or depoliticise their actions in relation to a very specific circumstance (here, in relation to UWRA state aid cases). This imposes certain limits on making generalisations to other EU policy areas. At the same time, state aid was selected because of its very particular supranational nature. After all, state aid has been named one of the Commission's "superpowers" as it has been "one of the strongest tools at the European Commission's disposal to ensure that the EU can impose common standards and goals across the continent" (Larger 2019). Moreover, state aid has been at the centre of the EU's biggest strategic decisions, which have at times been called out for being "too political" in nature (see claims by Ireland's ex Minister for Finance Michael Noonan in regards to the Apple state aid decision in chapter 6). If we are to understand how an EU policy such as state aid can become subject to politicisation, we may be able to better understand the political games that occur in other areas (e.g. trade policy). Indeed, there are large similitudes between discussions regarding state aid and trade agreements and negotiations (for example, Brexit negotiations). Therefore, the analysis on state aid cases in this dissertation can shed light on other economic policy areas where the EU's powers might be contested.

This chapter will explain how UWRA cases can: 1) become labelled by the Commission as "unlawful with recovery of aid" (UWRA), 2) gain media attention, 3) become subject to politicisation or depoliticisation by different actors, and 4) show that actors can legitimise or delegitimise the EU by politicising or depoliticising a supranational policy such as state aid. In order to answer the main research question, I have developed a research design where each stage represents a building block for the next stage. The stages are 1) data collection, 2) study of appeals and referral to courts, 3) media analysis and case selection and lastly, 4) claims-making analysis.

The first stage of data collection involves the gathering of all state aid cases as well as their news coverage. The second stage conveys the study of the appeals and referral to courts which provides an overview of which member states tend to have the most "unlawful" cases as well as who tends to appeal the Commission's decision the most. The third stage

encompasses a media analysis which evaluates the possible reasons for state aid cases gaining news coverage. Stage three also enables this dissertation with the ability to select two state aid cases for later use. Finally, stage four covers the objective of the claims-making analysis. This stage is used to understand how actors (which can include Irish citizens, politicians, DG-Competition commissioner Margarethe Vestager, Apple CEO Tom Cook, among many others) choose to politicise or depoliticise as well as legitimise or delegitimise the EU, the Commission and the Irish government's actions in the media. As previously explained in chapter 2, the media provides an arena for contestation and, therefore, a mechanism to analyse how legitimations or delegitimations towards a power structure.

The literature on politicisation in the media, has been mainly operationalised as the combination of three factors: the polarisation of opinions, the intensification of debates (salience), and the increase of actors involved in the conflict (e.g. citizens or social movements) (De Wilde 2011; 2016; 2020; Hutter and Kriesi 2019; Hutter, Grande and Kriesi 2016; Statham and Trenz 2013 among many others). The most common way in which the three variables of politicisation have been studied is through claims-making analysis (e.g. Koopmans and Statham 1999; Haunss 2007; Lindekilde 2013; Statham and Trenz 2013; De Wilde 2011; 2013; 2020; Gora and De Wilde 2019; De Wilde, Koopmans, Zürn 2014; Hurrelmann et. al. 2020; Hurrelmann and Wagner 2020). As we will see in this chapter, claims-making is the expression of political demand of actors in the public sphere (Lindekilde 2013). The claim is an expression of an opinion by several actors (governments, corporations, journalists, social movements, NGOs, other civil society actors) and a verbal act of political communication. This type of analysis allows me to analyse actors' opinions on the legitimacy of a polity (whether the EU or the member state). Claims-making analysis is also used in this study to assess depoliticisation. This is because I aim to evaluate how actors not only politicise but also depoliticise an issue via their claims. As previously mentioned in chapters 1 and 2, developing a way to analyse depoliticisation through Claims-making analysis is one of the key contributions of this study. By examining how actors use their claims to depoliticise an issue, we can also gain a broader understanding of when this is likely to occur and how depoliticising an issue can also delegitimise or legitimise the EU or member states involved in the conflict. An example of how actors can depoliticise an issue is by framing an appeal to a state aid decision as "having no alternative" or framing the state aid case as "too technical" for common understanding.

By analysing both politicisation and depoliticisation using the same method, it illustrates that an issue gaining attention does not necessarily mean that the issue becomes

politicised. This dissertation also aims to show that these processes are mirror images of themselves (one on the political side of the spectrum and the other on the non-political side), both of which are analysed using a similar method: a claims-making analysis. In this chapter, I will first explain the methodology, including how I combine different methods to answer the main research question as well as the comparative methodological choices used in this thesis. Then, I will explain the overall research design where UWRA cases are analysed. Next, the sections afterward will explain in greater detail each of the stages that start with data collection (section 3.4) and finish with the claims-making analysis (section 3.7). By the end of this chapter, the reader should have a clear understanding of: a) the types of selected state aid cases, b) how these cases were gathered, c) the analysis of the media and case selection and lastly, d) how the claims-making analysis works.

## **3.2 Methodology**

In the following sections, I will explain the mixed method research applied in this dissertation as well as the comparative methodology.

### *3.2.1 Mixed Methods*

The methodology of this dissertation benefits from different methods (e.g. quantitative analysis such as a negative binomial regression and more qualitative forms of analysis such as claims-making) through which I aim to answer the main research question of this dissertation. The analysis of state aid cases in Chapter 4 provides information on the referrals to court and appeals and sets the foundation for Chapter 5 where I will examine why certain state aid cases are more or less likely to gain news coverage in national and newswire services. The results from the quantitative analysis will also be used to select the two state aid cases that will be analysed in a more qualitatively manner. This phase of the research uses the claims of the actors involved to determine if the selected state aid cases became politicised or discursively depoliticised, and if these cases were used for the legitimization or delegitimation of the EU.

The main benefit of using a quantitative approach is that it provides both the researcher and the reader with a clear view of the universe of state aid cases labelled UWRA. That is, we can easily identify the member states with the most unlawful aid as well as who is more likely to appeal the Commission's rule or not comply with EU norms. Moreover, by selecting the cases through the quantitative analysis, this removes selection biases as I am not simply using the cases that are most convenient for my analysis. Also, a large N-analysis guarantees that

there are a sufficient number of claims for the claims-making analysis. For instance, if a state aid case does not gain news attention there may not be enough claims for a valid analysis. Thus, by ensuring that I gather cases where there is media attention, I can guarantee that I can conduct a valid and representative claims-making analysis (more on this in section 3.7 of this chapter).

One of the most common criticisms of using mixed methods as a methodology is that qualitative and quantitative worldviews or paradigms differ from one another (see Johnson and Onwuegbuzie 2004). However, mixed methods do not seek to replace either of the paradigms but rather to combine the strengths of both methods (Johnson and Onwuegbuzie 2004). The aim of using both quantitative and qualitative methods in this thesis is to integrate them in order to understand the processes of politicisation and depoliticisation. Together, these methods will provide insight into all state aid cases labelled “Unlawful with Recovery of Aid” or UWRA and how they behave in the media. Then, the analysis on news attention will provide the basis for the selection of the state aid cases that will be used in the claims-making analysis.

### *3.2.2 Comparative Research*

As previously mentioned, state aid was selected to test the “authority transfer hypothesis”. Indeed, in state aid cases the Commission holds the majority of the power and enforces the rules. Out of these state aid cases, those labelled UWRA were chosen due to their conflictive nature. In these cases, the aid must be recovered by the member state from the corporation. This is likely to create some tensions as asking the corporation to return the money might be an unpopular decision among the member state’s constituencies (I will discuss this further in Chapter 4). Member states might therefore appeal the decision to gain political or economic benefits from “sticking to their guns” against the Commission. As I will show in Chapter 4, it is quite common for the media to report on tensions or conflict (see Galtung and Ruge 1965; Milioni et al. 2015). Thus, it is expected that cases that are appealed or referred to court are more likely to gain news coverage and, in turn, become politicised (see Figure 3.1).

Appealed cases are likely to follow more typical patterns of cultural or “identitarian” conflicts that are usually associated with the EU’s politicisation. This usual type of politicisation sees Eurosceptic forces driving the politicisation of European integration (see Hoeglinger 2016; Hooghe and Marks 2009; Kriesi 2016). Thus, these types of cases are more likely to create a politicisation that might be negative for the EU’s legitimacy (see Figure 3.1).

*Figure 3.1 How contested cases can lead to politicisation*



The analysis in Chapter 4 will demonstrate that this is mostly the case: the most popular state aid cases in the media were those that were contested (either via appeal or referral to court) (more on this in section 3.6 of this chapter). However, an issue that is highly salient in the media does not necessarily become politicised but, in cases labelled UWRA, the authority transfer is indeed likely to create some form of politicisation. There were only two cases that were outliers in Chapter 4 in terms of the type of aid which gained news coverage: the corporation Ilva in Italy and Szczecin shipyard in Poland. These two cases were not contested yet gained significant news coverage. Thus, it is expected that the politicisation in these cases may not be particularly negative for the EU's legitimacy, as the Commission might not be blamed in these cases. Rather, the member state or the corporation may be accused of misbehaviour for providing or receiving unlawful aid. The actors in the cases did not blame the EU via appealing its decision and, therefore, they may be more likely to accept fault for the state aid issue (more on case selection in section 3.6.1 of this chapter).

In Chapter 5, I select two state aid cases: one case that was appealed and, thus, should follow more typical forms of politicisation (Apple) and one that was not appealed (Ilva). This is done with the intention of demonstrating how politicisation and depoliticisation cannot always be only negative or positive for the EU's legitimacy even within the same policy field. By doing this, I aim to contribute to the literature on political science by showing how different actors can politicise and depoliticise the same issues and by doing this, legitimise or delegitimise the EU. Also, these two cases can help build patterns on appealed and non-appealed UWRA state aid cases when they become politicised in the media (see section 3.6.1 for a more detailed account of the two selected cases). This theory can contribute to a unique area of state aid literature that looks at how these cases can be used as tools by political actors to politicise or depoliticise a case (see Blauburger 2011; Moraitis 2019). In this sense, I aim to make a contribution to the state aid literature by empirically assessing how these cases can become politicised and depoliticised.

Overall, the aim of the multiple case selection approach was to select two cases that illustrate how state aid can become subject to politicisation and depoliticisation. For this, I sought to identify and compare different typologies related to the same phenomena (politicisation and depoliticisation). A multiple case study will reinforce and generalise the

results and it also allows me to compare niche situations within the selected samples. I selected cases according to their heterogeneity in terms of a priority variable: contestation (appeals and referral to courts). The heterogeneity for this analysis stems from the quantitative analysis that identified the state aid cases to investigate. In this sense, the quantitative analysis in Chapters 4 and 5 set the tone and the variables which will become key to identify the politicisation and depoliticisation processes in Chapters 6 and 7. For this dissertation, case sampling was performed theoretically, as appealed cases are more likely to trigger patterns of politicisation which are negative towards the EU.<sup>30</sup> By contrast, non-appealed cases that gain large news attention might follow other forms of politicisation (if they become politicised at all).

### 3.3 Research Design

This section will provide a general description of the various stages involved in the research design of this dissertation. From section 3.4, each of the stages are described in greater detail, including the steps involved to select the two cases for the claims-making analysis.

This research follows a linear and sequential design. First, during the quantitative stage, two specific state aid cases will be selected from the entire sample of cases. Then, these two cases will be analysed using a claims-making analysis. The first stage includes the data collection and is divided in two phases. The first phase of this stage involves the identification and sampling of UWRA cases for the period January 2000 - January 2018. The second phase of this first stage gathers the news coverage for all UWRA cases and codes the cases from phase 1 by categorising the state aid variables as:

- 1) Appealed: Cases that were appealed either by the member state or by the corporation involved.
- 2) Not-appealed: Cases where none of the parties involved contested the Commission's decision.
- 3) Referred to court due to non-compliance: Cases that were referred to court not because they were appealed but due to non-compliance by the member state.

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<sup>30</sup> See literature on conflict and the media (Galtung and Ruge 1965; Milioni et al. 2015) and, specifically, in the context of the EU (de Vreese et al. 2001; de Vreese and Peter 2004; Boomgaarden et al. 2013; Lloyd and Marconi 2014).

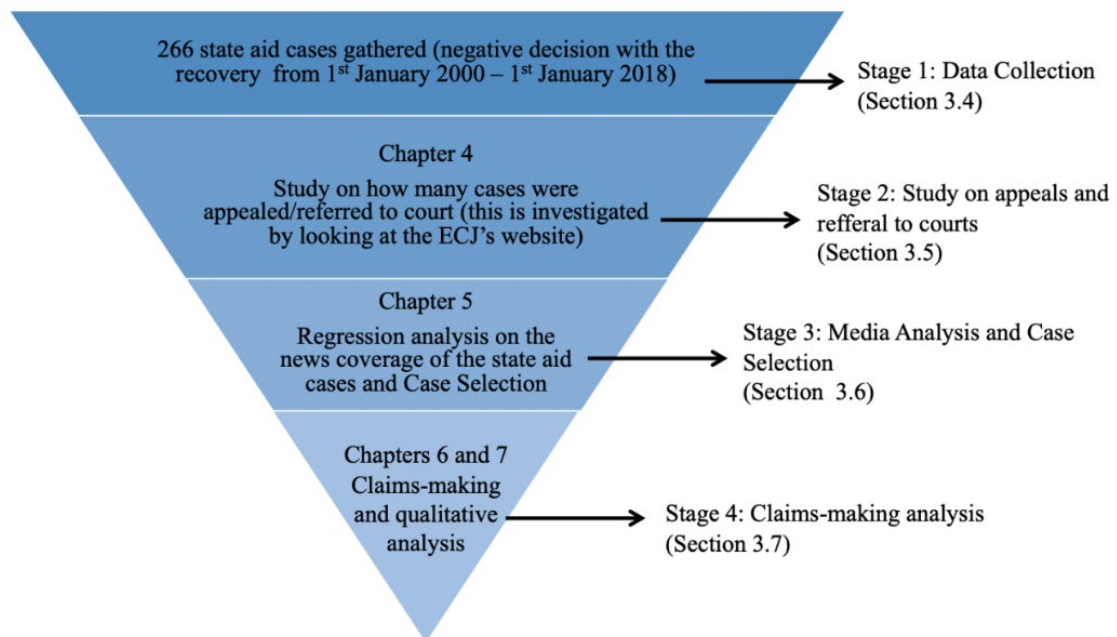
The third stage includes the news coverage analysis of the UWRA cases from stage 1 (phase 2). In this part, a negative binomial regression is used to understand what can trigger news coverage of state aid cases (more detail on this type of regression will be provided later in this chapter as well as in Chapter 5 of this thesis). This stage also involves the case selection from the analysis on news coverage of state aid cases. This guarantees that sufficient news articles (at least 100 news articles from the same news source) can be gathered for the claims-making analysis. It is not guaranteed that a news article will contain relevant claims (see Eisele et al. forthcoming). Therefore, it is critical that a large amount of news articles is gathered in order to perform a claims-making analysis on 50 newspapers per case.

Finally, stage four includes the claims-making analysis. The aim of the claims-making analysis is to understand how different claims are used by different actors in the selected state aid cases to either politicise or depoliticise as well as legitimise or delegitimise the EU, member states and the corporations involved in the conflict. Overall, this research is designed to reveal how UWRA cases arise, which cases are more likely to be covered in the media, and how different actors can use their claims to politicise and depoliticise the policy and, consequently, legitimise and delegitimise the EU. All of these stages are illustrated in figure 3.2 which shows the structure of the dissertation including the methods, as well as an outline of the different chapters of the thesis.



Figure 3.2 Research Design

## Research Design



### 3.4 Data Collection of State Aid cases: Stage 1

The data collection of the dissertation occurred in two phases, both which are described in subsections 3.4.1 and 3.4.2. Briefly, during phase 1, I collected all state aid cases from the Commission's website. In phase 2, all the news articles were gathered from Factiva, which is a research tool used to collect news articles from different media around the world (more on this in sections 3.4.2 and 3.6 of this chapter).

#### 3.4.1 Phase 1: Data Collection of State Aid cases from the Commission's website

The data collection involved first gathering all UWRA state aid cases from the European Commission State Aid website.<sup>31</sup> On this website, one must select "cases" from the left menu bar (the "State Aid" website shows the latest information on cases and provides an overview of decisions and on-going investigations). Then, "search for a state aid case (cases from 2000)" was selected. For this thesis, cases were selected from January 2000 - January 2018. The start

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<sup>31</sup> See State aid overview available at: [http://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](http://ec.europa.eu/competition/state_aid/overview/index_en.html)

date of January 1<sup>st</sup> 2000 was chosen for the following two reasons. First, for pragmatic reasons, as state aid cases were only available online from the DG-Competition website from the 1<sup>st</sup> January 2000, as decided by the European Commission in 2016.<sup>32</sup> Before 2016, state aid cases were not openly available to the public. Second, for theoretical reasons, as the Commission makes information on state aid cases available to the public and this allows for the cases to become contested by anyone. Thus, state aid decisions or cases that are publicly available are more prone to politicisation. In this sense, transparency measures taken by the European Commission are also subject to legitimisation or delegitimation by actors who are involved in the conflict (see Heldt 2019). For example, in a neighbouring field (trade), the Commission decided to make trade negotiation texts publicly available and this, in turn, has made TTIP negotiations more likely to become politicised (Heldt 2019).

Once the dates were selected in the search engine, under “advanced search” the tab “decision type” is found and, in here, “negative decision with recovery” was selected and then the search was performed. Once the search was finalised, a total of 266 cases appeared and the results were exported into an Excel spreadsheet. The excel spreadsheet contains all the relevant information regarding the case (case number, decision date, member state involved, title of the case, aid instrument and case type), which will be used to code the type of UWRA cases during phase two of this thesis.

#### *3.4.2 Phase 2: Data Collection of news articles regarding the State Aid Cases*

The second part of data collection involves gathering the news articles using Factiva. Factiva is primarily used for information on companies or industries but is also used in the social sciences.<sup>33</sup> Factiva was selected as the main search engine because it is oriented towards corporate and business news, which is relevant for state aid cases. It also offers over 36,000 news sources, has more languages than other databases, and is primarily newspaper focused. As such, news articles related to the cases were identified across the then 28 member states in their respective languages using Factiva. More specifically, the following are the steps that were followed to obtain information from the Factiva database:

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<sup>32</sup> See EC’s transparency measures available at:

[https://ec.europa.eu/competition/state\\_aid/overview/transparency\\_and\\_evaluation.html](https://ec.europa.eu/competition/state_aid/overview/transparency_and_evaluation.html)

<sup>33</sup> For more information see ProQuest library information website:

<https://proquest.libguides.com/factiva>

- 1) I selected the date range for the database.
- 2) Then, I clicked on the sources/countries/regions/language of interest (depending on where the case was located).
- 3) Once I clicked on the interested countries, a number appeared in the search box. This number was later used in the coding for obtaining the news articles.<sup>34</sup>

The time for collecting news sources was from the “notification date” to six months after the “decision date”. The “notification date” is the day that the Commission notified the member state that it is opening a procedure to investigate whether or not state aid is taking place in the chosen member state. *The State Aid Manual of Procedures* states that “according to the case law of the Community Courts, the Commission is obliged to open the procedure when it has doubts about the compatibility of an aid, or when it experiences difficulties in determining the compatibility of an aid”.<sup>35</sup> The opening of the procedure enables interested third parties to comment. Therefore, all member states must be informed if the Commission is opening a procedure to allow sufficient time for the member state to submit their plans to grant or alter any type of aid.<sup>36</sup> It is also important to note that when a notification has been sent, the member state cannot “put its aid measure into effect until the Commission has reached a decision.”<sup>37</sup> Meanwhile, the “decision date” is when the Commission releases its official decision regarding a particular state aid case (which, in the case of this thesis, are labelled “UWRA”). Overall, I chose six months after the “decision date” as the cut-off date for all cases to standardise the search. Indeed, it is impossible to gather news articles from future events and, also, I planned to begin analysing news articles in 2018 for this stage of the analysis. In addition, the six-month cut-off date allowed me to see news that occurred after the decision related to any appeals.

The search in Factiva was performed by providing three search queries:

QUERY 1: All country sources (by Factiva code): This searches all news sources within a country.

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<sup>34</sup> For tips on how to use Factiva see: <https://proquest.libguides.com/factiva/tips>

<sup>35</sup> See latest State Aid Manual available at: <https://op.europa.eu/en/publication-detail/-/publication/a0a0b02a-03ba-467e-82fd-a3eee78b59cb>

<sup>36</sup> For tips on how to use Factiva see: <https://proquest.libguides.com/factiva/tips>

<sup>37</sup> Ibid.

QUERY 2: Wire services: This searches within the major international wire services (Reuters, Associated Press, Alliance France Press, Xinhua, BBC Monitoring, etc).

QUERY 3: Daily newspapers: This search is of four daily quality newspapers (not tabloids) for each country with full coverage and high numbers of readership (based on Trenz 2004; Hutter, Grande and Kriesi 2016). This was used for the gathering of news articles for the claims-making analysis. This query was conducted after selecting the two state aid cases in stage 3 (more on this in section 3.7).

Each “query” included specific keywords that were used in each of the then 28 member states (before Brexit).<sup>14</sup> The only words that required translation were “European Commission” and “State Aid” (as the name of each case is usually the name of the corporation and, therefore, did not require translation). The translations for the keywords “European Commission” and “State Aid” were easily accessible on the DG Competition website. Then, the collection of news sources in Factiva was conducted in both English and in the language of the member state involved. The search query was composed by the country code, the name of the court case and/or key words related to the cases, plus the words “European Commission” and “State Aid” in both English and the member states’ official language. A detailed example is provided below to illustrate the Factiva search:

Izar is a Spanish company that did not follow the appropriate state aid rules according to the Commission. Spain was first notified on May 23<sup>rd</sup>, 2003. The Commission’s decision that Azar must pay the aid back to Spain was made on June 1<sup>st</sup>, 2005. In this example, the search is conducted from the “notification date” until six months after the decision was made (all of this information was gathered from phase 1 of this stage). The search also includes key dates such as date of press releases and referral to courts (if applicable) and relevant key words. The search query requires the following structure:

*“Media’s country code” AND “country” AND (“name of the case and/or company’s name”) AND (“European Commission” OR “European Commission in the language of the member state”) AND (“state aid” OR “state aid in the member states’ language”)*

If we follow the example of IZAR in Spain the search query looks like this:

*rst=spain AND re=spain AND ("IZAR") AND ("European Commission" OR "Comisión Europea") AND ("state aid" or "ayuda estatal")*

The search just described finds the news coverage derived from the member-states' media. For international and EU news sources, we can analyse international newswire services. Examples of international newswire services include: Reuters, Agence France Presse, Press Association, DPA International Service, Economist Intelligence Unit, ANSA, Adnkronos, Agenzia Giornalistica Italiana, ATS (Agenzia Telegrafica Svizzera), Metal Bulletin News Alert, Agenparl, Askanews and many others. The search query for these types of news sources is as follows:

*“Code for newswires” AND “country code” AND “name of the case and/or company’s name” AND (“European Commission” OR “European Commission in the language of the member state”) AND (“state aid” OR “state aid in the member states’ language”)*

Continuing the example for IZAR:

*(rst=twww OR rst=trtw) AND re=spain AND ("IZAR") AND ("European Commission" OR "Comisión Europea") AND ("state aid" OR "ayuda estatal").*

After performing the search, Factiva provided the amount of news sources related to the particular case in a specific country (or newswire service). These searches also included the total amount of duplicates found (duplicates occurred when national news media copied the same story given to them by newswire or international news services).<sup>38</sup> The newspaper duplicates were also counted towards the overall amount of news searches for this part of the analysis (see section 3.6).

Now that I have described how the state aid cases and news articles were gathered, I will outline how the UWRA state aid cases were coded to determine which cases were referred to court due to non-compliance, and which cases were appealed by the member states and corporations. This is done with the intention of evaluating whether contested state aid cases are more likely to obtain news coverage in stage 3.

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<sup>38</sup> See Appendix A1 for a visual representation of the search performed.

### 3.5 Referrals to Court and Appeals: Stage 2

After collecting the state aid cases that were subject to recovery of aid (UWRA), the first empirical analysis (in Chapter 4) identified which cases were appealed by the member state, corporations and/or individuals. A case is considered to be “contested” if the member-state appeals the Commission’s decision or is referred to court due to “non-compliance”. These two types of actions (appeal or referral to court due to non-compliance) were divided into active and passive disagreements. In the former, a member state actively contests the Commission’s decision by appealing to the General Court of the European Union. In the latter, the Commission takes a member state to Court for non-compliance (as the member state did not collect the aid in due time). In both scenarios, member states have not recovered the aid and, therefore, we can assume the possibility of conflict occurring between the parties involved (Commission, member state and corporation). The goal of stage two was to examine if appeals or referral to courts due to non-compliance influence whether or not the case receives media news attention.

The analysis for classifying cases as appealed, non-appealed or referred to court was performed using data from the website of Court of Justice of the European Union (CJEU) ([https://curia.europa.eu/jcms/jcms/j\\_6/en/](https://curia.europa.eu/jcms/jcms/j_6/en/)). Stage 1 provided the researcher with the case name and number used in the Court of Justice of the European Union (CJEU) website to see whether a case went to court or not. Cases that did not appear in the CJEU’s register (as they might have not been sent to court or appealed) were coded as “NC” (not-contested). These were also checked online by researching key words (e.g. company or case name) to verify once again that these cases were not appealed (as cases can be appealed but not referred to court). If nothing was found, it was confirmed that the case was not appealed (NC). The “referrals to court” (RC) were easily identified as this information was reported in the case description on the Commission’s state aid website. It is important to note that a case could be referred to court due to non-compliance at one stage and later be appealed by either the corporation or member state involved, or vice versa (i.e. a case can be first appealed and then referred to court for failure of the member state to collect the aid from the corporation in due time).

To summarise, the cases were classified and coded as: appealed by member state (CM), appealed by the corporation (CC), referred to court due to non-compliance (RC) or non-contested (NC). If a case was appealed by both the member state and the corporation, then it was coded as both “CM” and “CC”. Similarly, if the case was referred to court and appealed by both of the parties involved, it was coded as “CM/CC/RC”. At times, other parties were

involved in the contestation of the case (e.g. The United States and Poland were involved in the appeal of the Commission's decision on Apple). This was clearly noted in the coding of the appeals as contested by other entity (CO).

Overall, the goal of the first empirical analysis was to first identify which cases were more likely to have provided illegal and which member states' are more likely to appeal the Commission's decision. Also, this stage identified whether new or old member states were more likely to appeal the Commission's decision or comply with its request, as well as other possible factors (such as region or Varieties of Capitalism). Moreover, this part of the analysis detailed the industries that are involved in the appeals and the types of aid given by the member states.

### **3.6 Media coverage analysis and Case Selection: Stage 3**

This stage of the empirical study included an analysis of all 266 state aid cases found in the media. Specifically, this stage evaluated quantitatively the number of times state aid cases appeared in national and international newspaper media. This analysis was also used to select two state aid cases for the claims-making analysis. Before delving into how the analysis was conducted it is important to note that news media was selected in order to evaluate whether or not state aid cases gained some form of notoriety in the public sphere. It is here where different actors from a variety of levels of governance can make claims and either politicise or depoliticise a state aid case. This form of media might also contain a limited number of claims regarding the state aid cases as there may be claims regarding state aid and the legitimacy of the EU in other settings. However, this medium was chosen due to its ability to provide concrete insights into how actors such as the European Commission justify their decisions to the public while allowing for other actors to either legitimise or delegitimise the EU in a public setting.

Once cases were gathered using Factiva (as explained in section 3.2.2), they were merged in an excel spreadsheet with information about the state aid cases (whether they were appealed, referred to court due to non-compliance, case number, type of aid, etc) in order to start conducting the analyses. The first part of the analysis included descriptive statistics that provide an overview of which cases, industries and member states gained more news coverage. This involved identifying the total number of media reports in both national newspapers and newswire articles. As previously mentioned, it is important to emphasise that news articles can be duplicated. This happens as many national media sources tend to base their coverage on newswire services. As such, newswire services can serve as a mechanism to transmit

information to journalists at the national levels. Duplicates were still counted in the analysis as this shows that the same news is spreading across different news platforms and more citizens have the opportunity to read the article. The first part of the media coverage analysis also counted the frequency of news coverage for each of the state aid cases, the most covered industries (e.g. transport, electricity, steel), and the peaks in news coverage for all state aid cases over time. The peaks in news coverage detailed the totality of news coverage for all member states from 2000 to 2018. In addition, news hits in the USA were also counted for each state aid case using US media. The US was chosen as all of the international or multinational corporations (outside of the EU) are American.

Following the general descriptive statistics analysis, which can be found in Chapter 6, the second part of the analysis verified whether appeals, referrals to court, multinational involvement, newswire services, accession date, region and Varieties of Capitalism (VoC) influenced the coverage of these cases in the media. The first step was to examine the distribution of all the news hits. The results from the distribution of the news hits and overall national news coverage of state aid cases showed little to no news coverage. Thus, I chose to conduct a specific type of regression (negative binomial regression) in order to see what could influence national news coverage and also account for the skewed distribution.

There are several types of regressions that could be performed, with linear and logistical being the most commonly used in studies evaluating news hits (see Keneshloo et al. 2016; Marujo et al. 2013; König 2009). The classical Poisson regression model for count data is often of limited use in these disciplines because empirical count data sets typically exhibit overdispersion. A popular generalisation of Poisson regression is called negative binomial regression. This type of regression was performed for this dissertation using R to account for the skewed data, the large quantity of zeros and the distribution, which decreases as the number of news articles increase (see Hilbe 2011; Lawless 1987; Keneshloo et al. 2016). Negative binomial regression is similar to regular multiple regression except that “the dependent ( $Y$ ) variable is an observed count that follows the negative binomial distribution. Thus, the possible values of  $Y$  are the nonnegative integers: 0, 1, 2, 3, and so on” (Ncss Statistical Software Website 2020). Thus, negative binomial regression was chosen as it accounted for overdispersion better than other types of Poisson models (Allison 2012).

The next phase of stage 3 selects the two cases used in the comparative claims-making analysis to evaluate how different actors politicise and depoliticise these cases.



### *3.6.1 Case Selection*

To perform a claims-making analysis, each of the cases required a certain minimum level of news coverage. This is because without enough news articles, a claims-making analysis could not be performed. Thus, one of the main selection criteria for case selection was the number of news articles found. Because of this, I chose the two state aid cases that obtained the most news coverage and where a corporation was involved (Apple and Ilva), rather than a national scheme. State aid cases involving corporations were selected to emphasise the actors involved in politicising the state aid case. This is because for this dissertation, the corporation was considered another actor involved in the potential politicisation and legitimisation/delegitimation of the state aid cases. Another two factors that were expected to influence the media coverage of the cases were:

- a) whether the corporations involved are international or national and;
- b) whether the case was appealed or not by the member state. Moreover, the national context in which the state aid cases occur will influence the legitimations and delegitimations towards the EU.

Both the Apple and Ilva cases have a very particular set of characteristics which the other cases in the top 10 most covered state aid cases did not have. For instance, Apple was the only case in the top 10 where a US corporation was involved. On the other hand, the Ilva case was one of two cases which was not appealed and where a large controversy occurred (e.g. large cancer rates in the Taranto region). More specifically, Apple was appealed not only by the member state but also by the corporation. Moreover, other actors were involved in the issue (e.g. the US government and Poland), which could further fuel the fire for politicisation and polarise others against the EU.

As previously mentioned, out of the top 10 state aid cases, only two were not appealed (Ilva and Szczecin shipyard). Out of these non-appealed cases, Ilva was selected as it had the most amount of news coverage. The case was also extremely controversial as Ilva created several thousands of jobs in the region and the state aid jeopardised the position of 10,000 employees (more details on the Ilva case will be provided in Chapter 6). Therefore, it would be expected that claims follow a more negative stand towards the EU, with articles stating that

the Commission “hates Italy” for doing this to Ilva and Taranto.<sup>39</sup> At the same time, the company also suffered major controversies in the past for causing increased cancer rates in the area, which might have already impacted how the Italian government and Ilva were perceived by citizens, journalists and other actors.<sup>40</sup> As such, the Commission could be seen as an intermediary who could address the mismanagement from the Italian government and the corporation. This would lead to a different pattern of politicisation to the one usually described in the literature. Italy has also had its fair share of Euroscepticism; therefore, it is interesting to understand whether actors blame the Commission for causing further unemployment in an already poor region of Italy,<sup>41</sup> or if they see the Commission as a supranational entity that could help create a more sustainable steel company in the region (see Chapter 6 for this analysis).

*Table 3.1 Case Selection: Apple and Ilva*

| <b>Corporation</b>            | <b>Apple</b>       | <b>Ilva</b>        |
|-------------------------------|--------------------|--------------------|
| <i>Appealed/Non-Appealed</i>  | Appealed           | Not appealed       |
| <i>International/National</i> | International      | National           |
| <i>DV: News coverage</i>      | High news coverage | High news coverage |

To summarise, the media analysis (stage 3) determined which cases received the most newspaper coverage, as well as other factors that may affect news coverage (e.g. year, country, whether the case was appealed, or if there was a multinational corporation involved). Moreover, this stage also served as a case selection process to identify the two state aid cases for the claims-making analysis.

### **3.7 Claims-making Analysis: Stage 4**

The aim of the previous two stages was to identify which UWRA state aid cases gain the most news attention and why this might be the case. After selecting two state aid cases, news articles from four particular publications were chosen for the two selected member states in order to conduct a claims-making analysis (two newspapers for each member state). I selected two major newspapers in each member state (Ireland and Italy), one centre-left and the other centre-right, as I wanted to determine if a centre-right bias in news coverage led to

<sup>39</sup> See <https://www.ilprimatonazionale.it/economia/ilva-procedura-infrazione-36893/>

<sup>40</sup> See <https://www.bbc.com/news/world-europe-49713147>

<sup>41</sup> See <https://cattolicaglobalmarketsmagazine.com/2016/02/24/what-future-for-ilva/>

more EU delegitimations. Indeed, centre-right newspapers tend to “be most critical towards the EU” (Bijsmans and Leruth 2017, p.8) and, therefore, it is expected that more delegitimations are found in conservative leaning newspapers.

Evaluating claims at the national press represents the standard methodology in analysing politicisation (see Fernee and Harrison 2012; Statham and Trenz 2013; De Wilde 2011; 2016;2020; Koopmans 2002; Saward 2006; Jochum and Tresch 2004; Hajer and Bröer 2020 among many others). Thus, the claims-making analysis, which aims to determine whether or not a case has been politicised or depoliticised, is conducted in this thesis through the national media lens. I assume that EU politicisation still largely occurs at the domestic level (Kriesi 2016, p. 32). Indeed, it is in the national media where we can understand how different actors from a variety of levels of governance either politicise or depoliticise a state aid case, while also legitimising or delegitimising the EU’s and national government’s actions. While the national media only contains a subset of relevant claims, it still represents a credible source to investigate how different actors’ claims are represented in the state aid conflicts. Moreover, as most EU debates take place in the national media (see Eder and Kantner 2000), the claims available in either the Irish or Italian media can help reveal how politicisation and depoliticisation occurred across different cases and countries. In this sense, the analysis assessed how different national news media represented the actors that operate across different governance levels (e.g. The Commission versus the Irish government or the Italian government).

Section 3.7 will first describe the claims-making analysis and will also define “a claim”. Then, the parameters for newspaper articles for the two selected state aid cases are described (e.g. amount of news articles per newspaper). This stage not only analyses the possible politicisation and depoliticisation of these cases but it also observes how different actors might legitimise or delegitimise the EU, the member states and corporations’ actions. The analysis on claims for both politicisation and depoliticisation in Chapters 6 and 7 represent the pinnacle of this dissertation, as it is here where the main research question will be addressed. While Chapters 4 and 5 represent the foundation and selection process for state aid cases that will be analysed, Chapters 6 and 7 hold the main contribution to the literature on politicisation and depoliticisation.

### *3.7.1 Defining Claims-Making Analysis*

Claims-making analysis is a standard method for analysing the contents of public debates and news-sources (see Koopmans and Statham 1999; Haunss 2007; Lindekilde 2013; Statham and Trenz 2013; De Wilde 2011; 2013; 2020; Gora and De Wilde 2019; De Wilde, Koopmans, Zürn 2014; Hurrelmann et. al. 2020; Hurrelmann and Wagner 2020 among many others). Claims-making is the expression of political demand of actors in the public sphere (Lindekilde 2013). The claim is an expression of an opinion by several actors (governments, corporations, journalists, social movements, NGOs, other civil society actors) and a verbal act of political communication. The claimants (or subject actors) serve as strategic actors who steer the conversation and achieve their goals by making a specific claim. This might be to justify or change a certain policy; for example, when actors from the Irish government justify their decision to appeal the Commission's decision regarding the Apple case (Bossio 2017). It differs from a regular content analysis in that it examines the relations between the actors who are making the claims and the objects of analysis (in this case The Commission, Apple, Ilva, the Irish or Italian governments) (Statham and Trenz 2013). Content analysis only identifies the content of what is said and not the ways in which actors interact with one another. In contrast, claims-making shows how the content of what is said is often only one part of a wider political process. Actors use the claims they make to invite others to consider a problem or issue, which is worthy of attention, in a particular way (Hurrelmann and Wagner 2020). Then, those who read the news articles can accept, reject, ignore or adjust the claims made to them specifically or about a broader issue (Hurrelmann and Wagner 2020). An issue that is salient, polarising and has a growing number of actors can be analysed by examining the claims occurring in the public sphere (Hurrelmann and Wagner 2020). As previously explained, in the current research, newspapers are used to observe the processes by which different actors use the public sphere to make claims about a particular (contested) issue.

For this thesis, newspaper media is seen as the conveyance of actors' claims to larger audiences. Newspaper media was chosen because national newspaper media still continues to play a role in stimulating EU discourses and debates (see Risse 2010; Bijsmans and Leruth 2017). More specifically for this study, quality newspapers were selected to evaluate the claims, as these newspapers tend to cover more EU affairs than other mediums such as TV or radio (even if they are likely to have a bias in elite readership) (Conti and Memoli 2017; Risse 2010). Moreover, quality newspapers have been shown to provide more critical discourses towards the EU (see Bijsmans and Leruth 2017). Thus, it is in these types of newspapers where one

should expect more delegitimations regarding state aid decisions and where public politicisation is also more likely to be visible.

I chose not to analyse state aid news coverage in third party countries for three primary reasons. First, I am interested in the claims of the main stakeholders, which are more likely to occur in the national media where those stakeholders are based. This means that actors who are making the claims in either the Irish or the Italian press can shed light on how the state aid decision is perceived nationally as it directly impacts them. Second, state aid decisions tend to impact negatively on the employment sector and this is also reflected in the two selected state aid cases. Unemployment was one of the key reasons that Irish claim makers cited as to why they wanted to appeal the decision. Also, in the Ilva case, even though it was not appealed, unemployment had a major role (as I will further describe in chapter 6). Therefore, I am interested to see how the state aid decisions are reflected in the press where those who are mostly affected by the decision are located. The third reason for not including media from third party countries was empirical. A Factiva search on newspaper coverage in other member states resulted in large coverage for third party countries for Apple but not for Ilva. Most member states had some form of news coverage of Apple but not of Ilva and, therefore, a strict claims-making comparison between the claims from a third country is not possible. The same occurred with newswire services, as Apple received large amount of news coverage in newswire media but the Ilva case did not (for results on this analysis see Appendix D). Therefore, a comparison between the two based on newswire media could not be conducted.

This dissertation follows a claims-making analysis based on Statham and Trenz's (2013) coding of string variables. String variables are needed as information from claims tends to be qualitative in nature and not simply numeric. Moreover, string variables are used to specify: a) who makes the claim b) who is this claim targeted toward, c) how the claim represents the state aid conflict, d) who does the claimant blame (the EU, the nation-state or the corporation), and e) "how it frames the issue within a broader legitimating discourse" (Statham and Trenz 2013, p. 970). This part of the analysis also includes the use of databases (e.g. Factiva) to collate content from two leading quality newspapers (centre-left and centre-right) from the selected countries as well as parliamentary debates (see QUERY 3 in stage 1). As previously described, the search criteria for the 4 newspapers include the "notification date" (when the country was notified of aid by the Commission) and 6 months after the "decision date" (or if the case had a court date 6 months after this).

I developed a detailed code book as well as a step-by-step guide constructed for the purpose of this research. This was done following past code books from Koopmans and Statham (1999) as well as the codebook guide of Eisele et al. (forthcoming) and Hurrelmann and Wagner (2020). The code book (see Appendix B) includes the following variables: a) Year, b) Source, c) Claimant, d) Claimant Nationality, e) Action or Form, f) Addressee Type, g) Addressee Action, h) Addressee Nationality, i) Issue, j) Position, k) Object, and l) Justification. The coding guide provides specific information on how to code each of these variables for the coders. The guide also explains what is considered a claim, as well as what is not (e.g. statistical number or figures are not counted as claims).

In total, three coders followed the Coding Guide for the claims-making analysis on politicisation (two research assistants and myself). After the coders read the full guide, they proceeded to code the articles in a text document where they specified the claimant and the object (which can only be the EU, Apple, Ilva or the Italian/Irish government). Then, the coders added their results into an excel spreadsheet where they filled in further details about the claim (e.g. issue, addressee, justification). Once all the claims from 50 newspapers were coded, the analysis for polarisation was conducted on SPSS in order to see which justifications and positions were more popular among the claimants. It is important to note that the number of newspapers that were read exceeds the number of newspapers that make up the selected set of 100 newspapers (the Apple and Ilva cases involve 50 newspapers each). This is because not all newspapers that were read had claims in them.

### 3.7.2 *What is a claim?*

A claim can refer to a few words, a specific sentence, a paragraph or several paragraphs, as long as the same subject, actor or claimant made the claim (examples of claims are shown in section 3.7.5). The claimant is the person stating or performing the claim and this can include the journalist responsible for the article. The claim can only have one single argument and it must contain an addressee, actor, issue, frame and form (see examples of claims in figures 3.2 and 3.3). Specific to the of state aid cases, a claim can be defined as the expression of a political opinion by physical or verbal action in the public sphere regarding EU state aid issues. This definition implies two important delimitations: (1) instances of claim-making must be the result of purposive action by the claimant and (2) they must deal with issues about state aid. This entails that there must be some explicit reference to a state aid case for a claim to be included in this study. Furthermore, the object *must* be explicitly present in order for a claim to be

present. The object must also be related to either the European Union (which also includes the EU, the Commission, the EU parliament, ECJ or any other of its institutions, as well as EU officials such as the DG-Competition commissioner Margarethe Vestager), Apple, the Irish government or the Italian government. Four of these objects (Ilva, Apple and the Italian and Irish governments) were included during preliminary tests as the Commission tends to justify its actions in relation to either the Apple/Ilva or the Irish/Italian governments cases. These objects were also included as it allows this investigation to understand how different actors (claimants) position the European Commission's actions in relation to national governments and corporations.

With regard to the coding for the analysis, statements and actions made by different actors were considered separate claims. For example, when two people stated the same opinion. This occurred when a claim was written in the media as: "Both Apple and the Irish government believe that the Commission is wrong in making its decision". Here, two claims were coded, one where Apple believes that the Commission is committing the wrong action and a second claim where the Irish government is stating or performing the claim. In addition to this, claims with different objects were considered different claims. Lastly, the text needed to include an action or a statement made by an actor to be categorised as a claim with an explicit object.

### *3.7.3 Parameters for the Claims-Making Analysis*

As previously suggested, the analysis made use of databases (e.g. Factiva) to collate content from two leading quality newspapers (centre-left and centre-right) from Ireland (the Irish Times and the Irish Independent) and two from Italy (Il Sole 24 Ore and La Repubblica). These were top centre-right and the top-centre left quality newspapers (with the most amount of circulation) in their respective countries. These specific newspapers were chosen as they have one of the largest readerships in both countries. Moreover, using the top centre-left and centre-right newspaper for each country also allow this dissertation to make generalisations about similar claims that can also be found in quality newspapers with smaller circulations.

Table 3.2 shows the four selected newspapers with information of their circulation, format, political leaning and total number of articles in the sample. The texts that were searched as criteria for the claims include the "notification date" (when the country was notified of aid by the Commission that it will start an official enquiry into the case) and six months after either decision date or court date (if available). In the case of Ireland, the notification date was the 21st of February 2014 and the last court date took place on the 14<sup>th</sup> of December 2018, which

means that the end search date is the 14<sup>th</sup> of June 2019. In the Ilva case, the first notification date was the 14<sup>th</sup> April 2014. This date was registered in the Commission's website as they received multiple complaints in 2014 from steel market competitors. The Commission made its final decision regarding Ilva, the 21<sup>st</sup> December 2017. This means that the end search date was the 21<sup>st</sup> June 2018. The decision stated that the Italian government had to collect 84 million euros from Ilva and out of the five measures investigated, two were deemed a breach of EU state aid rules.

Claims were coded from a systematic random sample of articles drawn from all articles retrieved from databases. This systematic sample was performed in Excel using the following procedure:

- 1) Each newspaper article had a code created by the researcher (from 100 onwards). This code was plugged in a spreadsheet where I created an extra column named "random".
- 2) In the first cell of this new column I typed the following code to Excel: "=RAND()". Then, I press enter and this generated a random number which appeared in the cell.
- 3) Step 2 was copied and pasted from the first cell to all the other cells in the column.
- 4) These random numbers were then sorted. Then coders followed the random article to code from this spreadsheet.

The sample was drawn from a chronological list of articles to ensure coverage of the whole period of analysis. The number of articles to be drawn for the claims coding was defined in a pre-test, which resulted in an average of 6,8 claims per article as a reference value in the Apple state aid case and a 5 claim average for the Ilva case.



Table 3.2 Two Irish news outlets included in the analysis

| Name                     | Circulation | Format     | Political leaning          | No. of Articles in the Sample |
|--------------------------|-------------|------------|----------------------------|-------------------------------|
| <i>Irish Independent</i> | 83,900      | Compact    | Right Centre <sup>42</sup> | 140                           |
| <i>The Irish Times</i>   | 58,131      | Broadsheet | Left Centre <sup>43</sup>  | 202                           |
| <i>La Repubblica</i>     | 301,565     | Broadsheet | Left Centre                | 46                            |
| <i>Il Sole 24 Ore</i>    | 90 619      | Broadsheet | Right Centre               | 137                           |

### 3.7.4 Variables for the Claims-Making Analysis

The core variables of a claim are the object (i.e. about whom is the claim made?), the claimant or “claim maker” (i.e. the actor raising the claim), the evaluation of the object (i.e. positive/ambivalent or neutral/negative), the broader issue context (e.g. domestic violence, equal pay, sexual harassment, etc.) and the justifications or frames (see Figure 3.3). Claimants (or actors performing the claims) can create, steer or frame information in ways that fit their goals (Bossio 2017). Journalists are considered channels of information and, at the same time, strategic actors in their own right. That is, in the analysis, journalists are also considered to be “claimants” (or actors who make claims) if their opinions are expressed explicitly (e.g. through the use of “I” or verbs that express personal opinion such as “think”).

Figure 3.3 Basic 'grammar' used for claims-coding

| Claimant   | Issue  | Evaluation   | Object  | Justification/Frame   |
|--|--|--|---|---|
| <ul style="list-style-type: none"> <li>E.g. The European Commission, Margrethe Vestager, The Irish Government, etc.</li> </ul> | <ul style="list-style-type: none"> <li>E.g. State aid decision.</li> </ul> | <ul style="list-style-type: none"> <li>Positive/Ambivalent or Neutral/Negative.</li> </ul> | <ul style="list-style-type: none"> <li>E.g. Irish Government; The EU (Commission, Vestager, ect); Apple.</li> </ul> | <ul style="list-style-type: none"> <li>E.g. The Government has accused the Brussels body of interfering with Ireland's sovereignty and has exceeded its powers. (Sovereignty Frame).</li> </ul> |

<sup>42</sup> See media bias for the Irish Independent at: <https://mediabiasfactcheck.com/irish-independent/>

<sup>43</sup> See media bias for the Irish Times at: <https://mediabiasfactcheck.com/the-irish-times/>

### *3.7.5 Operationalising Claims-Making for Politicisation*

As mentioned before, the operationalisation of politicisation can be understood as the combination of three factors: the polarisation of opinions, the intensification of debates (salience) and the increase of actors getting involved in the conflict (e.g. citizens or social movements) (De Wilde 2011). Regarding the claims-making analysis, each of these three variables are measured (in the analysis presented in chapter 6) to demonstrate whether and how the Apple or Ilva cases are politicised and whether their politicisation has an effect in how different actors legitimise or delegitimise the EU, the member state involved (either Ireland or Italy) or the corporation. The number of articles written about a particular case, as well as when spikes in news coverage occur, provides the analysis with an understanding of when claims occur.

The analysis measured salience as the increase in claims after a specific event (either notification or decision date) to determine if there was a spike in claims made about the two selected state aid cases. Actor expansion refers to the increasing amount of actors (claimants) involved in politicising an issue. This was measured by determining whether there was a growing amount of actors speaking about the state aid case over time. Overall, we can talk about polarisation occurring when there are several actors involved (not only the elite) having a wide range of extreme opinions opposing each other (Statham and Trenz 2013). This means that both polarisation and actor expansion go hand in hand as the more actors are involved, the higher the chances of having a wide range of different opinions about an issue. Also, if more actors are involved in debating EU topics such as state aid, this means that the EU matters to people outside of the elite (Statham and Trenz 2013, p. 303). This type of analysis reveals not only whether selected state aid cases were fully politicised or not but also how actors can use EU policies like state aid to legitimise or delegitimise the EU more broadly. Specifically, polarisation was measured in this dissertation, as the tone towards the EU or a specific member state (e.g. Ireland or Italy) regarding the state aid issue as well as the justifications provided. The types of tones were negative (-1), neutral (0) or positive (+1). This can give an indication about how people feel about a specific actor (the EU, the Italian or Irish governments, or Apple and Ilva).

To ensure that the codes (particularly the variable of “tones”) were clear and could be followed and replicated by a multitude of researchers, inter-reliability coding tests were

conducted using the De Swert (2012) guide and the Hayes Kalpha macro for SPSS.<sup>44</sup> A total of 15 news articles were used for the inter-reliability coding with two coders on the first test. The first test conducted identified the claims with the same claimant and the object. The result for this was  $Kalpha = 0.87$ , which is high for this test. Another test was conducted for the tones of the claims using a total of 36 random claims. This second inter-reliability test was performed with one coder only but the test was performed 5 months after the initial coding. The result was  $Kalpha = 0.73$ . However, tone was an ordinal variable coded from -2 to +2 and, therefore, can be subject to interpretation. Nevertheless, if we take values as either negative or positive regardless of the exact value, the results show that there were only 3 claims coded as “neutral”, when previously they were coded as negative by the second coder, while all other variables resulted in the same outcome for both coders. This means that, out of 36 claims, only 3 were coded differently between the two coders.

An example of coded politicisation claims is presented in table 3.3. In here, all claims must address the broader issue of state aid and must include an object (either the EU, Irish Government or Apple based on the example in Table 3.3). In the first example, “several politicians” are coded as the “claimant” and the issue relates to the state aid decision. Their evaluation towards the European Commission was coded as negative as these politicians regard the decision as an “encroachment of Ireland’s sovereignty” and mentioned this in “alarmist terms”. Finally, the justification variable was coded as “national identity (Sovereignty)”. In the coding guide (see Appendix B), the “national identity” justifications are claims which relate to the country (Ireland) wanting to maintain its sovereignty/national interests or claims that make reference to taking control of their “own” country and rules.

The second example sees Ireland’s Finance Minister Michael Noonan making a claim also in regards to the Apple State aid decision. Here, his evaluation is also negative towards the Commission as he states that “politics” was a large factor in the Apple state aid ruling, thereby implicitly suggesting that the Apple decision was used for political purposes by the Commission. The justification for this claim was coded as “politically driven frame”. This specific justification refers to claims with mentions of the European Commission, Vestager, the member state or corporation involved as being “politically motivated”. These frames can

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<sup>44</sup> Go to <http://www.afhayes.com/spss-sas-and-mplus-macros-and-code.html> and look for KALPHA.sps.

also relate to claims that portray the Commission, member state or corporation as wanting to create favourable headlines for themselves or push a specific agenda for their own interest.

*Table 3.3 Examples of Coded Politicisation Claims*

| <b>Text part coded as claim</b>   | <b>Coding of variables</b>  |
|---|---|
| Several politicians have spoken in alarmist terms about the European Commission's decision being a serious encroachment of Ireland's sovereignty.   | <ul style="list-style-type: none"> <li>• Claimant: Several politicians (non-specified)</li> <li>• Issue: State Aid decision</li> <li>• Evaluation: Negative</li> <li>• Object: The European Commission</li> <li>• Justification/Frame: National Identity (Sovereignty) [210]</li> </ul> |
| Finance Minister Michael Noonan accused Brussels of being politically motivated when it found against Ireland's tax system in the landmark case last year. "Politics" was a factor in the European Commission's ruling that Ireland gave Apple a sweetheart tax deal, he told the Oireachtas Finance Committee. | <ul style="list-style-type: none"> <li>• Claimant: Finance Minister Michael Noonan</li> <li>• Issue: State Aid decision</li> <li>• Evaluation: Negative</li> <li>• Object: The Commission</li> <li>• Justification/Frame: Politically Driven Frame [130]</li> </ul>                     |

For the analysis on politicisation, justifications/frames were identified inductively in an extensive pre-test (e.g. tax arrangements with Apple were "economic treason") and the list of possible frames was extended when necessary during the coding. The possible justifications relate are further described in table 3.4 and these are: EU's procedure/effectiveness frame, Protection of EU interest, Politically Driven Frame, National Identity (Sovereignty), Ireland's reputation and future, Economic Effects, Labour/Cost-benefit, Procedural Frame, Solidarity/Equity and Legality justification.

*Table 3.4 Justifications and Frames*

| <b>Justifications/Frames</b>              | <b>Description</b>  |
|---|---|
| EU's Procedure/Effectiveness Frame [110]: | <ul style="list-style-type: none"> <li>- Claims about the EU's ability (or inability) to get things done, make the necessary decisions (either reasonability or not)</li> <li>- Examples can include: "It was the wrong decision based on created facts"</li> </ul> |
| Protection of EU interest [120]:          | <ul style="list-style-type: none"> <li>- Claims which describe the EU as advancing the common interest of all Europeans/all member states</li> <li>- Used for statements which present the EU as a safeguard to the US's hegemony.</li> </ul>                       |

|   |  |
|---|--|
|   | - Statements which describe the EU as a one polity, unitarian entity which is comprised by its member states   |
| Politically Driven Frame [130]:                 | <ul style="list-style-type: none"> <li>- These are justifications that might relate to the state aid case being “politically motivated” by either the Commission, Vestager, the member state or company involved.</li> <li>- These frames can also relate to the Commission/Vestager/member state/company trying to make positive headlines for the EU/Commission/member state/company or wanting to push for a specific agenda or for their own interest.</li> <li>- Mentions about the EU wanting to isolate a member state/country (for political purposes).</li> </ul> |
| National Identity (Sovereignty) [210]:          | <ul style="list-style-type: none"> <li>- Justifications which relate to the country (Ireland/Italy) wanting to maintain its sovereignty/national interests.</li> <li>- References about taking control of their “own” country and rules.</li> <li>- Keyword: Sovereignty</li> </ul>  |
| Ireland’s /Italy’s reputation and future [220]: | <ul style="list-style-type: none"> <li>- Any justifications that relate to this case damaging or tarnishing the country’s reputation.</li> <li>- It may also refer to any negative consequences that the state aid might have in the country’s future or current situation with other countries and/or EU relations.</li> <li>- Positive mentions about the future are also included.</li> </ul>   |
| Economic Effects [310]:                         | <ul style="list-style-type: none"> <li>- Used for general references to the economic performance/prosperity</li> <li>- Arguments that refer to economic effectiveness/ineffectiveness</li> <li>- Cost effectiveness of a policy/government expenditure/public infrastructure/profits/sales</li> <li>- Keywords: money/market/business/tax/profits</li> </ul>   |
| Labour/Cost-benefit [320]:                      | <ul style="list-style-type: none"> <li>- Justifications based on employment/labour/unions</li> <li>- Mentions about losing jobs/ employment considerations</li> </ul>  |
| Procedural Frame [330]:                         | <ul style="list-style-type: none"> <li>- Justifications that relate to the way the member state/Company works/acts/behaves</li> <li>- Justifications expressing the way the member state/company have handled the state aid case.</li> <li>- Mentions about compliance/technicalities</li> </ul>   |
| Solidarity/Equity [340]:                        | - Frames which relate to the state aid improving/decreasing societal aspects of life (homelessness/environment/housing)  |
| Legality [350]:                                 | <ul style="list-style-type: none"> <li>- Used for statements which argue that EU/Apple/Ireland did not follow the appropriate rules</li> <li>- Mentions about the EU rules/decisions based legal order</li> <li>- Statements about the EU has abused its powers</li> <li>- Mentions about legal/illegal/legality/unfairness</li> </ul>   |

This section has so far provided an overview of how claims are coded for analysing politicisation. I will now describe how the same type of analysis can be used for

depoliticisation. Using claims-making analysis for depoliticisation represents one of the main contributions of this dissertation to the literature on discursive depoliticisation as it advances the work of Flinders and Wood (2017) and provides a schematic method to analyse these claims.

### *3.7.6 Operationalising Claims-Making for Depoliticisation*

In this part of the claims-making analysis, I will focus on depoliticisation. More specifically, I will evaluate instances of what the literature calls “discursive depoliticisation”. To recapitulate, discursive depoliticisation is viewed as the processes and tactics designed to remove the politics from an issue (Fawcett, Flinders and Hay 2017). This means that discursive depoliticisation focuses on the way language is used to depoliticise an issue (e.g. framing an issue/policy choice or governmental decision as having no alternative). Rather than evaluating the effect of depoliticisation on the efficiency of specific policies (governmental depoliticisation) or assessing EU policies and how quickly decisions are made or not (Majone 1998), this study focuses on degrees of politicisation and depoliticisation through the understanding of claims which occur in the media and the public sphere. Discursive depoliticisation is discussed and observed in chapter 7 of this dissertation. Here, claims-making analysis is also used to identify whether there are any types of strategies used by claimants or claim makers involved in the attempted depoliticise of the case (and therefore remove the case from being discussed in the public sphere).

In the coding guide (see Appendix C), a depoliticisation claim is defined as a “verbal and/or written action in the public sphere which aims to make an issue apolitical.” When the researcher was coding depoliticising claims, she/he had to ask: is the actor trying to remove any type of issues from the political agenda or from being debated in public? The coder identified the claimant, form, issue object and frame as well as whether there was some form of discursive depoliticisation strategy in the news article. If there was a depoliticisation claim, then the coder would allocate the appropriate number to the depoliticisation variable (e.g. “no alternative” claims are coded as 40). If no depoliticisation claim was found, then that variable would be coded as 0. The issue can be attempted to be depoliticised, if the actor tries to pursue one of the 8 strategies presented in Table 3.5.

As shown in Table 3.5, the first three possible strategies are claims which relate to the past, present and future (these were re-adapted from Flinders and Wood 2017). Then, we have the “there is no alternative” claims (TINA), technical claims, appealing claims, declining to

comment and, finally, those where “only one specific actor can solve the problem”. The last two strategies (declining to comment/no case to answer and only Ireland/Italy can solve the issue) were included in a pre-test of 10 news articles (5 random Irish articles from the database and 5 Italian news articles). It is argued that these two strategies are necessary for the analysis and should be considered for the broader literature on discursive depoliticisation. The “no comment/no case to answer” occurs when actors decline to give an answer to a question. In this sense, they are also removing themselves from the debate as well as the issue. The latter technique was added as several claims were identified in Italian news articles that described Italy as the only country who could solve specific issues related to Ilva. Therefore, actors making these types of claims are also removing any other actors from taking part in the decision-making processes. This strategy is different to TINA in that it does not suggest that there is no alternative regarding an action but rather that an actor is the only one who can perform a specific action (e.g. resolve environmental problems caused by Ilva). In this sense, partial or bounded depoliticisation can also take place in the analysis.

*Table 3.5 Types of Depoliticisation Claims*

| <b>Type of Depoliticisation Claim</b>                              | <b>Explanation</b>  |
|--|---|
| Claims which relate to the past [10]:                              | These are claims that relate to an issue that occurred in the past (denial in relation to the past). For example, actors may argue that an issue was more problematic in the past or the way previous governments dealt with the aid may have been worse in the past. This can happen if member states try to legitimise their handling of the aid. |
| Claims which relate to the denial in relation to the present [20]: | If there are claims that relate to specific issues (denial in relation to the present) where rules cannot be broken at a particular moment. This might occur when the Commission tries to frame their decision to either investigate Ireland or Italy.  |
| Claims which relate to the denial in relation to the future [30]:  | Any claims that relate to how changes made by the Commission or the Irish/Italian government could cause societal chaos and collapse (denial in relation to the future).  |
| No Alternative (TINA) claims [40]:                                 | “No Alternative” claims can happen in debates where Irish or Italian leaders might try to justify why there is no other option but to appeal the Commission’s decision.   |
| Technical Claims [50]:   | Technical claims relate to the state aid being too “complex” or “technical” and therefore “normal” citizens should not be aware of state aid processes.   |

|  |   |
|--|---|
| Normalising relations between actors (Appeasing Claims) [60]:    | This occurs when political actors try to downplay their interactions. This aims to depoliticise an issue by suggesting that it is not contested or by suggesting that the relationship between actors is “normal” and there are “no tensions” involved. |
| Declining to Comment/ No case to answer/ shut down options [70]: | This occurs when claimants refuse to comment and, therefore, remove the possibility to dispute/discuss an issue. This also includes removing oneself from a situation in order to avoid confrontation.  |
| Only one specific actor can solve the issue [80]:                | Includes mentions of the specific government/commission being <i>the only</i> actor who can solve an issue.   |

Table 3.6 also shows two examples of depoliticisation claims. In the first example, Mr. Noonan tries to depoliticise the action of the appeal. This claim was coded as TINA (“there is no alternative”) and as “denial in relation to the future” (as he expressively makes sure that citizens understand how important it is to appeal for Ireland’s future). Meanwhile, other discursive strategies try to normalise the discussions about the state aid case. The same can be said for the second example in Table 3.6 which shows the ex-president of the Commission Jean-Claude Juncker who states: “Yes, we have chauvinistic-type [sic] talk, but there [are] good working relations between Commissioners and our Italian colleagues. We had a pretty heated debate, but that is normal.” In this quote, Juncker tries to frame his relationship with his Italian colleagues as “normal”. This occurred after heated discussions appeared in the news regarding the Ilva case. In this example, Juncker is actively trying to suggest that “heated discussions” are normal and that there is no reason why this has to be a concern or part of the news agenda.

Table 3.6 Examples of coded Depoliticisation claims

| Text part coded as claim  | Coding of variables  |
|---|--|
| Mr. Noonan also said that the European Commission’s decision to order Ireland to demand back taxes from Apple could be detrimental to the country’s economic future and appealing the decision was the best course of action. | <ul style="list-style-type: none"> <li>• Case: Apple</li> <li>• Claimant: Finance Minister Michael Noonan</li> <li>• Issue: State Aid decision</li> <li>• Evaluation: Negative</li> <li>• Object: The European Commission</li> <li>• Depoliticisation Type: Denial in relation to the future [30] and TINA [40]</li> </ul> |
| “Yes, we have chauvinistic-type [sic] talk, but there is good working relations between Commissioners and our Italian colleagues. We had a pretty heated debate, but that is normal.”   | <ul style="list-style-type: none"> <li>• Case: Ilva</li> <li>• Claimant: President of the Commission Jean-Claude Juncker</li> <li>• Issue: State Aid negotiations</li> <li>• Evaluation: Positive</li> <li>• Object: The Italian Government</li> <li>• Justification/Frame: Appeasing Claim [60]</li> </ul>                |



Unlike the analysis for the politicisation claims, the analysis of depoliticisation was initially conducted by one coder only. To avoid issues with reliability, the cases were coded again 2 months after the original codification. Similar to the test conducted in the politicisation chapter, the intra-reliability test was performed and showed a result of  $Kappa = 0.82$  for identifying discursive depoliticisation claims. The proposed claims-making analysis on depoliticisation should be further tested across other settings (e.g. how discursive depoliticisation claims occur in other policy areas such as trade). This could improve our understanding of how discursive depoliticisation claims can take place in other EU policies. However, this represents the first successful attempt at evaluating depoliticisation techniques using claims-making analysis.

During the claims-making analyses, it is important to pay attention to the discourse of the main actors, as De Wilde (2011, p. 571) explains: “It is thus in the discourse of the public sphere – potentially altered by politicisation - that the dominant patterns of delegation and accountability in the EU can be analysed. In other words, understanding politicisation as a practice of competitive representative claims-making in the public sphere allows us to connect polarisation of opinion, intensifying debate and public resonance to the web of delegation and accountability in the EU polity and possible changes therein.” Meanwhile, understanding the claims-making in the public sphere of instances of discursive depoliticisation can tell us a lot about how specific actors might try to avoid tensions and confrontations among themselves. Thus, understanding the claims of the actors involved is crucial to this study in order to understand who chooses to claim what and whether this is to politicise or depoliticise the state aid case.

### **3.8 Conclusion**

This chapter has sought to outline the methods of this dissertation and provided a brief description of the specific type of state aid that will be analysed. This dissertation evaluates cases which have been labelled “negative with recovery of aid” or UWRA. These types of cases were selected as it is more likely that confrontation and, hence, politicisation arises as a consequence of the Commission asking the member state to collect the money from the corporation.

The first stage of the analysis gathers all of the state aid cases labelled as UWRA as well as the news articles which talk about each of the 266 gathered cases using Factiva. In the

second stage, these cases are coded to understand which state aid cases were appealed and referred to court. The second stage also makes a general evaluation about which countries tend to have the illegal recovery of aid and which countries tend to appeal the Commission's decision the most. In stage 3, all the UWRA state aid cases are analysed with the gathered data from Factiva. The media analysis reveals whether appealed cases are more likely to gain news coverage or due to other reasons (for example if a big multinational is involved in the case like Starbucks, Apple or Amazon). The media analysis is also a decisive factor in evaluating which two cases will be studied in the claims-making analysis (Apple and Ilva). Indeed, in order to assess the claims that occur in the media, I had to ensure that each of the state aid cases had sufficient articles from the same news source.

Once the two cases are selected, the claims-making analysis can be performed. The aim of the claims-making analysis is to evaluate the legitimization of the EU in light of the state aid cases as well as to understand how these cases can become politicised or discursively depoliticised. For this analysis, four newspapers (two for each country) are selected to analyse the claims related to the Apple and Ilva cases. The articles used for politicisation were also used to code the discursive depoliticisation strategies. The same search dates are also used; from the moment the Commission made a notification to the member states to six months after the decision (unless there was a court date involved as it occurs in the Apple case). The use of claims-making analysis to analyse politicisation *and* discursive depoliticisation represents a key contribution to future empirical studies who seek to evaluate how actors can attempt to depoliticise an issue through their claims.

To conclude, this chapter has summarised the methods that will be used in the following chapters of this dissertation to assess how state aid cases can be used to politicise or depoliticise the EU. The next chapter includes the first empirical analysis with an overview of all the state aid cases as well as an analysis on the appeals and the referral to courts of these cases.

## **Part 2: Analyses, Discussions and Conclusions of the Thesis**

## Chapter 4: Referrals to Court Due to Non-compliance and Appeals

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### 4.1 Introduction

State aid has evolved over the years to become one of the most supranational policies of the EU (Cini and McGowan 1998). State aid policy requires that member states entrust the Commission with the task of deciding whether or not any aid provided to a specific industry is in the interest of the community as a whole (see Ibáñez Colomo 2016). Thus, state aid is quite unique from other EU policies, in that member states must trust a supranational authority to decide who they can provide aid to, as well as how much. This can lead to conflicts and situations where the Commission may force member states to apply state aid rules even if the member state believes that it is not in their best interest. This authority transfer to the DG-Competition creates instances where the member states might contest the Commission's decisions (Le Galès 2001). Governments that challenge the Commission may become isolated as the European Court of Justice (ECJ) tends to back the Commission's decision more often than not (Le Galès 2001). In this sense, power shifts away from national governments "in favour of the Commission" in state aid cases (Zahariadis 2012, p. 145). As such, governments with preferences regarding state aid that differ from the Commission might initiate a conflict with the non-majoritarian institution. This makes state aid an ideal case study for analysing how this type of policy can become subject to politicisation, as a consequence of the transfer of power, as well as how state aid policy can be used by different actors to either legitimise or delegitimise the Commission's decisions.

This chapter examines how states aid functions, including how different member states deal with the policy, and also provides an analysis of the cases labelled "negative decision with recovery of aid (UWRA)" (i.e. cases where aid must be recovered from the corporation/industry by the member state) from January 2000 – January 2018. As previously explained in Chapter 3, the cases were gathered from the European Commission State Aid website<sup>45</sup> and, for this chapter, cases were coded as appealed (cases that were contested either by the member state or by the corporation involved), not-appealed (cases where none of the parties involved contested the Commission's decision) and referred to court due to non-

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<sup>45</sup> See State aid overview available at:  
[http://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](http://ec.europa.eu/competition/state_aid/overview/index_en.html)

compliance. The main goal of this chapter is to provide an overview of all UWRA cases from 2000-2018 in order to later analyse the media coverage they receive (Chapter 5) to determine whether contested (appealed or referred to court due to non-compliance) cases become politicised (Chapter 6) or discursively depoliticised (Chapter 7). This chapter represents the first step in ensuring that the most appropriate state aid cases are selected for the claims-making analysis; specifically, cases must have a minimum number of news articles to ensure a sufficient number of claims for the claims-making analysis (as explained in chapter 3 at least 100 articles are required to ensure that 50 newspapers are included in the analysis). If a state aid case does not gain news attention there may not be a sufficient number of claims for a valid analysis. By ensuring that I gather cases where there is media attention, I can guarantee that I can conduct a valid and representative claims-making analysis (the full details of which will be further discussed in Chapter 5). This chapter also aims to introduce the reader to the world of state aid by providing further information on why UWRA cases were chosen, and when member states are more likely to appeal the Commission's decision.

First, this chapter will provide a brief explanation of state aid within the EU context. Then, UWRA state aid cases are explained and justified to understand why they were selected for analysing processes of politicisation and depoliticisation. The chapter also examines the influence of the member states' population, GDP, and other factors (such as accession date, region or Varieties of Capitalism) on the likelihood of cases being labelled as UWRA and whether or not the member state contests the Commission's decision. Finally, the chapter gives a summary of the main findings on unlawful aid. It finds that Germany and Italy are the countries with the largest number of cases labelled "unlawful". It is interesting to note that both Germany and Italy have large populations and GDP's. This is consistent with previous studies suggesting that larger member states are more prone to state aid cases (e.g. Zahariadis 2013; Finke 2020) that defy the Commission and are labelled "unlawful". Lastly, this chapter provides an overview on the appeals made by member states and corporations involved. More specifically, the analysis finds that appeals, from either the member state or the corporation involved, occurred in 47% of cases in Italy but only in 36% of cases in Germany. Appeals were observed in 67% of cases in Sweden and Austria, 60% in Spain and Netherlands, 57% in Poland, 50% in Denmark, 47% in Greece, 40% in Belgium, 33% in Bulgaria, Finland and Romania, and 14% in Portugal. Finally, Ireland, Slovakia, Slovenia and the UK have had all cases appealed (100%) either by the member state or the corporation, but these countries had three cases or less each.

The analysis will also show that, when examining the appeals made *only* by member states, Germany, Italy and Spain contest the European Commission's decision the most. However, when accounting for the overall number of cases in Germany, the number of appeals made *only* by the country is relatively low and represents less than 18% of their unlawful aid cases. For other countries, such as Austria or Ireland, the appeals represent 33%, France 24%, Greece 21%, Spain 18%, Poland 14%, Italy 11%. While for Slovenia or Luxembourg the appeals represent 100% of their unlawful cases (Slovenia has only 1 case and Luxembourg 2 cases). This low number in appeals by member states is likely because the Commission tends to win the majority of cases that are referred to court. However, this may soon change as, since 2018, the European Commission has been losing more state aid cases in court (see Larger 2019).

Overall, this chapter provides the reader with a general picture of the universe of UWRA cases, which serves as a foundation for the specific analyses to be conducted in later chapters as well as possible explanations as to why some member states have more UWRA cases and are more likely to contest the Commission's decision.

#### **4.2 How State Aid Works in the EU**

To recapitulate, the theoretical framework of this dissertation explained that the European Union is built on a Multilevel Governance (MLG) system with 3 governance levels (supranational, national and local). The EU level includes processes where policy makers make EU decisions for its member states. The national includes the member states who try to implement the EU policies and the subnational levels include regional and local governments. The European, national and subnational levels play an important part in drafting, formulating and enforcing the rules and regulations for the European Union (Asare, Cairney, & Studlar 2009).

The European Commission is the main decision maker in charge of developing state aid policies (Evans 1997). The Commission has the power to develop the policy through either legislation or informal rule making (Craig and de Búrca 2015). Moreover, the Commission also has the power to make decisions through informal rule making mechanisms; for instance, particular rules have been crafted for specific industrial sectors. Therefore, the Commission has the discretion to apply certain formal or informal decision making mechanisms following the Treaty rules. In state aid cases, the Commission is able to act without the consent of the Council. Some authors have criticised this ability stating that there seems to be a lack of clarity,

which may not safeguard individual rights (della Cananea 1993). However, other authors like Rawlison (1993, p. 55) suggest that not requiring the Council's consent is practical and changing Article 109 could hinder the functioning of state aid policy. This is because competition policy can only work if it is insulated from the state's consent. Otherwise, member states might collude or decide to constantly intervene in decisions that they do not like.

In accordance with Article 109 of the TFEU, the Council granted the European Commission the power to make formal regulations to exempt small and medium size companies with “de minimis aid” or training aid. The “minimis aid” refers to small amounts given to an industry which do not exceed €200000 over three fiscal years to any company (irrespective of size or location).<sup>46</sup> Under the General Block Exemption Regulation (GBER), member states may grant up to 2 million euros per training project without notifying the Commission. Under the GBER, the following categories of aid are authorised by the Commission: aid for research and innovation, regional development aid, invest aid for SME's, employment aid, aid in the form of risk capital, environment aid and lastly, aid which promotes female entrepreneurship.<sup>47</sup> Now that I have provided a brief description of how state aid works within the EU's MLG system in general, the next section will describe how state aid decisions are labelled by the Commission as well as why UWRA cases were chosen to analyse the processes of politicisation and depoliticisation in this dissertation. This will provide the reader with the opportunity to understand how UWRA works and how the Commission makes decisions regarding these types of state aid cases. It will also illustrate the amount of time that is typically required between the Commission officially starting an investigation, to the member state appealing the decision and, eventually, the European General Court making a final decision regarding the member states' appeal.

### **4.3 Specific Type of State Aid Cases Chosen for This Dissertation: Unlawful with Recovery of Aid (UWRA)**

This section describes the rationale for the selection of the state aid cases that are analysed throughout this dissertation (unlawful with recovery of aid or “UWRA”) as well

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<sup>46</sup> For more information see: <https://www.enterprise-ireland.com/en/About-Us/Services/De-Minimis-.html>

<sup>47</sup> For information about which types of aid are allowed see: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_08\\_659](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_08_659)

describe the processes that the DG-Competition follows to decide whether or not a case is unlawful. It also illustrates how UWRA state aid cases can become subject to appeals and referred to court.

#### *4.3.1 Types of State Aid*

The European Commission, more specifically the Directorate-General for Competition (DG Competition), ensures that state aid rules are applied by all member states. The DG Competition is responsible for conducting investigations into the legality of aid provided by a member state to a particular company, scheme, individual or corporation. This type of investigation generally begins with a preliminary examination in which DG Competition asks the member state for further information about the supposed aid that was provided. Then, if DG Competition concludes that further enquiries are needed, a formal investigation is opened. Article 108(3) of the Treaty on the Functioning of the European Union (TFEU) explains that member states must notify the Commission and wait for the outcome of the investigation before any type of state aid measure is implemented. Once a formal investigation is opened, three types of decisions can be made regarding the outcome of the investigation. These types of decisions are categorised by the DG Competition as: positive decision (no aid is discovered by the Commission), conditional decision (even though the aid is compatible with EU market regulations, the implementation might be subject to further monitoring) or negative decision (the measure is not compatible with EU state aid rules and cannot be implemented).<sup>48</sup>

Furthermore, a negative decision can be categorised in two ways by separating the cases where the aid does not need to be recovered and the cases where it does. When the decision regarding a case is negative and the aid needs to be recovered, the case is labelled “negative decision with the recovery of aid (Article 14)” (UWRA) by the Commission. These are the state aid cases where member states were found to have unlawfully provided aid to a corporation and, therefore, must recover that aid from said corporation. In 2015, the European Court of Justice (ECJ) reiterated that the purpose of the recovery of aid by the member state is to ensure that the market is not changed as a result of the aid in order to maintain a level playing field for companies in the internal market (see Council Regulation 2015/1589<sup>49</sup>). The aid to be

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<sup>48</sup> State Aid Manual of Procedures. Available at:

[http://ec.europa.eu/competition/state\\_aid/studies\\_reports/sa\\_manproc\\_en.pdf](http://ec.europa.eu/competition/state_aid/studies_reports/sa_manproc_en.pdf)

<sup>49</sup> Council Regulation 2015/1589 available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1468318513361&uri=CELEX:32015R1589>



recovered includes interest and is “payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery”.<sup>50</sup> Finally, if the Commission has taken a negative decision regarding a state aid case and, if the member state does not recover the aid on time, the Commission may refer the case to the European Court of Justice (ECJ). The case can also be appealed by the member state or corporation involved and then referred to the ECJ. In either of these cases, the ECJ will review whether the Commission, member states and corporations involved complied with the appropriate procedures.

#### *4.3.2 Rationale for selecting “Unlawful with Recovery of Aid” (UWRA) Cases*

As previously mentioned in Chapters 1 and 2, there are several reasons why UWRA state aid cases were selected as the focus of this dissertation. The politicisation of EU issues can occur when there is an authority transfer (see De Wilde and Zürn 2012). In state aid and more specifically in cases labelled “UWRA”, conflict and confrontation is more likely to occur between the member state and the European Commission. This is due to the contentious nature of enforcing the member state to recover the money given to the corporation along with the transfer of authority. Conflict may arise as a consequence of either the corporation or the member state disagreeing with the Commission’s decision. The very nature of these types of state aid cases might create instances for contestations and, therefore, the potential for some of these cases to become politicised. At the same time, people within the government, or other actors, may try to discursively depoliticise the Commission’s decision in an attempt to mitigate the attention surrounding the case. As such, these types of state cases can be used not only for politicisation but also for discursive depoliticisation. Furthermore, these types of cases are open to be appealed (and therefore to be contested) by either the member state or the corporation who benefits from the aid. Contestations (such as the appeal or referral to courts for non-compliance) allows actors who are contesting the Commission’s ruling to make claims about why the member state did not commit unlawful aid and why the Commission misjudged the case (e.g. the state aid case was used for political reasons; the Commission exceeds its powers, etc). Therefore, “unlawful” cases can create instances where actors make claims about the legitimacy of the decisions made by the Commission, which is central to the objectives of this thesis.

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<sup>50</sup> See the European Commission’s information on state aid:  
[http://ec.europa.eu/competition/state\\_aid/studies\\_reports/recovery.html](http://ec.europa.eu/competition/state_aid/studies_reports/recovery.html)

### *4.3.3 The Process of UWRA State Aid Cases becoming Appealed and Referred to Court*

The first step in UWRA cases becoming appealed or referred to court occurs when the Commission makes its final decision on whether or not the member state committed an unlawful act by providing aid to a corporation or an industry. Then, the member state can recover the aid, appeal the decision or not perform any action. If the member state does nothing, the Commission sends the member state several notifications reminding the member state to recover the aid. If the member state does not meet the following Commission's deadlines for action, the case is referred to court due to non-compliance (see State aid Manual of Procedures Directorate-General for Competition 2015):

**Deadline 1:** Up to 2 months following the Commission's decision. Within this period, the member state must inform the Commission on how it plans to adopt the measures to recover the aid.

**Deadline 2:** The aid must be recovered within 4 months of the Commission's decision.

If the member state fails to communicate its plans for recovery of the aid within 2 months of the Commission's decision, a reminder is sent to the member state. This reminder indicates that the deadline has elapsed and that the Commission may refer the subject to the Court of Justice under 108(2) TFEU (State aid Manual of Procedures Directorate-General for Competition 2015). If the member state complies with the 2-month deadline but not within the 4 month deadline, then a reminder is sent. This reminder also states that the Commission may refer the subject to the Court of Justice under 108(2) TFEU. I will now use the Apple case to illustrate how state aid procedures function within these respective timelines:

**21 February 2014** – The Commission revises the Apple case in a preliminary investigation.

**11 June 2014** – The decision to initiate a formal investigation is taken.

**29 August 2016** – A decision was made and DG-Competition Commissioner, Margrethe Vestager announced through a press conference that Apple must return 13 billion euros plus interest in unpaid taxes from 2003-2014.

**2 September 2016** – The official statement from the Irish government was released stating that they would appeal the Commission’s decision.<sup>51</sup>

**7 September 2016** – The Irish government secured a majority in Ireland’s national parliament (Dáil Éireann) to reject the Commission’s decision.

**8 November 2016** – Ireland officially appealed the Commission’s decision. Apple also announced its decision to appeal the decision. Ireland’s Finance Minister, Mr. Noonan, stated:

"The government fundamentally disagrees with the European Commission's analysis and the decision left no choice but to take an appeal to the European Courts and this will be submitted tomorrow," (Michael Noonan in the European Parliament committee in Brussels, 8<sup>th</sup> November 2016).<sup>52</sup>

**2 February 2017** – Ireland negotiates with Apple the terms for the 13 billion escrow account.

**4<sup>th</sup> October 2017** – The Commission declares failure of collecting the aid by Apple. During the press conference DG-Competition Commissioner Vestager stated:

“The deadline for Ireland to implement the Commission's decision on Apple's tax treatment was 3 January 2017 in line with standard procedures, i.e. four months from the official notification of the Commission decision. Until the illegal aid is recovered, the company in question continues to benefit from an illegal advantage, which is why recovery must happen as quickly as possible” (Commissioner Vestager in the European Commission Press Release, 30 August 2016)

**5 December 2017** – Poland sought permission to make representation in support of the European Commission in the court case.

**18 September 2018** – Apple lodged 13 billion into an escrow account pending the appeal.

**15 July 2020** – The European General Court (EGC) made a ruling that the Commission “did not succeed in showing to the requisite legal standard” that Apple had received tax

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<sup>51</sup> See official statement at : <https://www.gov.ie/ga/preasraitis/64d4f6-statement-by-the-minister-for-finance-on-the-government-decision-to-/>

<sup>52</sup> Michael Noonan’s quote available at: <https://fr.reuters.com/article/us-eu-apple-taxavoidance-ireland-idUSKBN13320P>

advantages from Ireland, and ruled in favour of Apple.<sup>53</sup> The decision can be appealed to the Court of Justice of the European Union.

**25 September 2020** – The Commission appeals the court’s ruling.

As the Apple state aid case shows, the Commission took around 15 weeks between the preliminary investigation and the official investigation (between the 21<sup>st</sup> February 2014 -11 June 2014). The final decision regarding the Apple state aid case was taken over two years later (29 August 2016). After the decision was made, the official appeals by the Irish Government and Apple followed in November of the same year (even though both made threats to appeal before this date). Ireland failed to recover the aid in the established period and the Commission decided to take Ireland to court due to non-compliance. Meanwhile, Ireland and Apple attempted to lodge the 13 billion euros into an escrow account. More recently, the EGC made a decision on the case in July 2020 which saw the court siding with the Irish Government and Apple. This decision was then appealed by the Commission. Overall, this illustrates how contestations related to state aid cases can last years and how, in this case, the legitimacy of the Commission could be tested through the way in which different actors (such as the Irish government or Apple) justify their decision to appeal and delegitimise the Commission’s decision at the same time (this will be discussed extensively in Chapter 6).

#### **4.4 Why do certain member states have more UWRA and Appeals?**

In state aid, there are two existing political approaches that can be used to explore UWRA cases. The first perspective is known as “power politics” and its proponents suggest that state aid is a political act and member states can enforce their views on the Commission (McGowan 2000). State aid is seen as a game that the Commission is likely to lose to its paymasters, as member states are the ones who provided the Commission with its powers in the first place. Therefore, this perspective believes that the Commission is less likely to disapprove aid if it is given by, what authors considered to be, powerful member states (McGowan 2000, p. 131). This perspective has faced criticisms as it has been seen by some as an approach that places too much emphasis on the political considerations that influence the decisions made by the Commission and the ECJ.

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<sup>53</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-07/cp200090en.pdf>

The other perspective is known as the “supranationalist” approach (Zahariadis 2013). In this approach, the member states and the Commission tend to clash over how to interpret state aid rules as well as resource allocations. In the supranationalist belief, the outcome of the negotiations that occur between the member states and the Commission creates further clashes, which then exacerbates an institutionalised system of rules where the Commission tends to hold the upper hand (see Le Galès 2011). That is, in state aid matters, the way in which member states decide to allocate their aid reflects the Commission’s preferences. This perspective has been criticised by authors who believe that the supranationalist argument overestimates the power of the Commission and underestimates the role of its member states (Zahariadis 2013; Aldestam 2004; McGowan 2000).

#### *4.4.1 The “Power politics” Approach*

The “power politics” perspective has been used in the state aid literature to determine which member states tend to give the most amount of aid as well as the member states that are more likely to contest the EU’s ruling (see Finke 2020; Zahariadis 2013). Zahariadis (2013) uses the “power politics” perspective to argue that allocations of aid reflect political priorities of powerful member states. He uses the size of the population and GDP to assess the bargaining power of member states (see also Stoll and Ward 1989). Zahariadis (2013) states that the largest countries are expected to give more aid. Thus, the larger the size of the member state, the more likely it is to provide aid. Similarly, Finke (2020) also used size to measure the likelihood of member states to give aid by analysing all state aid decisions between 2000-2018 (including different types of decisions and not only UWRA). Finke’s (2020) study found that larger member states, in terms of population and GDP, had more state aid cases. Moreover, these cases could also more likely to be contested (and, therefore, appealed) by the member states and corporations, based on the “power politics” approach to state aid policy. Indeed, the “power politics” approach argues that the Commission tends to fear large and powerful member states who are more likely to legislate and overrule them (see Blauberger and Schmidt 2017; Garrett, Kelemen and Schulz 1998). Therefore, I can assess whether these larger member states are more likely to have UWRA cases and, also, if they are more likely to contest such cases following the Commission’s decision (for this part of the study, a contestation can be an appeal or a referral to court due to non-compliance). At the same time, I argue that equating population size and GDP with power can also be problematic because they can be mischaracterised. For example, member states with large populations might also have a large amount of economic

burdens. Nevertheless, it is still interesting to determine if these two variables contribute to member states having more UWRA and appealed state aid cases for the purpose of evaluating the “power politics” theory.

Other studies have also examined whether smaller and newer member states are less likely to give aid. Studies by Blauberger (2009; 2011) suggest that the “obligatory character<sup>54</sup> of state aid” is more obvious for accession preparation in newer countries of central and Eastern Europe. Candidate countries must comply with the “*acquis Communautaire*” in relation to state aid (see Blaubergee 2011, p. 32). In combination with policy and legislation compliance, each member state is expected to be in close communication with the European Commission before accession takes place. That is, candidate countries are more likely to follow stricter state aid rules, state aid policy implementation and have better communication with the European Commission than already established and older member states (Blauberger 2009, p. 1030). Moreover, after becoming member states these countries continue to align with state aid implementation. However, other have observed a negative impact on rule adoption in countries that considered themselves as “frontrunners” (e.g. Hungary) and, therefore, did not have any fears of exclusion in the final stages of enlargement negotiations (Schimmelfennig and Sedelmeier 2005, p. 376). Unlike Blauberger (2009), Schimmelfennig and Sedelmeier (2005) considered a wide range of policy areas such as social policy, environmental policy and agricultural policy. However, Blauberger (2009) focuses only on state aid policy and, thus, the results in this chapter are more likely to replicate his findings. Meanwhile, other studies have also shown that new EU member states tend to provide less aid and, thus, have less state aid cases (see Thies and Porche 2007; Aydin 2007). This is perhaps because accession states believe that they are subject to more intense political pressure and legal sanctions once they become members (Zahariadis 2012). Following Blauberger (2009), Thies and Porche (2007), Aydin (2007) and Zahariadis (2012), I can expect that accession countries will have a fewer percentage of UWRA cases.

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<sup>54</sup> Obligatory character refers to the manner in which the Commission forces its member states to comply with state aid rules and ensuring that they recover the aid from the corporation involved in the UWRA state aid case.

#### *4.4.2 Supranational Perspective: The Commission holds the upper hand*

In contrast to the “power politics” perspective, the supranational perspective suggests that the Commission holds the upper hand in state aid policy. Thus, member states are less likely to appeal the Commission’s decision as they are aware that, if the case goes to court, the ECJ is more likely to side with the Commission than with the member state (see Le Galès 2001). As such, governments who go against the Commission may become isolated (Le Galès 2001), which leads to a power shift away from national governments in favour of the Commission. This suggests that the majority of member states are likely to appeal less than 50% of their state aid decisions as they might be aware that, if the case goes to court, the General Court is likely to side with the Commission rather than the member state.

#### *4.4.3 Aid Instruments*

It has been previously reported that the most frequently used aid instrument was direct grants, followed by interest subsidies and guarantees (Van Langehove 2017, p. 16). Direct grants<sup>55</sup> are a common form of fiscal incentive that is offered by the government to a corporation in exchange of certain actions (e.g. hiring local residents or adopting certain standards). Typically, direct grants function as reimbursement for allowable expenses and are meant to encourage local residents or business owners to restore or rehabilitate certain corporations or industries. By contrast, interest subsidies are tax deductions made to a company’s earnings. Depending on the amount of money borrowed, interest may be deducted from the company taxed income.<sup>56</sup> Based on Van Langehove (2017), it can be expected that direct grants will be the most common aid instrument in UWRA cases.

To summarise, the literature on state aid points to two main possible scenarios for UWRA and/or appealed cases. The first predicts that member states with more “power”, in terms of having a larger GDP and population size, will have more UWRA and appeals (See Zahariadis 2013; Finke 2020; Blauburger 2009). By contrast, the second scenario predicts that member states will not appeal the Commission’s decision as the outcome of the negotiations

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<sup>55</sup> See <https://urban-regeneration.worldbank.org/node/23#:~:text=One%20common%20form%20of%20fiscal,or%20adopting%20specified%20design%20standards>

<sup>56</sup> See <https://financial-dictionary.thefreedictionary.com/Interest+subsidy#:~:text=The%20value%20of%20the%20tax,or%20how%20it%20was%20borrowed.>

that occur between the member states and the Commission creates further clashes and the Commission tends to hold the upper hand in state aid cases (see Le Galès 2011).

#### 4.5 Coding UWRA Cases

For this study, UWRA state aid cases were gathered from the Commissions' website. To recapitulate, the search was performed from the 1<sup>st</sup> of January 2000 to the 1<sup>st</sup> of January 2018 and resulted in 266 cases (this is the total amount of cases, therefore this dissertation takes the universe of cases rather than a sample). In order to perform the analysis, I coded cases as appealed [contested by the member state (CM) or contested by the corporation (CC)], referred to court (RC) or not contested (NC) using data from the website of Court of Justice of the European Union (CJEU) ([https://curia.europa.eu/jcms/jcms/j\\_6/en/](https://curia.europa.eu/jcms/jcms/j_6/en/)). As explained in chapter 3 of this thesis, cases that did not appear in the CJEU's register were coded as "NC" (not-contested). These cases were also checked online by researching key words (e.g. company or case name) to verify once again that these cases were not appealed (as cases can be appealed but not referred to court). If no information about the case being appealed was found, then the case was coded as not appealed (NC). The "referrals to court" were easily identified as this information was reported in the case description on the Commission's state aid website.

I also conducted correlations to examine whether member states with larger populations, higher GDP, accession date, region or type of Variety of Capitalism are more likely to have UWRA state aid cases. The "region" variable is comprised of: Northern European Countries (Denmark, Finland and Sweden), Southern European Countries (Cyprus, Greece, Italy, Spain, Malta, Portugal, Slovenia and Croatia), Eastern European Countries (Estonia, Latvia and Lithuania), Central European Countries (Bulgaria, Hungary, Poland, Romania, Slovakia and Czech Republic) and, finally, Western European Countries (Austria, Belgium, France, Germany, Ireland, Luxembourg, Netherlands and United Kingdom).

Varieties of Capitalism or VoC was first developed by Hall and Soskice (2001) who distinguished between two types of economies: the liberal market economies (LME) and the coordinated market economies (CME). According to this view, LME have well developed capital markets and tend to have outsider forms of corporate governance (Gould, Barry and Wilkinson 2015, p. 588). These types of economies also have high levels of labour flexibility. Examples of this type of economy include the United Kingdom, the United States, Ireland, Canada, New Zealand and Australia (Gould, Barry and Wilkinson 2015, p. 588). By contrast, CME economies have an "insider" approach to corporate governance. Here, employment



relations involve less flexibility than in LME countries and encapsulate more uniformity in terms of wave outcome and greater employment security (Gould, Barry and Wilkinson 2015, p. 588).

For the analysis conducted in this chapter and Chapter 5, I have used Amable and Lung's (2008) and Pinto, Healy and Cruz's (2019) categorisation of VoC, which accounts for 5 different types of VoC that were identified in the literature on the EU. While Hall and Soskice (2001)'s categorisation can account for LME countries, like the United Kingdom or Ireland, and CME countries like Germany, there are still several countries within Europe that are intermediate versions of these two ideal types (Pinto, Healy and Cruz 2019). Following Amable and Lung's (2008) and more recently Pinto, Healy and Cruz's (2019), the variables of VoC can be divided into (1) Continental European capitalism (CEC), which includes Austria, Belgium, Czech Republic, France, Germany, Luxembourg, Switzerland and Netherlands; (2) Liberal market economies (LME) comprised of United Kingdom and Ireland; (3) Social democrat economies (SDE), including Denmark, Finland and Sweden; (4) Mediterranean capitalism (MED), comprising Portugal, Greece, Italy, Spain, Malta, Croatia and Cyprus; and (5) Eastern and Central Europe capitalism (EAST), which includes Bulgaria, Hungary, Poland, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia.

To recapitulate, the data gathered from the Commission's website was entered in an excel spreadsheet with information about the state aid cases (e.g. whether they were appealed, referred to court due to non-compliance, case number, type of aid). The analysis was then performed in excel to identify the member states with the most amount of state aid cases labelled UWRA, as well as the cases that were appealed and referred to court. The statistical software SPSS was used to assess the correlation between a member states' power (based on population and GDP) and the number of state aid cases in that country.

#### **4.6 Results I: Recovery of Unlawful State Aid**

The results presented in this section provide the reader with an overview of the member states that have the most cases labelled UWRA. The results of this chapter also provide the basis for the media analysis and claims-making analysis conducted in later chapters, as well as insight into UWRA state aid behaviour. In the next section, I will first describe which member states have the most and the least amount of cases and, then, I will provide further details, including the types of industries and aids. The objective is to provide the reader with a broader picture of the cases that will be used in the analyses in the following chapters.

#### 4.6.1 Member states with the most and least amount of UWRA cases

The countries that have given the most “unlawful aid” that has to be recovered are Germany with 56 cases, followed by Italy with 53 cases and Spain with 33 cases. France had a total of 25 state aid cases, Greece 19, Belgium 15, Netherlands 10, Poland and Portugal had 7 state aid cases. Hungary and United Kingdom had 5 cases each while Austria, Bulgaria, Cyprus, Finland, Ireland, Romania and Sweden had 3 cases each. Denmark, Estonia, Luxembourg and Slovakia had 2 cases and Malta and Slovenia 1 case each. Finally, Croatia, Czech Republic, Latvia and Lithuania did not have a single UWRA state aid case. Interestingly, all the countries that have either one or no cases joined the EU in the last two waves of enlargement (2004 and 2013). These results go in line with Blauberger’s (2009) study which suggests that candidate countries to the EU follow strict state aid policies and rules before accession.

Figure 4.1 Total Amount of “Negative Decisions with Recovery of Aid”

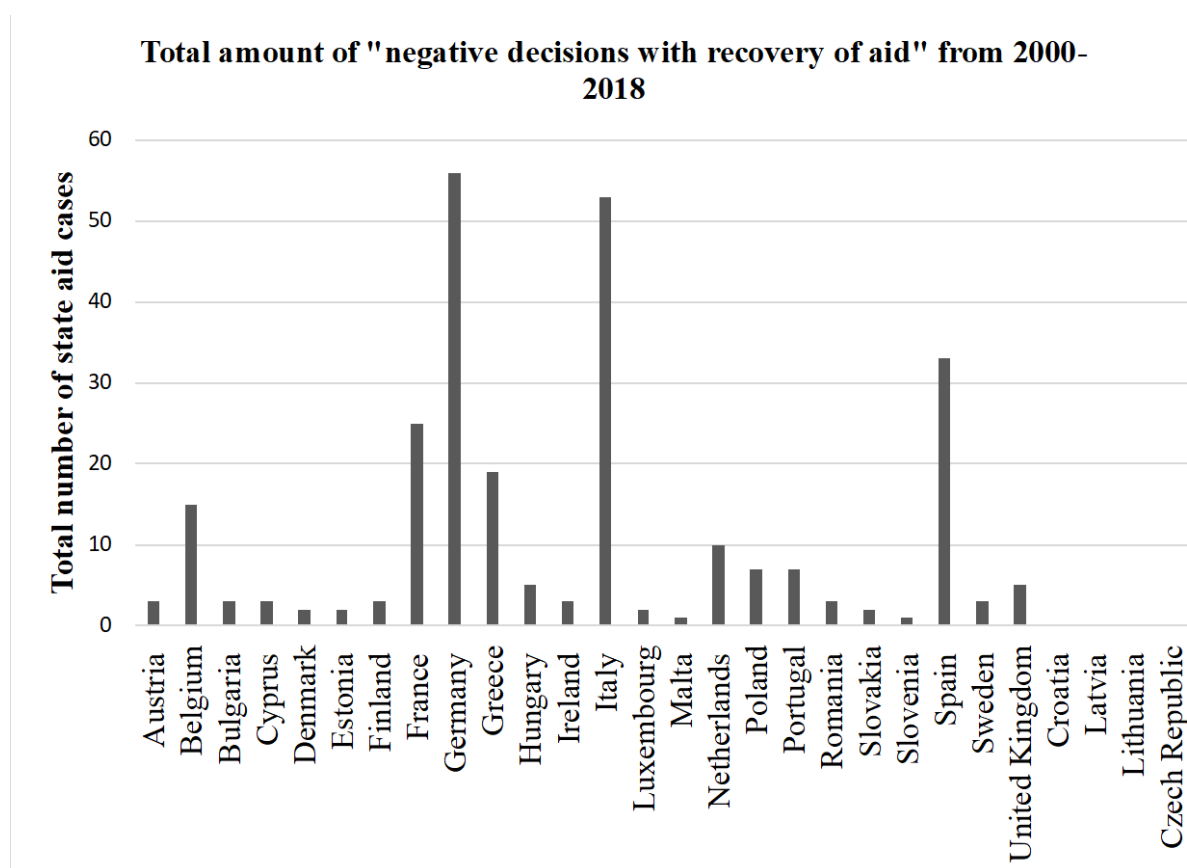


Table 4.1 illustrates that member states with large populations, including Germany, Italy, France and Spain, tend to have more cases. A Pearson's correlation conducted using SPSS between population and UWRA confirmed this observation ( $r = 0.796$ ). Moreover, as shown in table 4.1, a significant correlation was also observed between UWRA and GDP ( $r = 0.779$ ). These results can be interpreted through Cohen's conventional criteria of "small, medium and large" (Cohen 1988). Pearson's values vary from -1 to 1 with -1 indicating a perfect negative linear relation and 1 indicating a perfect positive relation. This means that when the R value is close to 0, there is no linear relation between the two variables. Thus, the results shown in Table 4.1 indicate that both results (0.796 and 0.779) have strong positive linear relations, with a large effect size ( $>0.50$ ) (Cohen 1988). I also analysed other potential factors, such as number of years as an EU member. Number of years as an EU member was significantly correlated with UWRA ( $r = 0.618$ ). Other variables, such as region or Varieties of Capitalism (VoC) were assessed, however these correlations did not result in significant results.

Overall, the results indicate that member states with larger populations and GDP and who have been in the Union for longer are more likely to have UWRA aid cases (see Table 4.1). Past studies on state aid have equated power with larger populations and GDP (see McGowan 2000; Zahariadis 2013). However, this positive correlation does not necessarily mean that GDP and population are sufficient proxies for power (see also Beckley 2018, p 9). Indeed, Beckley (2018, p.16) has raised certain concerns about equating GDP with power. First, GDP does not deduct welfare costs, which means that populous countries tend to generate more economic activity just by "simply existing" (2018, p. 16). Thus, GDP and population tend to go hand in hand and this can be misleading in certain analyses (Beckley 2018). Also, according to Beckley (2018), GDP fails to account for economic costs arising from domestic instability and international conflict (2018, p.16). Nevertheless, scholars in the state aid literature continue to measure power with indicators that are "gross but reliable measures of powers given data constraints" (Beckley 2018, p.9). Despite the potential issues with these measures, the present analysis does provide useful information as to why some countries might have more cases labelled as UWRA than others.

Table 4.1 Correlation Matrix between UWRA and Population and UWRA and GDP

|      |                     | UWRA | Population | GDP    | Years as EU members | Region | VoC   |
|------|---------------------|------|------------|--------|---------------------|--------|-------|
| UWRA | Pearson Correlation | 1    | .796**     | .779** | .618**              | -.230  | -.348 |
|      | Sig. (2-tailed)     |      | .000       | .000   | .000                | .239   | .069  |

\*\* . Correlation is significant at the 0.01 level (2-tailed).  
N= 28

#### 4.6.2 Types of Aid and Industries in the data

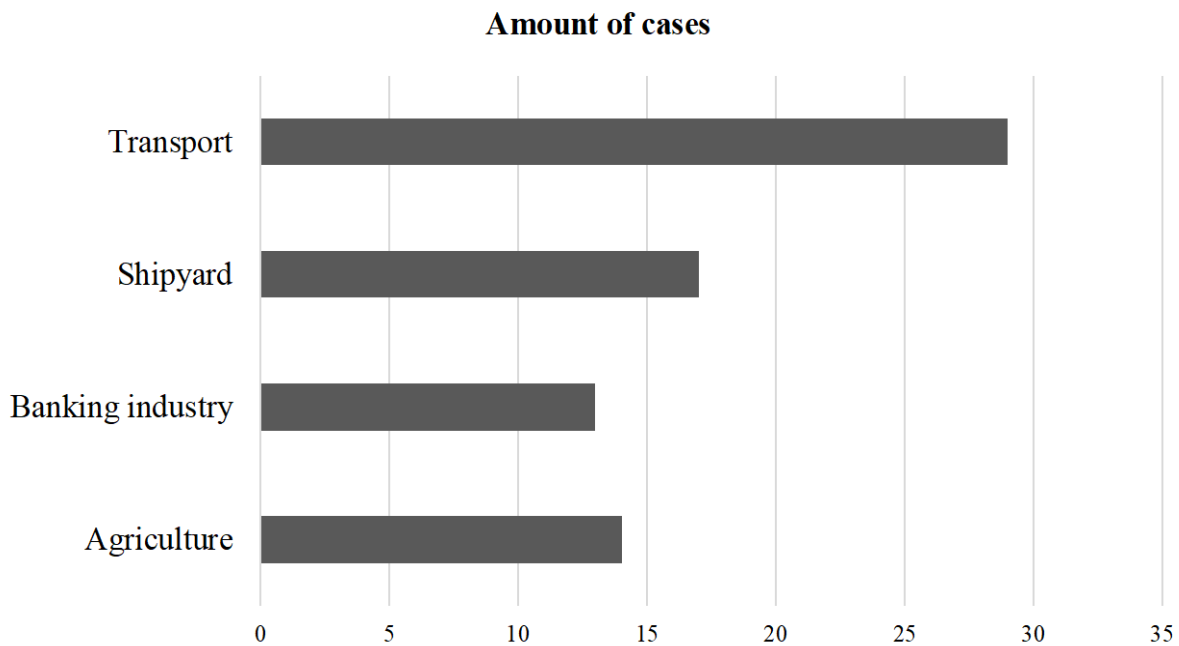
The analysis for this chapter shows a total of 19 different types of aid (see table 4.2). Out of the 266 state aid cases, 220 were labelled by the Commission (as either direct grants, guarantee, soft loan, etc) and the other 48 cases remained unlabelled. Some of the cases received multiple labels. The analysis performed in this chapter took into account each type of aid. The most common type of aid is “direct grant” with a total of 74 cases labelled as such. Lastly, after “direct grant”, the most common aid instruments were “guarantees” and “soft loans”. The least common types of aid include “fiscal measures” and “provision of risk capital”. Overall, these results seem to also confirm past studies by Langenhove (2017).

Table 4.2 Frequency of the Types of State Aid between the Years 2000-2018

| Type of Aid                                | Number of cases |
|--|-----------------|
| Direct grant                               | 74              |
| Guarantee                                  | 45              |
| Soft loan                                  | 39              |
| Debt write-off                             | 27              |
| Other forms of equity intervention         | 22              |
| Tax base reduction                         | 20              |
| Other                                      | 19              |
| Reduction of social security contributions | 17              |
| Tax allowance                              | 14              |
| Other forms of tax advantage               | 13              |
| Tax deferment                              | 12              |
| Tax rate reduction                         | 10              |
| Interest rate subsidy                      | 8               |
| Subsidised services                        | 7               |
| Repayable advances                         | 6               |
| Loan                                       | 4               |
| Tax advantage or tax exemption             | 3               |
| Fiscal Measure                             | 2               |

The analysis also revealed 72 different types of industries. These industries included transport, iron, carbon, steel, fishing, construction, IT, electronics, electricity, banks, alcohol, casinos, film studies and football clubs. As shown in Figure 4.2, the industries with the most state aid cases were transport with 29 cases, shipyards and the ship building industry with 17 cases, the banking industry with 13 cases and agriculture with 14 cases.

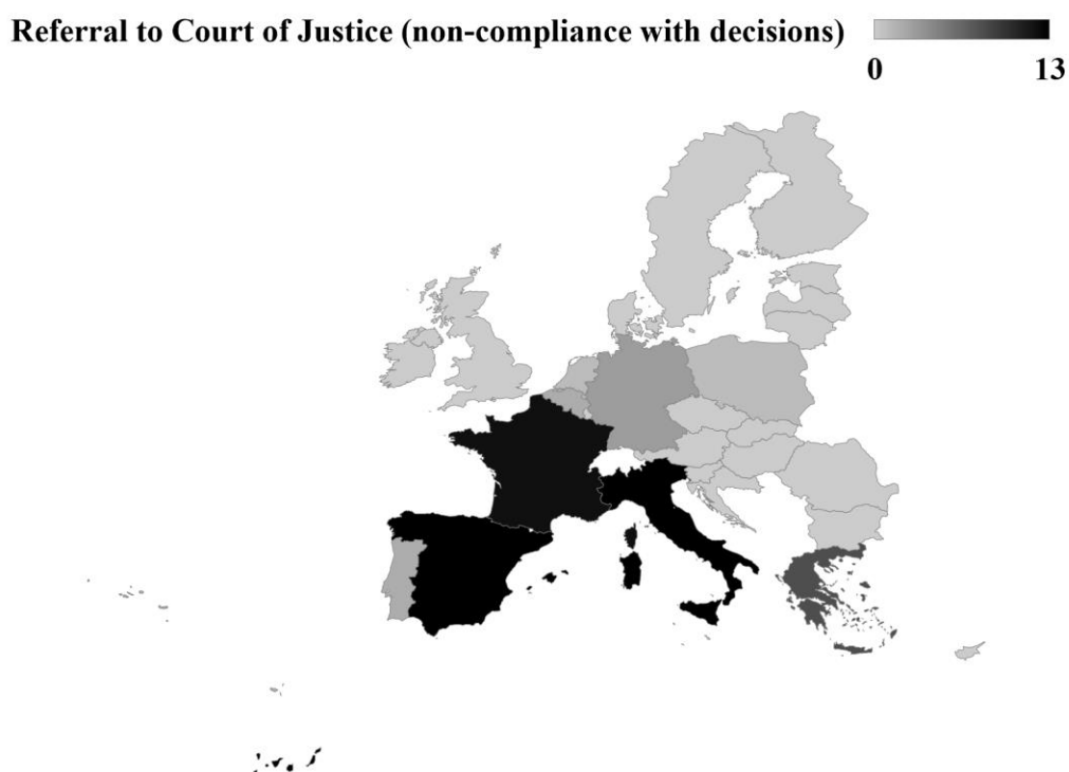
*Figure 4.2 The Types of Industries in the Analysed State Aid Cases*



#### **4.7 Results II: Contestations**

Figure 4.3 shows the countries that have not followed the European Commission's decisions and the cases have been referred to court due to non-compliance. The graph shows that Italy and Spain have had 13 cases each which have been referred to court due to non-compliance. France has a total of 12 cases, Greece 8, Germany 3, Belgium and Portugal 2 while the Netherlands and Poland have 1 case each.

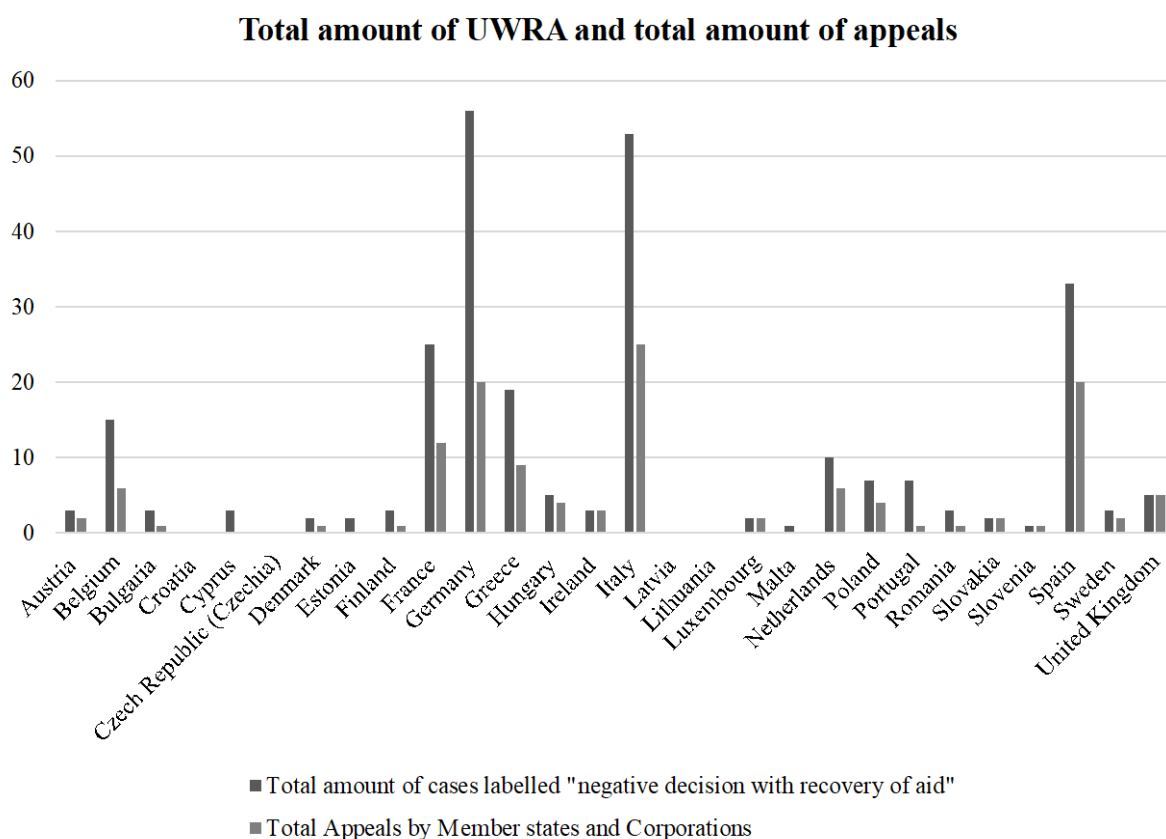
Figure 4.3 Referral to Court Due to Non-compliance



#### 4.7.1 Appealed Cases by Both Corporations and Member States

For this dissertation, it is important to evaluate how many of the “unlawful with recovery of aid” (UWRA) cases were appealed by the affected corporations and the member states. This will allow us to later understand whether appealed cases might obtain more news coverage or whether there are other factors at play. Figure 4.4 shows the total number of UWRA cases and the total amount of appeals per country. These appeals were made by both member states and corporations involved in the state aid case. Overall, Germany has the highest number of decisions labelled as UWRA while Italy has the highest number of appeals. Indeed, appeals from either the member state or the corporation occurred in 47% of cases in Italy but only in 36% of cases in Germany. Appeals are observed in 67% of cases in Sweden and Austria, 60% in Spain and Netherlands, 57% in Poland, 50% in Denmark, 47% in Greece, 40% in Belgium, 33% in Bulgaria, Finland and Romania, and 14% in Portugal. Ireland, Slovakia, Slovenia and the UK have had all cases appealed (100%) either by the member state or the corporation, but had three cases or less each.

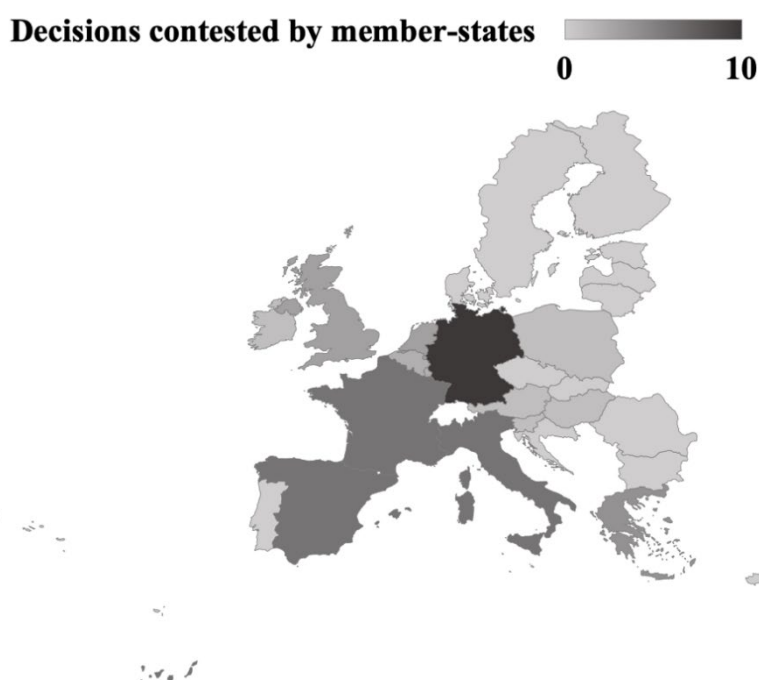
Figure 4.4 Total Amount of “Negative Decision with Recovery of Aid” and Total Amount of Appeals



#### 4.7.2 Appealed Cases by Member States Only

Figure 4.5 illustrates the appeals made by member states only. Germany appealed a total of 10 decisions, followed by France, Italy and Spain with 6 cases each. Greece appealed 4 decisions and the UK and Netherlands appealed 3 cases, followed by Belgium and Luxembourg with 2 appeals each. Finally, Ireland, Hungary, Poland and Austria have been involved in appealing 1 state aid case in their respective countries. Apart from Germany (who has the most “unlawful” state aid cases), the pattern of results in Figure 4.5 looks similar to the cases referred to court due to non-compliance (Figure 4.3). That is, Italy, Spain, France and Greece tend to contest the Commissions decisions the most while disregarding the EU’s ruling.

Figure 4.5 Appeals Made by Member States



Overall, Germany appealed the most decisions with 10 appeals. However, given the number of cases in Germany, the number of appeals is relatively low and represents an appeal in less than 18% of their unlawful aid cases. For other countries such as Austria or Ireland it represents 33%, France 24%, Greece 21%, Spain 18%, Poland 14%, Italy 11%. While for Slovenia or Luxembourg the appeals represent 100% of their unlawful cases (Slovenia has only 1 case and Luxembourg 2 cases). This low number in appeals by member states is likely due to the fact that the Commission tends to win the majority of cases that end up in court (more on this in the discussion section of this chapter).

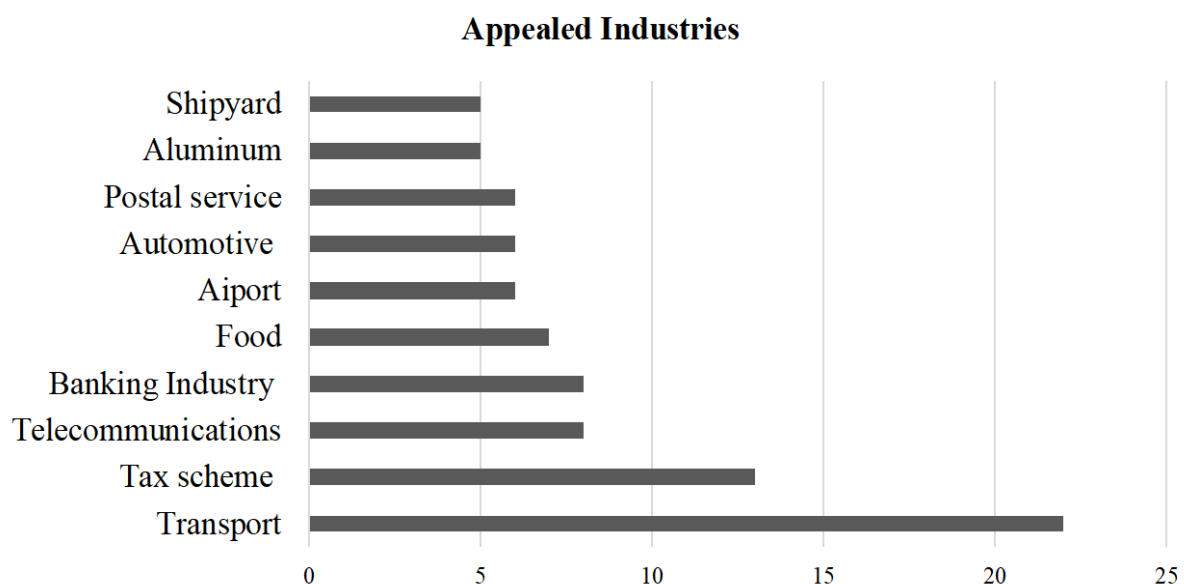
#### 4.7.3 Appealed Industries

Figure 4.6 shows that the cases that have been appealed the most relate to the “transport industry”. The main type of transport affected was airlines and within this category Ryanair was the most appealed corporation. Over the years, Ryanair has had several state aid cases and has received aid from various member states. However, the appeals in the Ryanair state aid case come from the corporation itself and not from the member state. The company has had its share of state aid controversy and seems to be continuously questioned across different member states (aid was given to Ryanair in France and Austria). More recently, Ryanair is taking Germany to court for providing 9 billion euros in aid to Lufthansa and suggests that Germany



mostly ignores EU rules on subsidising Germany companies.<sup>57</sup> This is an example of how Ryanair is delegitimising the choices made by the German government in relation to the EU rules. Other types of appeals within the transport industry include railways companies such as the SNCF in France or bus companies such as Buonotourist in Italy. However, as it occurred with Ryanair, most of these appeals come from the companies themselves rather than the member state that provided the aid. The second most common industry to be appealed is telecommunications, including cases such as Télécom (also known as Orange) in France. Here, the majority of the cases were also appealed by the corporations involved. The third most commonly appealed industry is the postal service, including cases such as the Deutsche Post in Germany or La Poste Belge in Belgium (again, most of these cases were appealed only by the corporation and not the member state).

*Figure 4.6 Appealed Industries*



As previously suggested, only three out of the twenty-eight (~10%) cases related to the transport industry were appealed by member states (two were in France and one in Greece). However, when member states do appeal, they are likely to do so for political or economic reasons. Below, I will use these three transport related state aid cases as illustrations to understand how different governments used the appeal for either political or economic reasons:

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<sup>57</sup> See <https://www.neweurope.eu/article/ryanair-to-appeal-lufthansa-state-aid-citing-breach-of-eu-rules/>

#### 4.7.3.1 *SeaFrance*

The two cases in France that were appealed by the member state were regarding Ferry companies: SeaFrance and SNCM. For the SeaFrance decision, we can see how political interests were the main driver in appealing the Commission's decision. In 2011, the then French President Sarkozy and his government tried to keep SeaFrance afloat as the cross-channel ferry business was in the brink of bankruptcy (Gamini 2012). Sarkozy met with key ministers and backed the cooperation to finance SeaFrance workers (Gamini 2012). This was an attempt to handle the threatening rise of the unemployment rate, which was almost above 10% four months ahead of the next presidential election (Gamini 2012). Thus, Sarkozy and the French government made the appeal in order to be seen as a government who makes the preservation of jobs a priority and to bid for another mandate.<sup>58</sup>

#### 4.7.3.2 *SNCM*

The Ferry company was owned by both Transdev and the French state (25% stake in SNCM) and the company received aid in 2006 during its privatisation (Thomas 2014). This aid was initially approved by the European Commission but, in 2012, following a complaint by the competitor "Corsica Ferries", the company was ordered to repay the aid. At the time, the Commission stated that, while the French government could provide aid for its services during "low season", it could not do so during the "high season" (summer) when most of the boats are operating at full capacity (Hirst 2014). The Commission also decided to take France to court in 2013 due to non-compliance as it claimed that the member state failed to recuperate the illegal state aid from SNCM (Hirst 2014). During the same year, France appealed the decision under President Hollande's mandate. For the French government, the state aid decision was considered to be the collapse of the business, which could put 2600 jobs on the line in a region where President Hollande's socialist party was susceptible to heavy losses in both municipal and EU parliamentary election, which were conducted months after the appeal.<sup>59</sup> The next time

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<sup>58</sup> See further information at: <https://www.thelocal.fr/20120103/2182>

<sup>59</sup> See: <https://uk.reuters.com/article/france-eu-ferry/eu-orders-france-to-recover-state-aid-from-ferry-operator-idUKL5N0J53V220131120>

France filed an appeal regarding SNCM, there were rumours that the company was going to file for bankruptcy in order to be taken over by a private stakeholder.<sup>60</sup>

#### *4.7.3.3 Olympic Airways*

Greece appealed a decision against transport company, Olympic Airways. The company was facing cuts to thousands of jobs, which the government opposed (Featherstone and Papadimitriou 2007). At the time, Transport Minister Christos Verelis said that the airline would continue flying and that Greece was willing to challenge the Commission's decision.<sup>61</sup> The Commission's decision was a huge blow to the airline as it was in a precarious state. By saving the airline, the Greek government hoped to save the jobs and avoid the economic downfall that would come with the crash of the Greek airline (Featherstone and Papadimitriou 2007).

As we have previously seen with the examples of the transport industry, political gains and policies can play an important role in making the member state appeal the decision. Several other appeals have also been used for political purposes. These examples include cases such as C38/2006 (Fish factory improvement scheme in the Shetlands, UK), C62/2001 (State Aid in favour of Neue Erba Lautex GmbH Weberei und Veredlung in Sachsen, Germany) and C64/1997 (Capital transfer-Westdeutsche Landesbank), which are described in more detail in the following sections:

#### *4.7.3.4 Fish Factory Improvement Scheme in the Shetlands, UK*

In the case C38/2006, the Commission's demanded that recipients of the 1 million pounds of aid had to return the money to Shetland's council (Riddell 2008). The Commission's decision also included 78 first time fishermen who each received 7500 pounds to buy or share their first boat (Riddell 2008). More specifically, the Commission asked for the aid given to the fisherman over the period between 1998 and 2008 to be returned to Shetlands Council. This, in turn, created a stir among the local fisherman who benefited from the aid. This decision by the Commission was heavily criticised by both Shetlands Council and Shetland Islands Council convener, Sandy Cluness. Cluness accused the Commission of double standards and stated that it was ironic that during a particularly difficult period for local fishermen (due to the fuel crisis),

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<sup>60</sup> See <https://www.reuters.com/article/ofrtp-france-sncm-20140109-idFRPAEA0804I20140109>

<sup>61</sup> <https://www.irishtimes.com/news/eu-to-ask-olympic-airways-to-repay-state-aid-1.451210>

the European Commission was trying to prevent the Shetlands Council from assisting start-ups within the local industry (Riddell 2008). Cluness also said that the payments were a compensation for hosting Europe's largest oil terminal and that the aid was supposed to benefit the community (Hayman 2008). The council convener stated: "We have provided the facilities and security to safely handle large tankers over many years in return for a small share of those revenues. It's ironic that we're being prevented from using these funds for the very reason they were established: to support our traditional industries" (Sandy Cluness, in Hayman 2008).

Moreover, the Council convener also argued that the state aid could have implications on the Shetland's economy (Hayman 2008). He also argued that the state aid decision *will* affect other businesses in the area (these types of discursive depoliticising statements are expected to occur in the claims analysis in Chapter 7). The claims made by Cluness strongly suggest that the country *must* appeal the Commission's decision because, if they do not, the state aid decision will have negative repercussions on the future of a region, city or country. This, in turn, pushes for the legitimation of the appeal in the media. This case also illustrates that the Commission's decision can be contested among localities that depend on a specific sector, which can further fuel tensions between locals and the Commission's state aid enforcement. In the end, case C38/2006 was appealed directly to the Courts to protect the position of the fish factory. In this case, the appeal was justified by the Shetlands council as a way to protect the fisherman and the fish industry (Hayman 2008).

#### 4.3.7.5 *Erba Lautex, GmbH*

Regarding C64/1997, the government of Sachsen in Germany decided to aid Erba Lautex, GmbH. The government at the time wanted to stop the company from going into bankruptcy. Simultaneously, the German government claimed that the Commission's decision was hindering the creation of a company in the New Bundesländer (Müller 1999). Following the German reunification, Bundesländer's like Sachsen wanted to push companies like Erba Lautex to succeed and create jobs.<sup>62</sup> The main concern by the Bundesländer at the time was that the Commission's decision and the repayment of aid was threatening more than 400 jobs in the region where there was already a high unemployment rate (24.3%).<sup>63</sup> Thus, the appeal by the German Bundesländer against the Commission was mainly for economic and political

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<sup>62</sup> See <https://www.saechsische.de/plus/neue-erba-lautex-soll-millionen-zurueckzahlen-480110.html>

<sup>63</sup> Ibid.

reasons. Moreover, the case produced heated arguments with the spokesman for Sachsen's Minister of Economics, Burkhard Zcheischler stating that the Commission's arguments to make the decisions were a "lie and deceit".<sup>64</sup>

#### *4.7.3.6 Westdeutsche Landesbank*

Similarly, in the C64/1997 case, the German government appealed the Commission's decision regarding the transfer-Westdeutsche Landesbank. The appeal of this decision was supported by a diverse range of political parties (CDU, FDP and SDP) who wanted to support the aids given to the Westdeutsche Landesbank.<sup>65</sup> Similar to Erba Lautex, the case occurred in the 90s and the German government wanted to foster the economy by providing aid to different sectors (Müller 1999). The aid given to the Westdeutsche Landesbank was aimed as part of a bigger insensitive to develop the German market and sustain German banks. Therefore, proceeding with the appeal was a highly political move widely accepted across different political parties. In chapter 7, I will show that appealing the Commission's decision can be highly popular among member states and their constituencies. Thus, the appeal is a way of unifying the response of the member state against the Commission. In this way, the Commission (or the EU more broadly) is framed as the "other".

#### *4.7.4 Involvement of Multinationals in State Aid Cases*

Since 2013, the Commission has included tax ruling practices of member states that involve the investment of large multinationals (or schemes that allow tax preferences towards multinationals) as part of their investigations. A multinational is a company or organisation that controls production of services as well as goods in at least one country other than its home base (Ferner, Edwards and Tempel 2012). The Commission set up tax measures aimed to assess public allegations on favourable tax treatments to certain companies. Since 2014, the Commission's new tax force has made final decisions on the following cases: UK Tax scheme for multinational (Controlled Foreign Company rules), alleged aid to McDonald's, aid in

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<sup>64</sup> Ibid.

<sup>65</sup> See European Commission decision regarding Westdeutsche Landesbank available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2000.150.01.0001.01.ENG&toc=OJ:L:2000:150:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2000.150.01.0001.01.ENG&toc=OJ:L:2000:150:TOC)

favour to ENGIE, aid to Amazon, state aid implemented by Ireland to Apple, Excess Profit exemption in Belgium, aid in favour of Starbucks and aid to Fiat.<sup>66</sup>

The analysis on the appeals shows that the five aids given to multinationals (or schemes) in relation to tax ruling practices were all appealed by the corporation and the member states involved (see Table 4.3). While this cannot be assessed statistically (as there is only a small number of these cases), it suggests that multinational corporations are more likely to appeal the Commission's decision than other types of corporations (e.g. national corporations). The analysis also suggests that member states are more likely to appeal a decision that relates to a multinational corporation when national governments have given them tax benefits. Moreover, these cases were also subject to the involvement of countries outside of the EU such as the Apple case in Ireland which was appealed by the US. The only case that did not involve a multinational is the "Excess Profit exemption in Belgium" scheme, which allows multinational groups to be exempt from corporate income tax (also known as "excess profit")<sup>67</sup>. State aid cases with multinationals involved also occurred in Ireland, Luxembourg and The Netherlands. These countries have been named "the worse tax offenders in the world" in a report made by Oxfam.<sup>68</sup> Member states choose to give tax advantages to corporations as they attract a large amount of foreign investment to the country. As such, countries that offer large multinationals tax advantages might fight the Commission if it rules against them in state aid cases. The nature of cases involving multinationals are expected to be highly salient in the media given that these cases were appealed by a multitude of actors. Moreover, these cases are also likely to create different types of legitimations and delegitimations towards the Commission in comparison to state aid cases involving national industries (this will be further discussed in the case selection section of chapter 5). The variety of legitimations or delegitimations is due to the involvement of a multitude of different actors in the contested issue, who are outside the EU.

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<sup>66</sup> This study covers the periods of January 2000 to January 2018, therefore decisions made later in 2018 and 2019 are not counted (such as the Google or McDonalds cases).

<sup>67</sup> For more information on the "Excess Profit exemption in Belgium" scheme see <https://www.bakermckenzie.com/en/insight/publications/2019/02/belgiums-excess-profit-rulings>

<sup>68</sup> See Article on worse tax havens: <https://www.politico.eu/article/oxfam-luxembourg-ireland-netherlands-among-worst-tax-havens/>

Table 4.3 Multinational State Aid Cases

| Country                | Case   | Appealed by Member state | Appealed by Corporation |
|------------------------|--|--------------------------|-------------------------|
| <i>Belgium</i>         | Excess Profit exemption in Belgium – Art. 185§2 b) CIR92 | ✓                        | ✓                       |
| <i>Ireland</i>         | State aid implemented by Ireland to Apple.               | ✓                        | ✓                       |
| <i>Luxembourg</i>      | State aid granted by Luxembourg to Amazon.               | ✓                        | ✓                       |
| <i>Luxembourg</i>      | State aid which Luxembourg granted to Fiat.              | ✓                        | ✓                       |
| <i>The Netherlands</i> | State aid implemented by the Netherlands to Starbucks.   | ✓                        | ✓                       |

#### 4.8 Discussion: Power Politics versus Supranational State Aid theories

For the “power politics” perspective, the results seem to confirm studies by Finke (2020) and Zahariadis (2013) on state aid cases which suggest that larger member states are less concerned about the repercussions of having cases labelled as “unlawful” and are also less scared of appealing the Commission’s decision. The results showed that Germany in particular tends to provide high levels of aid to its corporations and industries. More recently, after covid19, state aid rules became more relaxed and Germany decided to take full advantage of this. Germany “alone accounts for over half of the value of the state aid unleashed” in Covid-19 measures.<sup>69</sup> DG-Competition Commissioner, Margrethe Vestager has mentioned that even in normal circumstances some member states have more fiscal space to move the rules than others.<sup>70</sup> Thus, Germany tends to utilise more aid which increases the likelihood of that aid being used unlawfully.

The tendency for more powerful states such as Germany to give more aid can lead to conflict as other member states may object. For example, the Spanish government recently complained that Germany was allowed to provide more aid than other member states which in turn, can prompt the “skewing of the single market” (Fleming and Espinoza 2020). This shows that, if state aid cases become politicised, other member states and competitors from other

<sup>69</sup> See Rios (2020). Available at : <https://www.euractiv.com/section/economy-jobs/news/germanys-massive-use-of-state-aid-could-serve-as-locomotive-vestager-says/>

<sup>70</sup> See also: [https://www.euractiv.com/section/competition/news/germany-gains-most-from-relaxed-eu-state-aid-rules/?utm\\_content=1588583658&utm\\_medium=eaEconomy&utm\\_source=twitter](https://www.euractiv.com/section/competition/news/germany-gains-most-from-relaxed-eu-state-aid-rules/?utm_content=1588583658&utm_medium=eaEconomy&utm_source=twitter)

member states might become involved in contestations surrounding either the member state involved or the Commission (as I will also show in Chapter 6 of this dissertation). In terms of accession, the strong compliance record by new EU member states might be the result from the institutional structure of EU state aid control which is enforced to these countries by the Commission from early on (Blauberger 2009; 2011). The strong state aid control by the Commission to these member states is what ensures high levels of compliance, which is why new member states did not have many cases labelled as “unlawful with recovery of aid” (UWRA).

Regarding the supranational approach, the results showed that, overall, during the years 2000-2018, member states rarely appealed the Commission’s decision. However, it is important to note that, recently, POLITICO performed an analysis on the state aid cases that went to court in 2018. Their news article titled “Brussels loses one of its superpowers”<sup>3</sup> shows how EU courts have “shot down an unprecedented number of decisions on state aid” (Larger 2019). POLITICO’s study indicates that the Commission has lost 17 out of 41 state aid cases in court since November 2018. The article suggests that decisions taken by the Commission in relation to state aid during Juncker’s mandate might have been politically motivated. Most of the state aid cases that end up in court relate to policies that were steered with Juncker’s mandate: energy union, banking union and fight against tax avoidance. Therefore, the CJEU may be trying to create some level of resistance towards the politicisation of state aid cases by going against the Commission’s decision (Larger 2019). Others suggest that the EU courts are trying to “up their game” in regards to state aid and be more thorough when reviewing these cases (Lamadrid in Larger 2019). Nevertheless, in the future, member states might be more prone to appeal the Commission’s decision if it appears that they might have a higher chance of winning the court case. That is, while the supranational approach seems to have been confirmed (in terms of member states not appealing the Commission’s decision very often), this may not hold true in the future as member states start to win more appeals in court.

Supranational theorists such as Le Galès (2001) believe that the functioning of state aid policies tend to exacerbate an institutionalised system of rules where the Commission always holds the upper hand. However, there may soon be a power shift where member states are not only more likely to appeal more often but also to delegitimise the Commission in public while doing so. This could create a further crisis in legitimacy for the Commission. Indeed, state aid was created under a transfer of authority, which occurs from the member states to the Commission. In this transfer of power, member states should obey the state aid rules to which



they committed in the first place. In the future, member states might become more eager and willing to question the Commission's decisions and overall legitimacy. Specifically, when a member state appeals the Commission's decision, this is usually paired with delegitimations towards the Commission (as I will later show in Chapters 6 and 7 of this dissertation). As such, if appeals occur more frequently, state aid cases are more likely to become more politicised and in turn the Commission might become delegitimised more often as predicted by authors such as Majone (1998; 2014) or Moravcsik (2006; 2018).

#### **4.9 Conclusion**

This chapter has provided an overview of state aid within the context of the EU. It also revealed the countries that tend to give the most aid to companies and corporations as well as the prevalence of "unlawful" aid in these countries. The analysis was performed on all cases that were labelled "negative decision with recovery of aid" (UWRA) from the 1<sup>st</sup> January 2000 to 1<sup>st</sup> January 2018 in all 28 member states (prior to Brexit). The results show that Germany has the most unlawful aid with 56 state aid cases, this is followed by Italy with 53 cases and Spain with 33 cases. France had a total of 25 unlawful state aid cases and Greece 19 cases. Italy, Spain, and France also had the most cases that were sent to court due to non-compliance. Moreover, countries that have joined the EU in the last two waves of enlargement (2004 and 2013) have almost no cases (1 or less than 1 case per member state). These results go in line with Blauburger's (2009) study which suggests that candidate countries to the EU follow strict state aid policies and rules before accession. The corporations and countries that tend to appeal the Commission's decisions the most are Germany, Italy, Spain, Greece and France. However, the percentage of cases that were appealed only by member states shows a slightly different picture; Germany has appealed only 18% of the time, Italy 11%, Greece 21%, France 24% and Spain 18%. The countries (Slovenia and Luxembourg) where the percentage was high was because they had a low total amount of cases (1 or 2) and the same amount of appeals. This means that member states do not tend to get involved in appealing state aid cases labelled "negative recovery of aid" very often. This might be due to the fact that the CJEU often rules in favour of the European Commission. On top of this, member states are more likely to be involved in an appeal if there is some form of political gain or policy goal. This is because the government sometimes can utilise the aid given to a certain sector or corporation in order to retain its position of power or to further its economy. If the member state believes that the Commission's decision may affect the member states' sovereignty and/or economy, then it is

likely that they will appeal the decision. The government is also more likely to make negative claims towards the Commission in order to gain support for the appeal (as I will later show in chapters 6 and 7 of this thesis).

The industries more likely to be appealed are transport, telecommunications, postal service and food services. The types of “unlawful” aid that are the most common were also discussed and it was shown that tax exemptions made to multinationals are the cases that seem to be contested by both corporations and member states. Specifically US multinationals are likely to become highly salient in the media given the high profile of these multinationals as well as the fact that they have been appealed by both member states and corporations as I will show in Chapter 5 of this dissertation.

The supranational perspective suggests that the Commission tends to hold the upper hand and this might affect the behaviour of member states. This was tested by examining the ratio of appealed cases to overall cases labelled UWRA. This analysis largely confirmed the prediction of the supranational perspective, with very few cases appealed, however studies on recent state aid cases (post 2018), suggest that more cases are being referred to court and the court is ruling against the Commission more often (e.g. the Commission has lost 17 out of 41 state aid cases in court since November 2018; see Larger 2019). Consistent with the “power politics” perspective, it seems that more powerful EU countries (based on population size and GDP) not only have more unlawful cases, but are less afraid to question the Commission’s decision. Cases with negative decisions, where the member states do not comply, tend to lead to conflict with the Commission and, consequently, to a possible “politicisation of the case” (Finke 2020, p. 483). This politicisation can “convince prospective beneficiaries of state aid that repeal is the only alternative” (Finke 2020, p. 483). As such, state aid cases can affect the EU’s legitimacy if national governments choose conflict over compliance (Finke 2020). If this is the case, then we can expect that appealed cases may lead to increased news coverage. This will be explicitly examined in the next chapter of this thesis using a media analysis of the 266 state aid cases. Thus, the next chapter uses the information gathered from this chapter to understand whether appealed cases tend to gain more media coverage as well as what other factors might trigger media coverage.

## Chapter 5: Study on the News coverage of Unlawful State Aid Cases

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### 5.1 Introduction

Member states who choose conflict over compliance might affect the EU's legitimacy (Finke 2020). In this sense, appealed cases may lead to increased media coverage and a possible differentiation in how actors can attempt to politicise, or depoliticise, a particular state aid case. Therefore, this chapter will focus on how the appeal can lead to conflict and, thus, to more media attention by examining 266 UWRA state aid cases in national news media sources. So far, the previous chapter identified the member states with the largest number of cases labelled "negative with decision of recovery" (UWRA) from 2000-2018. The two member states with the most UWRA cases and appeals were Germany and Italy. Moreover, countries that joined the EU in the last two waves of enlargement (2004 and 2013) had almost no cases (1 or less than 1 case per member state) in the UWRA analysis. This suggests that candidate countries to the EU tend to follow strict state aid policies and rules before, during and, possibly, after accession (as shown in the results of Chapter 4).

Finally, Germany, Italy and Spain had the most appeals (or contestations) against the European Commission's decision. The percentage of cases that were appealed was low for all countries which means that member states do not tend to get involved in appealing state aid cases labelled "negative recovery of aid" very often. This, I argue supports supranationalist theories on state aid, which suggest that member states are less likely to engage in conflict with the Commission as the CJEU often rules in its favour. At the same time, these few appealed cases are very important and deeply implicated in processes of legitimation/delegitimation as they are more likely to become subject to politicisation/depoliticisation during the conflict. As we will see in this chapter, contestations such as appealing a Commission's decision or referring a case to court due to non-compliance can impact news coverage and, as I will demonstrate in Chapter 6, this can influence how different claims are made regarding the different actors involved in the politicisation of a state aid case. When a case is contested by the member state, different actors seek to legitimise or delegitimise the actions of the Commission, the member states or the corporations involved in the conflict, which is the focus of this dissertation. Overall, this chapter examines the same state aid cases analysed in Chapter 4 in a detailed manner to determine which of these received the most media attention. This step is important because the media is the medium through which I will analyse the claims that are

key to answering the main research question of this dissertation. The analysis of this chapter also serves as a case selection process for the claims-making analyses, which will be conducted in Chapters 7 and 8.

In this chapter, I will first explore the potential triggers for media coverage. There is an increasing number of newswire journalists based in Brussels who have a large impact on the content of the news cycles in national contexts (Baisnée 2004 in Bijsmans and Altides 2007). Thus, I expect that newswire services will influence how national news outlets cover state aid cases. Also, studies on what triggers news attention suggest that conflict and disagreement are likely to increase the amount of EU news coverage (Peter and de Vreese 2004). For the analysis of this chapter, this means that media coverage is more likely to occur when a state aid case is appealed by either the member state, or the corporation involved. After outlining the hypotheses, this chapter explains the negative binomial regression analysis that will be used to analyse the impact of news coverage on state aid cases. The results are then presented, which indicate that newswires and contestations, such as appeals or referral to courts due to non-compliance, are likely to affect news coverage (even when controlling for GDP per capita, accession date, region and varieties of capitalism). Based on these results, two state aid cases are selected for the claims-making analysis in Chapters 6 and 7 in order to answer the main research question of this dissertation: How do actors attempt to politicise and depoliticise state aid cases and, in so doing, legitimise or delegitimise MLG structures such as the EU through the claims they make?

## **5.2 Media Coverage of the EU**

Early studies on the media coverage of EU news affairs showed that the polity and its policies previously received moderate news attention (Kantner 2003; Schlesinger and Doyle 1995). For example, a study by de Vreese (2001) shows that, by that point in time, news in Britain, Denmark and the Netherlands regarding the EU was cyclical and the visibility of the EU primarily occurred when the following three events took place: 1) the first introduction of the Euro in January 1999, 2) the European parliamentary elections in 1999 and 3) the December 2000 Nice summit. De Vreese (2001) showed that news attention towards the EU was moderate in the sense that the EU peaked during the above mentioned events but was hardly visible before or after these events occurred. Similarly, studies by Machill et al. (2006, 76) suggest that EU discussions in the media focus around specific events. This is also consistent with Boomgaarden et al. (2010) who found that the EU is more likely to receive news attention

around European parliamentary elections. Thus, if we translate these studies to state aid policy, this indicates that specific points in time, such as the notification or decision date, are more likely to trigger news attention.

In addition, there is an increasing number of newswire journalists based in Brussels who, it has been suggested, have a large impact on the content of the news cycles in national contexts (Baisnée 2004). Thus, newswire services are likely to strongly influence the national news coverage regarding state aid. Based on the studies by Baisnée (2004), Bijsmans and Altides (2007), Munjal et al. (2014) and Tworek (2015), I hypothesise that:

H1. A case is more likely to gain news attention at the national level if the story is covered in newswire services.

We might expect global newswire services such as Reuters, Bloomberg or the Financial Times to play this role because they now have full time Brussels correspondents. Currently, over 1,000 journalists are permanently stationed in Brussels and they serve hundreds of different media outlets (news agencies, websites, television broadcasters, radio stations and newspapers) both for other member states and countries outside of the EU (Ab Algo 2019). After one of the 1987 enlargement waves, the number of EU accredited journalists increased from 259 to 480. In 1991, this number increased again to 520 and, in 2005, the number peaked at 1031 EU focused journalists (Ab Algo 2019). Previous studies have shown that these journalists can influence national news outlets (see Munjal et al. 2014; Tworek 2015). The current research advances the literature by examining how this phenomenon occurs with a specific policy: state aid. Indeed, analysing whether news sources in Brussels impact the propensity for national news media to cover state aid cases is a novel approach to the literature on state aid, which is predominately based on the policy and legal aspects (e.g Hoffmann and Micheau 2016; Cini and McGowan 2009).

### *5.2.1 Appeals and their Possible Influence on News Coverage*

Several scholars have emphasised the impact of the media, public debates and overall communication avenues on the legitimacy of the EU (Meyer 1999; Risse-Kappen et al. 1999) and others have used analysis of media and news coverage<sup>71</sup> to determine how the media affects

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<sup>71</sup> This thesis uses the definition of Peter and de Vreese (2004) of coverage of the EU, which “addresses EU politics, EU institutions and politicians, or events at the EU level” (2004, p. 5).

parliamentary questions (Siune and Blumler 1984; Kevin 2001) or referendums (Siune et al. 1994). So far, the literature has suggested that policy issues are more likely to be covered if there is conflict associated with the topic. This is confirmed by past studies on the role of conflict in news coverage (Galtung and Ruge 1965; Milioni et al. 2015) and, specifically, in the context of the EU (de Vreese 2001; Peter and de Vreese 2004; Peter et al. 2005; Boomgaarden et al. 2013; Lloyd and Marconi 2014). While these studies tend to focus on broader EU issues such as parliamentary elections, little to no emphasis has been paid to news coverage of state aid cases and this represents the main contribution of this chapter. No other study has looked at which possible factors impact UWRA news coverage and thus, the study of this chapter represents a novel contribution to not only state aid literature but also to studies on news coverage of EU issues in general.

Past studies on EU news coverage show how “conflict and disagreement may be assumed to increase the amount of European election coverage” (de Vreese and Peter 2004, p. 7). More broadly speaking, scandals (and conflicts) have played a key role in politics and in shaping public debate and political culture (Thompson 2013). This not only applies to election coverage, but also in general: if European elites disagree about certain EU issues (and conflict is created), this is also likely to gain media attention. For example, in state aid policy, if the member state or corporation involved are not satisfied with the Commission’s decision, they can threaten to appeal the decision. This appeal can be classified as a form of contestation, which the media is likely to cover. Moreover, the media can focus on specific “justifications” by the member state as to why it contests a specific state aid decision (e.g. the state aid decision goes against the member states’ sovereignty). Therefore, the justifications as to why the member state decides to appeal a decision can be associated with an attempt to delegitimise the Commission’s functioning. For example, if the member states justify their action to appeal by stating that the Commission’s decision is made for “political purposes”, this would suggest that the Commission made the decision not because it was the “appropriate” or the correct (lawful) decision but, rather, because the Commission could make an example of the state aid decision to others. As I will show in Chapter 6, this occurred in the Apple state aid case as several actors from the Irish government believed that the Commission made a political move rather than a legitimate one.

As such, each of the processes relating to the communication of state aid can become triggers to its politicisation. This includes if the case is appealed by the member state or corporation involved or if the case is referred to court due to non-compliance. In this way, the

appeal and referral to courts are seen as a proxy for conflict as they indicate the presence of said conflict. That is, appeals or referrals to court for non-compliance reflect instances when member states go against the Commission's decision. Therefore:

H2. A case is more likely to gain media attention if an appeal or referral to court (state aid conflict) is involved.

Overall, appeals are likely to indicate the presence of conflict as the member state is defiant of the Commission's ruling. Similarly, cases referred to court due to non-compliance can also indicate that a form of conflict and/or disagreement between the member state and the European Commission is occurring. Moreover, both of these instances can further exacerbate existing tensions between the member state and the Commission. When member states decide to not comply or appeal the Commission's decision this can be taken as a sign of disagreement between the two parties. Thus, when a contestation or an appeal occurs, some form of conflict likely already exists. If member states do not comply, the Commission can threaten to take the member state to court to recover the amount that it is owed by the corporation. Also, if the case goes to court, this can serve as a way for different actors to justify their actions. Indeed, international courts "offer a way for states to frame settlements to appeal to domestic audiences" (Fang 2008 in Davis and Morse 2018, 3). Overall, contesting the EU by either appealing or not complying with state aid rules are both likely to be triggers for the possible politicisation of a case that follows "identitarian" patterns, which might result in large portions of the actors involved in the conflict delegitimising the EU. The appeal represents the first step in contesting the EU's ruling and powers and thus can lead to justifications for going against the Commission. In this way, member states can legitimise their actions while at the same time delegitimising the Commission's decision which they see as either wrong (and therefore they are appealing it) or as not being relevant enough to apply its rule (and therefore not complying with it). At the same time, there is also the possibility that state aid cases become publicly politicised without an appeal or referral to court. However, in these instances the politicisation might be due to internal issues where the Commission is not the actor that becomes the subject of the delegitimisations. Rather, the member state or corporation involved might be subject to an internal conflict where the state aid case is taking place.

### **5.3 Rationale behind analysing State Aid methods in the media**

As described in Chapter 3, all state aid cases were gathered from the DG- Competition's website from January 2000-2018 and were downloaded to an excel spreadsheet. Then, a Factiva

search was performed for the analysis of this chapter to determine which state aid cases received more media coverage. To recapitulate, the period during which ... for collecting news sources was from the “notification date” to six months after the “decision date” for all the state aid cases. The “notification date” is the day that the Commission notifies the member state that it is opening a procedure to investigate whether or not state aid is taking place in the chosen member state. The “decision date” is the day the Commission makes a final decision on whether the case constitutes illegal aid. The aim is to first understand the general trends in news coverage for the 266 state aid cases. This will provide the reader with an overview of the member states that are more likely to cover the news on state aid as well as the cases that gained more news coverage both at the national and newswire level.

A negative binomial regression was performed for this chapter to understand which of the previously stated variables (e.g. appeals, newswire coverage) have a stronger effect on national news coverage. The dependent variable showed little to no news coverage (shown in Figures 5.9 and 5.10), which represented an issue for the overdispersion of the variable. Thus, as explained in Chapter 3, this type of regression was used as negative binomial models count variables with excess in zeros and over-dispersed count outcome variables (Keneshloo et al. 2016) which is the case for the national news media data analysed in this chapter (as I will show in section 5.5).<sup>72</sup> Thus, this type of regression was performed to account for the skewed data, the large quantity of zeros and the distribution, which decreases as the number of news articles increase (see Hilbe 2011; Lawless 1987; Keneshloo et al. 2016). This type of regression was chosen over others (e.g. Poisson) as the dependent variable (news coverage) is over dispersed.

For the negative binomial regression, three models were used, two of which control for GDP per capita, region and Varieties of Capitalism (VoC). These are the same variables used in Chapter 4 as independent variables but, in this chapter, they serve as controls. To recapitulate, the “region” variable is divided into: Northern European Countries (Denmark, Finland and Sweden), Southern European Countries (Cyprus, Greece, Italy, Spain, Malta, Portugal, Slovenia and Croatia), Eastern European Countries (Estonia, Latvia and Lithuania), Centre (Bulgaria, Hungary, Poland, Romania, Slovakia and Czech Republic) and, finally, Western European Countries (Austria, Belgium, France, Germany, Ireland, Luxembourg, Netherlands and United Kingdom).

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<sup>72</sup> See <https://www.mathematica-journal.com/2013/06/27/negative-binomial-regression/>



As explained in Chapter 4, the VoC original proposal from Hall and Soskice (2001) distinguished between two types of economies: the liberal market economies (LME) and the coordinated market economies (CME). However, for the analysis conducted in Chapter 4 and in this chapter, I have used Amable and Lung's (2008) and Pinto, Healy and Cruz's (2019) categorization of VoC. Following these studies, the variables of VoC are divided into (1) Continental European capitalism (CEC), which includes Austria, Belgium, Czech Republic, France, Germany, Luxembourg, Switzerland and Netherlands; (2) Liberal market economies (LME) comprised of United Kingdom and Ireland; (3) Social democrat economies (SDE), including Denmark, Finland and Sweden; (4) Mediterranean capitalism (MED), comprising Portugal, Greece, Italy, Spain, Malta, Croatia and Cyprus; and (5) Eastern and Central Europe capitalism (EAST), which includes Bulgaria, Hungary, Poland, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia.

#### **5.4 Results I: General trends on news coverage of State Aid Cases**

The first part of the results shows the descriptive figures and overall trends for the countries that are most likely to cover state aid cases, as well as the types of cases and schemes that receive the most news hits. This section also specifies the particular cases and industries that have gained the most amount of news attention. The results presented here aim to build a general perspective of how state aid cases are covered across different member states before testing H1 and H2 in section 5.5 of this chapter.

First, I will show the general peaks in news coverage for state aid cases for the period of interest and, then, I will interrogate what these general peaks might imply. Figure 5.1 shows that from 2000 until the end of 2017, the year with the most amount of news coverage is 2015. The figure shows the number of coverage per year with the total number of member states. The total number of member states by year is divided in different colours: blue, orange, grey and yellow. Each colour signifies when new member states joined the EU (2004, 2007 and 2013). This was done with the intention of observing whether accession date impacts the news coverage. The figure shows that there was a peak in news coverage in 2017 and that there is a general long term upward trajectory over the years. More specifically, in the early 2000's (2000-2004) there were less than 500 articles written regarding state aid cases each year. After, we see an increase in coverage of state aid cases in 2008 and then the number declines in 2009 and reaches a new low in 2010. Since 2010, the number of hits has been increasing. During this period, peaks have occurred in 2015 and 2017, which is during Margarethe Vestager's time

as DG-Competition Commissioner and Juncker’s mandate as President of the European Commission (more on this in the discussion section of this chapter).

*Figure 5.1 Peaks in News Coverage regarding State Aid Cases throughout the Years*

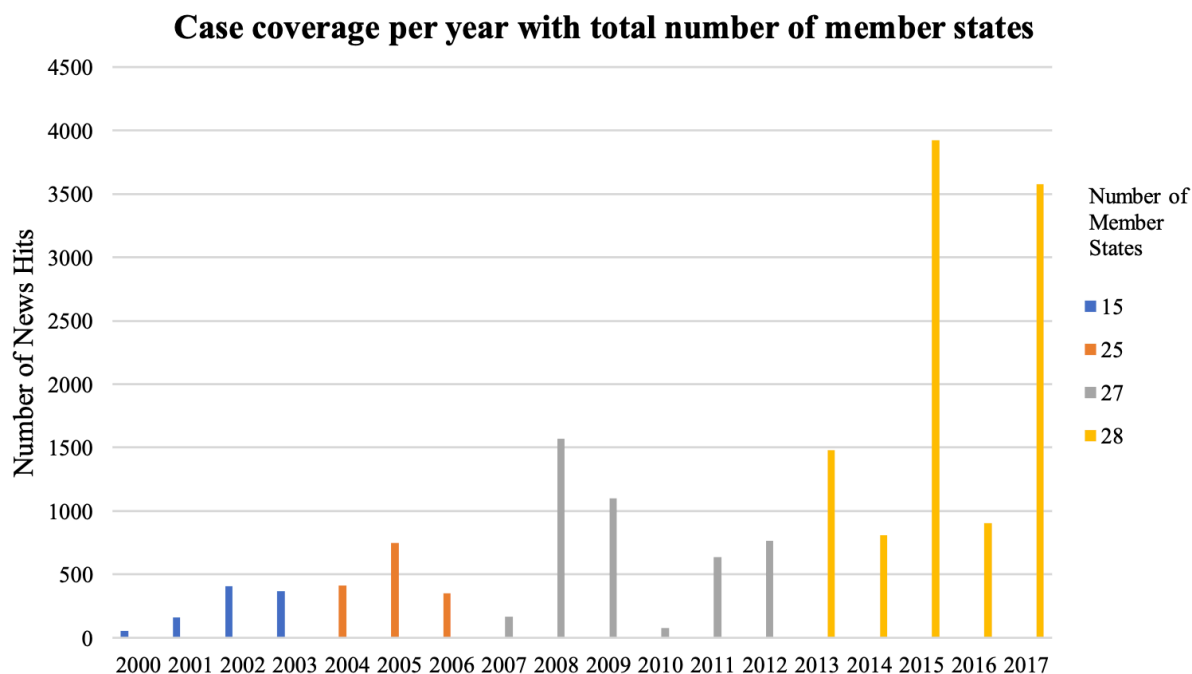


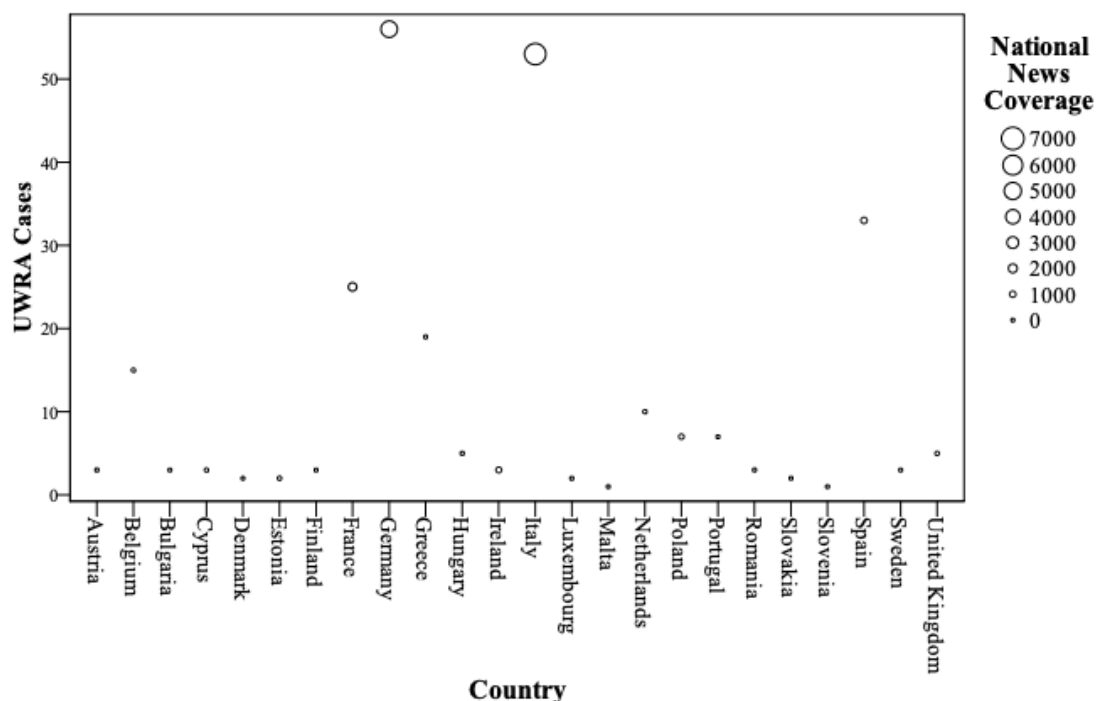
Figure 5.2 shows the member states with the most news coverage. Italy (6471 news hits) and Germany (4697 news hits) are the member states with the most amount of news coverage regarding state aid cases. This is consistent with the results from Chapter 4, which show that Germany (56 cases) and Italy (53 cases) had the most amount of state aid cases labelled “unlawful with recovery of aid”. These results are followed by France with 1851 news hits and Spain with 933 news hits in total. It is important to note that these are the results for the national news media that appears for each member state in Factiva. For newswire services, the results show similar trends. The member states with the least news coverage of state aid cases are Sweden (with 0 hits), Malta (1 hit), Finland (2 hits) and Denmark (7 hits). It is also important to note that all of these countries had less than 3 state aid cases labelled “negative decision with recovery of aid”.

Figure 5.2 News Coverage of State Aid Cases in EU Member States



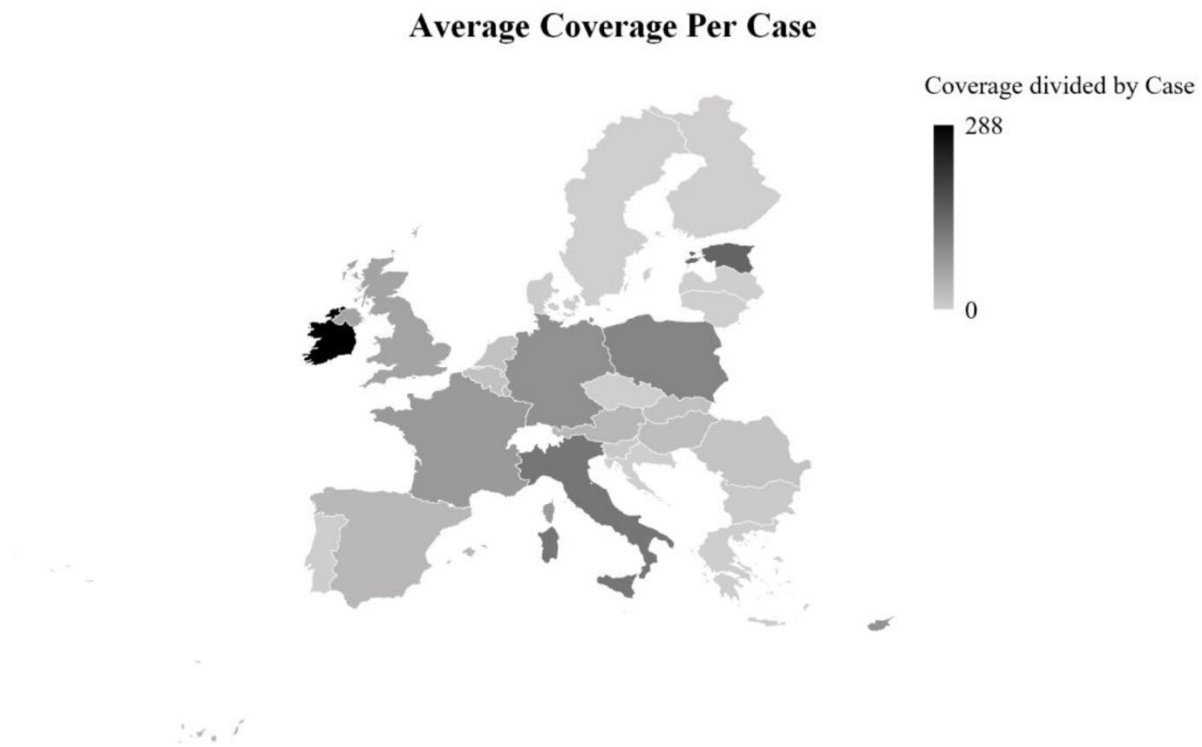
Figure 5.3 shows news coverage of state aid cases relative to the number of unlawful cases in each member state. The plot shows that Italy and Germany have more cases with more news coverage. It also shows that the majority of member states have few cases and, therefore, little news coverage. Figure 5.3 also illustrates that Ireland has few cases but gained a large amount of news coverage (i.e. Ireland had 3 cases and received 864 news hits).

Figure 5.3 News Coverage of State Aid Cases Relative to the Number of Cases Per Member State.



As we can see from Figure 5.3, it is necessary to divide the news coverage by the number of cases of each member state in order to have a more accurate depiction of which countries tend to cover state aid news. This is illustrated in Figure 5.4. Here, it is clear that the member state that obtained the most news coverage, when accounting for total amount of UWRA state aid cases, is Ireland (n=288). The second member state is Italy (n=124), which also had the state aid case with the most news (the Italian scheme on employment measures: SA.9398) in the whole dataset (more details on this case will be provided later in this section). After Italy, the member state with the most amount of news coverage when accounting for UWRA cases is Poland (n=102), followed by Germany (n=35), Cyprus (n=83), Spain and Austria (n=32 each).

Figure 5.4 News Coverage Divided by Case



*Italian Scheme on Employment Measures (Case: SA.9398)*

As previously mentioned, the Italian scheme on employment measures (case: SA.9398) received the most media coverage (see Figure 5.5). This case alone received 1071 news hits in the period covered (notification date - 6 months after decision date) and was referred to court due to non-compliance by the member state as well as appealed by the Italian government. The case has been open since the 28<sup>th</sup> of October 1997. The last decision made on the case was the 15<sup>th</sup> of February 2019. The case has therefore been open for almost 20 years, which explains the large amount of news coverage. The “employment measure” aid by the Italian government seeks to provide training and work experience for unemployed individuals up to the age of 29. The aid granted was to incentivise employment and it was paid in the form of tax relief for businesses.

### *EGG Surcharge in Germany (Case: SA.46526)*

The second most covered case is the EGG surcharge in Germany. The renewable surcharge gives money to provide for wind, solar and biomass electricity.<sup>73</sup> In 2013, several complaints were submitted to the European Commission who then decided to open an investigation into the EGG surcharge exemptions for energy intensive companies. The goal of the EEG is to allow industries in Germany to transition to renewable energy. Throughout the years, the EGG has undergone major reforms and adopted new legislations. However, these legislations may limit the renewable capacity that can be built each year. In turn, the EGG has been faced with scepticism from climate activities as well as renewable lobby and citizens' energy groups who believe that the EGG may cause Germany to miss its climate targets and "betray the collective spirit of Energiewende in an effort to appease big business."<sup>74</sup> Moreover, the Court of the European Union (EGC) in Luxembourg dismissed a lawsuit brought by the German Government against the EU Commission.<sup>75</sup> After this decision, the federal government decided to appeal again and also sued the European Court of Justice. The appeals by the German government generated news attention, which mostly related to whether the EGC should be classified as state aid. As such, the case gained major news traction over the years. More recently in 2019, the ECJ sided with Germany and overturned the General Court's judgment.<sup>76</sup>

### *Ilva (Case: SA.38613)*

The third most covered case is an Italian company called Ilva, which is the largest steel output producer in Europe. The company was in bankruptcy and therefore, the Italian government gave large amounts of aid to Ilva in order to keep the corporation afloat. The company has also been accused of releasing toxic emissions that generated an increase in local cancer rates. This, coupled with the company being the largest employment provider in the region, has made the state aid case highly popular in the media. One of the main issues covered

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<sup>73</sup> For more information visit <https://www.bmwi.de/Redaktion/EN/Artikel/Energy/electricity-price-components-state-imposed.html>

<sup>74</sup> See: <https://www.cleanenergywire.org/dossiers/reform-renewable-energy-act>

<sup>75</sup> Ibid.

<sup>76</sup> See <https://www.globalelr.com/2019/04/2012-german-law-on-renewable-energy-does-not-constitute-state-aid/>

in the media was the conflict between different actors in Italy who were unsure how Italy could have provided a large amount of aid (over 2 billion euros) to the corporation.

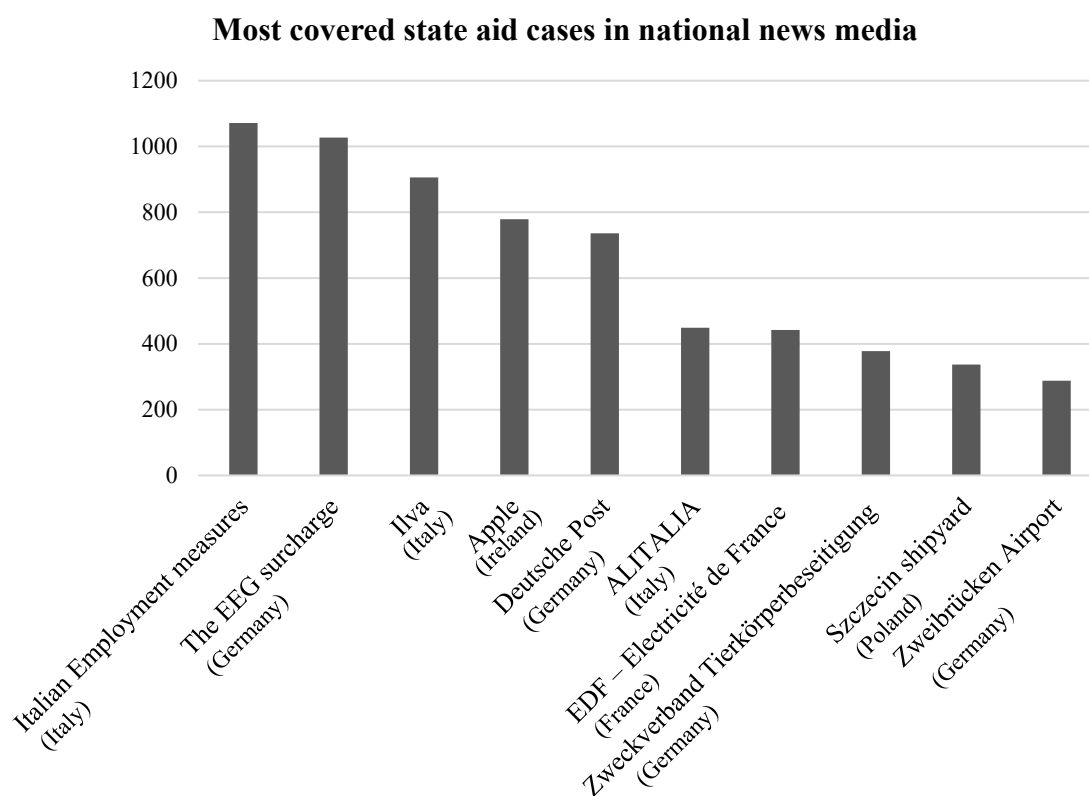
*Apple (Case: SA. 38373)*

The 4<sup>th</sup> largest case is the Apple state aid case. The case gained national and international attention due to Apple owing 13 billion euros to the Irish government, according to the European Commission. The vast amount of euros at stake made the case extremely appealing to journalists. Indeed, the case has the largest amount of hits among newswires (see Figure 5.6) and a large amount of coverage in the USA (see Figure 5.7). Apple is one of the most popular US companies around the globe and, coupled with the large sum of money, this made the case open to debate by parliamentarians in Ireland as well as the US senate. Moreover, the case was filled with accusations from different actors, including President Trump, who referred to DG-Competition Commissioner Vestager as “the tax lady who hates the US”.<sup>77</sup> After Apple, the next most covered state aid case is the Deutsche Post, followed by Alitalia, EDF (French electric utility company) and Zweckverband Tierkörperbeseitigung (the German association for disposal of dead animal bodies). The last two companies in the top 10 most covered state aid cases are the Szczecin shipyard in Poland and the Zweibrücken Airport in Germany.

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<sup>77</sup> See Trump’s quote available at: <https://www.politico.eu/article/eu-court-annuls-e13b-irish-tax-bill-for-apple/>

Figure 5.5 Most Covered State Aid Cases in National News Media



#### *Newswire media*

In terms of newswire media, we have some cases which are similar to those at the national media (Apple, Deutsche Post, ALITALIA, EDF). Figure 5.6 shows the cases which tended to be covered the most in newswire media. Deutsche Post and Apple both have the most amount of coverage among newswire services.

As previously stated, Apple is one of the largest and most famous US multinationals in the world, which also explains why it would be covered in newswire media. A brief overview on how the case was covered in newswire media tends to emphasize actors from Apple and their reasons for disputing the Commission’s decision. Claims made by Apple’s lawyer Daniel Beard stated that: “The Commission went out of its way to tell a fairy story about supposed benefits to employment. It has no evidence, it is wrong. There was no sense of any special deal. Ireland properly and correctly taxed the Irish branches. There was no derogation from the



normal rules”<sup>78</sup>. In general, newswire services seem to put strong emphasis on the appeal made by both the Irish government and Apple, and continue to emphasize the large amount of money that Apple has to pay (13 billion euros).<sup>79</sup>

*Deutsche Post (Case SA.17653)*

Meanwhile, Deutsche Post was also required to return a large amount of money (572 millions of euros). The Commission first ordered the recovery of the money in 2002 and argued that the German government overcompensated Deutsche post for losses between 1990 and 1995. The Commission claimed that this aid was used to cut out other rival parcel and post-delivery firms.<sup>80</sup> The case was then appealed by Deutsche Post and gained traction due to the amount of aid that needed to be recovered. In 2010, the ECJ ruled that the Commission’s decision was invalid and that Germany did not have to recover the large sum of money from Deutsche Post. Then, in 2012, Deutsche Post had another case labelled UWRA by the European Commission. This time, the Commission ruled that Germany granted Deutsche Post a combination of high regulated prices as well as pension subsidies, which in turn created an undue advantage over competitors.<sup>81</sup> Deutsche Post responded to the accusations by rejecting the repayment demands and announcing that it would appeal the decision to the ECJ.<sup>82</sup> Deutsche Post CEO, Frank Appel, stated that the Commission ruling was “incomprehensible and has no basis in fact” and that the decision was “inappropriate and that the Commission had applied a double standard to the postal company”. Together, these factors made the case highly appealing to both newswire and national media who covered the case extensively.

*ALITALIA (Case: SA.48171)*

After Deutsche Post, the most covered case in newswire service is the ALITALIA case. According to the Commission, ALITALIA benefited from 900 million euros of illegal loans

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<sup>78</sup> Daniel Beard’s claim available at: <https://www.reuters.com/article/us-eu-apple-stateaid/apple-spars-with-eu-as-14-billion-irish-tax-dispute-drags-on-idUSKBN1W31FE>

<sup>79</sup> See <https://uk.reuters.com/article/uk-eu-apple-taxavoidance-idUKKCN114201>

<sup>80</sup> See <https://www.politico.eu/article/court-backs-deutsche-post-in-state-aid-case/>

<sup>81</sup> “State aid: Commission refers Germany to Court for failure to recover incompatible aid from Deutsche Post” available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_13\\_1127](https://ec.europa.eu/commission/presscorner/detail/en/IP_13_1127)

<sup>82</sup> See <https://www.dw.com/en/brussels-demands-deutsche-post-repay-millions-in-illegal-state-aid/a-15689916>

from the Italian government.<sup>83</sup> After 2017, the Commission investigated two other loans totalling 1.3 billion euros. Over the last 12 years, there have been over 6 attempts to rescue the national airline carrier.<sup>84</sup> This also contributed to the company receiving a great deal of media attention throughout the years. ALITALIA's newswire coverage concentrated on whether indeed Italy "illegally bailed out ALITALIA" and newswires also emphasised other state aid investigations on airlines, such as Ryanair. A quick overview on Italian news articles shows that the national media tended to centre on ownership of the corporation. Similar to Ilva, the Italian news press seems to focus more on whether partially private or fully private ownership is better for the corporation.<sup>85</sup>

After ALITALIA, the next cases with the most coverage in newswire services are: Amazon, EDF, Ilva, the Brussels South Charleroi Airport and Ryanair. This illustrates that bigger corporations tend to be more covered among newswire services. Cases such as Amazon were not as popular among national news media but experienced high popularity among newswire services. This could be because newswire services are tailored towards an international audience and this audience is more likely to be interested in large multinationals like Amazon rather than in local corporations.

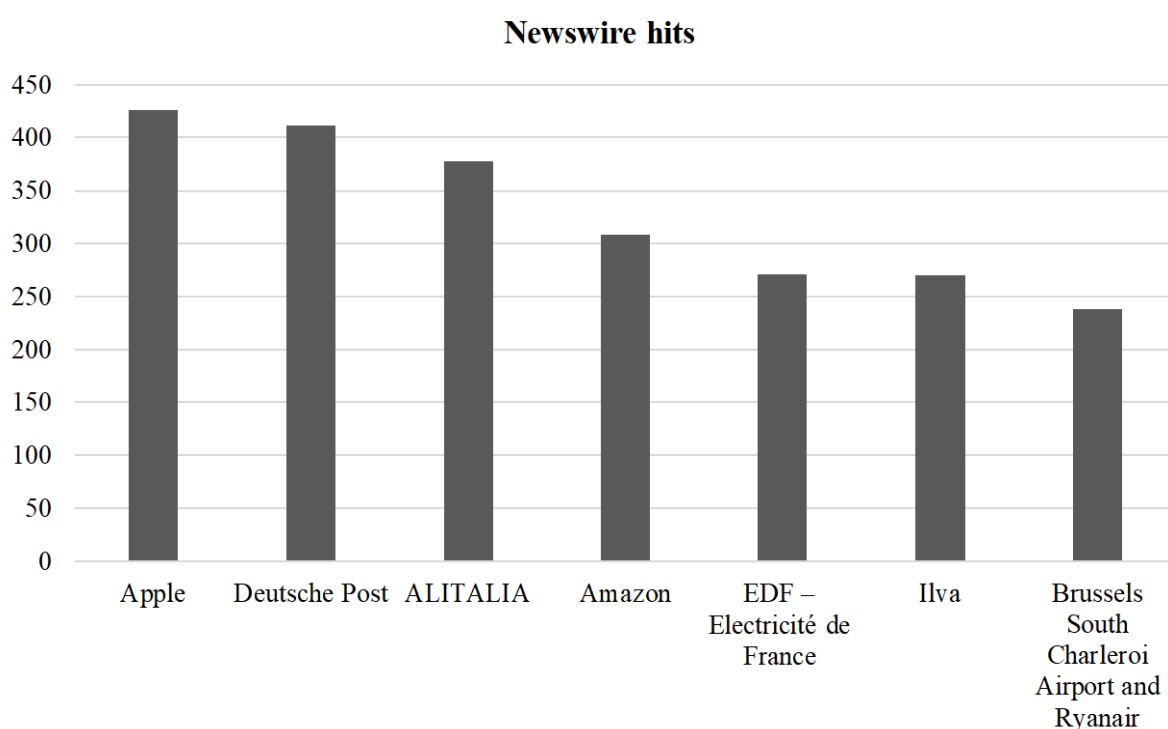
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<sup>83</sup> See <https://www.ft.com/content/8001912e-46f2-11e8-8ae9-4b5ddcca99b3>

<sup>84</sup> For more information see: <https://www.politico.eu/article/alitalia-airline-too-italian-to-fail/>

<sup>85</sup> See [https://www.repubblica.it/economia/2018/07/24/news/alitalia\\_via\\_libera\\_ue\\_alla\\_compagnia\\_di\\_stato-202545953/](https://www.repubblica.it/economia/2018/07/24/news/alitalia_via_libera_ue_alla_compagnia_di_stato-202545953/)

Figure 5.6 Newswire Hits



The analysis also revealed that three cases received significant media attention in the United States (US) (see figure 5.7).

*Apple (Case: SA. 38373)*

Once again, Apple was the state aid case that received the most amount of news coverage in the US. This likely occurred for several reasons. First, there was a large amount of money that had to be recovered (13 billion euros) and, second, Apple is one of the most recognised technological companies in the world. Indeed, Apple has topped Forbes’ annual “world’s most valuable brand” for the ninth time in a row<sup>86</sup>. Moreover, the case was also appealed by the US together with Apple and the Irish government. In the US, coverage of these state aid cases focused on senate investigations into Apple, which also reaffirmed their findings on Apple’s negotiations of a less than 1% tax rate.<sup>87</sup> In a statement, Senator Carl Levin, who investigated Apple for the Senate said: “Apple developed its crown jewels — lucrative

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<sup>86</sup> See <https://www.forbes.com/the-worlds-most-valuable-brands/#36f9e11d119c>

<sup>87</sup> See <https://www.nytimes.com/2014/10/01/business/international/european-commission-report-warns-ireland-over-tax-treatment-of-apple.html>

intellectual property — in the United States, used a tax loophole to shift the profits generated by that valuable property offshore to avoid paying U.S. taxes, then boosted its profits through a sweetheart deal with the Irish government.<sup>88</sup> More recently, the European Court overruled the 2016 Apple state aid decision. This has been mentioned widely both in European and US media as it represents a blow to the Commission’s rulings on state aid decision who, for years, has been taking aggressive actions against the world’s largest technological corporations.<sup>89</sup>

*Amazon (Case: SA. 38944)*

The second case with the most amount of US news coverage was Amazon. The multinational was found to have been given unlawful aid by Luxembourg in October 2017. The decision was appealed by Amazon. During the public battle, representatives of Amazon claimed that the Commission “ignored crucial evidence and acted both carelessly and zealously vis-à-vis Amazon’s tax arrangements with Luxembourg’s government”.<sup>90</sup> Amazon’s lawyer Michel Petite also stated that the decision to find Amazon guilty shows how the Commission has “led it astray from its duty as an impartial regulator”.<sup>91</sup> Meanwhile, in the US, the company was also facing a tax bill<sup>92</sup> and several news media focused on the tax subsidies and benefits that Amazon was also experiencing in the US.<sup>93</sup>

*Starbucks (Case: SA.38374)*

In 2015, according to the European Commission, the Dutch government provided tax agreements to Starbucks that went against EU rules. This led to the Dutch government recovering 25.7 million euros from Starbucks. This decision was both appealed by the Netherlands and the US company. In 2019, the European General Court sided with Starbucks

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<sup>88</sup> Ibid.

<sup>89</sup> See <https://www.nytimes.com/2020/07/15/business/apple-eu-ireland-tax.html>

<sup>90</sup> See <https://taxlinked.net/blog/march-2020/amazon-eu-clash-over-luxembourg-state-aid-decision>

<sup>91</sup> Ibid.

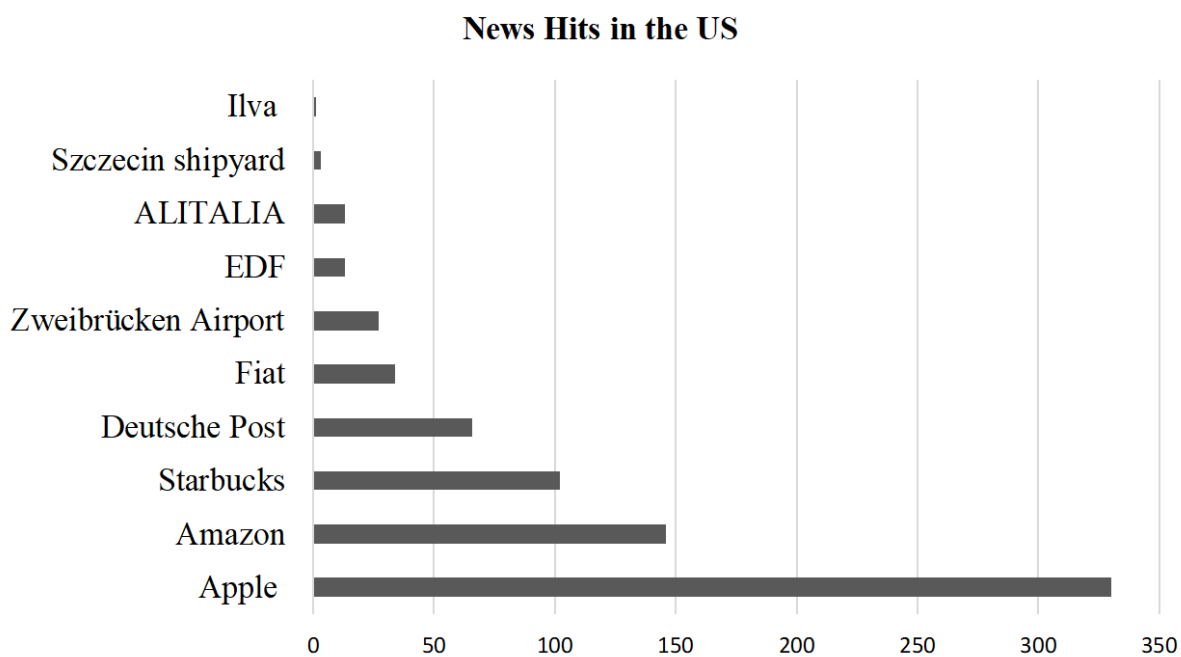
<sup>92</sup> See <https://www.ft.com/content/c3c63708-aa75-11e7-93c5-648314d2c72c>

<sup>93</sup> See <https://newrepublic.com/article/146540/amazon-thriving-thanks-taxpayer-dollars>

and the Dutch government stating that “the EU's executive commission "was unable to demonstrate the existence of an advantage in favour of Starbucks".<sup>94</sup>

All three of these cases (Apple, Starbucks and Amazon) involved American multinationals, which explains the heightened US media coverage. Moreover, because of these cases, President Trump mentioned Vestager in one of his speeches in June 2019: "You have a woman in Europe, I won't mention her name, she's actually considered to take Jean-Claude's place ... she hates the United States perhaps worse than any person I've ever met. What she does to our country. She's suing all our companies."<sup>95</sup> These remarks by Trump, and also the stand from the US government, meant that these cases gained increased attention in US media and, potentially, this may have further politicised US multinational state aid cases such as the Apple state aid case (as will be argued in Chapter 6 of this thesis).

*Figure 5.7 Media Coverage in the US*



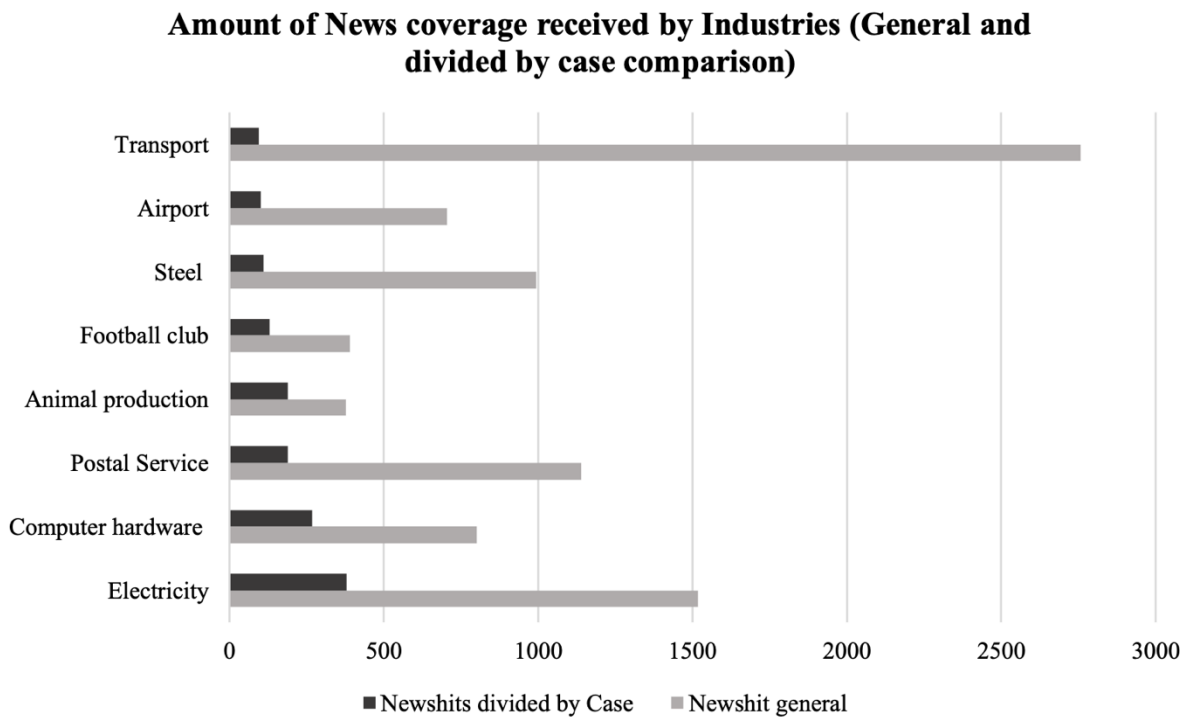
<sup>94</sup> See [https://www.business-standard.com/article/pti-stories/eu-court-dutch-tax-deal-with-starbucks-is-not-state-aid-119092400499\\_1.html](https://www.business-standard.com/article/pti-stories/eu-court-dutch-tax-deal-with-starbucks-is-not-state-aid-119092400499_1.html)

<sup>95</sup> See Trump's remarks regarding Vestager available at: <https://www.politico.eu/article/trump-europe-treats-us-worse-than-china/>

### *News Coverage of Industries*

Figure 5.8 shows the 8 industries with the most news hits, both with and without accounting for the total amount of UWRA state aid cases. The grey bar represents the total amount of news coverage in general, while the black bar represents the news coverage that industries received when accounting for UWRA cases. Inspection of this figure indicates that, before accounting for the total number of cases, the industry with the most news hits is the transport industry with 2758 articles written. This is also consistent with the findings reported in Chapter 4 showing that the transport industry had the most amount of cases labelled “unlawful with recovery of aid”. However, when the total amount of hits is divided by the total amount of cases, the industry most covered in the media is electricity (which ranked second place in general). Chapter 4 showed that this industry had very few cases labelled as “unlawful”. However, companies such as France’s EDF electric company gained large amounts of news coverage, which likely explains this result. We can also see that when accounting for the total amount of cases, computer hardware and postal services received more media coverage, including large cases such as Deutsche Post. Animal production and football clubs did not gain nearly as much news coverage in general but when accounting for total amount of cases we can also see that these cases became highly popular in the media. In terms of football clubs, state aid cases against Real Madrid (SA. 33754) and other Spanish football clubs (SA. 29769) also gained large amounts of attention both in Spain and internationally. Finally, the steel, airport and transport industries also gained news attention but not as much as electricity, computer hardware or postal services.

Figure 5.8 Industries with the Most Media Coverage



## 5.5 Results II: Regression Analysis

The aim of this section is to reveal potential triggers for news coverage of a state aid case by performing a regression analysis and test H1 and H2. To achieve this, I will first provide the reader with the distribution of news hits followed by a binomial negative regression.

Figures 5.9 and 5.10 show the frequency of “media hits” in both the national news sources and the newswires. Inspection of these figures reveals that most of the state aid cases did not gain media coverage, suggesting that news media do not pay attention to state aid cases unless these cases become appealed or referred to court. Therefore, when state aid cases make the news it is because there might be some form contestation involved (as will be shown with the results of Table 5.1). Both figures also show the skewed distribution of the data, which justifies the use of a negative binomial regression for the analysis of this data.

Figure 5.9 Frequencies from National News Sources

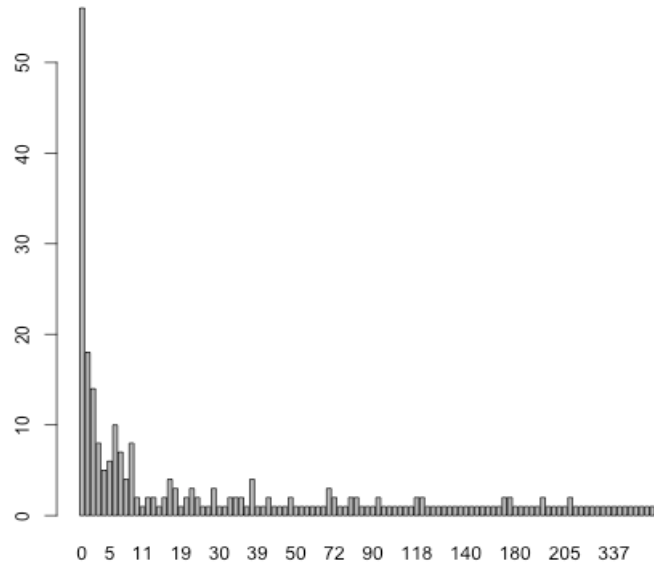
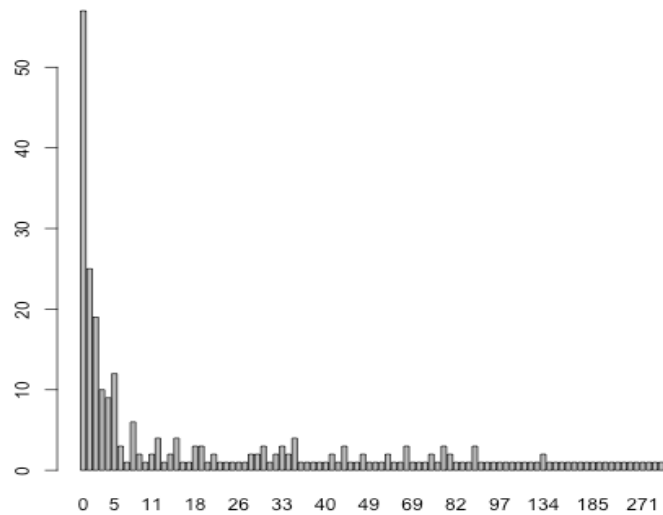


Figure 5.10 Frequencies from Newswire Sources





The frequency diagrams in Figures 5.9 and 5.10 show that most of the cases did not receive news coverage and therefore a negative binomial regression was conducted as the distribution of data was highly skewed. Table 5.1 shows the results for three models which account for potential triggers to news coverage of state aid cases. The first model accounts for the contestations (appeals) made by the member states, the corporations, the referrals to court, multinational involvement and newswire services. The second model and third model controls for accession date, GDP per capita, region of Europe (North, West, South and Centre) and Varieties of Capitalism [Continental European capitalism (CEC), Liberal market economies (LME), Social democrat economies (SDE), Mediterranean capitalism (MED) and Eastern and Central Europe capitalism (EAST)].

The three models have 266 observations. Given that several of the region variables and Varieties of Capitalism (VoC) were almost perfectly collinear (e.g. Southern member states with MED), I tested these variables in two separate models: model 2 includes the coded regional variables and model 3 has the VoC variables. The results in Table 5.1 suggest that, even after controlling for GDP per capita, Accession date, region and VoC, the number of appeals and newswires have a significant effect on news hits at the national level. More specifically, the variable of appeals has a coefficient of 0.77 in model 1, 0.71 in model 2 and 0.61 in model 3 (all three which are statistically significant). This means that for each one unit increase in appeals, the expected log count of the number of news hits in national news media increases by 0.77, 0.71 and 0.61 in each of the three models respectively. Meanwhile, the variable of newswire services has coefficient of 0.02 in all 3 models (also statistically significant) which suggest that the expected log count of the number of national news media hits increases by same rate (0.02) in all three models (even when accounting for other variables such as region or VoC).

Regarding the control variables, we can see that Accession date was significant in model 3 only. When accounting for VoC, the relationship is negative between accession date and national news coverage (beta= -0.02) which means that member states that joined the EU in the last waves of enlargement (post 2004) are less likely to cover state aid cases in national news coverage. This is understandable as member states which joined the EU in the last waves of enlargement also have less state aid cases (see findings in chapter 4 of this thesis). In terms of VoC variables, we can see that Northern member states and Social Democrat economies are missing from table 5.1, as both are considered to be reference categories in the negative binomial regression models 2 and 3. Thus, the variables that appear in the table on region and

VoC should be interpreted in reference to both of these variables (Northern and SDE countries). More specifically, the expected log count for Southern member states is 4.43 higher in news coverage than the expected log count for Northern countries. The log count for Western member states is 3.02 higher than the expected log count for Northern European countries. The log count for Central member states is 6.98 higher in comparison to the Northern European countries news coverage. Finally, Eastern member states have a log count of 6.19 higher than the news coverage of Northern European countries.

This indicates that all the described regions (South, West, Central and East) are more likely to cover state aid news than Northern EU countries. Similarly, in terms of VoC, Continental European capitalist the log count is 2.23 higher than Social Democrat economies (SDE). Eastern and Central European capitalist economies have a log count of 5.33 higher than SDE economies, while Liberal market economies have a 3.75 higher log count than SDE. Finally, Mediterranean capitalist economies have an expected log count of 3.44 higher in news coverage when compared to SDE economies.

An ANOVA was also conducted on the three negative binomial models. This analysis revealed a significant difference between model 1 and model 2 ( $p < 0.05$ ), indicating that Northern member states as a reference value has a significant effect on the model. A significant difference was also found between models 1 and 3 ( $p < 0.05$ ), which shows that SDE also has a significant effect on the model. Also, based on log likelihood/BIC number/AIC, model 3 fits the best in describing what causes news attention of the state aid cases.<sup>96</sup>

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<sup>96</sup> A chi-test was also conducted to determine if the deviances in each of the models are significantly lower than the null hypothesis. The tests were conducted using the three residual deviances of each of the 3 models (310.28, 307.89 and 307.83 respectively) and the null deviance for each model as well (510.14, 562.60 and 578.11 respectively). The chi-test also took into consideration the degrees of freedom for both the residual deviance (262, 256 and 256 respectively) and the null deviance (265 in each model). The test was performed by subtracting the null deviance minus the residual deviance and the degrees of freedom in null deviance minus the degrees of freedom in residual deviance. The result for the three models was significant, which demonstrates that the deviances of the independent models are significantly lower than null hypothesis values.

Table 5.1 Negative Binomial Regression Models

|  | Model 1        | Model 2        | Model 3         |
|--|----------------|----------------|-----------------|
| Intercept                                    | 2.17 (0.15)*** | 16.45 (14.42)  | 39.56 (15.15)** |
| General Appeals                              | 0.77 (0.19)*** | 0.71 (0.19)*** | 0.61 (0.18)***  |
| Multinational Involvement                    | -0.48 (0.39)   | -0.42 (0.38)   | -0.60 (0.38)    |
| Newswire Service                             | 0.02 (0.00)*** | 0.02 (0.00)*** | 0.02 (0.00)***  |
| Accession date                               |                | -0.01 (0.01)   | -0.02 (0.01)**  |
| GDP per capita                               |                | 0.00 (0.00)*** | 0.00 (0.00)***  |
| Southern member states                       |                | 4.43 (0.74)*** |                 |
| Western member states                        |                | 3.02 (0.70)*** |                 |
| Central member states                        |                | 6.98 (0.93)*** |                 |
| Eastern member states                        |                | 6.19 (1.32)*** |                 |
| Continental European Capitalism (CEC)        |                |                | 2.23 (0.71)**   |
| Eastern and Central Europe capitalism (EAST) |                |                | 5.33 (0.91)***  |
| Liberal market economies (LME)               |                |                | 3.75 (0.82)***  |
| Mediterranean capitalism (MED)               |                |                | 3.44 (0.75)***  |
| AIC  | 2259.99        | 2237.11        | 2229.39         |
| BIC  | 2277.91        | 2276.53        | 2268.81         |
| Log Likelihood                               | -1125.00       | -1107.56       | -1103.70        |
| Deviance                                     | 310.28         | 307.89         | 307.83          |
| Num. obs.                                    | 266            | 266            | 266             |

\*\*\*p < 0.001, \*\*p < 0.01, \*p < 0.05

#### Statistical models

Overall, the results in Table 5.1 confirm H1. The regression models show that newswire services positively affect state aid national news coverage. This positive relation shows that journalists indeed use newswire services as a source of information on state aid cases (as predicted by Baisnée 2004; Bijsmans and Altides 2007). Nonetheless, the effect is limited (beta = 0.02). Instead, the model suggests that other factors have a more meaningful explanatory power of state aid news hits. Particularly, general appeals has a significant and strong effect on news hit (beta= 0.77 in model 1, 0.71 in model 2 and 0.61 in model 3). This shows that there is a strong relationship between the appeals made by member states and corporations and the likelihood of media attention at the national level of news coverage.

## 5.6 Discussion: What news coverage means for the possible Politicisation of State Aid Cases

Based on the results for general trends (Figure 5.1), the rise in news coverage of state aid cases likely occurred for two reasons. First, Juncker's Commission became increasingly debated in the media, which could have been as a consequence of Jean-Claude Juncker wanting the European Commission to seem "more political" during his time as President of the

Commission (see Larger 2019). Second, during Vestager's time as Commissioner for Competition, she initiated her term by making 'transparency' one of the main goals. Indeed, as explained in Chapter 1, transparency provisions were introduced in 2014 and state aid decisions became available to the public in 2016.<sup>97</sup> During her first month in office, Vestager, together with the new DG-Competition, set a new approach for transparency.<sup>98</sup> This shift in enhanced transparency allowed for a complex and usually depoliticised policy, such as state aid, to become more likely to be picked by the media and debated by different non-EU actors. This is also the first step in state aid cases becoming publicly politicised, as transparency measures by the Commission allow state aid cases to enter the public domain.<sup>99</sup> This moves state aid to the political realm where different actors can debate the policy in public settings like the media. In this sense, transparency first allows an issue to be subject to gain news coverage and, then, to become potentially politicised. Thus, as shown in Figure 5.1, state aid cases have gained more news attention since the Juncker Commission, potentially as a direct consequence of transparency measures and making the Commission more political.

While most of the 266 state aid cases did not gain any notoriety in national news media, state aid cases may still become contested in both the public and private spheres. As previously discussed in the conceptual and theoretical chapters of this dissertation, media attention does not directly translate to politicisation of an issue. However, the public sphere is still a useful tool to evaluate politicisation. Public debates are, naturally, more visible in the public sphere and provide information about how people legitimise or delegitimise the EU. Public politicisation can also reveal how the EU is perceived to have or not democratic legitimacy. The results from chapter 4 show that most cases do not tend to be appealed by member states. This might be as EU courts have tended to side with the Commission in decisions on state aid prior to November 2018 (Larger 2019). However, when cases are contested (even if it is by the case being referred to court due to lack of compliance), they gain news attention. Therefore, contestations in the form of appeal or referral to court are the first step in cases becoming politicised.

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<sup>97</sup> See [https://ec.europa.eu/competition/state\\_aid/overview/transparency\\_and\\_evaluation.html](https://ec.europa.eu/competition/state_aid/overview/transparency_and_evaluation.html)

<sup>98</sup> Ibid.

<sup>99</sup> See the European Commission's transparency measures available at: [https://ec.europa.eu/competition/state\\_aid/overview/transparency\\_and\\_evaluation.html](https://ec.europa.eu/competition/state_aid/overview/transparency_and_evaluation.html)

The results also suggest that GDP per capita, region and VoC can affect news coverage. In the case of the regions and the VoC examined, all member states tended to have positive values and, therefore, have more news coverage when compared to Nordic or Social Democrat economies (SDE). That is, Nordic countries within the EU (e.g. Finland, Sweden and Denmark) tend to pay less attention to state aid news stories than other regions of Europe. This is perhaps a consequence of Nordic countries having fewer cases than other member states (e.g. Germany, Italy or France) and, therefore, the media puts less emphasis on state aid as they have fewer unlawful cases. This makes confrontation between Nordic countries and the Commission less likely.

State aid does not necessarily always follow the patterns of cultural or “identitarian” conflicts that are usually associated with the EU’s politicisation. Due to their nature, state aid cases (if they become politicised) can lead to salience of left-right wing cleavages and a more classical type of interest politics politicisation. When state aid cases do gain saliency and become politicised, they may lead to the empowerment of the EU and its functions. This, in turn, can create claims that seek further authority expansion from the EU, which might not follow the usual patterns of Euroscepticism that undermine the EU’s legitimacy. Even if state aid cases do not always become salient, if they do become politicised, this could have positive *or* negative effects on the Commission’s legitimacy. A positive effect is likely to occur under specific circumstances where the different actors delegitimise their own member state more than the EU (e.g. if the case is not appealed) (this will be further explored in the next chapter of this dissertation).

When state aid gains news attention, it has the potential to become subject to public politicisation as this type of policy is extremely supranational in nature. That is, the interaction between the European Commission and its member states in state aid cases exemplifies a supranational policy. This presses member states to defend or validate their actions and this is most commonly done by blaming or contesting the Commission through its discourse. Therefore, this makes the state aid cases that gain news coverage more prone to politicisation. Similarly, cases also have the potential to become politicised when they gain news attention due to appeals as this might impact the way in which actors delegitimise the Commission’s decision. Indeed, member states may wish to support a certain industry or corporation without having to comply with the restrictions imposed by the European Union. Member states may also verbalise this position through an appeal along with their public justifications when the

state aid case gains news attention. Next, I will select two state aid cases for the claims-making analysis in order to later assess how different actors politicised and depoliticised the cases.

### **5.7 Selection of State Aid Cases for the Claims-Making Analysis**

De Vreese (2011; 2004; 2013; 2005) and De Vreese and Boomgarden (2003; 2006; 2016) have extensively contributed to the literature on news coverage and its role in shaping the EU. Their analyses have shown that “the news media in this process is a conditional one” (de Vreese and Boomgarden 2016, p. 430). Citizens must be highly exposed to news coverage for them to be more susceptible to positive news about the European integration process. Moreover, EU media coverage peaks around the same time that summits with EU heads of governments take place (Peter and De Vreese 2004) and “higher levels of satisfaction with domestic democracy were associated with more visible and more prominent coverage of EU affairs” (Peter and De Vreese 2004, p. 16). These studies illustrate that the media can serve as a platform through which citizens learn about and understand EU issues, such as state aid. Overall, these studies show that levels of satisfaction with the EU depend on (1) how exposed citizens are to news about the EU and (2) how happy or unhappy citizens are with their domestic country. Thus, for this dissertation, cases are selected based on whether there is sufficient news coverage made in regards state aid cases. The news coverage may reveal how actors justify their actions as well as how the media is transmitting the different (de)legitimations to citizens, who can then make form opinions on whether they agree with the behaviour of their country and/or the Commission (or, more broadly, the EU) in relation to the case. This, in turn, can tells us more about whether or not the EU has lost some form of legitimacy when it comes to state aid.

The aim for this multiple case selection approach is to select two cases that illustrate how state aid can become subject to politicisation and depoliticisation in different ways. For this, I sought to identify and compare different typologies related to the same phenomena (politicisation and depoliticisation). A multiple case study reinforces and generalises the results and it also allows this dissertation to compare niche situations within the selected samples. Therefore, I selected cases according to their heterogeneity in terms of a priority variable: contestation. Contestation in state aid cases relate to appeals and referrals to court for non-compliance. The heterogeneity for this analysis stems from the quantitative analysis of this chapter that identified the state aid cases to investigate. Therefore, from a theoretical perspective, it is useful to select an appealed case and a non-appealed case. This is because

appealed cases are expected to trigger patterns of politicisation that are negative towards the EU.<sup>100</sup> By contrast, non-appealed cases that gain large news attention might follow other forms of politicisation (if they become politicised at all).

As previously mentioned in the results section, the five cases that received the most media coverage are the Italian employment measure scheme, the EGG surcharge in Germany, Ilva, Apple and Deutsche Post. The first two cases are schemes and do not involve a particular corporation. In claims-making analysis, the object must be an actor (Koopmans and Statham 1999) as the claims must make a direct reference to a particular subject (for example, the Commission, the Italian or Irish government). This occurs as the claimant (or claim-maker) makes an assessment of the actor's behaviour (e.g. when the Commission makes a decision regarding a state aid case) and whether what they are doing is legitimate or not. If we are to include three objects, the Commission, the national government and the corporation involved, we can also have a more general overview of whether claim makers tend to direct more blame toward the corporation or the other actors involved. In state aid, this can happen when claimants assess businesses as "evil" for not paying taxes and in this way they can justify the Commission's decision as legitimate. Thus, the inclusion of corporations as an object actor is key to understanding the ways in which claimants can assess the legitimacy of the Commission's decision when it comes to state aid. More specifically, corporations such as Apple serve as objects as the analysis can identify whether or not the claim maker is making a positive or negative assessment of the corporation, as well as of the governments involved in the dispute with the Commission.

Overall, the purpose of having an object actor allows this analysis to identify who the claimants blame for an action (e.g. making a state aid decision) or to justify their actions (e.g. appealing a state aid decision). Thus, the two cases involving a specific corporation with the largest amount of news coverage were chosen for the analysis: Ilva and Apple. Because these two cases received large amounts of news coverage, they are particularly suited to the claims-making analysis for both theoretical and pragmatic reasons. For pragmatic reasons, this thesis analyses politicisation and discursive depoliticisation in selected newspapers and, thus, a large amount of coverage is required to ensure that claims can be identified. For theoretical reasons, the Apple case was appealed and therefore it is expected that politicisation will have negative

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<sup>100</sup> See literature on conflict and the media (Galtung and Ruge 1965; Milioni et al. 2015) and, specifically, in the context of the EU (de Vreese 2001; Peter and de Vreese 2004; Peter et al. 2005; Boomgaarden et al. 2013; Lloyd and Marconi 2014).

consequences on the way actors delegitimise the EU. The Ilva case on the other hand, was not appealed which could result in different behaviour surrounding how actors delegitimise other actors more than the EU. This is because the corporation and the government's handling of the case was regarded by popular opinion as poor and, thus, the Commission might not be the main polarising actor in how the state aid case becomes politicised.

Selecting one appealed case and one not appealed (which still gained high levels of news coverage) can help this dissertation demonstrate how politicisation and depoliticisation cannot always be only negative or positive for the EU's legitimacy even within the same policy field. By doing this, I aim to contribute to the literature on political science by showing how different actors can politicise and depoliticise the same issues at different points in time and therefore legitimise or delegitimise the EU. Moreover, these two cases can help build a specific theory on appealed and non-appealed UWRA state aid cases when they become politicised in the media, which aims to contribute to the overall approach that political scientists use to study state aid cases.

Finally, by having a state aid case which was appealed and one that was not, we can see the types of claims that are used and how these claims can be used to justify, legitimise or delegitimise the member state, the corporation or the Commission. As shown in this chapter, appeals are likely to influence whether or not the case receives media attention. As such, these appeals may directly affect the politicisation of the case and the legitimacy of the corporation, the Commission and the EU. For example, in the Ilva case, it is likely that the blame is shifted towards the corporation and the member state as they were not able to deal with the aid appropriately and, thus, public opinion and the claims made in the media might delegitimise the national government but not the Commission or the EU. Importantly, this demonstrates that politicisation can function in a different manner to that which is typically described in the literature.

## **5.8 Conclusion**

To summarise, the main goal of the analysis in this chapter was to explore potential reasons for state aid cases gaining media coverage. Based on the analysis of all 266 state aid cases labelled UWRA between 2000 and 2018, it appears that most cases did not receive extensive media attention. In general, newspaper coverage of state aid cases is low. However, there are times when the industry or scheme involved (such as the Italian scheme on employment measures) is within the scope of the media's general interests. Overall, the



descriptive statistical analysis on news coverage shows that the 10 most covered state aid cases are the Italian scheme on employment measures, the German EEG surcharge scheme, followed by aid given to Ilva, Apple, Deutsche Post, ALITALIA, EDF (Electricite de France), Zweckverband Tierkörperbeseitigung (the German association for disposal of dead animal bodies), Szczecin shipyard in Poland and the Zweibrücken Airport in Germany. The industries (or schemes) with the most amount of news coverage are transport, electricity, employment aid, postal services, steel, Banking, Computer, Agriculture, Regional firms in need of aid and Airports. However, when accounting for the total number of state aid cases, the industry that tends to be the most covered is electricity. The results also show that the two countries that pay the most attention to state aid cases are Italy and Germany but when I accounted for the total amount of state aid cases, Ireland was the member state with the most news attention. In terms of national media, the Italian scheme on employment measures (SA.9398) gained the largest amount of new attention. However, the Apple state aid case and the Deutsche Post received the most coverage in newswire services. This is likely because the international newswire services provided in Factiva tend to be business oriented and, thus, international or multinational companies are more likely to gain news attention. The analysis also evaluated news coverage in countries outside of the EU. The US was selected as a country of interest as several companies in the 266 cases were American corporations. The results showed that the top companies covered by the US media are American (Apple, Amazon and Starbucks). The regression analysis revealed a strong relationship between the appeals made by member states and corporations and the likelihood of media attention both at the national and newswire level. Thus, the three models show that appeals, newswire services as well as the control variables of GDP per capita, region and VoC significantly predict whether or not a state aid case is covered in the media. Moreover, by running diagnostics on the three models (AIC, BIC, log likelihood and deviance) we can see that model 3, which accounted for VoC, was able to better predict whether or not a case might be covered in national news. This indicates that one of the main triggers for the politicisation of state aid cases is when actors decide to appeal the Commission's decision.

In the next chapter of this dissertation, the claims made by the different actors involved in the ILVA and Apple cases will be evaluated. For the next chapter, it will be interesting to see if the most polarising debates occur during the highest time of news coverage or if they occur afterwards (e.g. when debates are taking place in parliament). For the claims-making analysis, each of the two selected cases will be studied using two newspaper sources (one right- and one

left-wing newspaper) as well as coverage provided by Reuters. The aim of the claims-making analysis is to determinate whether these cases became politicised and, if so, to what extent.

## Chapter 6: Analysing the Politicisation of the Apple and Ilva Cases

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### 6.1 Introduction

During an interview in 2017, when asked about the Apple state aid case in Ireland, Margrethe Vestager, the Competition Commissioner stated: “We are doing this because people are angry about tax avoidance and the [European] council knew that it already had the power to do something to change that. The thinking was: Let’s try to do something different within the system we have. Something that means no change to legislation or voting systems, but a change in attitude that acknowledges that people across Europe are angry” (Margrethe Vestager in Adams 2017). In the same context, the Irish government presented the case as an “encroachment of EU state aid rules into Ireland’s sovereignty around taxation” (Brennan 2017), stating that “it is necessary to defend the integrity of our tax system and provide tax certainty to business” (Brennan 2017). These past quotes illustrate what this chapter aims to analyse: the clash of competing claims that occur between actors at the different governance levels to either legitimise or delegitimise the actions of the actors involved in the politicised state aid case.

On the other side of the continent, Italian Prime Minister Giuseppe Conte was received in Taranto with crowds shouting “close it, close it!” referring to Ilva, Europe’s third largest steel plant company (Johnson and Ghiglione 2019) and the biggest steel plant in Italy. The company was asked to pay 84 million euros in government loans and was facing bankruptcy. In 2012, the company also experienced an environmental scandal, which saw a large increase in cancer rates in the Taranto region where the steel company is located. Since the 1970s, studies have shown the link between emissions from the Ilva plant and health issues in the local population (Bofetta and La Vecchia 2013; Bofetta et al. 2013). A report by the epidemiological group Sentieri showed that “between 2005 and 2012, more than 3000 deaths occurred in the Taranto region that were linked to limited environmental exposure to pollutants” (Bofetta et al. 2013). Citizens who live near the plant have described their living situation as living “next to a cancer factory” (Lucarelli in Hruby and Cristofolletti 2019). The increase in death rates in the region led to the arrest and conviction of some of the Ilva owners and instigated the transfer of Ilva to the International steel conglomerate, ArcelorMittal.

ArcelorMittal pledged to improve the conditions of the Ilva factory and do more to protect the local population. ArcelorMittal committed to paying 1.2 billion euros for an

environmental plan to reduce emissions to zero (Hruby and Cristofolleti 2019). However, recently, the company's purchase by ArcelorMittal fell at the end of 2019 during negotiations with the Italian government. This caused great concern among Commission officials who were hoping for a shift away from how the Ilva corporation was handled by both the Italian government and the previous owners of the corporation. In 2017, the European Commission stated that two loans provided by the Italian authorities to support Ilva involved illegal state aid.<sup>101</sup> The same day the decision was announced Vestager stated:

"The best guarantee for a sustainable future of steel production in the Taranto region is the sale of ILVA's assets at market terms – it cannot rely on artificial State support. Our investigation found that two public measures gave ILVA an undue advantage to finance its current operations. This does not change the fact that, in the right hands, ILVA has a sustainable future. As the sales process run by the Italian government showed, there were several potential bidders ready to invest in ILVA's future and upgrade the site in line with environmental standards"<sup>102</sup>

The unlawful state aid provided by the Italian government was also seen by several steel industries as unfair. These corporations were anxiously waiting for the Commission's verdict and wanted to see Ilva punished. At the same time, over 20,000 jobs depend on Ilva in a region where poverty rates remain high (Hruby and Cristofolleti 2019). Thus, the decision by the Commission meant that a large number of jobs in the region could be threatened, which also caused waves of concern.<sup>103</sup> The Ilva and Apple cases illustrate that the Commission's decisions were capable of touching the nerves of different actors (citizens, politicians at the national governance levels, businesses, NGO's) who might not be happy with the state aid decision. This lies at the centre of what this chapter seeks to evaluate; that is, how different actors legitimise or delegitimise the Commission, the member states and the corporation's actions.

Overall, this chapter uses the Apple and Ilva cases to analyse (a) the extent to which state aid decisions were key to further create conflicts between the member state and the Commission, (b) the extent to which the state aid cases became politicised and, (c) the claims

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<sup>101</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_5401](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5401)

<sup>102</sup> See Vestager's statement regarding the Ilva case in the European Commission Press Release, 21 December 2017, available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_5401](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5401)

<sup>103</sup> See <https://www.thelocal.it/20160120/eu-opens-probe-into-italian-aid-for-polluting-ilva-steelworks>

used by different actors – including the Commission itself – to legitimise or delegitimise the actions of the Commission, Apple, Ilva and the Irish and Italian governments. The politicisation of these cases will be analysed using a claims-making analysis. This evaluates the claims that political actors make in order to represent certain policy preferences, constituencies or values (Saward 2006), and to legitimise their actions. First, this chapter will evaluate the context in which the Apple and Ilva cases occurred, then the methods of this chapter will be described. This will be followed by the results, discussion and conclusion.

Overall, the results of this chapter shows that different degrees of politicisation occurred for both state aid cases. The Apple case, which was appealed, had more politicisation and delegitimations directed towards the EU. This clearly illustrates that the politicisation of a state aid case can be negative for the EU's legitimacy. Also, Irish newspapers tended to emphasise claimants from the Irish government, which further exacerbated the delegitimations towards the EU. Regardless of the EU's attempts to legitimise itself via press releases and conferences, the national media appears to support their national governments. Indeed, the EU's legitimations do not seem to reach the audience in the same way as claims made by Irish officials who, in the Apple case, argued that the Commission overstepped its powers. Meanwhile, for the Ilva case, politicisation was mostly negative for the Italian government's legitimacy and less so for the Commission. This suggests that it takes a company with very poor management and high levels of controversy (e.g. the large increase cancer rates in Taranto due to Ilva) for the EU to avoid being the most polarising and negatively perceived actor. In the latter case, the EU did not lose its legitimacy, rather it was seen as a regulator to help complainants deal with a specific company.

## **6.2 The Context Behind the Politicisation of the Apple and Ilva Cases**

State aid rules and decision making processes have “always been politically sensitive” (Blauberger 2011, p. 28). This is because state aid regulation tends to target the member states' policies and instructs how firms should behave at the national level of governance (Ehlermann 1995). This creates a scenario in which “political sensitiveness” can arise as a consequence of the Commission asking the member state to recover the state aid given to a particular corporation or industry. This aid can prove beneficial to the member state who might wish to boost a particular sector or improve their own political popularity by providing more jobs in a particular area of the country or economy. This “political sensitivity” can make state aid subject to public attention at the national level, as shown in the media analysis in Chapter 5 of this

thesis. The analysis in Chapter 5 also set out a method to select the two state aid cases to be analysed in this chapter: Apple and Ilva. While state aid cases are inherently political, this does not mean that all cases will become politicised in the same manner. Before discussing how these two selected cases became politicised differently, I will first provide the reader with the respective backgrounds of each case, as well as the context in which Apple and Ilva gained public attention.

### *6.2.1 The Apple Case (SA.38373)*

The reasoning behind making the decision by the Commission was Apple's interpretation of the "double Irish" tax system, which the company used to protect over 110 billion US dollars from taxes (Drucker and Bowers 2017). This double Irish tax system relied on two tax rulings issued to Apple (in 1991 and 2007), which lowered the taxes paid by Apple.<sup>104</sup> The ruling was first granted by the Irish Revenue Commissioners in 1991 when Apple was a "struggling computer maker" and was then updated and re-negotiated in 2007 (Houlder, Barker and Beesley 2016). Indeed, Apple was a very different company in the early 1990s compared to now (Houlder, Barker and Beesley 2016). By 1991, John Sculley was CEO and Apple's market share had collapsed (Houlder, Barker and Beesley 2016). In the 1991 meeting with the Irish government, Apple made its case stating:

"[the tax adviser's employee representing Apple] mentioned by way of background information that Apple was now the largest employer in the Cork area with 1,000 direct employees and 500 persons engaged on a subcontract basis. It was stated that the company is at present reviewing its worldwide operations and wishes to establish a profit margin on its Irish operations. [The tax adviser's employee representing Apple] produced the accounts prepared for the Irish branch for the accounting period ended [...] 1989 which showed a net profit of \$270m on a turnover of \$751m. It was submitted that no quoted Irish company produced a similar net profit ratio. In [the tax adviser's employee representing Apple]'s view the profit is derived from three sources – technology, marketing and manufacturing. Only the

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<sup>104</sup> See

[https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_finance\\_public\\_expenditure\\_and\\_reform\\_and\\_taoiseach/submissions/2017/2017-02-02\\_opening-statement-niall-cody-revenue-commissioners\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/submissions/2017/2017-02-02_opening-statement-niall-cody-revenue-commissioners_en.pdf)

manufacturing element relates to the Irish branch" (Interview extracts between Apple tax advisers and Irish Revenue, Financial Times 2014<sup>105</sup>)

By doing this, Apple made it clear that if the Irish government did not strike a deal with the company, Apple might go elsewhere. This is not new for multinationals as the literature has shown that foreign direct investment (FDI) is mobile capital and represents “a formidable exit threat” (Borner, Brunetti and Weder 1995, p. 181). That is, multinationals and large corporations can threaten to leave a country if they believe that they can receive better tax benefits elsewhere. This is what occurred in Ireland with the Apple state aid case as the Irish government decided to grant the special tax treatment to the US multinational. However, neither the Irish government nor Apple predicted that, in 2016, the Commission would decide that the 1991 tax ruling would be against the state aid rules (European Commission Press Release, 30 August 2016).

On June 11<sup>th</sup> 2014, the Commission decided to initiate a formal investigation, which occurred after a bipartisan investigation by the US Senate in May 2013 (Rushe 2013). The investigation examined whether Apple used offshore structures and tax arrangements to shift profits from the US to Ireland. It was during the investigation that Senators Carl Levin and John McCain first shed light on what they referred to as a “special tax arrangement between Apple and Ireland”, which allowed Apple to pay a tax rate of less than 2% (Rushe 2013). After this, the Commission decided to further examine the Apple case and, in June 2014, they officially decided to start a formal investigation (European Commission Press Release, 11 June 2014). The Apple case also coincided with other investigations opened by the European Commissioner for Competition, Margarethe Vestager on other US companies (Starbucks and Fiat) (European Commission Press Release, 11 June 2014). This occurred as part of the Commission’s aim to tackle large multinationals who might receive tax benefits in Europe.

After an anticipated two year investigation by the Irish government and Apple, DG-Competition Commissioner Margarethe Vestager announced “Ireland granted illegal tax benefits to Apple” on August 29<sup>th</sup> 2016 (European Commission Press Release, 30 August 2016).<sup>106</sup> It was then that the Commission ordered Ireland to retrieve 13 billion euros from

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<sup>105</sup> Interview available at: <https://www.irishtimes.com/business/economy/extracts-from-apple-meetings-with-revenue-1.1946627>

<sup>106</sup> Press Release by the European Commission available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_2923](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_2923)

Apple. In making their final decision, the European Commission stated the following in its press release:

“The rulings endorsed a way to establish the taxable profits for two Irish incorporated companies of the Apple group (Apple Sales International and Apple Operations Europe), which did not correspond to economic reality: almost all sales profits recorded by the two companies were internally attributed to a "head office". The Commission's assessment showed that these "head offices" existed only on paper and could not have generated such profits. These profits allocated to the "head offices" were not subject to tax in any country under specific provisions of the Irish tax law, which are no longer in force. As a result of the allocation method endorsed in the tax rulings, Apple only paid an effective corporate tax rate that declined from 1% in 2003 to 0.005% in 2014 on the profits of Apple Sales International” (Vestager in the European Commission Press Release, 30 August 2016<sup>107</sup>)

When assessing the case, the European Commission examined two subsidiaries: Apple Operations Ireland (AOI), which is an Irish registered holding company and acts as an internal financing company, and Apple Sales International (ASI), which was the focus of the investigation. Apple Sales International (ASI) is a registered subsidiary of Apple Operations Europe (AOE) (Commission Decision (EU) 2017/1283<sup>108</sup>). Both ASI and AOE belong to the Irish advance pricing agreement of 1991. ASI was the main vehicle through which Apple was able to disperse over 110.8 billion of US dollars in profits from 2004-2014. The Commission used these figures to make its final assessment (Commission Decision (EU) 2017/1283). Based on the above information we can expect that the Commission is likely to validate its official decision using justifications which reassures its throughput legitimacy. It is also likely that it will use justify its decisions based on output legitimacy as it will rely on technicalities as well as legal arguments to bolster its final state aid decision.

The official procedure states that member states have a total of 2 months and 10 days to appeal the Commission’s decision to the EU’s General Court (European Commission Press Release, 30 August 2016). These appeals to the EU’s General Court can take up to 3 years to be decided.<sup>109</sup> After the final decision was made by the Commission in August 2016, on

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<sup>107</sup> Ibid.

<sup>108</sup> Official Journal of the European Union (Commission Decision 2017/1283) available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2017.187.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.187.01.0001.01.ENG)

<sup>109</sup> See <https://www.mccannfitzgerald.com/knowledge/international-tax/the-apple-case>



September 2<sup>nd</sup>, an official statement from the Irish government was released stating that they would appeal the Commission’s decision (Statement by the Minister for Finance on the Government Decision to appeal the Apple State aid decision 2016<sup>110</sup>). The Irish officials claimed the Commission had “exceeded its powers and interfered with national tax sovereignty”<sup>111</sup>. Apple also lodged its appeal independently from the Irish government in September 2016 and claimed that, according to the corporation, the Commission made “fundamental errors in its interpretation of Irish law and of the way in which the tech giant generated its profits” (Toplensky 2017). When appealing the Commission’s decision, the US firm stated that the decision defied “reality and common sense”.<sup>112</sup> Regardless of whether the decision was appealed or not, the Irish government decided to place the 13 billion euros into an escrow account pending the outcome of the EU’s General Court (Burke-Kennedy 2020).

The Commission’s Apple state aid decision was supported in court by only one member state: Poland (Yun Chee 2019). Poland sought permission to make a representation in Court in support of the European Commission. This news was made public by Ireland’s Department of Finance briefing notes, which were obtained by the press under the Freedom of Information act (Power 2017). Poland also wrote a submission outlining its support for the Commission’s decision. This is a normal procedure of EU state aid as all member states can request to make a representation to the EU court in any case (Power 2017). Media outlines such as the Irish Times reported that this was an attempt to ‘curry favour’ after a ruling of the Commission against Poland in another state-aid case in August of the same year (Power 2017). Meanwhile, outside of Europe, the US also became involved in the Apple state aid case by filing an application to intervene in the case.<sup>113</sup> In their application, the US argued that it should be allowed to intervene as US tax revenues could be affected by the state aid decision [see SA.38373 (2014/C) (ex 2014/NN)<sup>114</sup>]. The US also stated in its application to intervene that the

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<sup>110</sup> See official statement at : <https://www.gov.ie/ga/preasraitis/64d4f6-statement-by-the-minister-for-finance-on-the-government-decision-to-/>

<sup>111</sup> For the full article see: <https://www.businessinsider.com/afp-ireland-claims-eu-breaching-sovereignty-in-apple-tax-ruling-2016-12?international=true&r=US&IR=T>

<sup>112</sup> See <https://www.reuters.com/article/us-eu-apple-stateaid/apple-says-14-billion-eu-tax-order-defies-reality-and-common-sense-idUSKBN1W1195>

<sup>113</sup> See <https://www.reuters.com/article/us-eu-apple-tax-idUSKBN19P220>

<sup>114</sup> See State aid SA.38373 (2014/C) (ex 2014/NN) — Alleged aid to Apple. Invitation to submit comments pursuant to Article 108(2), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014XC1017\(08\)&from=DE](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014XC1017(08)&from=DE)

Commission's decision could harm bilateral tax treaty negotiations with EU member states and affect the way in which the pricing rules within the OECD framework currently work.<sup>115</sup> Finally, the US also argued that it could assist the EU in understanding American tax law.<sup>116</sup> The involvement of several actors resulted in the case becoming newsworthy as it was widely reported both in Irish and International news outlets. Moreover, claims that come from different actors who are involved in the contested case are likely to put into question the "effectiveness" in which the Commission makes its decision as well as the overall output legitimacy of the state aid decision.

Overall, the Apple case gained a large amount of press coverage with Factiva results showing over 719 news articles written across Irish news media from the moment the Commission publicly notified the investigation until 6 months after the decision date. There were 2362 news articles written across all the other 27 member states during the same period of time (see Appendix D). This is one of the main reasons why I chose to evaluate the Apple case: in order to evaluate how different actors legitimise or delegitimise the EU in the media. In addition, the Apple case is representative of other state aid cases in that the Commission, corporations and member states can become involved in large disagreements when they do not have the same understanding as to what is "right" (Cini 2001).

The Apple case will illustrate in this thesis what occurs when member states contest the EU's ruling through appealing the Commission's decision and the extent to which the conflict can affect the way in which actors delegitimise the decision taken by the Commission and, more generally, by the EU. The implications of the Apple state aid case represent an important precedent beyond Ireland. Indeed, other current state aid cases involving large US multinationals, such as Google, Microsoft, Amazon, Starbucks or Fiat, were eager to see whether the EU General Court would rule for or against the appeal made against the Commission. Overall, it has been suggested that state aid represents one of "Brussels superpowers" (see Larger 2019). However, as I will further discuss later in this chapter, since 2018, the Commission seems to be losing more cases in front of the EU General Court and this might affect whether or not the Commission's decisions are seen as legitimate. Moreover, this could trigger further delegitimations by member states and large corporations who use their claims to ruin the Commission's reputation when it comes to state aid.

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<sup>115</sup> Ibid.

<sup>116</sup> See <https://mnetax.com/eu-court-rejects-uss-application-intervene-apple-state-aid-case-25170>

### 6.2.2 *The Iva Case (SA.38613)*

At full capacity, Ilva can produce more steel than Bulgaria, Greece, Hungary, Croatia, Slovenia, Romania and Luxembourg combined.<sup>117</sup> Ilva produces more than 170 million tonnes of steel per year (European Commission Press Release, 20 January 2016). Even though Europe is struggling with cheap imports from Chinese companies and intense world competition, the Commission still made the assessment that two loans given by the Italian state to Ilva in 2015 involved illegal State aid (European Commission Press Release, 21 December 2017). More specifically, on December 21<sup>st</sup> 2017, Italy was ordered to collect 84 million euros from Ilva.<sup>118</sup> The sum was calculated by the Commission by looking at how much aid was given to the corporation during insolvency proceedings. Ilva entered these insolvency proceedings in March 2015 and the EU state aid rules only allow for the “long-term competitiveness and efficiency of steel manufacturing but not the support of manufacturers in financial difficulties” (European Commission Press Release, 21 December 2017). At the time the decision was made, the company represented 80% of the town of Taranto’s economy and, following the state aid decision, news articles about the possibility of further employment cuts started to emerge.<sup>119</sup> However, Ilva was not new to controversies as the company has been held to cause environmental hazards in the Italian town (Johnson and Ghiglione 2019). Vestager described the company as having “a very long history of non-compliance with environmental standards”.<sup>120</sup> According to an epidemiological survey, 386 people that lived near the plant died between 1998 and 2010 (around 30 deaths per year) due to exposure to toxic emissions, such as dioxins and carbon monoxide (Lucifora et al. 2015). Moreover, 237 people were diagnosed with a malignant tumour during the same period (18 cases per year). There were also 937 cases of hospitalisation due to respiratory diseases, mostly among children (Lucifora et al. 2015). According to a study by the Sentieri Project between 2003 and 2008, in the Taranto region the mortality in men increased from 8% to 14%. Moreover, in comparison to the rest of Puglia, in Taranto there is a 20% excess mortality in the first year of life of an infant (Pirastu

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<sup>117</sup> See <https://phys.org/news/2016-01-eu-probe-italian-aid-polluting.html>

<sup>118</sup> See Press Release of the Ilva decision available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_5401](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5401)

<sup>119</sup> See <https://www.linkiesta.it/2019/11/crisi-arcelor-mittal-ilva-lavoro-stato-investimenti-agevolazioni-indus/>

<sup>120</sup> See <https://phys.org/news/2016-01-eu-probe-italian-aid-polluting.html>

et al. 2010). Indeed, children and infants have a higher propensity to be affected by toxins as growing organs are more susceptible to mutagens while the immune system is still immature (Milano and Aiello 2012).

These figures show the how citizens of the town of Taranto depend heavily on this company for employment but also condemn the plant for its environmental and health impacts. Over the years, Ilva was kept afloat thanks to large amounts of aid from the Italian government. These aids were seen as unfair by several of its steel competitors in Europe. In 2014 and 2015, the Commission received multiple complaints from Ilva's steel competitors [some of these competitors were rumoured to be Eurofer, Thyssenkrupp and the British division of Tata Steel (which was also in severe crisis and has had to resell its plants<sup>121</sup>)]. These complaints triggered the investigation by the European authorities (as stated in the press release made by the European Commission in December 2017). The surrounding context is likely to impact the way that different claim makers delegitimise the handling of the Ilva corporation prior to the state aid case, and the overall throughput legitimacy of the Italian government in giving aid to Ilva.

Unlike Apple, Ilva's state aid decision was not appealed by either the member state or the corporation. However, Italian newspapers paid a great amount of attention to this case. This occurred because, as previously mentioned, the company faced controversy both in Taranto and in Italy thanks to the toxic dust unleashed by the steel corporation onto the population (Hruby and Cristofolletti 2019). Also, over 20,000 jobs were dependent on Ilva and the corporation had been struggling prior to the Commission's decision (Hruby and Cristofolletti 2019). Thus, it is expected that the case might have become politicised to a certain extent but not in the same way as the apple case (as the Ilva case was not appealed). During the investigations of the aid, both the Italian government and Commission expressed their willingness to put behind previous political misunderstandings and restore their relationships (Romano 2017) (see examples of this in section 6.4.2 – Justifications). This suggests that the two polarised actors in the politicised Ilva issue might not be the Commission versus the Italian government but, rather, these two actors are seen to cooperate with each other. Moreover, during the investigation, the EU also appointed a new representative in Italy, Beatrice Covassi (Romano 2017). Covassi was given the duty of further cultivating the relationships at a time where Italy was experiencing the repercussions of the banking crisis as well as a high debt and a fragile economy, which could be further damaged by collecting aid from national companies

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<sup>121</sup> See <https://www.bbc.com/news/uk-politics-35930904>

such as Ilva. The implications of the Ilva state aid case represent can provide this dissertation with a broader understanding of how non-appealed cases can become politicised.

### **6.3 Evaluating Politicisation through Claims Analysis**

This section will elaborate on earlier discussions described in Chapter 3 on the methods that were used to perform the claims-making analysis in this chapter. The objective of the claims-making analysis is to understand how claimants politicise and (de)legitimise the EU, the Commission and the actions of the Irish or Italian governments. As previously stated, politicisation can be operationalised as a combination of three factors: the polarisation of opinions, the intensification of debates (salience) and the increase of actors involved in the conflict (e.g. citizens or social movements) (De Wilde 2011). As explained in the methods chapter of this dissertation, a claim can make reference to a few words, a specific sentence, a paragraph or several paragraphs, as long as the same subject, actor or claimant made the claim. The “claimant” or “claim maker” is the person stating or performing the claim (e.g. "DG-Competition Commission Vestager stated that Ilva committed illegal state aid as it violated EU rules"). Journalists sometimes make it clear that it is their opinion (I think this/I argue this/it is argued that) however, often it is difficult to disseminate between what is a fact and what is a journalist’s opinion. To distinguish between fact and opinion, we can consider the words the journalist might use to make an opinion rather than a statement. If the journalist expresses either a liking or disliking for the topic, then this is coded as a claim. For instance, expressions such as want, are in favour of, oppose, reluctant to, are divided over, can be counted as part of a claim

The claim can only have one single argument and it must contain an addressee, actor, issue, frame and form. If there is more than one argument, this is counted as more than one claim. This is also true for the other variables, for example, if there is more than one actor making the claim, this is counted as several claims made by different actors. Specific to this study, a claim can be defined as the expression of a political opinion by physical or verbal action in the public sphere regarding state aid issues. This implies one important delimitation: claims must deal with issues about state aid. This entails that there must be some explicit reference to a state aid case for a claim to be included in this analysis. The object of the claim must also be related to either the European Union (which also includes the Commission, the EU parliament, ECJ or any other of its institutions, as well as EU officials such as the EU Commissioner, Vestager), the Irish government, the Italian Government, Apple or Ilva. The

object actor can also include broader categories that relate to the three big groups: EU, member state or corporation involved (e.g. the Commissioner's team, the Apple board of directors).

As previously stated in Chapter 3, all news articles were first gathered from the Factiva database first from two leading quality newspapers (centre-left and centre-right) from Ireland (the Irish Times and the Irish Independent) and Italy (Il Sole 24 Ore and La Repubblica). The search date for these articles was from the notification date to 6 months after decision date. As explained in chapter 3, the selection of the specific 50 newspapers was done through systematic random sample in Excel (for more details on the systematic random sample see chapter 3). As the analysis was performed using national news coverage, it is expected that the claimants from the national level will gain more news coverage than EU claimants (as explained in Chapters 1 and 2 of this dissertation). Regarding the coding for the analysis, statements and actions made by different actors are considered separate claims. Also, a claim has to make reference to the same day and place. Claims with different objects are considered different claims. The text needs to include an action or a statement made by an actor to be categorised as a claim with an explicit object (e.g. the Commission, Apple or the Irish government). The core component of a claim (which become the variables in the analysis) are the object (i.e. about whom is the claim made?), the claimant (i.e. the actor raising the claim), the evaluation of the object (i.e. positive/ambivalent or neutral/negative), the broader issue context (e.g. the state aid investigation or the state aid official decision) and the justifications or frames deployed (e.g. the state aid decision was used for political reasons). Justifications/frames were identified inductively in an extensive pre-test and the list of possible frames was extended when necessary during the coding. The justifications or frames in claims-making analysis were later added by Koopmans and Rucht (2002) to understand how different actors justify their claims. The justifications or frames represent one of the main values of claims-making analysis to the study of legitimations and delegitimations. Actors can use their claims to justify whether the object of the claim (the Commission, the Irish government, the Italian government, Apple or Ilva) is performing a legitimate or illegitimate action.

Overall, the claims-making analysis for this chapter was based on previous studies that analysed politicisation using the three variables of salience, polarisation and actor expansion (Koopmans and Statham 1999; Haunss 2007; Lindekilde 2013; Statham and Trenz 2013; De Wilde 2011; 2013; 2020; Gora and De Wilde 2019; De Wilde, Koopmans, Zürn 2014; Hurrelmann et. al. 2016; Hurrelmann and Wagner 2020). More specifically, claims-making analysis has been understood as the performance of certain claims that are made towards an

audience and involve governments as both targets and claim makers (other parties such as supranational governments, NGO's, or corporations can also be involved in this process) (Tilly and Tarrow 2006, p. 4; Tilly 2008).

Several studies have analysed salience in claims-making analysis as the total number of news articles written about a particular issue in the national news (for example see Fernee, Stoop and Harrison 2012; Eisele et al. forthcoming; Statham and Tumber 2013). Similarly, this chapter analyses salience as the total number of written articles regarding the state aid cases as well as the total number of claims made within these articles. The analysis on claims-making analysis for this chapter relied on three coders (the PhD student and two research assistants hired for this analysis). As explained in Chapter 3, the three coders followed a specific coding guide based on previous studies (*Koopmans* and Statham 1999; Trenz et al. 2017; Hurrelmann and Wagner 2020). Coders did not report any issues in identifying the same claims, however coders did show some difficulties with the tone variable. For example, it was harder to agree on whether a claim was “extremely negative” or just “negative”. Indeed, polarisation was evaluated by assessing whether a claim was extremely negative, negative, neutral, positive or extremely positive and coders had some issues in differentiating between the extremes and less extremes. To account for any discrepancies, inter-reliability coding tests were conducted using the de Swert (2012) guide and the Hayes Kalpha macro for SPSS.<sup>122</sup> A total of 15 news articles were used for the inter-reliability coding with two coders on the first test. The first test conducted identified the claims with the same claimant and the object. The result for this was  $K_{alpha} = 0.87$ , which is high for this test. Another test was conducted for the tones of the claims using a total of 36 random claims. The inter-reliability test was performed with one coder only but the test was performed 5 months after the initial coding. The result was  $K_{alpha} = 0.73$ .

Overall, the analysis on position allows the analysis of this chapter to observe how actors adopt a position on an issue such as state aid. As explained in Chapter 3, the claims-making analysis (in particular, the variable of “tones”) was subject to reliability tests to ensure that the variables were clear to the three researchers who coded the claims (2 research assistants and the PhD researcher). To recapitulate, the inter-reliability coding tests were conducted using the de Swert (2012) guide and the Hayes Kalpha macro for SPSS<sup>123</sup> (see Chapter 3 for an in

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<sup>122</sup> Go to <http://www.afhayes.com/spss-sas-and-mplus-macros-and-code.html> and look for KALPHA.sps

<sup>123</sup> See <http://www.afhayes.com/spss-sas-and-mplus-macros-and-code.html>

depth explanation on these tests). The tone variable observed whether claims made in the news articles were labelled as positive, negative or neutral. The analysis on tone was also used for the article headlines. For polarisation, coders also evaluated the justifications made by the different claim makers. Justifications or frames were first identified inductively in an extensive pre-test (e.g. tax arrangements with Apple were "economic treason") and the list of possible justifications was extended when necessary during the coding (see Appendix B for the coding guide). The justifications identified for the analysis are: EU's procedure/effectiveness frame, Protection of EU interest, Politically Driven Frame, National Identity (Sovereignty), Ireland's reputation and future, Economic Effects, Labour/Cost-benefit, Procedural Frame, Solidarity/Equity and Legality justification. Actor expansion was measured by determining whether there was a growing number of actors speaking about the state aid case over time. Specifically, this was measured by examining whether a specific date (e.g. the notification or decision date) was associated with an increased number of actors making the claims.

## 6.4 Results

### 6.4.1 Salience

#### 6.4.1.1 General Salience of the State Aid Cases in the Media

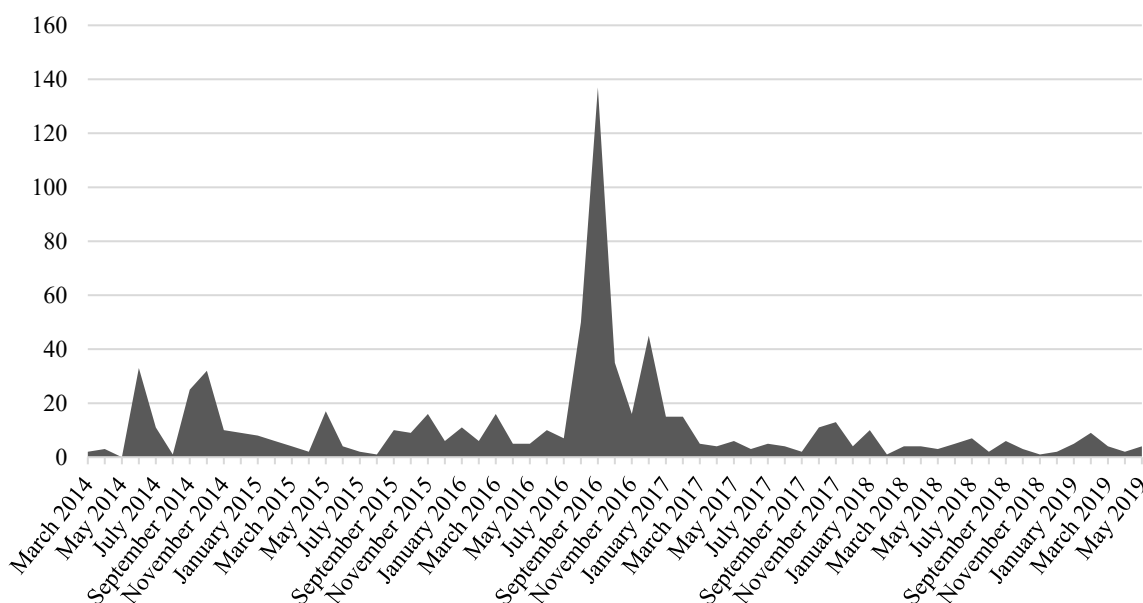
Figure 6.1 shows the news coverage for the Apple state aid case. Data was gathered from the notification date (21/02/2014) to 6 months after the last court date at the time of analysis (14/06/2019). Six months after the court date was added as the "end date" for this part of the analysis to see if the court date would have any influence on the news coverage. For Apple, the month that shows the highest peak is September 2016 and, more specifically, the 2<sup>nd</sup> of September 2016 received the most news attention in Irish media. The first decision date was the 30<sup>th</sup> of August 2016. The same day, the European Commission released its press release declaring that "Ireland gave illegal tax benefits to Apple worth up to €13 billion". This triggered news hits on the day and the two days after the decision. A total of 47 news articles were written in Ireland about the decision on the 30<sup>th</sup>, the 31<sup>st</sup> and the 1<sup>st</sup> of September. However, the date with the most amount of news hits was the 2<sup>nd</sup> of September 2016 (24 new hits). This is the same date as the official statement from the Irish government was released stating that they



would appeal the Commission’s decision.<sup>124</sup> The case continued to have news coverage in the Irish media in the days following this announcement with a total of 52 news hits between the 3<sup>rd</sup> of September and the 8<sup>th</sup> of September.

Another visible peak in Figure 6.1 is November 2016, when the Irish government officially lodged the appeal and the same day, Apple also announced it would appeal the decision. Another peak is observed on the 19<sup>th</sup> and 20<sup>th</sup> of December 2016 which is a direct consequence of the European Commission publishing its final decision on its Apple state aid investigations on the 19<sup>th</sup> of December. Even though the decision was announced in August, the publication was deferred (as usually occurs in legal proceedings).<sup>125</sup> This data shows how press releases and decisions made public by the Commission can also trigger high amounts of news coverage. However, it seems that news about Ireland appealing the Commission’s decision still represents the strongest “trigger” for news coverage in the Apple state aid case. Also, Figure 6.1 suggests that peaks in state aid news coverage are short lived. That is, news regarding state aid tends to occur after specific events (e.g. the decision date) but does not stay in the news cycles for long periods. This result also confirms the results from Chapter 5 showing that appeals are likely to instigate news coverage in state aid cases.

*Figure 6.1 Peaks in News Hits for the Apple Case*



<sup>124</sup> See official statement at : <https://www.gov.ie/ga/preasraitis/64d4f6-statement-by-the-minister-for-finance-on-the-government-decision-to-/>

<sup>125</sup> See <https://assets.kpmg/content/dam/kpmg/xx/pdf/2016/12/tnf-tp-ireland-dec23-2016.pdf>

For the Ilva Case, the month with the most news coverage is January 2016 with 304 news hits. The biggest peak within January 2016 occurred the 20<sup>th</sup> of January, which was the date that the European Commission opened its investigation into Ilva.<sup>126</sup> This was also the date that DG-Competition Commissioner Vestager released a statement on the Commission's decision to investigate the aid.<sup>127</sup> Similar to the Apple case, this result also illustrates that the press releases and information from the Commission tend to be covered by the national media. The next three biggest peaks occurred in December 2017 (87 hits), December 2015 (68 hits) and May 2016 (56 hits). The second peak in December 2017 occurred when the Commission made its final decision on December 21<sup>st</sup> 2017. Again, the decision was accompanied with a press release titled: "State aid: Commission concludes in-depth investigation on support to Italy's largest steelmaker ILVA S.p.A. and orders recovery on two measures that involved illegal State aid".<sup>128</sup> Indeed, the biggest peaks within the month occurred the same day the Commission announced its decision on December 21<sup>st</sup> with 21 hits and two days after on December 23<sup>rd</sup> with 39 news hits.

In December 2015, the Council of Ministers launched a law decree that accelerated the sale of Ilva to third parties (ArcelorMittal). The Law Decree no. 1/2015 and the Decree of the President of the Council of Ministers (Decreto del Presidente del Consiglio dei Ministri) of 14 March 2014 adopted an Environmental Plan and entrusted Ilva with powers to start the process of Ilva's environmental clean-up (Official Decision made regarding Ilva, 2017)<sup>129</sup> The same day (4<sup>th</sup> December 2015), it was also announced that the Italian government would give 300 million to facilitate the transition of the company (see point 14 in the Commission's decision Document regarding the Ilva case 2017<sup>130</sup>). This loan to Ilva was made via a Ministerial Decree to support Ilva's liquidity needs. Moreover, this loan had to be repaid by the acquirer of Ilva's assets following the final sell of the corporation (Commission's decision Document regarding

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<sup>126</sup> See the European Commission's press release available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_115](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_115)

<sup>127</sup> See statement available at: [https://www.europa-nu.nl/id/vk0vj950i4tb/nieuws/statement\\_by\\_commissioner\\_vestager\\_on\\_eu?ctx=vg9wike5q2yt&start\\_tab0=20](https://www.europa-nu.nl/id/vk0vj950i4tb/nieuws/statement_by_commissioner_vestager_on_eu?ctx=vg9wike5q2yt&start_tab0=20)

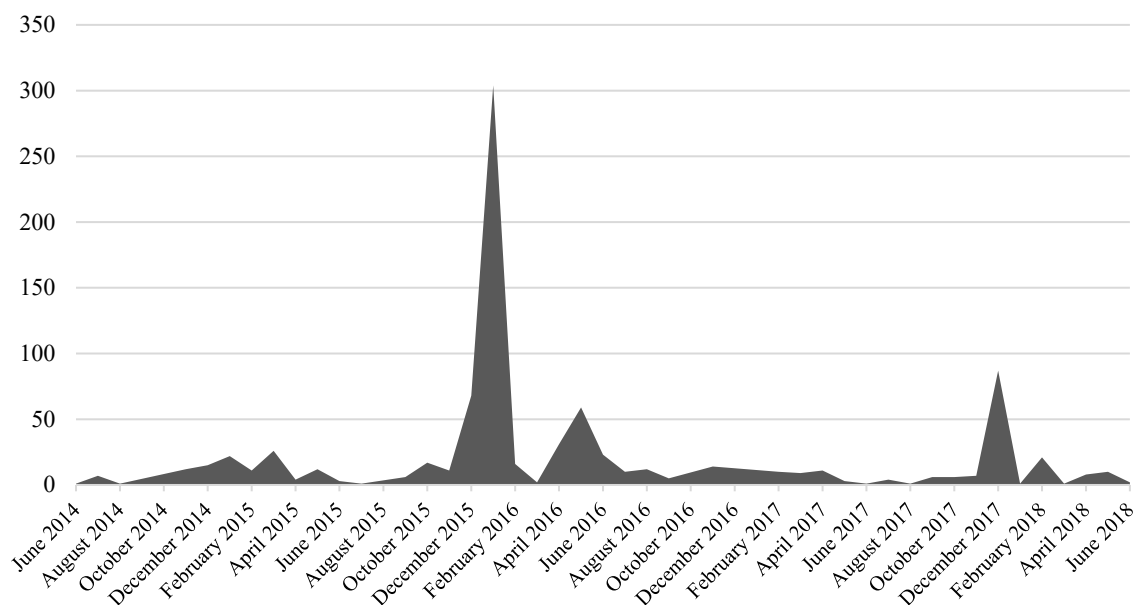
<sup>128</sup> See Press release available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_5401](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5401)

<sup>129</sup> See Official Document of the Commission's decision regarding Ilva available at: [https://ec.europa.eu/competition/state\\_aid/cases/262365/262365\\_1966498\\_473\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/262365/262365_1966498_473_2.pdf)

<sup>130</sup> Ibid.

the Ilva case 2017<sup>131</sup>). The news of the loan alarmed union groups (Fim, Fiom, Uilm and Usb) in the country and also worried workers in Genoa where 800 people could be affected by the decision (Campni 2015). On May 13<sup>th</sup> 2016, the Commission made the decision to extend its proceedings. This date, together with May 14<sup>th</sup>, saw an increase in news coverage regarding the Ilva case in Italian newspapers (see figure 6.2). Overall, the majority of the news peaks were triggered by the European Commission’s investigation or decision on the case. Interestingly, this suggests that Italian newspapers pay more attention to the Commission’s investigation and decisions regarding an Italian company than to what their own government decides to do in terms of ownership of the corporation. This demonstrates that, in state aid cases, appeals can influence how much news attention is being drawn to EU claimants versus national claimants. As Ilva was not appealed and the case was controversial given the poor management by both the corporation and the member state involved, the news media focused its attention on EU actors and provided them with more opportunities to legitimise and justify their actions via the press.

*Figure 6.2 Peaks in News Hits for the Ilva Case*



<sup>131</sup> Ibid.

#### *6.4.1.2 Patterns in Media Saliency*

From this initial analysis on news coverage, it is clear that, in the Apple state aid case, the highest peak in news coverage occurred after the Commission's decision. This occurred as the decision typically elicits responses from other actors who may question the decision. This is particularly true in the Apple case as the decision was highly anticipated by both the Irish government and Apple. By contrast, in the Ilva case, a peak in news coverage after the decision date was not observed, which suggests that news peaks in non-appealed cases are more likely to occur (if at all) during the investigation phase of the state aid case rather than after the decision date (see section 6.5 of this chapter). For the Ilva case, the largest peak occurred on January 20<sup>th</sup> 2016, which was the date that the European Commission opened its investigation into Ilva. This shows that, within non-appealed cases, if the state aid case becomes politicised, debate is more likely to occur before the decision date (at least in the analysed state aid case for this dissertation).

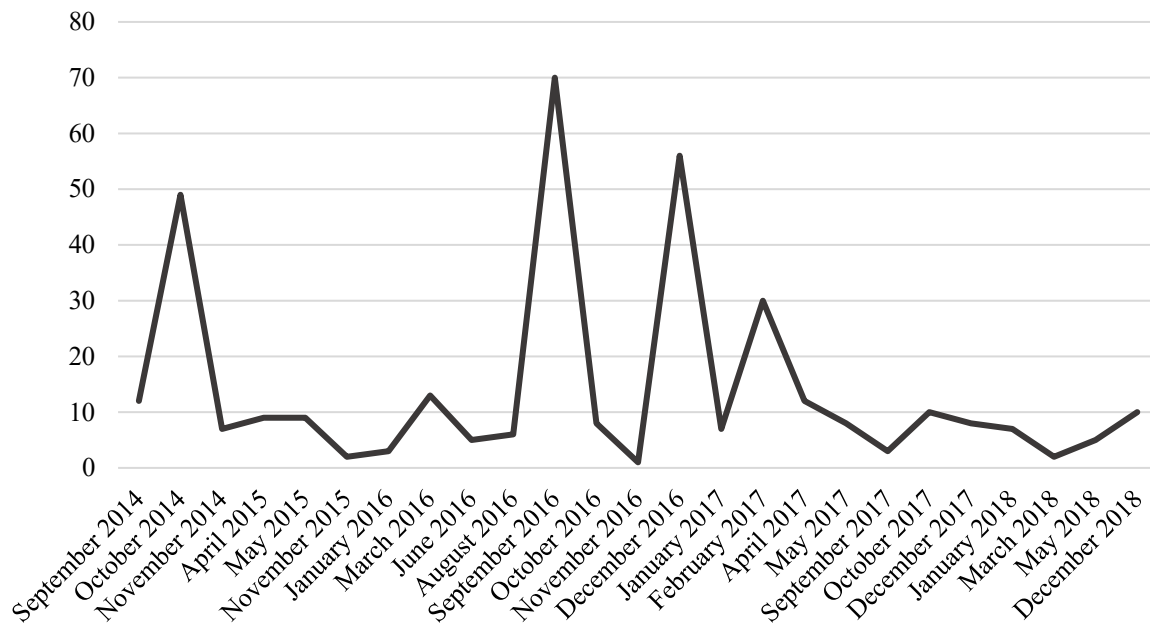
#### *1.4.1.3 Saliency of Claims*

The claims coding analysis for Apple shows that the majority of claims occurred after the decision date (30 August 2016). There were 352 claims in total from 50 news articles (15% of the total sample). For both Irish newspapers, there were a total of 109 claims made before decision date, while 243 claims were made after this date. Overall, the results here show an expansion in the number of claims made after the release of the Commission's decision. These data also indicate that most of the news peak coverage occurs after the Commission releases its official state aid decision. This also shows the role of the Commission in driving the politicisation of the Apple state aid case.

Figure 6.3 shows the months with the number of claims in the Apple case. The peaks were: September 2016 (70 claims), December 2016 (56 claims), October 2014 (49 claims) and February 2017 (30 claims). This confirms the results from the general saliency of state aid in the media (see Figure 6.1), which showed that the highest peak in overall news coverage was September 2016 (after the Commission made its official decision). The peak which occurred in December 2016 was as previously explained, a direct consequence of the European Commission publishing its final decision on its Apple state aid investigations on December 19<sup>th</sup>. Meanwhile, during the third largest peak (October 2014), news outlets were running stories on the Commission's official investigation into Apple's "double Irish" tax avoidance measures. These claims were triggered by the European Commission who released preliminary findings from its state aid investigation into Apple's tax affairs in Ireland. Claims occurred on

the days leading up to and after the press statements from the Commission.<sup>132</sup> Finally, in February 2017 (fourth largest peak), most of the articles were regarding claims made by Apple and its CEO's that the Commission overstepped its boundaries. Articles around this time also included opinion pieces that explained how the Commission "bent the rules in its pursuit of Apple's 13 billion euros".<sup>133</sup>

Figure 6.3 Saliency of Claims for Apple Case



The Ilva case had a total of 232 claims from 50 Italian news articles (Il Sole and La Repubblica), which is 120 claims less than the Apple case. The claims coding analysis for the Italian newspapers show that the majority of claims occurred after the Commission officially decided to open its investigation on January 20<sup>th</sup> 2016 (46 claims) (see Figure 6.4). This was followed by May 2016 (45 claims) and December 2017 (45 claims). January 2016 is when the Commission officially decided to investigate the aid against Ilva and December 2017 was when the Commission decided that the aid was unlawful. The claims made during the second peak in May 2016 relate to the Commission's decision. Newspaper coverage and claims regarding the decision were triggered as Ilva went to trial in the Strasbourg court for failing to protect the

<sup>132</sup> See <https://www.theguardian.com/world/2014/sep/29/ireland-defends-tax-dealings-with-apple>

<sup>133</sup> Liza Lovdahl-Gormsen for the Irish Times on the 1<sup>st</sup> of February 2017

health of the citizens of Taranto. The news, while not strictly related to the aid, still triggered claims about the state aid case investigation, which the company was undergoing at the time.<sup>134</sup> The third peak (December 2017) occurred as a consequence of the Commission concluding its investigation on the Ilva case. It was on this date that the Commission stated that Italy must recover 84 million euros from Ilva.

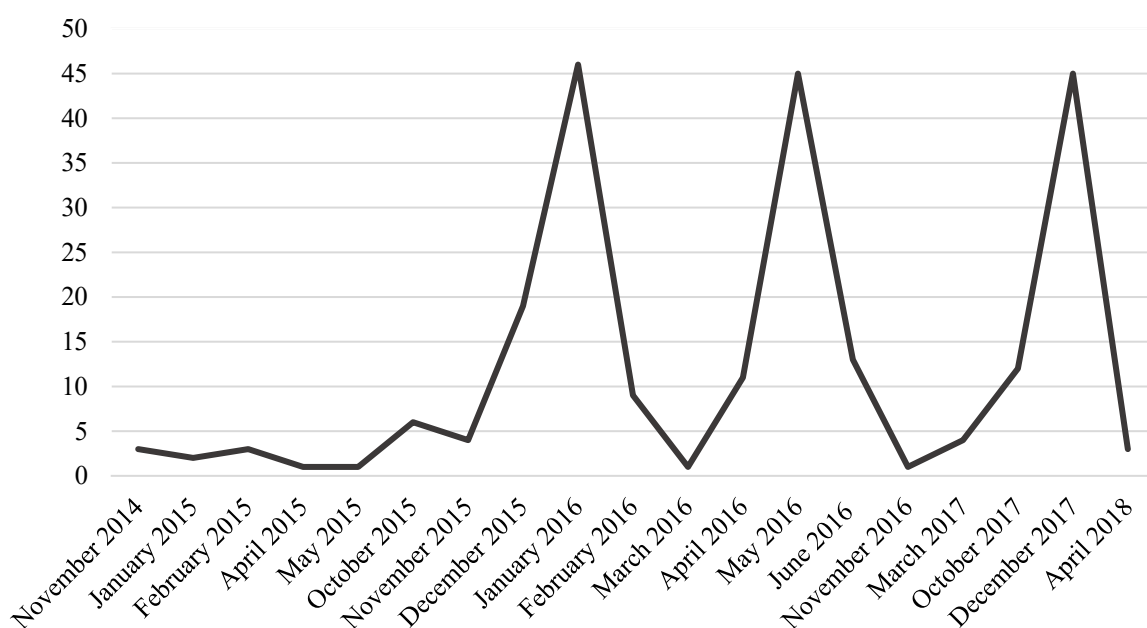
For the Ilva case, there were 2 notification dates. The first one was made in regards to the initial investigation to determine if a further, and more thorough, investigation was warranted. The second notification date occurred when the Commission announced that it was officially investigating the potential unlawful aid given to Ilva by the Italian government. Before the official notification was made public by Vestager in January 2016<sup>135</sup>, there were a total of 52 claims or 22% of the total amount of claims (between the April 14<sup>th</sup> 2014 and January 19<sup>th</sup> 2016) made regarding the possible Ilva investigation. This is a strong contrast to the 120 claims (or 50.2% of the total amount of claims) in the months that followed the notification made by Vestager (between January 20<sup>th</sup> 2016 and December 31<sup>st</sup> 2016). As previously noted, another wave of claims occurred on the day the Commission made its final decision regarding the Ilva case. There were a total of 191 claims (around 79.9%) made before the decision date (between April 24<sup>th</sup> 2014 and December 20<sup>th</sup> 2017) and 48 claims afterwards (20%) (between December 21<sup>st</sup> 2017 and June 21<sup>st</sup> 2018). This shows that, in the Ilva case, the official notification made by the Commission regarding the investigation of the company created more news coverage than when the Commission made its official decision. This likely occurred as a consequence of several fellow steel corporations (e.g. Eurofer and Thyssenkrupp) filing formal complaints to the European Commission that Ilva was receiving illegal aid from the Italian government. As such, the Commission's decision to investigate the case was highly anticipated. Thus, in state aid cases, complaints from competitors across Europe regarding a specific firm can create news traction and, in turn, can start the process of politicisation of a state aid case.

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<sup>134</sup> See <https://www.ilfattoquotidiano.it/2016/05/17/ilva-corte-di-strasburgo-apre-procedimento-contro-litalia-non-ha-protetto-la-salute-dei-cittadini-di-taranto/2738096/>

<sup>135</sup> See [https://www.europa-nu.nl/id/vk0vj950i4tb/nieuws/statement\\_by\\_commissioner\\_vestager\\_on\\_eu](https://www.europa-nu.nl/id/vk0vj950i4tb/nieuws/statement_by_commissioner_vestager_on_eu)

Figure 6.4 Saliency of Claims in the Ilva Case



#### 6.4.1.4 Patterns in Claims' Saliency

Regarding the patterns in the saliency of the claims, both cases would be expected to follow the same trends as overall news coverage. In the Apple case, the saliency of claims are consistent with the media news peaks observed in the general study, which showed that the highest peak in overall news coverage occurred after the Commission made its official decision. The Ilva case also followed a similar pattern with three peaks (although the peaks in claims show higher levels of claims after the decision was made). This further illustrates that claims are more likely to be made after the decision is made in the appealed case and when the Commission is investigating the decision in non-appealed cases. The results on media and claim saliency are likely to be transferred to other state aid cases that involve multinationals and potential unlawful tax practices.

#### 6.4.2 Polarisation

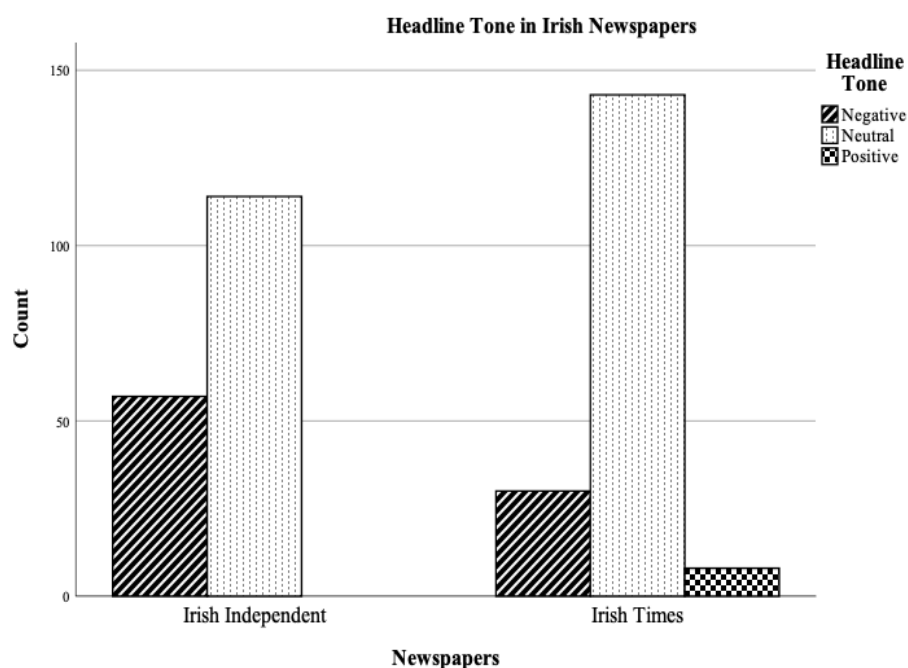
In terms of polarisation, the position of the claimant towards the object and the conveyed justifications were coded. First, this section will evaluate the tone of the claims towards the Commission, the Irish and Italian government as well as Apple and Ilva. Then, it will evaluate the justifications provided by the claimants to either legitimise or delegitimise any other actors involved.

### 6.4.2.1 Tone

The tone variables can serve as an indicator for opinion formation as well as the ability for different claim makers to take a position (i.e. for or against the Commission) regarding the state aid case. Moreover, the tone variable allows this study to understand whether moods towards either of the analysed objects (Commission, national governments or corporations) change over time based on key periods, such as the notification or decision date.

The analysis performed on the headlines in both the *Irish Times* and the *Irish Independent* shows that mostly neutral tones were used towards the Commission (and more generally towards the EU) on the Apple case. However, while the tone towards the Commission tended to be neutral in the headlines, the tone of the actual articles was more negative towards the Commission. This is likely because the newspapers that were analysed were two daily quality newspapers and not tabloids, which tend to be more sensationalist in nature (see Hendricks and Kleemans 2017) and often lead stories with more negative or positive coded headlines. Meanwhile in Figure 6.5, we can also see some EU positive headlines in the Irish Times, while the Irish Independent had either neutral or negative headlines. This is likely because the Irish Independent has more a centre right/conservative political leaning while the Irish Times has a more centre-left political leaning.

Figure 6.5 Headline Tones Towards the Commission in Irish Newspapers

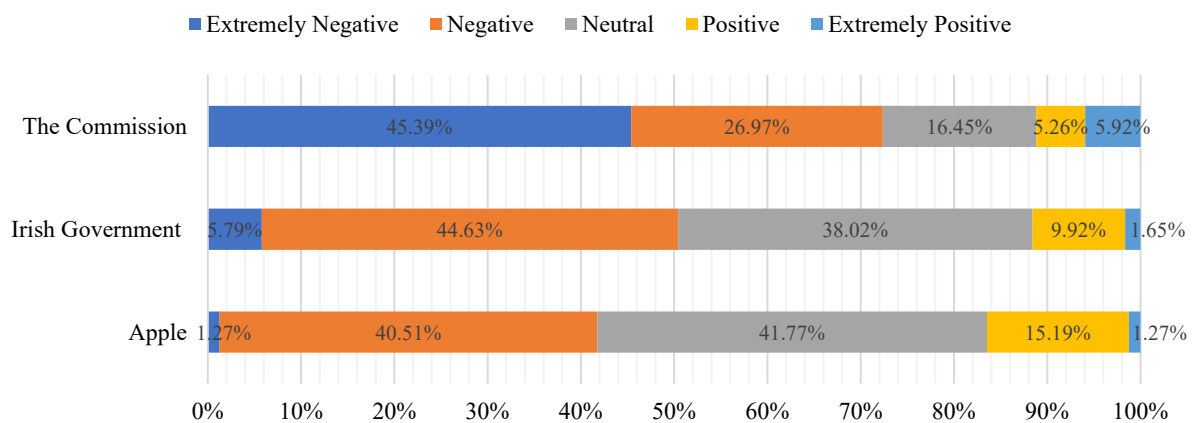




The analysis of the tones adopted in the claims also suggests that both newspapers held more negative positions towards the Commission and the Irish government on the Apple case in the analysed news articles. As shown in Figure 6.6, actors made the most extreme negative claims towards the Commission (45.39%) in reference to the Apple state aid case. By contrast, the Irish government received only 5.79% of extremely negative claims and Apple 1.27%. The Irish government received the most amount of claims coded as “negative” (44.63%), followed by Apple (40.51%) and the Commission (26.97%). However, when extremely negative and negative claims are group, we can see that the Commission is the actor that received the most negative claims (72.36% of the total amount of claims about this object). Negative claims (including “negative” and “extremely negative”) towards the Irish government represent 50.42% of total amount claims made about this actor and 41.78% for the total amount of claims made about Apple.

Apple received the most “neutral” claims (41.77%), followed by the Irish Government (38.02%) and the Commission (16.45%). Apple also received the most “positive” claims (15.19%), followed by the Irish Government (9.92%) and the Commission (5.26%). However, the Commission received the most amount of claims coded as “extremely positive” (5.92%), followed by the Irish Government (1.65%) and Apple (1.27%). When positive and extremely positive claims are grouped, Apple is the actor with the most amount of claims (16.46%), followed by the Irish Government (11.57%) and the Commission (11.18%). Overall, these results show that the Commission received the most “extreme” claims, both positive and negative. We can also see that claim makers made more negative claims towards the three objects than positive claims.

*Figure 6.6 Cumulative Positions Towards the Commission, Irish Government and Apple*



An independent T-Test (see Table 6.1) was also conducted to identify any significant differences between the variables of positions or tones towards each of the analysed objects (the Commission, the Irish Government and Apple). Specifically, the tone of the claims made towards the Commission was significantly different to the tone of the claims made towards the Irish Government ( $p < 0.01$ ) or Apple ( $p < 0.01$ ). However, the tone of the claims made in regards to the Irish government versus Apple was not significantly different ( $p = .500$ ), indicating that claim makers did not have significantly different positions towards these two objects (the Irish Government and Apple).

*Table 6.1 Independent Group T-test between Objects (the Commission, the Irish Government and Apple)*

|                             | <b>M</b> | <b>SD</b> |                             | <b>M</b> | <b>SD</b> | <b>t-test</b> |
|-----------------------------|----------|-----------|-----------------------------|----------|-----------|---------------|
| <i>The Commission</i>       | -1.01    | 1.171     | <i>The Irish Government</i> | -.43     | .815      | .006*         |
| <i>The Commission</i>       | -1.01    | 1.171     | <i>Apple</i>                | -.25     | .776      | .006*         |
| <i>The Irish Government</i> | -.43     | .815      | <i>Apple</i>                | -.25     | .776      | .500          |

\*\*\* $p < 0.001$  N=352

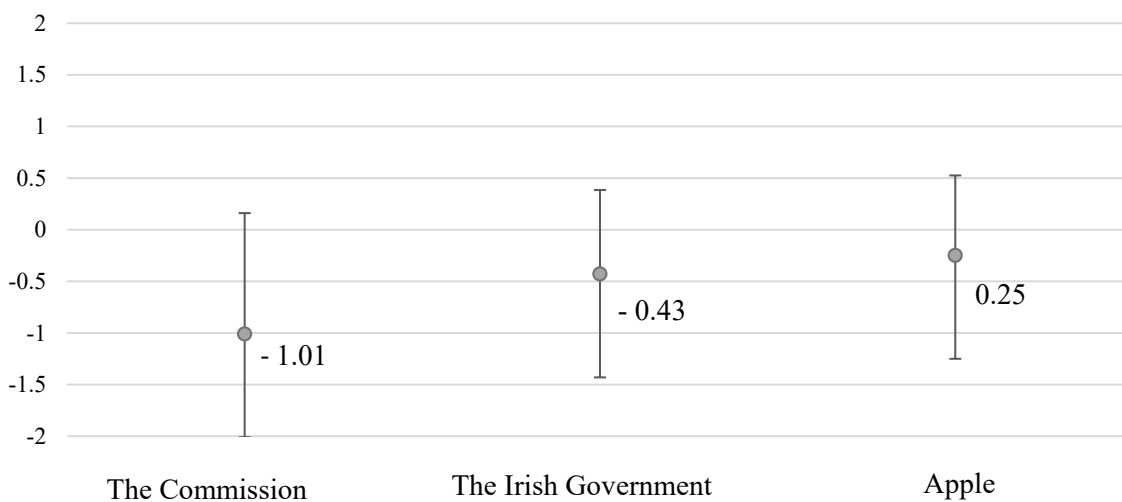
Note. M=Mean. SD=Standard Deviation. Position towards object ranges from -2-2 in which 2 indicates extremely positive views towards the object and -2 extremely negative

Figure 6.7 shows the means for the positions made towards the different objects (shown as the circles). Inspection of this figure reveals that Apple is the only object that had a mean score that was slightly above zero. This reaffirms what was previously shown in Figure 6.6. That is, out of the three objects, Apple received the most “neutral” claims (rather than extremely negative or positive as the Commission). This also shows that the majority of claim makers showed no strong feelings towards how the corporation behaved during the politicisation of this state aid case. Figure 6.7 also shows the standard deviations of each object with the Commission having the largest range between the three ( $sd = 1,171$ ), followed by the Irish Government ( $sd = 0,815$ ) and Apple ( $sd = 0,776$ ). It is worth noting that the averages of the claims made are either neutral (for Apple) or negative. This means that there were few positive claims about the three analysed objects. This might reflect a negative bias in the Irish media towards the three observed objects or it might mean that, in the claims analysed, most actors decided to blame the Irish government and the Commission (however, the Commission still received more negative claims).

Overall, these results illustrate that more actors had extreme positions towards the Commission than towards the Irish government or Apple, making the Commission the most polarising actor in the politicisation of the Apple state aid case. This might have occurred as a

consequence of the member state deciding to appeal the Commission’s decision. Thus, the appeal was a key factor in the Commission becoming the most polarised actor in the discussions of those at the national level. In this sense, the appeal may have helped to position Ireland against the Commission or the EU and also cause the politicisation to follow an international conflict trajectory (as understood by De Wilde and Lord 2016).

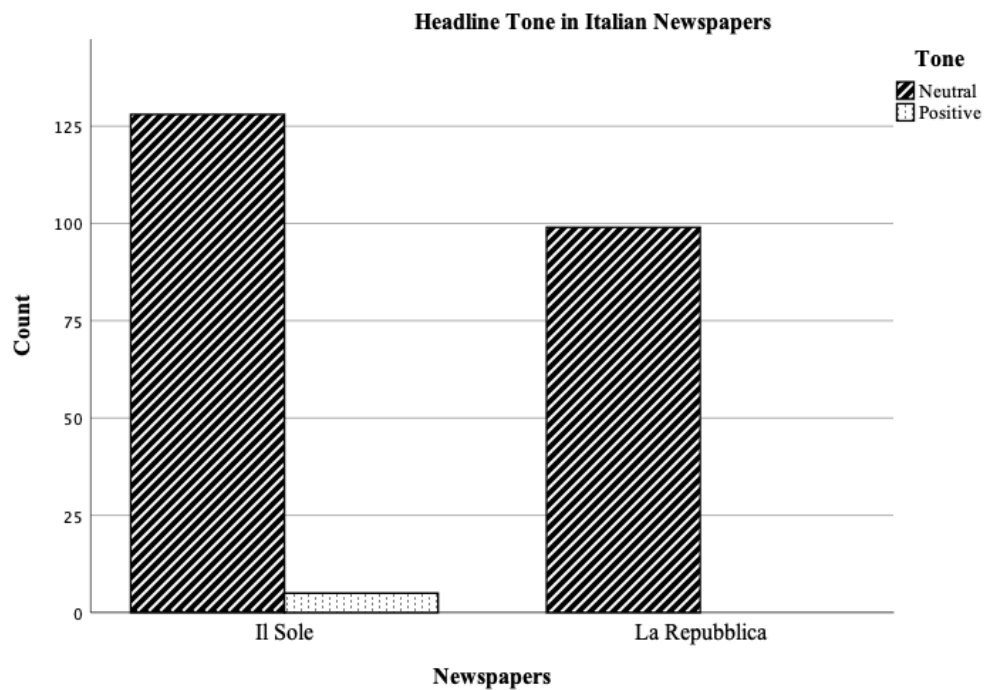
*Figure 6.7 Polarised opinions towards the Commission, the Irish government and Apple.  
Mean scores and Standard Deviations<sup>136</sup>*



Figures 6.8 and 6.9 show that polarisation was less visible in the Ilva case compared to the Apple state aid case. The neutrality of the Italian newspaper coverage is clearly visible in the headlines. Indeed, most of the headlines showed a neutral position towards the Commission and Il Sole also showed some positive claims, even though this is a newspaper with a centre-right political leaning.

<sup>136</sup> The values for the claimants were recoded for both the Apple and Ilva cases so both could be comparable.

Figure 6.8 Headline Tone towards the Commission in Italian Newspapers

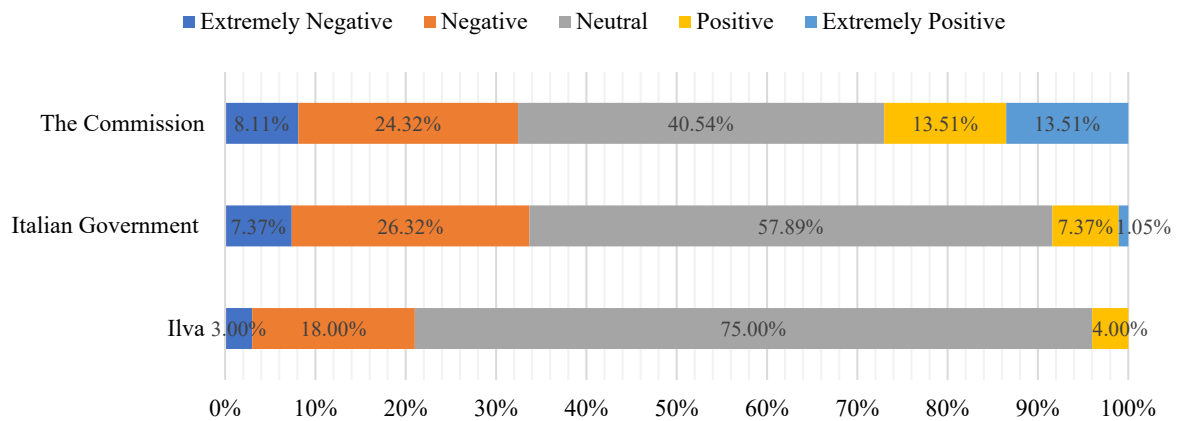


The Commission received the most “extremely negative” claims (8.11%), followed by the Italian Government (7.37%) and Ilva (3%). However, the Italian government received the most “negative” claims (26.32%), followed by the Commission (24.32%) and Ilva with (18%). When combining the results for both extremely negative and negative claims, the Italian government has received the majority of claims (33.69%), followed by the Commission (32.43%) and, finally, Ilva (21%). In terms of neutral claims made towards the three analysed objects, most of the claims made towards Ilva were coded as neutral (75%), followed by the Italian government (57.89%) and the Commission (40.54%). In terms of positive claims, the Commission received the most claims (13.51%), followed by the Italian government (7.37%) and Ilva (4%). Both the Commission and the Irish government received extremely positive claims with 13.51% and 1.01% respectively, while none of the claims made regarding the object “Ilva” were coded as such.

Overall, for the Ilva case, the Commission received more negative and positive claims than the other two evaluated actors. More specifically, 27% of the positive and extremely positive claims were coded towards the Commission while only 8.42% were coded for the Irish Government and 4% for Ilva. This shows that, in the Ilva case, more claimants made positive claims towards the Commission, which is the opposite of what occurred in the Apple case. Also, it is important to note that, in the Ilva case, it was the Irish Government rather than the

Commission who received the most negative claims. Moreover, most claim makers made neutral claims towards Ilva demonstrating once again that, out of the three evaluated actors in the politicisation of a state aid case, the corporation received the least amount of polarised opinions.

Figure 6.9 Cumulative Positions Towards the Commission, Italian Government and Ilva



Another independent t-test was conducted on the tone and positions made towards the three evaluated objects in the Ilva state aid case (the Commission, the Italian Government or Ilva). The independent t-test showed that the tone of the claims made towards the Commission and Ilva were significantly different ( $p < 0.01$ ; see Table 6.2). Similarly, the tones of the claims directed at the Italian government versus Ilva and the Commission ( $p < 0.01$ ). Finally, the independent t-test showed that the values compared between the Commission versus the Italian government ( $p = .65$ ) were also significantly different.

Table 6.2 Independent Group T-test between Objects (the Commission, the Italian Government and Ilva)

|                               | M    | SD    |                               | M    | SD   | t-test  |
|-------------------------------|------|-------|-------------------------------|------|------|---------|
| <i>The Commission</i>         | .00  | 1.130 | <i>The Italian Government</i> | -.32 | .762 | .065*   |
| <i>The Commission</i>         | .00  | 1.130 | <i>Ilva</i>                   | -.20 | .550 | .000*** |
| <i>The Italian Government</i> | -.32 | .762  | <i>Ilva</i>                   | -.20 | .550 | .000*** |

\*\*\* $p < 0.001$  N=352

Note. M=Mean. SD=Standard Deviation. Position towards object ranges from -2-2 in which 2 indicates extremely positive views towards the object and -2 extremely negative

Figure 6.10 shows the means for the positions made towards the different objects in the Ilva case (the Commission, the Italian government and Ilva). The Commission has a mean score

of zero, while the Italian government had a mean score of -0.32 and Ilva has a score of -0.2. The object with the largest standard deviation was the Commission (sd= 1.13), followed by the Italian government (sd= 0.762) and Ilva (sd=0.55). While the standard deviation was larger for the Commission, both the Italian government and Ilva had less positive claims made towards them than towards the Commission. This shows that, while the Commission seems to be the most polarised actor in the Ilva case (in terms of actors making both positive and negative claims towards this object), more positive claims were still made towards the Commission than towards the other two analysed objects. Again, this shows that most claims made towards the Commission were neutral. However, the claims made towards the Italian government or Ilva as objects were mostly negative, which created a lose-lose situation for the national actors involved in the politicisation process. As such, most of the negative claims in the politicisation of the Ilva case were made towards the Italian government and Ilva.

*Figure 6.10 Polarised Opinions Towards the Commission, the Italian Government and Ilva.  
Mean scores and Standard Deviations*

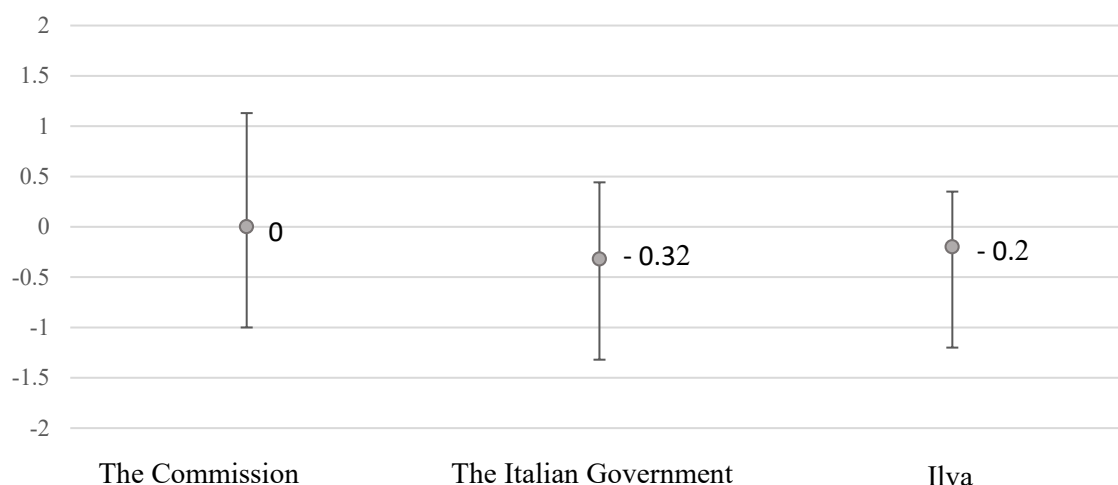


Table 6.3 shows the positions towards the Irish Government and the EU before and after the decision date. Positive, negative and neutral positions towards Ireland and the Commission increased after the decision date. However, the rise in negative claims was less for the Irish government (+7) than for the Commission (+85). This illustrates how negative views became more prominent for the Commission than for the Irish government. At the same time, positive views increased more towards the Commission after the decision date (+16) than for the Irish government (+8). Therefore, the polarisation of the case also increased the number

of positive claims towards the Commission, as no such claims were found before the decision was made. Moreover, neutral claims increased minimally for the Commission (+1) and somewhat for the Irish Government (+16). This indicates that the politicisation of this case allowed actors to make more extreme claims towards the Commission (and the EU more generally).

*Table 6.3 Position Towards Irish Government and The Commission Before and After Decision Date*

| <b>Position</b> | <b>Irish Government</b> |              | <b>The Commission</b> |              |
|-----------------|-------------------------|--------------|-----------------------|--------------|
|                 | <b>Before</b>           | <b>After</b> | <b>Before</b>         | <b>After</b> |
| <i>Neutral</i>  | 15                      | 31           | 12                    | 13           |
| <i>Negative</i> | 27                      | 34           | 13                    | 98           |
| <i>Positive</i> | 3                       | 11           | 0                     | 16           |

On closer inspection of the position towards different actors in the Ilva case (see Table 6.4), it appears that the main changes occur after the Commission decided to notify the aid (rather than after the official decision) for both actors (the Italian government and the Commission). The Italian government gained more neutral claims (+33) than the Commission (+15) after the notification of the aid. Similarly, the Italian government gained both more negative (+24) and positive claims (+25) than the Commission, who gained only +3 claims in negative claims and +10 in positive claims, after it officially decided to notify that it would investigate the company. After the decision was made by the Commission, the Italian government experienced a decrease in neutral (-37), negative (-10) and positive (-8) claims. Meanwhile, the Commission also experienced a decrease in neutral (-10) and negative (-10) claims and it maintained the same amount of positive claims (=5). The results suggest that if there is some form of politicisation in the Ilva case, it occurred after the official notification to investigate the aid rather than after the Commission’s decision. The lack of polarisation after the decision date may be because the Commission demanded that Italy recover less money (84 million) from Ilva than was originally expected (>2 billion euros in aid was being investigated by the Commission).<sup>137</sup>

<sup>137</sup> See <https://www.reuters.com/article/ilva-ma-arcelormittal-eu/update-1-eu-orders-italy-to-recover-84-mln-euros-in-loans-from-ilva-idUSL8N1OL2TA>

*Table 6.4 Position Towards the Italian Government and the Commission Before and After the Notification and Decision Dates*

| Position        | The Italian Government |                    |                 |                | The Commission      |                    |                 |                |
|-----------------|------------------------|--------------------|-----------------|----------------|---------------------|--------------------|-----------------|----------------|
|                 | Before Notification    | After Notification | Before Decision | After Decision | Before Notification | After Notification | Before Decision | After Decision |
| <i>Neutral</i>  | 11                     | 44                 | 46              | 9              | 0                   | 15                 | 13              | 3              |
| <i>Negative</i> | 4                      | 28                 | 21              | 11             | 4                   | 7                  | 11              | 1              |
| <i>Positive</i> | 2                      | 27                 | 8               | 0              | 0                   | 10                 | 5               | 5              |

Irish newspapers covered stories with a total of 91 claims made by actors from the Commission or the EU more broadly. Out of these, the Commission or actors who work to protect EU interests made a total of 58 claims regarding the Irish government, 24 towards Apple and 9 claims about itself. On top of this, the manner in which the Commission made its claims in Irish newspapers tended to be negative and critical of the Irish Government (average tone: -0.6) and even more so towards Apple (average tone -0.8). Meanwhile, the tone that members of the Commission used to justify itself was positive (+0.6). Claimants classified as part of the Irish government made 129 claims, which is 38 more claims than EU claimants (these claims do not include Irish politicians who are not directly linked with the government). Out of these, the Irish government made a total of 78 claims regarding the Commission with an average tone of -1.2, while the same claimant made 27 claims about itself with a slightly positive tone of +0.2. The Irish government also made 14 statements with Apple as the “object” and all of the claims made also had a positive (+0.2) tone.

In comparison, Italian newspapers covered stories with a total of 107 claims made from EU actors. Of these, 53 claims were made towards the Italian government and 51 claims towards Ilva. This indicates that the Italian newspapers paid more attention to EU sources than to their national claimants, while the opposite occurred in the Irish newspapers covering the Apple case. For the Ilva case, EU actors made negative claims towards Italy (-0.2) and towards Ilva (-0.10) and made 3 neutral (0) claims to justify their actions in the analysed Italian newspapers. Unlike the Apple case, the EU did not have to portray itself “positively”. Meanwhile, the Italian government made only 21 claims (86 claims less than the EU) and 4 of these claims were made towards the Commission/EU with an average tone of +0.75, which is positive in the context of the analysis so far. Claimants from the government also made 13 claims regarding Ilva and the average tone was neutral. To justify its own actions, the Italian government made 5 claims with an overall positive tone (+0.65).

Together these results indicate that Irish newspapers were less likely to cover the EU’s perspective than the Italian newspapers. This suggests that, in this specific context, Italian



newspapers are more willing to give EU claimants a “voice” in their news articles. Indeed, EU claimants were less visible in Irish newspapers than in Italian newspapers. Moreover, claimants tended to regard the Commission more negatively in the Apple case and more positively in the Ilva case. This may indicate that the EU had a stronger voice in the Ilva case compared to the Apple case, which may have influenced the politicisation of the cases and the effects of these cases on the Commission’s legitimation. Although, it is also possible that this might have occurred as a result of other non-evaluated factors such as how Irish versus Italian journalists interpret the news. Not only did EU actors have a stronger voice (based on the number of claimants that were represented in the Italian media), but also representatives from the Italian government had positive opinions towards the Commission. Conversely, in the Apple case, the Irish media paid less attention to EU claimants and it also showed more negative positions expressed towards the Commission.

#### *6.4.2.2 Justifications*

Table 6.5 shows the number of justifications made in the claims for Apple. To recap, the types of justifications spotted were: EU’s procedure/effectiveness frame, Protection of EU interest, Politically Driven Frame, National Identity (Sovereignty), Ireland’s reputation and future, Economic Effects, Labour/Cost-benefit, Procedural Frame, Solidarity/Equity and Legality justification. These justifications can have differential impacts on the EU’s legitimacy, which will be discussed below.

For the Apple case, most of the claims had some form of justification attached to them (74.4%) while 25.6% did not have any justification at all. Out of those that did have a justification, the most frequent was labelled as “economic effects” (20.5%). These are justifications related to certain economic performance (effective or ineffective) by the Commission, the Irish government or Apple. An example of an economic effects claim is “PBP’s Richard Boyd Barrett claimed tax arrangements with Apple will have a negative impact on Ireland’s economy”. This type of justification tends to either contest or defend the output legitimacy of state aid decisions. Indeed, “economic performance” justifications question the government or the Commission’s performance in terms of economic performance or efficacy, as well as the cost effectiveness of a decision. Other popular frames include the “legality” justification (18.1%), which mostly refers to opinions about whether the notification/decision followed the according legal order. The “legality” justifications also include statements about the EU abusing its powers. The legality justifications tend to question the throughput

legitimacy character of the EU and relate to the way in which processes and decisions were made. When using the legality justifications, the Commission justifies its throughput legitimacy by stating that it usefully applied the law. Meanwhile, actors from the Irish government tended to critique the Commission application of state aid rules to the Apple case. After, the “legality justification”, there were some justifications based on the “EU effectiveness frame” (9.7%), which are specific justifications related to the EU’s ability to get things done (or not) in the appropriate manner. The “EU effectiveness frame” can also be considered as part of output legitimacy justifications, as it also relates to whether the outcome of the actions made by the actors involved were legitimate or not. This is followed by justifications about “Ireland’s reputation” and the “procedural frame” (7.4% each). The latter also relates to throughput legitimacy as it questions the procedures followed by either member state or Apple. The remaining justifications obtained were coded as labour/employment (4.0%), politically driven (2.8%), Ireland’s sovereignty (2.8%), solidarity/equity (1.1%), and protection of the EU (“EU and its member states as one polity”) (0.3%). The “protection of EU interest” justification was aimed at identifying claims used for advancing the common interest of all European or member states and statements that attempted to safeguard the EU from the US’s hegemony. The only claim that was labelled under this particular justification was:

“In Paris yesterday, European commissioner for competition Margrethe Vestager defended the EU's right to use state-aid rules to investigate member states' tax matters. Addressing the OECD in Paris, she said that, in tax policy as in other areas, the commission can "help to support regulation by doing our job of enforcing competition rules" (Carswell and Lynch 2016).

The claim above, from Vestager and published in the *Irish Times*, emphasised the importance of the EU as a regulator of its member states. This, however, was the only claim coded as such. This suggests that Irish claim makers did not try to justify the EU’s role in terms of a common interest but, rather, most statements regard the EU as a separate entity from Ireland. Statements show that Ireland is portrayed as its own actor, who at times must fight the EU to protect its own interests and not the interest of the EU polity as a whole. These claims are likely to receive a stronger stance in the Irish media coverage given that the press is Irish and not European. This is an interesting finding as it demonstrates that, in the Apple state aid case, most claim makers shown in the Irish media were able to become unified against the Commission. This is similar to the trends described by De Wilde and Lord (2016) as an “international conflict” where, by politicising these issues, the government might frame the

international conflict of “us” (the nation-state) against “them” (EU), which could result in the polarisation of society.

*Table 6.5 Overall Justifications: Apple Case*

| <b>Justification</b>                         | <b>Frequency</b> | <b>Percent</b> | <b>Cumulative Percent</b> |
|--|------------------|----------------|---------------------------|
| <b>Effectiveness (EU) [110]</b>              | 34               | 9.7            | 9.7                       |
| <i>Output legitimacy</i>                     |                  |                |                           |
| <b>Protection of the EU [120]</b>            | 1                | 0.3            | 9.9                       |
| <b>Political driven Frame[130]</b>           | 10               | 2.8            | 12.8                      |
| <b>National Identity (sovereignty) [210]</b> | 10               | 2.8            | 15.6                      |
| <b>Ireland’s reputation [220]</b>            | 26               | 7.4            | 23.0                      |
| <b>Economic Effects [310]</b>                | 72               | 20.5           | 43.5                      |
| <i>Output legitimacy</i>                     |                  |                |                           |
| <b>Labour/Employment [320]</b>               | 14               | 4.0            | 47.4                      |
| <i>Output legitimacy</i>                     |                  |                |                           |
| <b>Procedural [330]</b>                      | 26               | 7.4            | 54.8                      |
| <i>Throughput legitimacy</i>                 |                  |                |                           |
| <b>Solidarity/Equity [340]</b>               | 4                | 1.1            | 56                        |
| <i>Input legitimacy</i>                      |                  |                |                           |
| <b>Legality [350]</b>                        | 65               | 18.1           | 74.4                      |
| <i>Throughput legitimacy</i>                 |                  |                |                           |
| <b>No Frame [999]</b>                        | 90               | 25.6           | 100                       |
| <b>Total</b>                                 | 352              | 100            |                           |

Table 6.6 shows the coded justifications for the Ilva case. It was found that 72% of the claims had some form of justification and 27.6% had no justification. The primary justification used in the Ilva case was the “Solidarity/Equity” frame. For this case, references to the environment and damages to the quality of life of those in Taranto were mentioned during these types of claims. This type of justification relates more to input legitimacy as it takes into consideration how the steel company affects the life of the citizens of Taranto. The “solidarity/equity” frame was followed by the “legality” justifications, which for the Ilva case mostly relate to disrespecting state aid rules. “Procedural claims” were the next most frequently used justification. These were claims related to the Italian Government or Ilva’s handling of the situation in terms of procedure and, as previously mentioned, relate to questioning the throughput legitimacy of these actors.

Next, the “economic effect” justification was used in claims that refer to the economic significance of a state aid investigation or the economic effects that the unlawful aid has had on other corporations. The “EU effectiveness” frame only relates to claims that discussed the EU’s handling of the situation. In comparison to Apple, Ilva had 29 less claims with this

justification, demonstrating that, in the Ilva case, this type of output legitimacy justifications were less apparent. This means that the justification of the Apple case was more output oriented (120 output legitimacy claims) than the Ilva case (41 output legitimacy claims). Finally, the political justification was used only twice and justifications related to the “protection of the EU” frame, “national identity: sovereignty” and “Italy’s/Ilva’s reputation” were not used. The use of these last four justifications in the Apple versus Ilva case is particularly interesting. For instance, none of the claimants used the “national sovereignty” frame to protect Italy and Italy’s biggest steel industry from the EU, as Irish claimants did with Apple.

*Table 6.6 Overall Justifications: Ilva Case*

| <b>Justification</b>  | <b>Frequency</b> | <b>Percent</b> | <b>Cumulative Percent</b> |
|---|------------------|----------------|---------------------------|
| <b>Effectiveness (EU) [110]</b><br><i>Output legitimacy</i> | 9                | 3.9            | 3.9                       |
| <b>Protection of the EU [120]</b>                           | 0                | 0              | 3.9                       |
| <b>Political driven Frame [130]</b>                         | 2                | 0.9            | 4.7                       |
| <b>National Identity (sovereignty) [210]</b>                | 0                | 0              | 4.7                       |
| <b>Italy’s/Ilva’s reputation [220]</b>                      | 0                | 0              | 4.7                       |
| <b>Economic Effects [310]</b><br><i>Output legitimacy</i>   | 26               | 11.2           | 15.9                      |
| <b>Labour/Employment [320]</b><br><i>Output legitimacy</i>  | 6                | 2.6            | 18.5                      |
| <b>Procedural [330]</b><br><i>Throughput legitimacy</i>     | 38               | 16.4           | 34.9                      |
| <b>Solidarity/Equity [340]</b><br><i>Input legitimacy</i>   | 44               | 19             | 53.9                      |
| <b>Legality [350]</b><br><i>Throughput legitimacy</i>       | 43               | 18.5           | 72.4                      |
| <b>No Frame [999]</b>                                       | 64               | 27.6           | 100                       |
| <b>Total</b>  | 232              | 100            |                           |

Overall, in the Irish case, claims made by members of the Commission are justifying its reasonings behind investigating and making the final decision regarding Apple. Meanwhile, the Irish government tries to justify its decision to appeal the decision and Apple as to why the decision is not good for Ireland. In this sense, the appeal becomes one of the main politicising forces of the Apple state aid case. In the Ilva case, EU claimants tend to justify their actions by specifying that their state aid decision does not hinder or slow down the urgent environmental remediation required in the Taranto area. Aid can be used to protect the health of the Taranto citizens through the Italian state without it being regarded as “unlawful” by the Commission. Members of the Italian government have tried to defend the laws they previously approved

regarding Ilva to ensure that the Commission does not raise any questions. Meanwhile, the former owners of Ilva tried to justify their actions by suggesting that there is no evidence that Ilva polluted Taranto during the Riva management.

#### 6.4.2.3 Comparing Justifications in the Two State Aid Cases

In this section, I will compare how claimants used the same justifications in the two state aid cases. First, table 6.7 shows that, in both cases, Vestager tried to justify the EU's role. In the Apple case, Vestager makes the analogy of a gift to understand how awkward it can be for member states to reclaim the money. However, she reiterates that the Commission is not "punishing" anyone with the Commission's decision regarding the Apple state aid case (see table 6.7). In the Ilva case, she does not rely on analogies, however she still tries to justify the work of the Commission by explaining how member states and the EU work together to ensure that state aid rules are appropriately applied and that the market is protected from distortions that might occur from providing state aid to a particular steel company. In this claim she is making clear that state aid decisions are based on rules, legislations and procedures, which have been put in place by both the member state and the Commission to ensure it benefits everyone involved. Thus, her justifications for the Commission's state aid decision are based on throughput legitimacy. As previously suggested, this throughput legitimacy relies on justifications regarding how rules and decisions were made by EU claimants.

*Table 6.7 Vestager Justifying the Commission's Role in Both the Apple and the Ilva Cases*

|                      | <b>Apple</b>  | <b>Ilva</b>  |
|----------------------|---|--|
| <b>Claimant</b>      | DG-Competition<br>Commissioner Margarethe Vestager  | DG-Competition<br>Commissioner Margarethe Vestager   |
| <b>Claim Example</b> | But the commissioner pointed out that enforcement of EU state rules does not work with punishments or fines. "Where I was raised in the western part of Denmark, the most awkward thing you could ever do was to take back a gift" and this was effectively what was being requested here, she said. "You rely on the uncomfortable inconvenience of a member | "«Across the European Union - explains Margrethe Vestager, Commissioner responsible for competition policy - the steel industry has to deal with global overcapacity and with the strength of imports, challenges that must be addressed by improving global competitiveness of the sector in the long run. With this in mind, EU state aid rules allow Member |

|                           |   |   |
|---------------------------|---|---|
|                           | state having to take back a selective benefit or advantage that they wanted to give." | States, for example, to support research activities or alleviate the energy costs of steel companies, while the Commission takes care to avoid distortions in international trade by applying anti-dumping measures. or anti-subsidy. For the same reason, the Member States of the European Union and the Commission have introduced rigorous guarantees which prevent state aid from being granted to help and restructure steel companies in difficulty »" |
| <b>Justification Code</b> | Effectiveness Frame [110]   | Effectiveness Frame [110] and Legality Frame [350]  |

While Vestager relies on justifications which aimed to make the Commission's role clear, the governments of Ireland and Italy took different approaches (see Table 6.8). The Irish government had to justify in most of its [it is a singular noun] claims why it had to appeal the Commission's decision, instead of asking Apple for the 13 billion euros. To justify their decision to appeal, certain actors, such as the finance spokesman Michael McGrath, used the "national identity" frame to suggest that the appeal was necessary to protect Ireland's sovereignty. This places more emphasis on Ireland as a whole; as an actor that can move forward with their decisions against the Commission. By contrast, in the Ilva case, the President at the time, Matteo Renzi, justified how the Italian government was working alongside the European Commission. That is, Italy is not acting against the EU but rather trying to strengthen this partnership. These cases therefore highlight two contrasting approaches; one is trying to work together with the Commission (Italian government) and other seems to be in conflict with it (Irish government).

*Table 6.8 Claimants From the Irish and Italian Government Justifying Their Own Actions*

|                      | <b>Apple</b>  | <b>Ilva</b>   |
|----------------------|---|---|
| <b>Claimant</b>      | Fianna Fáil (43 TDs) Finance spokesman Michael McGrath  | President Matteo Renzi  |
| <b>Claim Example</b> | Fianna Fáil (43 TDs) Finance spokesman Michael McGrath said Ireland needed to "aggressively defend its position", saying: "It is control over our own tax policies that allows us to create and protect jobs." "Those who propose that we should sit it out need to explain how they think this would benefit Ireland's strategic interests." | At this moment we have six important cases open for alleged violation of EU state aid rules, the most relevant of which concerns Ilva. I maintain continuous relations with Commissioner Margrethe Vestager and we are creating a Directorate-General at the Department to strengthen coordination with all administrations on State aid and partnership with the Commission. |
| <b>Justification</b> | National Identity [220]<br>And "Labour" Frame [320]   | Procedural Frame [330]  |

Another two examples, shown in Table 6.9, can help emphasise the previous point. In the first claim, the Irish government highlights how the Commission exceeded its powers whereas the Italian government has a positive attitude regarding how the Commission is handling the situation with the Ilva company. In this sense, the politicisation of the Ilva state aid case did not polarise the Commission against the Italian government. Rather, other national actors (outside of the Italian government) blamed the Italian government and the politicisation of the issue related more to whether the corporation should be terminated due to bad management or if it should be kept in order to preserve jobs in the Taranto area. This shows that, in state aid cases that gain news attention, the government can act as a key player in polarising the Commission and creating two polar opposite sides: the member state versus the Commission. This could have also occurred in the Ilva case but, instead, the Italian government chose to portray the Commission as a supranational body with which it could cooperate.

Table 6.9 The Irish and Italian Government Making Claims Towards the Commission

|                           | <b>Apple</b>   | <b>Ilva</b>  |
|---------------------------|--|--|
| <b>Claimant</b>           | The Irish Government   | The Italian Government   |
| <b>Justification Code</b> | 350 and 210  | 340  |
| <b>Claim Example</b>      | "The commission has exceeded its powers and interfered with national tax sovereignty," the Government told the commission in legal arguments made public today. "Ireland did not give favourable tax treatment to Apple," it said. "The full amount of tax was paid in this case and no State aid was provided. Ireland does not do deals with taxpayers." | The Minister of Development, Federica Guidi defined "very positive" that the Commission "recognized the importance of the fact that, to deal with the 'environmental emergency' requires government intervention with public funds |
| <b>Object</b>             | The Commission   | The Commission   |

The most negative claims made in the Ilva case towards the EU came from Antonio Gozzi, who is the president of Federacciai. He stated “Unfortunately, Commissioner Vestager has a hyperliberist and market-oriented attitude: at the moment it is my understanding that, possibly, the Commission is considering to launch an investigation”. This claim illustrates his critique towards the Commission’s market oriented approach. However, unlike the Apple case, none of the other claims coded in the Ilva case included the idea of sovereignty nor did they point to political games made by the Commission. This demonstrates that the appeal was used by members of the Irish government to unify Ireland against the Commission and to grow a larger sense of nationalism. This is also apparent in how Irish claimants portray the Commission and Vestager as entities that are making a political statement by demanding Ireland to obtain the 13 billion euros back from Apple. For the Ilva case, these strategies were not observed as there was no appeal that had to be “sold” to Italian citizens or members of parliament. Rather, the Italian government had to fight to regain its legitimacy with its constituencies, who sided against the member state more often than not.

#### 6.4.3 Actor Expansion

Actor expansion refers to the amount of actors that are making a claim regarding a state aid case before and after a case becomes politicised. In the Apple case, the claims analysis



shows that there are 92 categories of claimants before the Commission’s decision whereas there were 221 different categories of claimants<sup>138</sup> involved after the decision date (30<sup>th</sup> August 2016). Actors included the Commission, the Irish Government, lawyers, members of the Irish parliament, journalists, lobby groups, citizens and state aid experts. Claimants were also grouped into wider categories but the results still show that there were 10 different types of claimants before and 23 after the decision. These wider categories include the EU, lawyers and the judiciary, charity groups and NGO lobby groups, members of the US senate (see Appendix B for a full list of all the categories). Figure 6.11 shows a clear expansion of actors after decision date.

*Figure 6.11 Actor Expansion for the Apple Case with Newly Coded Categories*

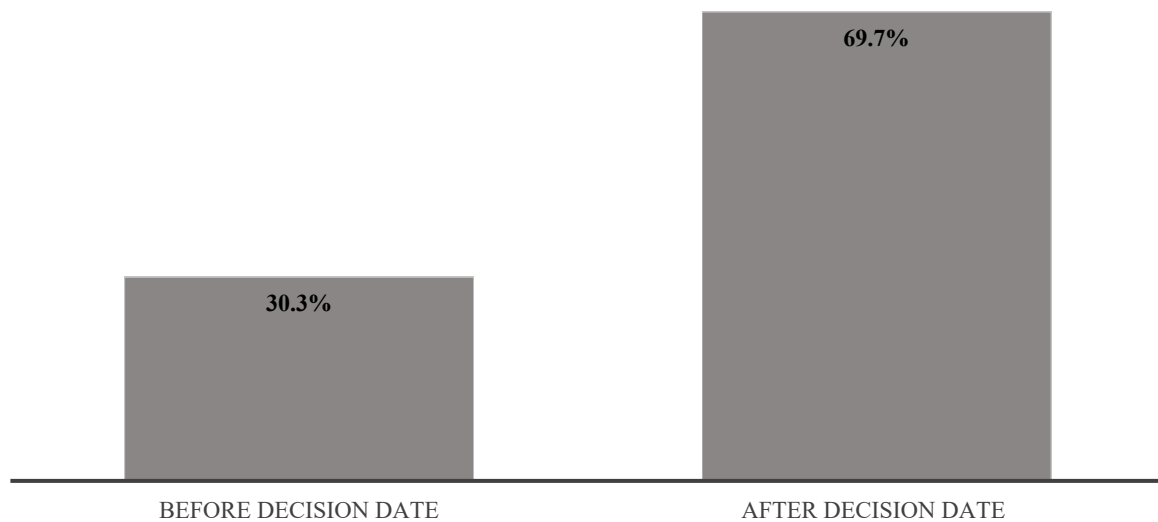


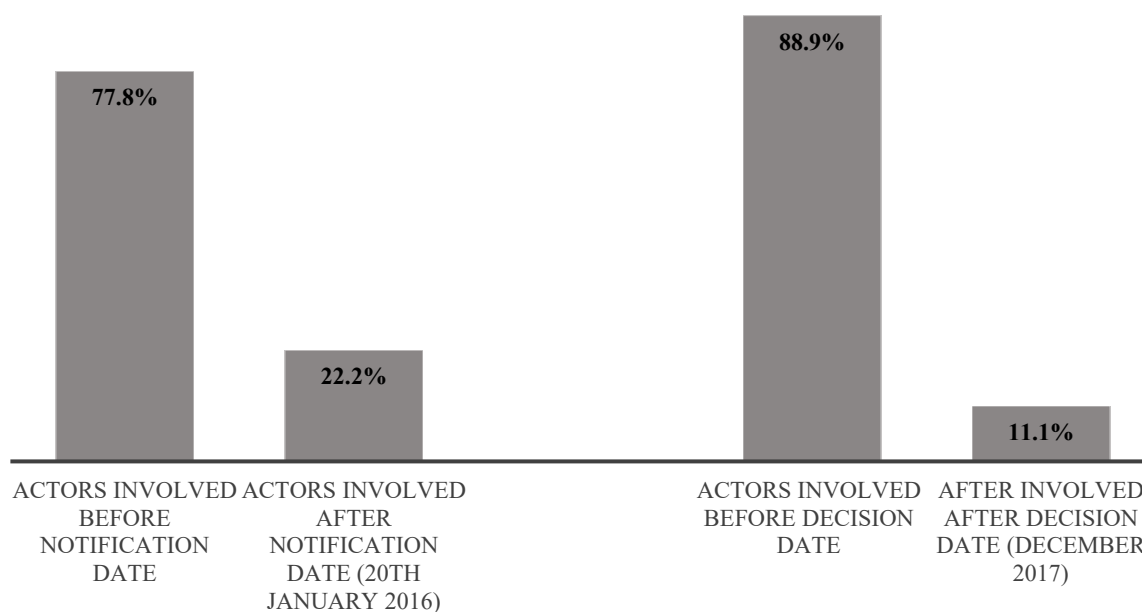
Figure 6.12 shows the actor expansion in the Ilva case. Here, the important date regarding the potential politicisation of the case is the notification rather than the decision date. After the notification, the number of actors expanded. The reason that the notification became more prevalent than the decision date could be as a consequence of several actors complaining to the Commission about Ilva. The Commission investigated the case for some time before making its official decision to open the case. The anticipation of this notification might explain why this date was so critical in the Ilva case. It was also probably expected that some of the aid

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<sup>138</sup> These claimants were later re-arranged into wider categories.

given to Ilva would be categorised as “state aid”, unlike the Apple case where several actors were unsure as to whether the Commission would ask Ireland to reclaim the money from Apple.

*Figure 6.12 Actor Expansion in the Ilva Case*



In terms of political parties, Fine Gael contained the majority of claim makers agreeing to appeal the Commission’s decision and are the political party who have made the majority of the claims (among all other Irish political parties). Other political parties and leaders such as Labour’s Brendan Howlin and members of the Fianna Fáil political party also supported the appeal against the commission. The political parties and members of the Irish parliament who opposed the decision to appeal the Commission’s decision tend to be left wing political parties including Sinn Féin, AAA (Anti-Austerity Alliance), PBP (People Before profit), Social Democrats and the Green party. Regarding the involvement of political parties in the Ilva case, actors who are affiliated with the Democratic Party made the majority of the claims (20 claimants). The majority of the claimants within the Democratic Party showed willingness to work and compromise with the European Commission. Meanwhile, claimants affiliated with the Populist Party 5 Star Movement, and the People of Freedom and Independents tended to blame the current Democratic Party and the government for Ilva’s mismanagement as well as for providing unlawful state aid to the corporation. Moreover, the state aid case was used by populist parties to demonstrate how “unfit” the Democratic Party was at handling the biggest

steel industry in the country and as a way of obtaining more popularity among voters who were upset about Ilva's lack of appropriate management. In this sense, the polarisation that occurred in the Ilva case occurred domestically.

In terms of how these cases were covered outside of the evaluated member states, the news story about the Apple state aid case was widely covered in the US (as shown in chapter 5 of this thesis) and also in other member states outside of Ireland (see Appendix D for the results). An analysis performed showed that the UK (508 news articles), Germany (362 news articles) and France (106 news articles) tended to cover the Apple state aid case the most outside of Ireland (see Appendix D for the results on this analysis). Meanwhile, for Ilva the only other countries that covered the case outside of Italy were the UK (25 news articles) and Ireland (1 news article).

A review on the news coverage on the Apple case in the UK shows that the coverage was focused on the appeal made by the Irish government. For example, papers like *The Guardian* have made the Apple case an example as to why the Commission needs to create common laws to make sure that tax avoidance in member states is illegal (Regan 2020). The news article suggested that if the Commission fails to do so, member states (especially those smaller in size) will continue to play a key role in helping large corporations pay less taxes and the system will not change (Regan 2020). UK centre-right newspapers like *The Times* focused its stories on how much money it has cost the Irish government to deal with the state aid case. In 2018, *The Times* published a story stating that "The Apple state aid case has cost the Irish taxpayer €5.7 million since 2016, the finance minister has confirmed" (see Deegan 2018). Unlike *The Guardian*, *The Times* focused its stories on the actors from the Irish government rather than those from the Commission.

Meanwhile, for the Ilva case, similarly to the Italian news media, the Guardian focused on the state aid story during the investigation period (see Rankin 2016). Guardian news articles tended to pay attention to the growing pressure by member states to rescue steel companies as the industry has been seeing large numbers of job cuts (Rankin 2016). From the Factiva search, it seems that the Times did not cover the story on the Ilva state aid case. While a thorough claims-making analysis was not able to be performed, as not enough news articles were found for the Ilva state aid case to draw a comparison, future research could focus on the news coverage of the Apple state aid case as it could also shed more light into the politicisation of the state aid case in other member states.

Overall, the Apple state aid case shows a high level of actor expansion where the claims made tend to be negative towards the European Commission, the Irish government and Apple. What this shows once again is the impact that the appeal has on the different justifications (or types of legitimations/delegitimations) made towards the EU. This is because the appeals tend to prompt claims that criticise the EU in national media, as shown in the Apple case. The Commission tried to legitimise its actions in the press to the Irish government, its citizens and whoever wants to listen. However, this was perhaps insufficient as the Commission was still perceived as not having applied the right rule to Apple in this case. The Ilva case also shows a growing number of actors but only after the notification date. The case shows less levels of polarisation towards the three actors involved and the most polarising agent was the Italian government, rather than the Commission (unlike the Apple case).

As previously stated, politicisation is understood as matters of degrees. As shown in Figure 6.13, for the specific period analysed, the Apple case was more politicised than the Ilva case. It is important to note that both cases may become less (or more) politicised during other periods. Recalling the theoretical chapter of this dissertation, the analysis on the politicisation of both cases shows that the Ilva case reached politicisation 2 (see Chapter 2). This type of politicisation refers to the transfer from the private to the public sphere. This occurs when state aid procedures start to involve the member-state, corporation or local government for further details on the formal investigation. It also occurs when a member-state is referred to court for failure to follow the Commission's decision or when the Commission releases a press release about the case. In this type of politicisation, the salience of the state aid case begins to increase in media outlets that cover the EU but we might also start to see some coverage in member state media/local media depending on who is involved. This happens as a consequence of the member state becoming more involved in the state aid process. In this type of politicisation, claims are made by different actors from a multitude of backgrounds.

Meanwhile, the Apple case reached politicisation 3 (see Chapter 2). In the third type of politicisation, an increasing amount of actors and debates start to become polarised and the salience of state aid further increases in the EU and also in national and/or local media. In this form of politicisation, the appeal (or contestation by the member state) is critical for the event to become public and part of politicisation 3. The difference between type 2 (in the Ilva case) and type 3 (in the Apple case) for this study was the way in which polarisation worked in the politicisation of these cases. The full polarisation in the Apple case made it become extremely politicised.

*Figure 6.13 Politicisation Scale of the Apple and Ilva Cases*



### **6.5 Patterns of Politicisation using the results obtained for Appealed and Non-appealed Cases**

This section provides the reader with more detailed explanations of the phases of politicisation based on the results of this chapter. Bates, Jenkins and Amery (2014) have previously provided patterns of partial repoliticisation which aimed at raising questions about the relationship between governance, technology, society and state. Bates, Jenkins and Amery (2014) also demonstrated that politicisation and depoliticisation can occur “concurrently and within particular political and social spaces” (2014, p.256). Their conclusions suggest that processes of politicisation and depoliticisation are also occurring within the political and social spaces that govern all areas of our lives (2014, p. 257). Similarly, this dissertation also sees both processes as occurring simultaneously, however, in this chapter, I have focused only on politicisation (the patterns for both processes will be considered together in the conclusion chapter of this dissertation).

Thus, the goal of this section is to create patterns of politicisation using the state aid cases to illustrate what might be expected in other similar state aid cases. First, I will start with the patterns observed in the appealed case (Apple) and then I will explain what occurred in the non-appealed case (Ilva). Each stage occurs around the key moments in the politicisation of these state aid cases: notification date, decision date and the appeal. This sections aims to unify the results of this chapter to provide general expectations for other UWRA state aid cases that may also become politicised or depoliticised. More specifically, it uses the current results to understand what can be expected from claim makers from both the national and EU level when state aid cases become politicised.

## *6.5.1 Phases of Politicisation for Appealed Cases*

### *6.5.1.1 Phase 1 – From the Notification Date Until the Decision Date: The Investigation*

The period of the investigation into the Apple state aid occurred when the Commission decided to formally investigate the aid on June 11<sup>th</sup> 2014. This period of investigation took place from June 2014 to the end of August 2016 (29/08/2016), when the Commission made its official decision. In terms of salience, the highest peaks in the appealed state aid case occurred immediately after the decision was announced. However, there were also several claims made during the investigation period (109), which I have coined “phase 1” of the politicisation of the Apple case. During phase 1 (the investigation phase of the state aid case), the results showed that most of the claims were in regards to “economic effects” justifications. Several of these claims were made by members of the US senate such as Carl Levin who stated (even before the Commission had made its decision) that the corporation was benefiting from tax deals that could negatively impact competition (see Carl Levin claims in the justifications section of this chapter). Another popular justification was regarding the legality frame, as actors from the Irish government tried to justify that their action complied with EU law during the Commission’s investigation. These types of claims in the investigation period for the Apple state aid case are unlikely to be replicated in other state aid cases that do not involve US multinationals.

However, what could be replicated in other state aid cases (whether they involve a US multinational or not) is the involvement of the national government in attempting to justify its past decisions in giving aid and attesting that they are compliant with EU law. Indeed, in the Apple case, claim makers from the Irish government “consistently argued that its tax policy complies with EU law, and [the government] threatened to refer any adverse finding to the European Court of Justice in Luxembourg” (claim coded by Irish official in the Irish Times 2015). This also demonstrates that Irish officials were already threatening to appeal during the investigation of the state aid case. These claims referred to both output and throughput legitimacy and aimed to evaluate the legitimacy of the Commission’s decision as well as the outcome of this decision. Thus, we can expect that, for other similar state aid cases (especially where US multinationals are involved in tax ruling practices, such as McDonalds, Amazon, Starbucks or Fiat<sup>139</sup>), throughput and output legitimacy justifications are also likely to occur

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<sup>139</sup> See Tax rulings section of the Commission’s State aid Website:  
[https://ec.europa.eu/competition/state\\_aid/tax\\_rulings/index\\_en.html](https://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html)

during the investigation phase. In the next section, it will be shown that these types of justifications also become popular in phase 2 of the politicisation of the investigated appealed case.

#### *6.5.1.2 Phase 2 – The Aftermath of the Commission’s Decision*

During this second phase, the majority of the claims occurred after the decision date for the evaluated appealed case (243 claims) took place. Similarly, there was a variety of different actors who made claims after this date (79.3%) showing a clear expansion in the amount of actors making claims regarding the Apple state aid case. After the decision date, opinions became both more positive and negative towards the Commission and the Irish Government (see Table 6.1) showing that the polarisation of the Commission (and the EU more generally) also took place. Moreover, during the second phase of the politicisation, immediately after the decision was made, threats regarding the potential appeal by the Irish government were ongoing. The claims came mainly from the then Minister of Finance Michael Noonan who, in a strongly worded briefing note, stated that the Commission had “misapplied tax rules laid down in EU treaties when it made its shock judgment on Tuesday” (Michael Noonan in claim evaluated for the Irish Independent, September 1<sup>st</sup> 2016). Claims made by the members of the Irish government relied primarily on the “legality frame”, which questions the throughput legitimacy of the state aid decision. The Irish government also relied on the “effectiveness frame” which questions output legitimacy of the Commission’s decision including the ability of the EU to get things done in an effective manner. The Apple case illustrates that claim makers from national governments are likely to question the throughput and output legitimacy of how the state aid decision was performed in order to sustain their appeal against the Commission. This is a way in which national actors can attempt to politicise the state aid case in their country to gain support for the appeal. This is also likely to transfer to other member states where the appeal needs to be debated in national parliaments and where the politicisation of the case unifies the member state against the Commission’s decision.

The claims analysis revealed that the Commission also tended to justify its actions using the legality frame (throughput legitimacy), the “effectiveness” and the economics effects (output legitimacy). Claims made by Commission representatives and Vestager during this period emphasized the decision-making process, highlighting its legitimacy in terms of legal procedures and rebalancing the Internal EU market. Indeed, both members of the Irish government and the Commission tried to delegitimise and legitimise, respectively, the

Commission's decision in terms of throughput and output legitimacy. Throughput legitimacy allows the Commission to justify its processes and procedures within the complexity of the MLG structure. Through their throughput legitimacy claims, the Commission can show that they conduct their procedures in an accountable and transparent manner. The reasoning for their decision is made transparent and open to the public via press releases and press conferences. However, this also allows for further debates to be created and provides the opportunity for member states, like the Irish Government, to threaten to appeal. It also allows member states to publicly question the manner in which these decisions were made in the first place, which can delegitimise the EU more generally. Meanwhile, output legitimacy derives from the effectiveness of the state aid decision. However, this effectiveness only has meaning in MLG in relation to the member states that provide the EU and the Commission with indirect legitimacy.

Overall, for this second phase, which occurs after the Commission's decision, similar types of behaviour (large number of claims made regarding a state aid decision, expansion in the type of actors making the claims and the types of justifications) are likely to occur in state aid cases where a well-known multinational corporation is involved. The media results previously evaluated in Chapter 5 show that not all state aid cases gain large amounts of news coverage. However, the results in Chapter 5 showed that appealed cases not only get more news coverage but are also subject to more claims from a variety of actors after the decision date has occurred. This means that appealed cases (especially those that involve multinationals in unlawful tax practices) are not only more likely to get noticed in the media but are also more likely to have actors make claims regarding the state aid decisions, which could legitimise or delegitimise the state aid actions taken by their national governments, the Commission or multinationals involved during this second phase of politicisation.

### *6.5.2 Phases of Politicisation for Non-appealed Cases*

#### *6.5.2.1 Phase 1 – From the Notification Date Until the Decision Date: The Investigation*

The results on the non-appealed case illustrate that the press releases and information from the Commission tend to be covered by the national media and can create news traction. For the Ilva case, the largest peak occurred on January 20<sup>th</sup> 2016, which was the date that the European Commission opened officially its investigation into Ilva. This shows that, within non-appealed cases, if the state aid case becomes politicised, debate is more likely to occur during



the investigation period (at least in the analysed state aid case for this dissertation). This also happened with the different types of actors who talked about the Ilva state aid case (88.9%) after the notification of the investigation by the Commission took place. This all shows that the politicisation of the non-appealed case in this analysis occurred mostly during the investigation or “phase 1”. Moreover, during this first phase, the most frequently used claims by the members of the Italian government were in relation to legality justifications (throughput legitimacy). Again, throughput legitimacy is used by the Commission to legitimise how it conducts its state aid investigations by following the law and rules. This is aimed at reassuring the member states (and the public more generally) that all the procedures are legitimate. Meanwhile, members of the Italian government tried to justify some of the previous laws approved for Ilva hoping that the Commission would not raise questions on alleged state aid (in the end only 2 out of 5 investigated aid were deemed unlawful). These were also throughput legitimacy frames to justify the Italian handling of the Ilva state aid case (or at least some of the partial legal handling of the corporation).

For other claim makers, such as union groups, the Solidarity/Equity (input legitimacy) was the common justification during this phase. For example, the provincial secretary of Uilm Valerio D’Alò shared the opinion that “there is a European campaign against the Italian steel industry. This is money destined for the environmentalization and salaries of employees, I regret to see that even in Taranto there are those who support the competition” (claim made by Valerio D’Alò in *La Repubblica* May 2016). By stating this, he is delegitimising the state aid decision as he believes that it goes against the Italian steel industry. These types of justifications are also likely to be seen in cases that were not appealed, which demonstrates how state aid can still be subject to legitimacy concerns by the public. By investigating the decision, several actors in the Ilva case complained that they could lose their job as the company was already in bankruptcy (these are questions of input legitimacy).

In the non-appealed case, the throughput legitimacy of the Italian government and Ilva was put into question during the investigation phase of the Ilva state aid case. Environmental actors (such as Peacelink) used the Commission’s investigation to delegitimise the Italian government’s decision to give aid to Ilva. For example, during the investigation, Peacelink stated that the aid given to Ilva by the Italian government “adversely affect(s) European competition rules” (Claim coded in the analysis from Peacelink member in *La Repubblica* 2016). This shows that these actors were already making assessments about the aid given to Ilva even before the Commission had made its final decision. This also suggest that claims

regarding the throughput legitimacy of the Italian government was put into question during this first phase of politicisation. These findings are expected to occur in state aid cases where actors involved in the politicisation of the case believe that the case is being investigated due to improper handling of the state aid decision (as it was also observed in the Apple state aid case). Moreover, these results seem to suggest that if politicisation does occur in non-appealed cases, this tends to take place during the investigation period rather than after the official decision by the Commission takes place.

#### *6.5.2.2 Phase 2 - The Aftermath of the Commission's Decision*

After the decision was made official regarding the Ilva case, the most used justification by Commission officials was regarding the “effectiveness” frame (output legitimacy). Again, this was used to justify the in depth state aid investigation. The Commission also tried to justify the final decision, which found two out of five measures in violation of state aid rules. Meanwhile, unlike the Apple state aid case, members of the Italian government were satisfied with the outcome stating that that the amount equated to a small reimbursement compared to the more than two billion "investigated measures". By also using the legality frame and throughput legitimacy, the Italian government justified the Commission's decision in the Italian news media through their claims. This might also occur in other state aid decisions when member states do not contest the Commission's ruling, which in turn legitimises the role of the Commission in overlooking and overseeing state aid decisions.

Overall, the peak for the politicisation of the appealed case occurred during the second phase and this is likely to also occur in other appealed cases where there is a multinational involved in potential unlawful tax practices. By contrast, if a case is not appealed but still gains politicisation and news coverage, then its “peak” in politicisation is likely to occur in the first phase of investigation. This shows that politicisation does not evolve or occur in the same manner (even when examining the same policy type). In the next section, I will further discuss the overall results of the dissertation and what this means for the legitimations and deligitimations towards the Commission, the member states and corporations involved in the state aid case.

## **6.6 Discussion**

This study has focused on the national media, as this is still considered the central arena for political mobilisation and politicisation. Therefore, it was expected that national claimants

would receive more coverage than EU claimants. However, this was only observed for the Apple case. In Ireland, national claimants were given more time and space to talk and make their statements regarding the case however, in Italy, the Commission was given more time to express their voice and facts about Ilva than Italian claimants. This indicates that the national media tends to pick favourites and they do not necessarily promote their national viewpoints. Moreover, in both cases the national media tended to cover the state aid case most concerted right after the notification or decision date. This suggests that the main driver in the politicisation process of state aid cases is the Commission as they are in charge of the decision-making processes that impact the corporations and member states. By communicating its responsibilities and decisions, the Commission can avoid any “blame games” from other stakeholders and enhance its public legitimacy. When it comes to state aid, the Commission’s decision is made public via press releases and press conferences. This “communication” mechanism, which occurs between the Commission and other stakeholders, is critical for the Commission’s attempts to legitimise itself.

The study of the Apple case showed countries such as Poland siding against Ireland and using this opportunity to gain the favour of the Commission. Indeed, Poland had a state aid case that they hoped would not go to court and used the Apple case as a political means “to curry favour with the commission, which made a state-aid ruling against that country in August” (see Power 2017). This illustrates how state aid can be used for political means by third party member states such as Poland as a way of wanting to avoid future tensions with the Commission. This shows that actors (such as the Polish Government) who tends to be EU sceptic might want to side with the Commission in terms of state aid, whereas member states (such as Ireland) that tend to be more pro-EU can try to delegitimise the EU through their claims as they do not agree with certain state aid rulings made by the Commission. Thus, it is possible that member states can contest a decision, delegitimise the EU and still be supportive of the MLG system. The opposite can also be true and member states who tend to be Eurosceptic can side with the Commission for their own political reasons (as seen in the Polish example). However, it is important to note that even if those in power at the member state level are generally supportive of the EU, the delegitimisations that occur during the politicisation of the state aid case may have negative repercussions for the overall legitimacy of the EU. This is because claims regarding the “excess of power of the EU” or the disruption of a member states’ sovereignty can be seen and used by other actors at the member state level to try and disrupt the entire MLG political system.

Out of the three evaluated objects, it seems that national governments are able to react opportunistically and strategically. This, in turn, attracts the national media, who then reacts with a sort of “rally around the government reflex”. In comparison, it will always be more difficult for EU institutions, and especially the European Commission, to convey its message to citizens across the different member states. In Ireland, the EU is portrayed as distant from the national government and from national decision making processes. At the same time, in the Ilva case, the EU is seen as a supranational entity that can help decision making processes and push companies or governments to behave in a manner that is more ethical and environmentally friendly. In the Apple case, the Commission was portrayed as having made a mistake, while for the Ilva case the Commission was the expert and, therefore, the media gave the Commission more time to express its opinion. These two case studies suggest that it takes a company with very poor management and high levels of controversy (e.g. increased cancer rates in Taranto) for the EU not to be the most polarising and most negatively perceived actor.

In terms of politicisation, the authority transfer hypothesis suggests that the politicisation of the EU grew as a consequence of having more authority. In this case, this politicisation was observed for both cases. The authority transfer also highlights the fact that this authority transfer also produces legitimisation problems as it brings barely visible institutions (or in this case policy) into the spotlight of political contestation (Zürn 2007; 2019). What we see here is that this is not necessarily always the case. When politicisation occurs through this authority transfer, the EU may not always be in the spotlight of political contestation. The issue at hand (in this case, state aid) might gain attention and become politicised but this can also create instances where other actors gain more notoriety or controversy than the Commission or the EU. In the Italian case, this occurred with both Ilva and Italy, as they both violated several rules and carried out acts that are considered highly unacceptable. When this happens, the EU does not become the main subject to delegitimation.

As previously shown, there is also an increase in positive views towards the EU after the politicisation of the state aid case occurred (+16). Unfortunately, this increase is not as high as the increase seen in negative claims towards the EU (+85). Meanwhile, the Irish Government also received an increase in positive views (+8) and similarly to the Commission it also received more negative claims (+16) after the decision date. Also by looking at the general percentages of the three involved actors, the Commission has more negative claims overall (72.36%) than both the Irish government (50.42%) and Apple (41.78%), which means that Apple was not as affected by the politicisation of the case as the EU or the Irish government.

Meanwhile, the analysis on the standard deviations of the means of positions showed that the Commission had the largest range between the three ( $sd= 1.171$ ), which indicates that this actor was the most polarized in the analysis of the Apple state aid case. Overall, the Apple case shows that the Commission was the most polarised actor and that it had more negative views and delegitimations towards the Commission than towards the Irish government or Apple.

For the Italian case, the politicisation of the EU policy is quite different. There is an increase in negative opinions towards the EU after the notification date. At the same time, positive and neutral positions are equally as prevalent. In this sense, the perception about the EU as an actor did not change in the same manner as it did for the Apple case in Ireland. Moreover, in the Ilva case, the notification date was key for its politicisation. The standard deviations showed that the range of positions was larger towards the Commission than towards the Italian government and Ilva. However, this actor also had more positive positions made towards it than both the Italian government and Ilva. This is due to many claimants believing that the Italian government or Ilva had mismanaged the corporation. Italian newspapers also showed more claims made towards the EU after the notification date (but not necessarily negative views). Rather, the politicisation of this case created more neutral views towards the European Commission and the Italian government after the notification that the investigation would proceed. This indicates that when a case gains media attention and becomes politicised, it does not necessarily mean that there will be more negative claims regarding the state aid decision or a specific actor (such as the Commission). For example, in the Ilva case, the most polarised actor was the Commission but it did not have the most negative claims made towards it. It is also interesting to note that, in both cases, the corporations are the least polarising figures, even if Apple did not pay the appropriate taxes and Ilva contaminated Taranto and made several of its inhabitant's sick.

The voices of those who seek to legitimise the EU may be less visible but they still exist and this is important to remember. Indeed, citizens may still read the claims made by the Commission and agree with the reason for the state aid ruling. The Commission tried to legitimise itself by using the “EU effectiveness” frame, however these legitimations are not as widely covered as the Irish government justifications, as previously shown. The evaluation of the claims made in the two Irish news outlets show that even when the national media covers EU policies, it still tends to give more coverage to those actors that are based nationally. Not only do national outlets cover EU policies such as state aid through national lenses, they also tend to align themselves with their national governments and politicians rather than the

European Commission. The analysis of the opinion pieces demonstrates that the average tone tends to be more negative towards the Commission than towards the Irish government or Apple. Even though the newspaper coverage may still include negative views towards both Ireland and Apple, these are fewer in number than the negative claims made towards the Commission.

It has previously been suggested that the politicisation of the EU can be negative for the EU's democratic legitimacy, as it illustrates the pitfalls of the multilevel system (Majone 1998). Yet, at the same time, politicisation provides the opportunity for citizens to be aware of the existence of the EU and its institutions. It also allows for citizens to be less apathetic towards the EU, as fewer claims have a neutral tone towards the Commission. Politicisation can therefore have both a negative and positive effect on the EU's polity. It depends on the policy which is being discussed as well as the type of issue at hand. For example, in the Ilva case, the Commission/EU was not portrayed negatively because the Italian government was the focus of most discussions. In the Apple state aid case in Ireland, it is clear that the EU has lost some legitimacy in the two newspapers analysed. However, importantly, this is not to say that the EU cannot regain some of its legitimacy in relation to state aid policy in Ireland. For Ilva, the EU did not lose its legitimacy rather, it was seen as a regulator that could help complainants put a specific company in its place. In this sense, the politicisation of an EU policy such as state aid was not negative for the EU. Future debates on the politicisation of the EU and its policies should therefore take into consideration the context of the issue at hand. Indeed, there might be instances where the politicisation of an EU policy is positive, which would confirm the viewpoint held by several authors, as previously described in Chapters 1 and 2 of this thesis (see debates by Rauh and Zürn 2014; Risse 2015; and Statham and Trenz 2015). However, the politicisation of the Apple case, and the resulting negative views towards the EU, supports the arguments of authors such as Majone (1998; 2014) or Moravcsik (2006; 2018). Therefore, when EU policies become politicised, various factors must be taken into consideration to understand whether politicisation has a negative or positive effect on the legitimacy of the EU's decisions as well as the polity itself.

Future research may examine the politicisation of state aid cases beyond the immediately affected state aid country. That is, the politicisation of state aid cases such as Apple could be analysed in third countries such as Germany, for example (which had 362 news articles written about the Apple state aid). However, such an analysis was beyond the scope of this chapter. A Factiva search on newspaper coverage in other member states resulted in large coverage for third party countries for Apple but not for Ilva (only received 37 news articles in

the remaining 27 member states). Therefore, a strict claims-making comparison between the claims from a third country was not possible for this chapter. Moreover, to answer the main research question of this dissertation, the national media was critical for performing the analysis. Therefore, while an analysis on third countries could be an area of future research, this was not necessary for the analysis performed in this dissertation.

## 6.7 Conclusion

This chapter has used a claims-making analysis to seek better to understand how the Commission, the Irish and Italian governments as well as Apple and Ilva decide to legitimise or delegitimise their actions (as well as the Commission's) regarding state aid rulings. It has been previously said in the literature (see for example Majone 1998; 2014) that politicisation can have a negative impact on the EU's legitimacy. But, is this always the case?

This chapter aimed to understand the claims made by different actors during the politicisation of these cases to determine whether politicisation can indeed be negative for the EU's legitimation (and, in turn, its legitimacy). It looked at how different actors justify the roles played by Ireland, Italy and the Commission in a prominent condemnation of the Apple and Ilva state aid cases. As a policy, state aid is considered to be one of the "EU's supranational powers" (Larger 2019). Due to the nature of state aid, the power relations between the Commission, member states and citizens offer a great context to analyse power dynamics and evaluate the different forms of legitimations and delegitimations surrounding the European Union and the European institutions. This study examined claims in the public sphere, where beliefs in the legitimacy of power can be debated. Different actors are involved in the justifications (or legitimations) that occur in this public sphere.

The study in this chapter contributes to the wider literature, which has tended to focus on European Tax governance and politicisation. The Irish case regarding corporate taxation was studied by Schmidtke in 2016 (as mentioned in Chapter 1 of this thesis) as an example of an "international conflict trajectory" (De Wilde and Lord 2016) between Ireland and the Commission. Schmidtke (2016) found that, in Ireland, the politicisation of the EU governance on tax was framed by both the Irish media and politicians as evoking cultural concerns about maintaining Irish sovereignty. In this chapter, I examined if this was also true in the Apple state aid case and, indeed, the justifications provided by different actors involved also tended to use the "sovereignty frame" as a way to evoke what Schmidtke (2016) calls "cultural concerns". To the analysis on Apple, I also added the variable of tone to see how the different actors

involved in the politicizing the case made claims that were regarded as positive, neutral or negative, which also furthers Schmidtke's (2016) study. More specifically, the results for the Apple case, suggest that various media outlets adopted a negative tone towards the EU, the Irish Government and Ireland. However, the negativity towards Ireland and Apple was far less than the negativity surrounding the Commission.

The findings also show that the Commission became the most polarising figure during the politicisation of this state aid case. Other interesting results demonstrate the discrepancy in the success of legitimisation strategies. The Irish government legitimisation strategies evaluated seemed to be more successful in reaching the national media than the Commission's strategies. Governments cater to a national audience and, therefore, they can reach their media in a more successful manner than the Commission. Claimants from the Irish government based their justifications on Ireland's sovereignty to perhaps maintain legitimacy with their constituencies. The government must legitimise to their constituents the reason for not wanting to collect 13 billion euros and to appeal the Commission's decision. The current study provides evidence that the Irish government's strategy was successful. Meanwhile, it is more difficult for the Commission to convey its ideas as they are seen as an "abstract" entity. This is despite the number of obvious justifications the Commission can provide for retrieving the money from Apple; 13 billion euros could help Ireland to build public hospitals, support homeless citizens, and support the general needs of the citizens in many other ways. The Irish government was also able to cater more successfully to its national audience by having more of its claims covered by the media and being more visible than the Commission. In this sense, the Commission's justifications for its state aid decision in the Apple case were not given as much space in the evaluated Irish media than the political legitimations of the Irish government.

Overall, the Irish claimants did not mention advancing the "common interest" of the Union. There were only mentions of Ireland being one entity versus the EU being the "other". Thus, this suggests that when the politicisation of an EU policy, such as state aid, occurs, the framing of the actors during this politicisation can have an impact on whether or not the EU's legitimations and overall legitimacy is negatively impacted. This represents a key contribution of this chapter to the literature on politicisation, which seems to suggest that politicisation can be negative or positive for the EU's legitimacy. Rather, for state aid cases, the effect on politicisation depends on whether the case was appealed and how these delegitimisations were made by actors from the Irish government as well as other actors within the member states (e.g. citizens, journalists or members of parliament). In the Apple case, the delegitimisations towards



the Commission (and, more generally, the EU) stem from the country wanting to appeal its decision. This was crucial in delegitimising the EU and also the Commission's future state aid actions. The EU's General Court ruling sided with the Irish Government and Apple, which further solidified the idea that the Commission's decision was not legitimate. This may affect the way in which actor delegitimise the Commission's action in future state aid rulings as member states are more likely to instigate appeals (Larger 2019). If this is the case, it could create legitimacy problems for the Commission in the future as member states might not see the value in having a Commission making state aid decisions for them in the first place.

The Apple case showed a pattern of "international conflict", as described by De Wilde and Lord (2016) (see Chapter 1), where the government frames the international conflict as "us" (the nation-state) against "them" (EU). In the Apple state aid case, this was triggered by the appeal and it resulted in a unification within the member state. An interesting finding and key contribution of this chapter to the literature is that not all state aid cases behave in the same manner. Specifically, not all politicisation of state aid cases results in an "international conflict" (De Wilde and Lord 2016), as shown by the Ilva case. Therefore, the differentiation in politicisation does not only occur between policies but also within the same policy field.

Indeed, the politicisation of the Ilva case developed differently to the Apple case. In Ilva, the main authority continues to be the EU, however there were no challengers to this authority. Rather, the Italian government is challenged by citizens and other actors who debate how the company was mismanaged. The Ilva case showed a growing amount of actors but only after the notification date. The case also shows less levels of polarisation towards the three actors involved and the most polarising agent was the Italian government rather the Commission (unlike the Apple case). This indicates that politicisation does not always have a negative impact on the EU's legitimacy. Furthermore, most of the claims in the Ilva case were from the Commission, which shows that national media can pay more attention to the Commission than to its national claimants when a certain policy becomes politicised. This is likely to have occurred as a consequence of the company itself, as Ilva and the Italian government had already lost some legitimacy. Indeed, only when the case involves a company that has damaged the health and environment of so many citizens can the Commission be seen as a legitimate institution and be given the opportunity in the media to have its voice heard.

As seen in the analysis on both cases, the appeal plays a key role in how the member state and the politicisation (via claims made in the national media) affect the delegitimisations towards the EU's state aid decision. This can have negative consequences on the Commission's

role in state aid as member states might become more sceptical and more likely to take the Commission to court. If this occurs, and the Commission loses the court battle (as it occurred with the Apple state aid), this can have implications on the legitimacy of future state aid decisions and may invite questions regarding whether the Commission should remain as the authority on state aid rulings. As previously mentioned, state aid is one of the EU's most supranational policies and the Commission has tended to rely on state aid as a way to further European Integration. If the legitimacy of "Brussels' superpower" (Larger 2019) starts to decline, this can mean trouble for the overall legitimacy of, not only state aid policy, but the Commission more generally.

## **Chapter 7: Discursive Depoliticisation - the Apple and Ilva Cases**

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### **7.1 Introduction**

This chapter shows how discursive depoliticisation occurs in national newspaper media in Ireland and Italy (The Irish Independent, The Irish Times, Il Sole and La Repubblica). It draws on the works of Flinders and Wood (2014; 2017) and adapts their schema to propose a claims-making analysis as an avenue to study discursive depoliticisation. This chapter has three main objectives: 1) to demonstrate how discursive depoliticisation instances can occur during politicisation and, therefore, confirm Flinders and Wood's (2017) understanding of discursive depoliticisation; 2) to use claims-making analysis to further identify and analyse discursive depoliticisation instances in the media, which will also highlight the usefulness of this approach in the field of depoliticisation; and 3) to determine whether discursive depoliticisation can impact the delegitimisations of the Italian or Irish governments and, ultimately, of the Commission (and the EU more broadly).

First, this chapter builds on the discussions provided in Chapters 1 and 2 regarding the discursive depoliticisation literature to argue that the schema for the analysis of discursive depoliticisation proposed by Flinders and Wood (2017) could be adapted to include more discursive strategies. I also propose claims-making as a method to identify discursive depoliticising claims. The proposed coding guide for discursive depoliticisation (see Appendix C) could also be used in studies of discursive depoliticisation for different types of EU policies. Then, it provides the reader with expectations for the claims-making analysis. Preliminary results suggest that certain depoliticisation techniques occurred in both the Apple and Ilva state aid cases. The results of the analyses show that the context of both cases created different instances of discursive depoliticisation strategies.

In 2016, the Commission ordered Ireland to recover 13 billion euros. After this occurred, governmental officials from Ireland suggested that there was “no alternative” but to appeal the Commission's decision. In this instance, the TINA (“There Is No Alternative”) strategy served as a mechanism to simultaneously achieve the goals of appealing the decision and delegitimising the Commission. For Ilva, the Commission decided to investigate the aid after receiving multiple complaints from other steel competitors in Europe. The final decision of the Commission was reached in December 2017 where Ilva was ordered to pay back 87 million euros to Italy. Members of the Italian government such as the Minister of Economic Development, Carlo Calenda, expressed “great satisfaction” with the Commission's decision

as the amount was considered a small reimbursement in comparison to the 2 billion euros worth of aid that was investigated by the Commission. For this case, actors from the EU and from the Italian government tried to calm any past “heat” by normalising their discussions and appearing to cooperate in the state aid case. This did not seem to have any negative consequences on the legitimacy of the actors involved. In addition, the results of the current study highlight the importance of journalists in discursively depoliticising the actions of political actors (the Commission or of the Irish/Italian government). The analysis shows that journalists can have an impact through how they choose to frame the actions of the Commission or the Irish/Italian government as depoliticising or not. Overall, this study shows that discursive depoliticisation can occur in different ways and that each of these strategies or techniques can have different impacts on the (de)legitimations of the different actors involved. In this sense, depoliticisation is not always necessarily just positive or negative for the EU. Rather, it is dependent on the discursive strategy being used, by whom, and with what purpose.

## **7.2 Discursive Depoliticisation: Summarising the Key Concepts**

In Chapters 1 and 2, I outlined my view of discursive depoliticisation, which is based on a critical appreciation of previous literature. In this section, I will recapitulate some of the key concepts regarding depoliticisation that are used in the analysis of this chapter.

As argued in chapter 1, the term “discursive depoliticisation” differs from other types of depoliticisation in that it does not make reference to “governmental depoliticisation” (i.e. how much the government controls a specific policy or issue and gives powers to other institutions or organisation) or to “societal depoliticisation” (issues that are left out of the political agenda). The term discursive depoliticisation has been used by authors such as Flinders and Wood (2014, p. 165) to emphasise the role of language in depoliticising an issue. This allows for an issue to become depoliticised as a result of more than just elements of “fate” (2014). Discursive depoliticisation focuses on the “supply side”<sup>140</sup> by identifying how actors (such as politicians) actively use their discourses (or language) to shift the nature of decision making processes. The concept encompasses practices which recognise that humans have agency and that they can be active actors in changing how institutions, practices and social rules work. In this sense, humans have the agency (or degree of initiative) to control how they wish their ideas to be understood or captured through their discourse (see Fludernik 1996).

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<sup>140</sup> See Hay’s (2007, p. 85) explanation of the “supply” and “demand” side of politics.

Thus, discursive depoliticisation can be seen and analysed through speeches and through the understanding that actors can deny or try to move topics out of political discussions.

For example, Flinders and Wood (2014) use former UK Prime Minister David Cameron's party conferences to study how he uses his speech to depoliticise taxation issues. Indeed, political actors can use specific words to make an issue apolitical and this can have negative consequences for the legitimacy of a complex MLG structure. Previous studies have shown that politicians can depoliticise decision-making processes and this, in turn, may have an impact on the growing public disengagement and disaffection domestically (Hay 2007). Hay (2007) also explains that public disengagement does not necessarily come from voters (demand side of politics) but from what politicians decide to do or say (supply side of politics). Thus, actively choosing to depoliticise an issue, a policy or any type of debate that can become "political", can have a negative consequence on how the public engages in politics. Therefore, if politicians decide to keep an issue "under the radar", citizens do not know about these issues and cannot engage in politics.

Bates, Jenkins, & Amery (2014) connected the dynamics between politicisation and depoliticisation processes by analysing the discourse of the Father's Clause parliamentary debates in the UK. This revealed "new ground by opening up in a richly empirical way questions of temporality which have thus far tended not to be explored in any detail in the literature on politicisation and depoliticisation" (Hay 2014, p. 310). Bates, Jenkins, & Amery (2014) also used Flinders and Wood's (2014) distinction between the three forms of depoliticisation: governmental, societal and discursive depoliticisation. By using these three distinctions, the authors find that a specific moment in time (the birth of Louise Brown, who was the first woman in the world to be conceived by IVF) triggered political debate that had not previously occurred (Bates, Jenkins, & Amery 2014). The birth of Louise Brown generated a societal controversy on whether assisted reproductive technologies should be used for reproduction purposes. Bates and colleagues (2014) used the news of having a baby through IVF as a degree of societal deliberation and contestation [this is what Hay (2007) calls politicisation 2; see chapter 2 for further discussion on this].

The Human Fertilisation and Embryology (HFE) Acts contained discursive depoliticisation, which the authors argue represented a form of discursive "sedimentation" as it tried to "moralise, normalise and limit provision to particular (nuclear) families" (Bates, Jenkins, & Amery 2014, p. 246). Before the 2008 update, the acts included a clause where a "father" was required for IVF and this, in turn, led to ideological clashes on sexuality and

parenthood more broadly (Bates, Jenkins and Amery 2014, p. 243). Bates and colleagues (2014) join the different types of depoliticisation as depoliticisation 1 (discursive), depoliticisation 2 (societal) and depoliticisation 3 (governmental). Thus, they link the three types of depoliticisation, rather than keeping them separate. For this thesis, I focus on the discursive depoliticisation and how different actors can attempt to depoliticise a policy through their claims.

Similar to Bates and colleagues (2014), in Chapter 6, I examined how the two selected state aid cases became politicised. I will now assess how actors might attempt to discursively depoliticise certain actions through their claims in this chapter. Past literature has explored how both politicisation and discursive depoliticisation can occur, possibly even simultaneously or in relation to the same political or policy process (see Bates, Jenkins, & Amery 2014; Kuzemko 2014b; Beveridge and Naumann 2014). Thus, following these studies, I also understand that if an issue is politicised, other actors involved in the conflict might attempt to put the issue “under the radar” and, therefore, try to depoliticise it. However, this literature only focuses on one level of analysis (the member state) and does not consider how different governance levels might affect the way in which politicisation and depoliticisation can occur. In this sense, I attempt to join the approach used in studies such as Bates, Jenkins and Amery (2014) with the literature on the politicisation of the EU (e.g. Ares, Ceka and Kriesi 2017; Blagioni and Hurrelmann 2016; De Wilde 2007; 2011; De Bièvre and Poletti 2020 among several others).

### **7.3 Depoliticisation, the ‘Supply Side’ of Political Disengagement and (De)legitimation Linkage**

Flinders and Wood (2017) framework of discursive depoliticisation explains how discursive depoliticisation functions rather than whether it exists or whether there is causal evidence for it (2017, p. 609). Overall, Flinders and Wood (2017) understand depoliticisation as placing responsibility elsewhere, denying or removing “the political nature of decision making” (Flinders and Wood 2017, p. 609). The authors also suggest how discursive depoliticisation can lead to public disengagement in politics and therefore, to the deterioration of legitimacy. After all, democratic political systems require some minimal level of participation if they are to retain legitimacy (Hay 2007, p. 25).

The literature on discursive depoliticisation has focused mostly on analyses which do not necessarily follow a structured form of analysis which future researchers can follow. This is one of the gaps which this chapter seeks to fill as it will provide a novel approach (through

the use of claims-making analysis) to understanding and evaluating discursive depoliticisation by using a method which has been mostly used to understand politicisation in the past. When actors are trying to justify their actions, they may use discursively depoliticising techniques. This may also occur as a tactic to divert public attention from the issue which can be seen as a rational or instrumental action. However, there is the possibility for this to occur irrespective of the actors intentions. As previously mentioned, actors can try and frame an issue as having “no alternative”. If they are unable to discursively depoliticise an issue, then the same negative consequences described above can also occur (i.e. lack of public engagement creates a lack of democratic legitimacy).

Authors like Schmitt (2007) believe that the friends/enemy distinction is important when an issue becomes politicised. Indeed, during the politicisation phase, there seems to be antagonistic forces which can polarise the state aid debate. Polarisation can be avoided when options are shut down by a specific actor. That is, political actors can choose to remove all other options presented by the “enemy”. By doing so, they aim to unify a group by presenting a single, specific viewpoint. In this sense, to depoliticise a state aid case is to completely “disavowal” the legitimacy of other actors’ worldviews (in this case the Commission’s) and denying their political claims as part of the general interest (Rancière, Panagia, and Bowlby 2001). Discursive depoliticisation strategies can be used as a tool to unify a specific action by the member state (e.g. through attempts to unify the decision to appeal the Commission’s decision during parliamentary debates), while delegitimising the Commission’s alternative viewpoint. By doing this, governments can delegitimise the EU by depoliticising their own actions (such as the appeal) regarding the state aid case. That is, in state aid, the government can attempt to discursively depoliticise the action of appealing the Commission’s decision while justifying its own decisions and actions. This results in the delegitimation of the Commission’s ruling and actions (e.g. by stating that the Commission’s investigation was not conducted accurately or did not follow the correct procedure).

Authors such as Majone (1996; 1998; 2014) and Moravcsik (2004; 2006) suggest that the depoliticisation of the EU and its policies support its democratic legitimacy, as politicisation can be detrimental to the functioning of the EU as a MLG system. These theorists have emphasised the apolitical character of the EU as one of its central features (Majone 1996; 1998; 2014; Moravcsik 2004; 2006). Thus, the EU functions as a regulatory form of polity that should focus on the coordination of different policies and decision-making processes. If the

polity becomes subject to democratisation, this can be counterproductive to its functioning as EU institutions are primarily regulatory in nature.

However, as described in Chapters 1 and 2, the other side of the literature notes that politicisation can make the EU, as well as EU topics and policy making processes, more accessible to wider audiences. This can lead to citizens becoming increasingly involved in EU policies and better able to discuss the European Integration project (see Rauh and Zürn 2014; Risse 2015; Schmidt 2013; Statham and Trenz 2015). This study seeks to empirically assess what occurs when different actors try to depoliticise their actions regarding a state aid case. It will also examine what occurs when these strategies successfully influence the EU's legitimacy or delegitimacy as well as the member states involved.

#### **7.4 Discursive Depoliticisation and negations of the past, present and future**

To recapitulate what was said in chapter 2, there are three instances of negations according to the literature: negations of the past, negations of the present and negations of the future (see Flinders and Wood 2017, p. 604). Negations of the past are dominant political paradigms from the past that are framed by actors as 'failures' (Flinders and Wood 2017, p. 604). More specifically, these are arguments which suggest that an issue/policy/country was worse before and, therefore, the present is not as bad. This can occur, for example, when politicians at the national level suggest that the national corporation is now in a better position because it received aid from the current government. Negations of the present relate to arguments based on supposed scientific social 'rules' that cannot be broken at a particular moment (denial in relation to the present) (Flinders and Wood 2017, p. 611). For this study, this can refer to instances where actors from the Commission, EU, Ireland or Italy suggest that rules cannot be broken for a number of reasons or when they phrase an action, rule or decision holds in all circumstances. For example, when Vestager made the following statement regarding the Apple state aid case: "Member States cannot give tax benefits to selected companies – this is illegal under EU state aid rules" (European Commission Press Release, 30 August 2016).

Finally, negations of the future are arguments based on the assumption that change could lead to societal chaos and collapse in the future. Politicians, policy makers or other actors might try to suggest that if they fail to do something or if they change the way they deal with an issue/policy, there will be negative consequences for the future. For this analysis, governmental actors might resort to this strategy when they wish to appeal the Commission's



decision. For example, if politicians believe that it is in the country's best interest to appeal, then they are more likely to suggest that, by doing so, they will avoid any negative consequences for Ireland in the future (e.g. by giving the right impression to a multinational corporation to come to Ireland and continue to invest in the country). Otherwise, if they fail to do so, the member state might run the risk of losing future business ventures with multinationals and risk becoming unappealing to investors in the future. This, in turn, can be framed as a situation that will have negative consequences for Irish workers in the future. In the next section of this chapter, I will explain other discursive techniques that I have added to the analysis on depoliticisation: framing issues as “technical”; normalisation of discussions and cooperation between actors; and, framing issues as having no alternative (“There Is No Alternative”: TINA).

### **7.5 Adding to the Analysis of Discursive Depoliticisation: Evaluating the Literature of Other Possible Discursive Depoliticisation Techniques**

As also explained in Chapter 2, there are other ways in which actors might try to discursively depoliticise an action or an issue that do not relate to negations of the past, present or future. This section reminds the reader about the other three discursive techniques that will be evaluated as part of the discursive depoliticisation analysis.

I have labelled the first discursive depoliticisation technique as “framing of issues as technical”. These are claims that occur when state aid is portrayed as a technical policy or a technical issue that is too complicated for the average reader to understand. Some literature suggests that technocratic experts might frame the issue as “technical” because they believe that, even if the topic is of societal importance, it is still too complex for larger audiences to understand (Schiappa 2003; Elworthy and Beyer 1986). In state aid, it could be expected that certain claim makers from the member state might frame the issue as being exclusively dealt with by national experts. By framing the issue this way, the member state confirms that the public can rest assured that there will be no mistakes and that the country's response to the state aid will not be questioned. That is, governmental actors can claim that experts are the *only* ones highly skilled with the knowledge to deal with state aid, therefore, the public should trust their opinion.

The second technique is labelled as the “normalisation of discussions and cooperation between actors (or appeasing claims)”. Studies have shown that politicians can attempt to normalise certain types of behaviours or relationships between political actors (Bear and Knobe

2016). Indeed, normalising past tensions is expected to occur in the analysis of this chapter between supranational governance levels (the Commission) and the national level of governance (member state). By deflecting attacks or seeking member states to side with the supranational institution, the Commission may attempt to “normalise” any past tensions that it had with a specific member state regarding a particular state aid case or issue. As explained in Chapter 2, by normalising certain situations, actors can attempt to discursively depoliticise an issue to avoid discussions about any type of conflictive behaviour.

Importantly, this type of discursive depoliticisation can occur in a less “conscious” manner. For example, actors at different governance levels may normalise situations simply by solving an issue regarding a state aid case. Studies on cooperation and depoliticisation also illustrate the existence of “appeasing” claims (Berkhout et al. 2012). More specifically, Berkhout and colleagues (2012) outlined politicisation and depoliticisation processes into quadrants. One extreme side is politicisation where there are high levels of salience and polarisation and, on the opposite side of the spectrum, is a choiceless democracy where there are no options and a predetermined political power (see Ferguson 1990; Harriss 2002). Thus, the authors argue that cooperation lies within a less extreme version of depoliticisation (Berkhout et al. 2012). As mentioned in Chapter 2, if politicisation is regarded as a method to discuss and debate polarising and contradicting ideas, then the cooperation and harmonisation of a policy would follow as a method to depoliticise (Flinders and Wood 2014). Thus, in this chapter, actors might also use their claims to show cooperation between parties during state aid conflicts to calm any tensions. This would include claims that highlight the willingness of a member state to cooperate with the Commission to resolve past tensions and to avoid further politicisation of the state aid case.

The third technique that I have added to the discursive depoliticisation analysis is “there is no alternative” or TINA. As explained in the theoretical chapter of this thesis, the slogan was first coined by Herbert Spencer in the 19<sup>th</sup> century and, eventually, became frequently used by politicians such as Margaret Thatcher to signal that free-market economy is the only system that works (Berliski 2011). More recently, it has been argued that TINA has re-entered EU politics as a technique to vindicate giving financial aid to Greece and to propose that this is the only solution that should be made by European Monetary Union (EMU), the European Central Bank (ECB), and the European Commission (Berlinski 2011). This also occurred in the UK with David Cameron citing Thatcher and justifying the rejection of other political parties to cut taxes in 2013 (Chapman 2013). More recently, when seeking to persuade Conservative

backbenchers to support a new Covid19 lockdown in November 2020, Boris Johnson stated, “Faced with these latest figures, there is no alternative but to take further action, at a national level” (see Johnson in Walker 2020), thereby removing the non-political element to his decision regarding the new proposed lockdown measures. So far, I have provided a brief overview of discursive depoliticisation (for a more extensive discussion see Chapters 1 and 2 of this thesis). Next, I will proceed to remind the reader how claims-making analysis was used to identify discursive depoliticisation claims.

## **7.6 Furthering the Discursive Depoliticisation Analysis: How to Find Discursive Depoliticisation Claims and How to Analyse Them**

As explained in Chapters 3 and 6, claims-making analysis refers to a method through which the claims of different actors are analysed to understand whether there is a form of politicisation occurring. However, I argue that this method can also be used to gauge discursive depoliticisation techniques and can reveal how different actors might try to actively politicise and discursively depoliticise the same issue.

As previously explained, a framework for identifying depoliticisation techniques in discourse has been developed by Flinders and Wood (2017) using the three negations above explained. In their framework, discourses from David Cameron’s and George Osborne’s speeches were used to assess how they might actively depoliticise an issue (debt crisis and austerity measures). Flinders and Wood (2017) argue that the literature on the imposition of austerity was always suggested to be “apolitical” (Kerr, Byrne, & Foster 2011; Macartney 2011; Paudyn 2013; Radice 2014; Macartney 2014). However, this previous research did not empirically evaluate the depoliticisation strategies on the imposition of austerity. Rather, Flinders and Wood (2017) created a framework in order to identify depoliticisation strategies. Their analysis was able to spot discursive depoliticisation techniques in an issue that was already known to be “apolitical” in nature. For other topics, however it might not be as easy to detect whether the issue is “depolitical” or not. In this sense, Flinders and Wood’s (2017) framework with the three negations can be expanded to include other types of discursive depoliticisation instances.

Following this, I will attempt to identify specific depoliticisation techniques to understand how different actors might attempt to shut down the potential politicisation of a state aid case. I will identify these techniques using claims-making analysis, which is the same method used in Chapter 6 of this thesis. Claims-making is typically used to measure

politicisation (see Koopmans and Statham 1999; Haunss 2007; Lindekilde 2013; Statham and Trezn 2013; De Wilde 2011; 2013; 2020; Gora and De Wilde 2019; De Wilde, Koopmans, Zürn 2014; Hurrelmann and Wagner 2020). However, I argue that it can also be used to gauge discursive depoliticisation techniques and determine how different actors might try to actively politicise and discursively depoliticise the exact same issue. When politicisation is occurring, this also allows actors to try and make the issue less “political”. Thus, by using claims-making analysis, I will attempt to illustrate that an issue gaining attention does not necessarily mean that the issue becomes politicised. I also I aim to contribute to the literature by proposing a new framework to identify, analyse and code discursive depoliticisation claims.

### *7.6.1 How to identify Discursive Depoliticisation Claims?*

As explained in Chapter 3, a claims-making analysis is used to identify how actors might seek to depoliticise state aid cases. The coding guide used for this chapter identifies a “depoliticising claim” and how it differs from “normal” politicising claims. Overall, a depoliticisation claim is defined as a “verbal and/or written action in the public sphere which aims to make an issue apolitical” (see Appendix C). The coder identifies the claimant, form, issue object and frame as well as whether there was some form of discursive depoliticisation strategy in the news article. If there was a depoliticisation claim, then the coder allocates the appropriate number to the depoliticisation variable (e.g. “no alternative” claims are coded as “40”). If no depoliticisation claim was found, then that variable would be coded as “0” [for a detailed explanation of all the depoliticisation variables see Chapter 3 (table 3.5) and the Appendix C of this dissertation]. Specifically, the coder can code “10” for claims that relate to the past, including claims that relate to an issue that occurred in the past or denial in relation to the past.

For example, actors may argue that an issue was more problematic in the past or the way previous governments dealt with the issue may have been worse in the past. The code “20” is for claims that relate to denial in relation to the present (e.g. claims that relate to specific current issues, denial in relation to the present, or stating that rules cannot be broken at a particular moment. Coders can write the code “30”, if they identify a claim relating to denial in relation to the future (e.g. claims that relate to how changes made by the Commission or the Irish/Italian government could cause societal chaos and collapse). The code “40” is for no alternative (TINA) claims (e.g. when the decision to appeal is framed as having no alternative). The code “50” relates to what I have coined as “technical claims” (e.g. the state aid case being

too “technical”; refer to the codebook for further clarification) and “60” relates to normalising relations between actors (e.g. when actors suggest that there is no tension between the parties involved in the state aid case).

The last two strategies (declining to comment/no case to answer, and only Ireland/Italy can solve the issue) were included in a pre-test of 10 news articles (5 random Irish articles and 5 Italian news articles from the database). Declining to comment/no case to answer is coded when claimants refuse to comment. This removes the possibility to dispute/discuss an issue. This type of claim is also coded when the claimant or claim maker tries to remove themselves from a situation in order to avoid confrontation (e.g. when claimants refuse to comment and therefore take the possibility to dispute/discuss an issue away). For example, in the Apple state aid case, former Taoiseach Enda Kenny “declined to comment on a forthcoming proposal from the commission on the controversial common consolidated case” (Claim coded in the analysis by Enda Kenny in the Irish Times, 21 October 2016). In the case of “only Ireland/Italy can solve the issue”, this claim is coded as such by the coder when the claim maker suggests that the national government or the Commission are the *only* actors who can solve an issue (e.g. comments made regarding the sale of Ilva so the government does not have to continue providing aid to the corporation). For example, a journalist from the newspaper Il Sole wrote “it is up to the government only to decide both the time of sale and the choice of the buyer, without prejudice which remains in everyone's interest”. It is argued that these two strategies are necessary for the analysis and should be considered for the broader literature on discursive depoliticisation. In the case of the “no comment/no case to answer”, when actors decline to give an answer to a question, they are also removing themselves from the debate as well as the issue.

While I have already demonstrated that claim makers (e.g. Irish citizens, politicians, DG-Competition Margarethe Vestager, Apple CEO Tom Cook, etc) can politicise the Apple and Ilva cases, this chapter focuses on how the same claim makers can choose to depoliticise the case and, while doing so, either legitimise or delegitimise the EU, the Commission and the Irish/Italian government’s actions. The analysis was conducted using the same newspaper articles used for the politicisation analysis. As previously stated, Factiva was used to collate content from two leading quality newspapers (centre-left and centre-right) from Ireland (the Irish Times and the Irish Independent) and from Italy (Il Sole and La Repubblica). As explained in the methods chapter of this dissertation, the news articles were chosen from a systematic random sample of articles drawn from all articles retrieved from the databases (see Chapters 3 and 6 for further information). Also, the same search dates used for the politicisation analysis

were used here: from the moment the Commission sent a notification to the member state, to 6 months after the decision was taken.

## 7.7 Results

For the analysis on the depoliticisation claims, I will first present the results for the number of different depoliticisation techniques used for the Apple case as well as the main depoliticisation techniques used by the main actors. Then, I will present the results for the Ilva case, including the techniques most commonly adopted by the Italian government, Ilva and the Commission. Finally, I will provide a comparison showing how the same techniques were used across both Apple and Ilva cases.

### 7.7.1 Apple Case General Results

Table 7.1 shows the types of discursive depoliticisation techniques used by the different claimants analysed. There were a total of 37 depoliticisation claims identified in the 50 newspapers analysed, which is less than the number of politicisation claims identified in Chapter 6 (352 claims). In the Apple case, we can observe several instances where actors, both from the national and EU level, tried to depoliticise the state aid issue. The most used techniques were the “no comment/no case to answer” and TINA (“There Is No Alternative”).

As previously explained, the first technique (no comment/no case to answer) occurs when claimants or claim makers state that they do not want to provide an answer about a certain topic and, by doing this, they attempt to dismiss any concerns about a specific issue (in this case, the Commission’s state aid investigation or decision regarding the Apple case). By contrast, TINA claims involve members of the Irish government trying to ensure that either fellow parliamentarians or citizens understand that “there is no alternative but to appeal the Commission’s decision”. It is important to note that these types of TINA claims were included in both the politicisation and depoliticisation analysis. These claims count towards making the public understand the Irish viewpoint rather than the Commission’s viewpoint. This is a polarising act that further politicises the state aid case as a whole. However, at the same time, they are discursively attempting to depoliticise the action of appealing but not the topic of state aid per se. In this sense, appealing is a depoliticised action by Irish leaders, however, the topic (e.g. the Commission’s decision regarding Apple) remains politicised. This demonstrates that, during politicisation, claim makers can still try to remove the political aspect of a specific national decision (in the case of the Irish government, to appeal the decision) to shut down

other responses to the Commission's decision (e.g. accepting the state aid verdict and not appealing).

The appeal also represents another way for Ireland to maintain its longstanding relationship with Apple since the 1980's (Houlder, Barker, & Beesley 2016). Over the years, this relationship has been surrounded by threats from Apple representatives that they will leave Ireland if they do not achieve a tax deal. For instance, in 1991, Apple threatened to leave Ireland if the company did not strike a deal (Houlder, Barker, & Beesley 2016). Since then, the Irish government provided two tax rulings issued to Apple (Houlder, Barker, & Beesley 2016). As explained in Chapter 6, these two tax rulings allowed the Tech giant to have a special tax arrangement, which was questioned not only by the European Commission but also by the US senate (see Guglielmo 2013). In addition, Apple is Cork's larger employer. In January 2020, Prime Minister Leo Varadkar, stated that "only four years after it was founded, Apple opened a factory in Hollyhill in Cork, employing 60 people. Today Apple is Cork's largest employer with 6,000 people of over 100 different nationalities and is a global operation" (Varadkar in O'Connell 2020). This, coupled with the longstanding relation between the country and the company, meant that the Irish government wanted to maintain their relationship with Apple as well as their current tax rulings so that the multinational would continue its operations in the country. This is perhaps why the TINA strategy was so commonly used by Irish government officials.

The TINA and "no comment/no case to answer" claims were followed by "appeasing" (13.5%) and technical claims (10.8%). The first aims to improve the relations between the Commission and the Irish Government while the latter refers to framing the state aid case as "too technical". An example of an "appeasing" claim is when a spokesman for the Irish minister said that the Government was working with the Commission and Apple on the final details of the matter. The spokesman stated: "While the formal deadline set out in the decision has now passed, the Commission has confirmed that it is satisfied with Ireland's progress on the issue to date. It is not unusual and not at all uncommon for member states to require more time for recovery" (claim made by Airgeadais, Irish Independent February 2017). The spokesman is trying to show that the process is normal and even if the Irish government is taking their time, they still have control over the state aid process. That is, the claim is suggesting that they are working alongside the Commission rather than against it. Interestingly, this claim occurred on

February 2<sup>nd</sup> 2017<sup>141</sup> but, on October 4<sup>th</sup> 2017 the Commission issued a decision to take Ireland to court due to non-compliance as the member state had failed to collect the money from Apple. This was likely a blow for the Irish government who, months before, wanted to make it seem that they were cooperating with the Commission and that taking their time was perfectly normal.

Finally, we have claims related to the negation of the past (8.1%), present (5.4%) and future (8.1%), as understood by Flinders and Wood (2017). These three types of claims were less frequent than expected, which perhaps suggests that the topic (state aid) might lend itself more to other types of discursive depoliticisation techniques. It is also possible that there are claims coded as 2 different strategies, as I will later discuss in this chapter. For example, claim makers from the Irish government simultaneously used both TINA and negations to the future.

*Table 7.1 Results for the Types of Discursive Depoliticisation Strategies Observed in the Apple Case*

| <b>Depoliticisation Type</b>              | <b>Count</b> | <b>Percent</b> | <b>Cumulative Percent</b> |
|---|--------------|----------------|---------------------------|
| <i>Claims related to the Past [10]</i>    | 3            | 8.1            | 8.1                       |
| <i>Claims related to the Present [20]</i> | 2            | 5.4            | 13.5                      |
| <i>Claims related to the Future [30]</i>  | 3            | 8.1            | 21.6                      |
| <i>TINA claims [40]</i>                   | 10           | 27.0           | 48.6                      |
| <i>Technical claims [50]</i>              | 4            | 10.8           | 59.5                      |
| <i>Appeasing Claims [60]</i>              | 5            | 13.5           | 73.0                      |
| <i>No Comment/ No case to answer [70]</i> | 10           | 27.0           | 100                       |
| <i>Total</i>                              | 37           | 100            |                           |

The majority of the depoliticising claims were made by the Irish Government (62% of the total claims made), followed by the European Commission (14% of the total claims made), Apple (8%), journalists (11%) and other members of the national Irish parliament (6%). Figure 7.1 concentrates on the types of techniques used by the main actors in the Apple case (the Commission, the Irish government and Apple) and their respective percentages. Actors from the Irish Government used claims related to TINA 30.4% of the time in the conducted analysis. Then, actors from the Irish government used appeasing and no comment/no case to answer claims (21.7 % each). Claims labelled as “no case to answer” usually take place when members of the Irish government decline to discuss any questions from journalists regarding the state

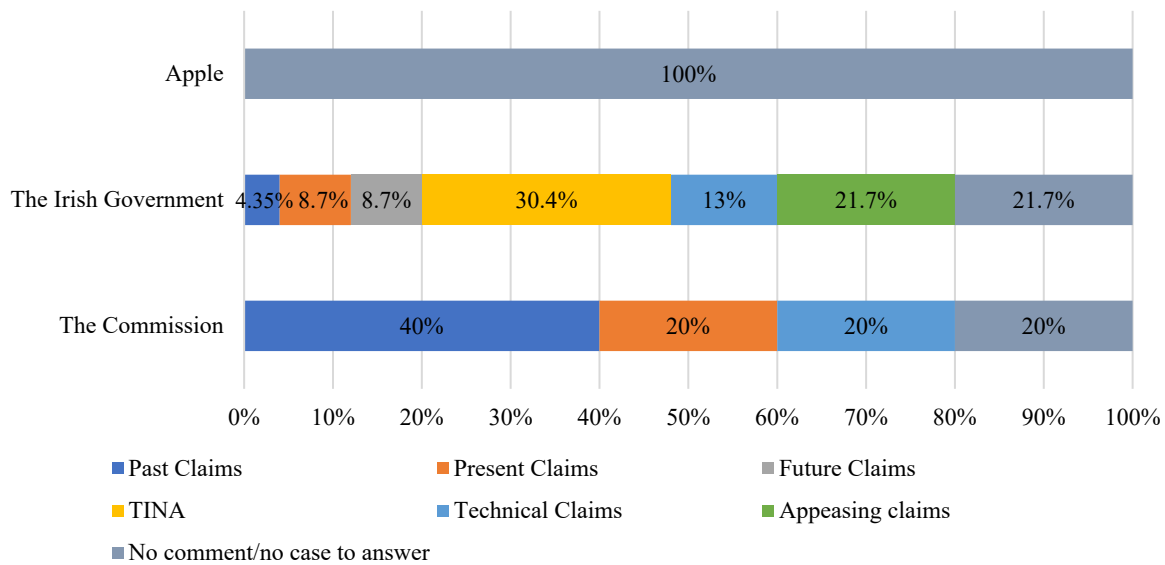
<sup>141</sup> Also see opening statement of Airgeadais available at: <https://www.gov.ie/ga/oraid/f51717-opening-statement-by-the-minister-for-finance-michael-noonan-td-eu-s/>



aid case. Specifically, for the Apple state aid case, these tended to occur more often during the Commission's investigation as representatives from the Irish government did not want to provide any information about private discussions occurring between the member state and the Commission. The results of "appeasing/normalising relations" and "no case to answer" claims are followed by technical claims (13%), negations regarding the present and the future (8.7% each) and lastly claims which relate to the past (4.35%).

The claims made by the European Commission in the Apple case related to the past (40%), the present (20%), technical claims (20%), and no comment/no case to answer (20%) (see Figure 7.1 below). Overall, it seems that the European Commission had less depoliticising claims than the Irish government and, when a depoliticisation claim was used, it was to justify its decision regarding the state aid case. For example, Vestager suggested that the way the Commission performed their Apple investigation was extremely "thorough". In her claim, Vestager stated: "We are very, very thorough. We don't just open a case on the spur of the moment." (Claim coded in the analysis by Vestager in the Irish Times, 19 September 2016). By stating this, Vestager attempts to justify the investigation of state aid by explaining that EU rules cannot be broken in this particular moment. Finally, "no comment/no case to answer" depoliticisation claims (9.68%) were made by actors who only represented Apple. Perhaps this is because, contrary to the Irish government, Apple does not have to justify its decisions to any constituencies. Thus, it is not necessary for them to justify their decision to appeal, as the Irish government did using TINA claims. The claims used by Apple representatives demonstrate how they tried to avoid any questions regarding the case and, therefore, they depoliticised any potential conflictive questions from journalists on Apple's response to having committed an "unlawful act" according to the Commission's decision.

Figure 7.1 Types of Claims Made by the Commission and the Irish Government



Overall, the results show that when the case was becoming politicised, the Commission was less likely than the Irish government to resort to depoliticisation strategies (more on this in the discussion section of this chapter). Indeed, while state aid might usually be considered as a “depoliticised” topic of debate, it seems that the Commission itself does not aim to further depoliticise its actions or try to avoid its state aid decisions from being discussed and debated in public. Rather, other actors such as journalists might depoliticise the Commission’s actions in their news articles (this will be discussed later in this chapter).

Some of the depoliticisation strategies were coded as negative and others as neutral or positive towards the object of the claim (either the Commission, the national government or the corporation involved in the case). For example, claim makers from the Irish government can make negative claims regarding the Commission’s ability (or inability) to handle state aid cases in order to appeal or undermine the Commission’s decision. However, other claims might have neutral or positive consequences for the object (e.g. appeasing claims). In this section, I will argue that not all discursive depoliticisation carries the same “weight” or impact on whether an actor or object will be negatively perceived.

Table 7.2 shows the overall positions in each of the depoliticisation types for the Apple state aid case (regardless of the object involved). Most types of claims had a neutral and negative tone towards the object (67.5%). Only one claim in the Apple case was coded as a positive “appeasing” claim. However, most appeasing claims had a neutral tone. Future claims only had the negative tone coded (these were claims where the Irish government threatened

that if they do not appeal, the future of Ireland will be at a major risk). The “no comment/no case to answer” claims were the only claims to carry purely neutral tones. Indeed, when claimants state that they do not want to comment, they rarely offer any assessments regarding the object of the sentence.

Overall, Table 7.2 shows that over 67.5% of the claims made (or 25 claims) were neutral regarding the object of the depoliticisation claim. The table also shows that 21.6% of claims were coded as extremely negative and 8% were coded as having negative tone. By contrast, only 1 claim (2.7%) was coded as positive towards any of the objects analysed. While this table does not show to whom these claims were directed, it does show that most claims were neutral. This is in stark contrast to the claims analysed during the politicisation analysis (Chapter 6), which showed more extreme views. It also illustrates the differences in the types of claims used in politicisation versus depoliticisation.

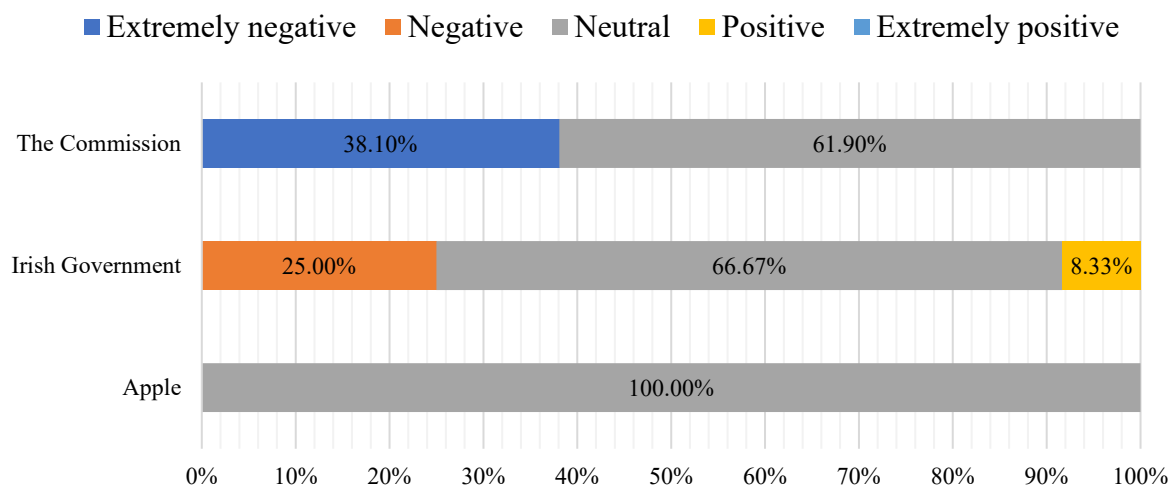
*Table 7.2 Overall Positions in each of the Depoliticisation Types for the Apple Case*

| Position                  | Claims which relate to past | Claims which relate to denial in relation to the present | Claims which relate to denial in relation to the future | No Alternative (TINA) claims | Technical Claims | Normalising relations between actors/full engagement or cooperation between authorities | Declining to comment/No case to answer/Shut down options | Total |
|---------------------------|-----------------------------|--|---|------------------------------|------------------|---|--|-------|
| <i>Positive</i>           | 0                           | 0  | 0   | 0                            | 0                | 1   | 0  | 1     |
| <i>Neutral</i>            | 2                           | 1  | 0   | 5                            | 3                | 4   | 10   | 25    |
| <i>Negative</i>           | 1                           | 1  | 0   | 0                            | 1                | 0   | 0  | 3     |
| <i>Extremely Negative</i> | 0                           | 0  | 3   | 5                            | 0                | 0   | 0  | 8     |
| <i>Totals</i>             | 3                           | 2  | 3   | 10                           | 4                | 5   | 10   | 37    |

Figure 7.2 shows that, for the Apple case, the discursive depoliticisation claims had mostly neutral tones for the three objects analysed (the Commission, the Irish Government and Apple). More specifically, neutral claims accounted for 61.90% of the coded claims towards the Commission, 66.67% of the claims made towards the Irish Government and 100% of the coded claims made towards Apple. There were also some negative claims coded towards the actions made by either the Commission or the Irish government. Figure 7.2 shows that 38.10% of the claims made toward the Commission were coded as extremely negative. Interestingly, the analysis found that negative discursive claims towards the Commission’s decision were made from Irish officials who sought to discursively depoliticise their appeal. It is important to note that just because depoliticisation claims were coded as negative towards the object (in this case, the Commission), this does not mean that these claims have a negative impact on the

overall legitimacy of either of the objects involved. Finally, 25% of the claims made toward the Irish Government were coded as negative and 8.33% were coded as positive.

Figure 7.2 Positions towards the Objects in the Apple Case



T-tests were also revealed that the positions taken in the claims towards the Commission versus the Irish government or Apple were significantly different (p values < 0.001). However, the positions taken towards the Irish government versus Apple only tended towards significance (p = 0.05).

Table 7.3 Independent Group T-test between Objects (The Commission, The Irish Government and Apple)

|                             | M    | SD   |                             | M    | SD   | t-test  |
|-----------------------------|------|------|-----------------------------|------|------|---------|
| <i>The Commission</i>       | -.76 | .995 | <i>The Irish Government</i> | -.17 | .577 | .000*** |
| <i>The Commission</i>       | -.76 | .995 | <i>Apple</i>                | .00  | .000 | .000*** |
| <i>The Irish Government</i> | -.17 | .577 | <i>Apple</i>                | .00  | .000 | .050    |

\*\*\*p<000.1 N=33

Note. M=Mean. SD=Standard Deviation. Position towards object ranges from -2-2 in which 2 indicates extremely positive views towards the object and -2 extremely negative

It is important to emphasize that the tone variable simply reflects whether the claim maker made a negative, neutral or positive remark regarding the three analysed objects (the Commission, the member state or the corporation). That is, only some of the negatively coded claims attempt to delegitimise the actions or decisions of the Commission, member states, or corporations. For example, several claim makers made TINA claims and delegitimised the EU to win support for the appeal. Indeed, the Labour Leader at the time, Brendan Howlin, stated

that "we must be very cautious about automatically accepting any ruling that could be regarded as an effort by the European Commission to determine Ireland's tax policy by the back door" (claim coded in the analysis by Brendan Howlin in the Irish Independent, 2 September 2016). He argues that Ireland should not blindly follow what the Commission decides but, rather, question the legitimacy of the ruling. Similarly, other claims state that the Commission is completely wrong or that the legitimacy of the decision is questionable.

However, there was also TINA-related claims that did not necessarily question the legitimacy of the Commission directly but questioned whether *not* appealing the decision would affect the Irish government's legitimacy. For example, Peter Vale, tax partner at Grant Thornton in Ireland who was interviewed by the Irish Times to give his opinion on the state aid case stated: "Indeed, the Commission's verdict could be seen as undermining the integrity of the Irish system, making the decision to appeal essential" (Claim coded in the analysis by Peter Valie in the Irish Times, 7 September 2016). Here, he is suggesting that if the Irish government does not appeal, this may raise questions regarding how the Irish government has managed its governmental decision and it could also "undermine its integrity". Overall, the TINA strategy appeared to be successful as polls showed 47% of people surveyed supported the appeal, while 39% said no and 13% responded with "don't know" (see Collins 2016).

Discursive claims made by the Commission (and coded as negative) towards the Irish government rely on 3 different types of strategy: One strategy refers to the past and argues that because Ireland reduced Apple's tax burden for over two decades, which was in breach of EU rules, there is no alternative but to repay the money. The other two strategies used by the Commission paint Ireland as guilty of providing unlawful aid and state that Ireland must obey the rules. These do not necessarily question the legitimacy of the Irish government per se but they are based on the idea that the Irish tax deals were unlawful. Similarly, technical claims that were used to explain that Ireland did not follow EU rules and must collect the money were also coded as negative. The only object who received some form of positive reception during the analysis of depoliticising claims in the Apple case was Ireland, which had two claims with a positive position. One claim was from the Irish government, where they tried to legitimise and justify themselves by suggesting that the appeal will create and protect jobs and benefit Ireland's strategic interests. The second claim comes from officials from the Commission who were satisfied with Ireland's progress on the issue (at that stage of the recovery of the money). A short time later after this claim was made (September 2017), the Commission made statement

that the Irish government was taking too long and in October 2017 made the decision to take Ireland to court due to non-compliance.<sup>142</sup>

### 7.7.2 *Ilva Case General Results*

Now, I will describe the general results for the Ilva case. Ilva has had several environmental and legal issues as previously mentioned in chapter 6. To recapitulate, an epidemiological survey conducted by Lucifora et al. (2015) shows that 386 people who lived near the plant died between 1998 and 2010 (around 30 deaths per year) due to exposure to toxic emissions, such as dioxins and carbon monoxide. To safeguard the company and the employment of its workers, the Italian government aided Ilva with large amounts of money (more than 2 billion euros).<sup>143</sup> The investigation into aid given by the Italian government initiated some form of politicisation of the case. The analysis performed in chapter 6 suggested that if there is some form of politicisation in the Ilva case, it occurred after the official notification to investigate the aid rather than after the Commission's decision. This is because more claims were made after the Commission decided to notify Italy that it was investigating Ilva.

The results of Chapter 6 also suggested that the Ilva case was less politicised than the Apple case. In addition, the most polarised actor seemed to be the Italian government, rather than the Commission as in the Apple case. As such, we could perhaps expect that more actors from the Italian government might attempt to calm any potential tensions and depoliticise the state aid investigation to avoid some of the blame it received during the politicisation of the case. In this chapter, I attempt to analyse how different actors involved also used discursive depoliticisation techniques to calm tensions between the Commission and the Italian government during the politicisation of the state aid. Table 7.4 shows the results for the types of discursive depoliticisation strategies found in the Ilva case. Half of the claims were coded as "appeasing claims" (50.0%), followed by claims coded as "only Italy/Ilva can solve the situation", claims related to the Present and technical claims (12.5% each), TINA claims (8.3%) and, finally, no comment/no case to answer claims (4.2%). Appeasing claims in the Ilva case

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<sup>142</sup> See article on Ireland taking too long to collect the money here: <https://www.irishtimes.com/business/technology/ireland-taking-too-long-to-collect-apple-tax-and-may-face-court-1.3089031>

<sup>143</sup> See <https://www.reuters.com/article/ilva-ma-arcelormittal-eu/update-1-eu-orders-italy-to-recover-84-mln-euros-in-loans-from-ilva-idUSL8N1OL2TA>

were mostly used by the Italian government to suggest that they were cooperating with the Commission. Similar to what I showed in the Apple case, members of the Italian government wanted to appear to be cooperating with the Commission in order to remove any possible tensions (this will be discussed further later on in this chapter).

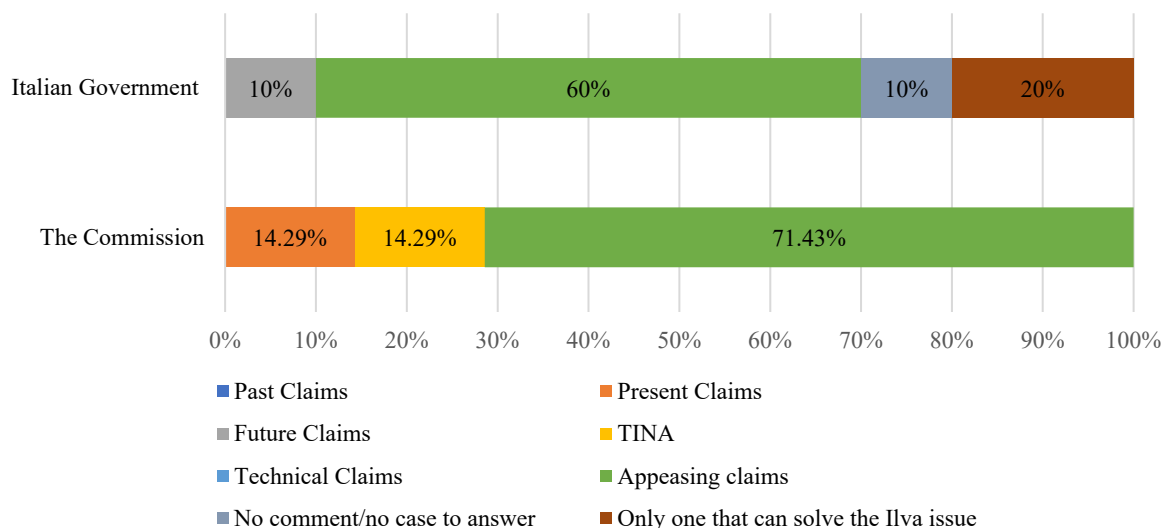
*Table 7.4 Results for the Types of Discursive Depoliticisation Strategies observed in the Ilva Case*

| <b>Type</b>                                     | <b>Frequency</b> | <b>Percent</b> | <b>Cumulative Percent</b> |
|---|------------------|----------------|---------------------------|
| <i>Claims related to the Present [20]</i>       | 3                | 12.5           | 12.5                      |
| <i>TINA [40]</i>                                | 2                | 8.3            | 20.8                      |
| <i>Technical claims [50]</i>                    | 3                | 12.5           | 33.3                      |
| <i>Appeasing Claims [60]</i>                    | 12               | 50.0           | 83.3                      |
| <i>No Comment/ No case to answer [70]</i>       | 1                | 4.2            | 87.5                      |
| <i>Only Italy/Ilva can solve the issue [80]</i> | 3                | 12.5           | 100                       |
| <i>Total</i>                                    | 24               | 100            |                           |

The Italian government made most of the claims (41.6% of the total claims), closely followed by the Commission (29%), then actors from the steel industry (16.5%) and journalists (12.5%). Similar to Figure 7.1, Figure 7.3 focuses on the types of claims made by the most important actors in the story: the Commission and the Italian government (no actors from the Ilva company were coded as making depoliticising claims). Most of the depoliticising claims made by both the Italian Government and the Commission were coded as “appeasing claims/normalising tensions”, with 60% and 71.43%, respectively. The Italian government also made claims regarding it being the only one that can solve Ilva issues (20% of total claims) as well as claims relating to no comment/no case to answer and negations of the future (10% each). It is clear that, despite the tension between the two claimants, both actors tried to show (via their claims) that they were cooperating with each other. This is in stark contrast to what occurred in the Apple state aid case, where appeasing claims only account for 21.7% of the Irish government’s claims and they did not appear at all in the claims made by the Commission. Meanwhile, the European Commission made 14.29% of its claim related to the present and the same percentage of TINA claims (14.29%). Regarding the other actors, journalists made one claim regarding the present, one for no comment/no case to answer and one for “Italy is the only actor which can deal with Ilva”. Finally, Duferco’s Antonio Gozzi made two technical

claims, one TINA claim and one claim that suggested Italy is the only actor who can deal with Ilva.

Figure 7.3 Types of claims made by the Commission and the Italian Government



For the Ilva case, appealing claims were primarily of positive tone (100% of all appealing coded depoliticisation claims). Overall, half of the claims (50%) were uniquely positive claims and the other half were either neutral or negative, with the majority of these claims being neutral (41.6%). There was one technical claim coded as positive and two present claims were coded as negative. These two negative claims were made by the Commission and a journalist. In the claim made by the journalist, the writer stated that, in their opinion, the Commission was attempting to shut down any type of responsibility for anything that goes wrong with competition within the Union. The claim maker was therefore suggesting that the Commission was performing a depoliticising action. The results shown in Table 7.5 provide the reader with a general overview of how tones were coded for these depoliticisation claims and show that most depoliticisation claims were coded as positive towards the objects analysed in the Ilva case (the Commission, the Italian government and Ilva). Table 7.5 shows that most of the coded claims were positive (predominately appealing/normalising relations claims) rather than negative.

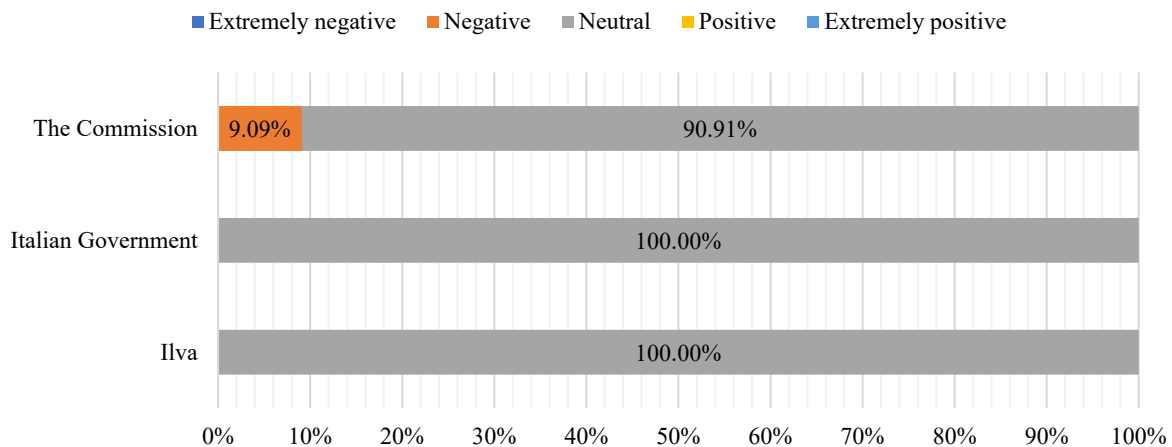


Table 7.5 Overall Positions in each of the Depoliticisation Types for the Ilva Case

| Position | Claims which relate to past | Claims which relate to denial in relation to the present | Claims which relate to denial in relation to the future | No Alternative (TINA) claims | Technical Claims | Normalising relations between actors/full engagement or cooperation between authorities | Declining to comment/No case to answer/Shut down options | Only one who can solve the issue | Total |
|----------|-----------------------------|--|---|------------------------------|------------------|---|--|----------------------------------|-------|
| Positive | 0                           | 0  | 0   | 0                            | 1                | 11  | 0  | 0                                | 12    |
| Neutral  | 0                           | 0  | 1   | 2                            | 1                | 0   | 2  | 4                                | 10    |
| Negative | 0                           | 2  | 0   | 0                            | 0                | 0   | 0  | 0                                | 2     |
| Total    | 0                           | 3  | 0   | 2                            | 3                | 12  | 1  | 3                                | 24    |

For the Ilva case, most of the positions were neutral except for the Commission, which had one claim coded as negative (see Figure 7.4). Most of the depoliticising claims were not aimed at depoliticising an action per se (like in the Apple case where the appeal played a large role). Rather, the actors used mostly discursive depoliticisation for “appeasing/normalising relations” claims. As previously stated, this demonstrates that Italian leaders and the Commission wanted to shut down the issue and show that there was no conflict between them. These appeasing claims aim to illustrate that both actors can cooperate to ensure the recuperation of the environment and the health of Taranto’s inhabitants. The only negative claim coded came from an Italian journalist who stated that Vestager wants to shut the door on any type of suspect in the Ilva case.

Figure 7.4 Positions towards the Objects in the Ilva Case



T-tests conducted on the Ilva case data showed that the positions taken in the claims towards the three actors were not significantly different (p values > 0.05). Indeed, most of the coded claims were neutral towards the three analysed objects (as shown in Figure 7.4).

Table 7.6 Independent Group T-test between Objects (The Commission, The Italian Government and Apple)

|  | M    | SD   |                               | M   | SD   | t-test |
|--|------|------|-------------------------------|-----|------|--------|
| <i>The Commission</i>  | -.09 | .302 | <i>The Italian Government</i> | 0   | .000 | .077   |
| <i>The Commission</i>  | -.09 | .302 | <i>Ilva</i>                   | .00 | .000 | .164   |
| <i>The Italian Government</i>  | -.17 | .577 | <i>Ilva</i>                   | .00 | .000 | N/A    |
| ***p<000.1 N=24  |      |      |                               |     |      |        |
| Note. M=Mean. SD=Standard Deviation. Position towards object ranges from -2-2 in which 2 indicates extremely positive views towards the object and -2 extremely negative |      |      |                               |     |      |        |

Overall, when compared to Apple, Ilva representatives did not attempt to avoid any possible questions regarding their state aid case. Indeed, it appears that they did not attempt to depoliticise their actions or decisions. This is perhaps because the company has been involved in many different types of problems (e.g. environmental problems, being a major job provider in the Taranto region, and relying on unlawful aid by the Italian government). Thus, it might be that the company did not anticipate how effective their actions could be at removing itself from the difficult situation in which they found themselves during the state aid case. Also, in contrast to the Apple case, the Ilva case had more depoliticising claims made by the Commission. Also, both the Commission and the Italian government had more appeasing claims than any other type in the Ilva case. As previously stated, appeasing claims come from both the Italian government and the Commission trying to “calm down” the storm that arose as a consequence of the state investigation. In this sense, the Italian government did not make a division between the member state and the Commission like the Irish government did in the Apple case. The main factor that created this divide was the appeal in the Irish case, which was the main instigator for using TINA and for questioning the EU’s decision. Meanwhile, in the Ilva case, the Commission is slightly more present and seems to want to appease/calm any tensions with Italy in order to depoliticise the investigation of the state aid case. This is likely because, if the case does become politicised, it can hinder the Commission functioning as suggested by Majone (1998) and Moravcsik (2006). Next, I will compare how the same depoliticisation strategies occurred in the Apple and Ilva cases.

### 7.7.3 Comparing both Cases: Analysing the same depoliticisation strategies in the Apple and Ilva Cases

I will now compare the techniques identified in both cases to provide a clearer picture of how the discursive depoliticisation techniques are used by different actors and how they can

help understand the link between depoliticisation and the EU's delegitimation. The first strategy that will be more deeply analysed is TINA. Regarding state aid, this occurs when member states choose to frame governmental decisions as "there is no other way than to appeal the Commission's decision". This was observed several times when coding the articles with Irish officials trying to justify their decision to appeal the Commission's decision. In the Apple case, this strategy accounted for 27.0 % of claims while for the Ilva case, this strategy was observed in 8.3% of claims. Table 7.7 demonstrates four claims coded as TINA for both cases. The first claim is from the Finance Minister of Ireland at the time, Mr. Noonan, who states that the best course of action, or rather the only course of action, is to appeal the Commission's decision. In addition, if Ireland does not appeal, he suggests that this will be negative for the future of the Irish people. Here, the claimant frames any other decision as "necessary" and any other option would go against Ireland's interest and sovereignty. By doing this, he appeals to the national interest in order to normalise his response to the Commission's decision and suggests that anyone could see how this is in the interest of Ireland and the Irish people.

Similarly, the leader of the Labour Party in Ireland, Brendan Howlin, also finds it inconceivable that Ireland would not appeal the Commission's decision. Similar to the Finance Minister, he also uses national sovereignty to suggest that this is the only possible course of action that the government can take to protect its sovereignty. It is interesting to note that both claimants are from different political parties, however, these parties were working together in a coalition government at the time – the government of the 31<sup>st</sup> Dáil. Both claim makers unite and use TINA to suggest that the government must appeal the decision. In this sense, during the politicisation against the European Commission, both domestic actors (who belong to different political parties) unite in their discursive strategy to a depoliticising response by Ireland against the Commission. This is not to say that the attempt to depoliticise the action of appealing was approved by all members of parliament. During heated parliamentary debates, other actors from national political parties such as Pearse Doherty<sup>144</sup> from Sinn Féin called it the "greatest tax avoidance scheme in Irish history" and People Before Profit TD Richard Boyd Barrett<sup>145</sup> called the act of giving aid to Apple as "economic treason". Finally, Catherine Murphy<sup>146</sup> of the Social Democrats also claimed that the Irish government had double

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<sup>144</sup> Claim coded in the analysis by Pearse Doherty in the Irish Times, 31<sup>st</sup> August 2016.

<sup>145</sup> Claim coded in the analysis by Richard Boyd Barrett in the Irish Times, 31<sup>st</sup> August 2016.

<sup>146</sup> Claim coded in the analysis by Catherine Murphy in the Irish Times, 31<sup>st</sup> August 2016.

standards as small firms tended to struggle while giant multinationals “paid the bare minimum of tax” and, therefore, she claimed that appealing would be, for her, “intolerable”. However, when the Irish parliament voted, the government received large support with 93-36 of votes<sup>147</sup> supporting the appeal against the ruling that Ireland must collect €13 billion from Apple. In this sense, the attempt to discursively depoliticise the appeal by members of the Irish government was successful as it was able to obtain the national parliamentary support it needed.

By contrast, the first TINA claim sample for Ilva shows Antonio Gozzi (who is the CEO of European steel giant, Duferco) making a statement about Vestager. Here, he suggests that Vestager has made it clear that Ilva has to be investigated. Duferco was one of the companies who alerted the Commission in 2014 to open an investigation against Ilva. Gozzi believes that “there is no alternative” but to investigate the state aid case. By using Vestager’s words to depoliticise the Commission’s decision, Gozzi validates his own view that Ilva needs to be investigated. The last claim also sees a journalist paraphrasing the Commission’s decision to investigate Ilva. In this claim, the investigation was phrased as “inevitable”. By doing this, the journalist discursively depoliticises the Commission’s action even though the Commission itself is not directly quoted. In this sense, the Commission, in both instances, is not discursively depoliticising but has two other actors who are discursively depoliticising their actions for them.

*Table 7.7 TINA Claims in both the Apple and Ilva Cases*

|                 | <i>Apple case</i>  |   | <i>Ilva case</i>  |  |
|-----------------|--|---|---|--|
| <i>Claimant</i> | Finance Minister<br>Michael Noonan   | Labour (7 TDs)<br>Leader Brendan<br>Howlin  | Antonio Gozzi   | Journalist   |
| <i>Claim</i>    | Finance Minister<br>Michael Noonan<br>said: "I disagree<br>profoundly with<br>the Commission's<br>decision ... The<br>decision leaves<br>me with no<br>choice but to seek<br>Cabinet approval<br>to appeal the | Brendan Howlin<br>has said it would<br>be "not<br>conceivable" that<br>Ireland wouldn't<br>appeal "given our<br>national interest<br>in the outcome of<br>this matter". | "Commissioner<br>Vestager - said<br>Gozzi - has made<br>it clear that the<br>launch of an<br>investigation into<br>any State aid<br>against Ilva is a<br>necessary act"<br>because there<br>have been reports | The decision to<br>open a formal<br>state aid<br>investigation was<br>inevitable, and<br>had already been<br>announced for<br>some time by the<br>Commission to<br>the government.<br>In the steel |

<sup>147</sup> See the news regarding support for the appeal available at: <https://www.euractiv.com/section/euro-finance/news/irish-parliament-backs-apple-tax-appeal-after-angry-debate/>

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|--|--|---|
| decision before<br>the European<br>courts. This is<br>necessary to<br>defend the<br>integrity of our<br>tax system; to<br>provide tax<br>certainty to<br>business; and to<br>challenge the<br>encroachment of<br>EU state aid rules<br>into the sovereign<br>member state<br>competence of<br>taxation." | from Ilva's<br>competitors and<br>from others<br>countries<br>(especially<br>Belgium and the<br>UK). | sector, state aid is<br>strictly<br>prohibited. |
|--|--|---|

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I will now evaluate another frame encountered in the Apple state aid: “no case to answer”. This type of claim was added after evaluating the different texts of both cases and observing that this technique was used among actors. Table 7.8 shows two examples of this type of claim. In both, it is evident that the actors involved either did not want to comment (in the case of Ilva) or argued that there is “no case to answer” (in the Apple case). In the Apple case, this type of strategy occurred more frequently when the case was under investigation. Actors from the Irish government and Apple representatives wanted to avoid disclosing that there could potentially be an illegal case against them. Therefore, they resorted to this discursive depoliticisation technique in order to calm any potential tensions which may have been heightened by journalists’ questions or other domestic actors who might ask questions regarding any unlawful advantage given to Apple. However, for the Ilva case this strategy occurred only once and it was made in regards to the sales process of the company. The sales of Ilva was a sensitive subject while the company was being investigated. The Commission regularly stated that the only way for Ilva to move forward was for the company to be sold to a private buyer and no longer rely on state funds. Indeed, the sale of the company was key to this case. There was much speculation regarding who might buy Ilva and members of the Italian government such as Carlo Calenda (Minister of Economic Development in Italy) tried to diffuse any possible rumours about possible buyers.

Table 7.8 No comment/No Case to Answer for Apple and Ilva

|                 | <i>Apple</i>   | <i>Ilva</i>   |
|-----------------|--|---|
| <i>Claimant</i> | Finance Minister Michael Noonan and Apple  | Minister of Economic Development Carlo Calenda            |
| <i>Claim</i>    | Both Finance Minister Michael Noonan and Apple have repeatedly said that the State and company have no case to answer in respect of the state aid investigation. | Calenda replied: « I don't comment on the sales process » |

So far, I have examined how the two most popular claims in the Apple case applied to the Ilva case. Now, I will look into the two most used claims in the Ilva case and evaluate the frequency and use of these claims in the Apple case. The most frequent type of strategy in the Ilva case was the use of appeasing claims, which accounted for half of the total claims. Apple had 13.5% of the claims coded under the appeasing depoliticisation frame and most of these claims emphasised what occurred behind closed doors between members of the Irish government and the Commission. Meanwhile, as previously suggested, appeasing claims were used in the Ilva case in a completely different manner. This point is made clear in Table 7.6, which shows four examples of appeasing claims discovered in the analysis. For the first claim, the Minister for Finance Paschal Donohoe emphasized at the beginning of his claim that the government has never agreed with the Commission's preliminary analysis. However, afterwards he reassured that the Irish government is working with the Commission. This claim was also coded as a technical claim as he describes the high level of complexity and legal knowledge associated with the case. For the second claim, John McGuinness also suggests that Ireland is open to engage with the Commission and with its Commissioner, Vestager, to further discuss the ruling. At the same time, similar to Pashal Donohe, he emphasised the negative aspects and implications for Ireland. While both Irish claimants attempted to "appease" or improve the relationships between the Commission and Ireland in the public eye, they still made negative remarks.

For the Ilva case, Carlo Calenda explained how both Italy and Brussels are trying to restore their relations regarding the case. In this sense, he is first accepting the fact that there were some issues in the past, however now they are trying to work together in order to solve the current problem with Ilva. The second claim shows the Commission stating that, regarding any aid given to support the health of Taranto's inhabitants, the Commission will not stand in the way. This claim suggests that the Commission will ensure that whatever aid is given to the

citizens of Taranto it will not be considered illegal state aid. By doing this, the Commission is trying to cooperate and remove any possible tensions arising from a state aid investigation. Indeed, these claims show that, in the Ilva case, both the Commission and the Italian government appear to want to cooperate with each other and actively shut down any past tensions that had occurred between them.

*Table 7.9 Appeasing Claims*

|                 | <i>Apple</i>   |   | <i>Ilva</i>  |   |
|-----------------|--|---|--|---|
| <i>Claimant</i> | Minister for Finance Paschal Donohoe   | John McGuinness, the committee's chairman   | Carlo Calenda  | The Commission  |
| <i>Claim</i>    | "Ireland has never accepted the commission's analysis in the Apple state aid decision. "Notwithstanding this, the Irish authorities have engaged fully with the commission throughout the state aid investigation. This involved a significant degree of legal and technical complexity, and additional expertise has been engaged where required," he said. | "Our committee welcomes the opportunity to engage with commissioner Vestager to discuss the rationale behind the commission's August ruling, which may have serious implications for the Irish tax code in terms of future determinations by the Revenue Commissioners," said John McGuinness, the committee's chairman | "After months of public quarrels and political misunderstandings, there is an attempt, in Rome and Brussels, to restore the relationship between the Italian government and the European Commission on a ridge of better collaboration." | Meanwhile, the Italy-Brussels dialogue on the Ilva dossier continues. The commission stated that it "does not intend to oppose any immediate action that the Italian authorities consider necessary and urgent to protect the health of citizens in the city of Taranto." |

Table 7.10 shows the three claims coded as “80” (“only Italy can solve this issue”). This was the second most popular claim used in the Ilva case (12.5%). Interestingly, in the Ilva case, these types of claims were unlike other TINA claims. TINA claims usually refer to claims where actors state why there are no other alternatives apart from the proposed action. However, for these claims, what was specified is not that an action or a specific rule *must* take place but

rather than the Italian government has to be the one in charge of the process of dealing with Ilva. Therefore, a specific type of depoliticisation claim was created (see code 80 in the coding guide).

*Table 7.10 Only Italy Can Solve the Issue*

| <b>Claimant</b>                    | <b>Claim type: Only Italy can solve the issue [80]</b>  |
|------------------------------------|---|
| <i>Antonio Gozzi</i>               | "It has also been acknowledged - Gozzi continued - that these works, necessary to close the environmental infringement procedure on the Taranto steel industry opened in 2013 against Italy, <i>can only be carried out by the Government</i> ".  |
| <i>Spokesman for the Executive</i> | A spokesman for the executive explained that "the Commission is closely following" the sale, but reiterated that the process <i>remains the responsibility of the Italian authorities</i> , from which it was dealt with "while adding that" elective state aid investigation "at the rescue stage and the "Securing Ilva" operation «is still in progress» |
| <i>Journalist</i>                  | "Consequently, <i>it means that it is up to the government to decide both the time of sale and the choice of the buyer, without prejudice which remains in everyone's interest that this happens as soon as possible.</i> "   |

There were a total of three claims recorded in the Ilva case labelled as "technical" and four in the Apple case. In the two examples shown in Table 7.11, both hint at technocratic experts having the knowledge and capacity to deal with the Commission in terms of state aid. The first claim shows Minister Donohoe explaining how experts from the Irish government have handled the case with the Commission. By stating this, he is suggesting that there is a high level of expertise on the Irish side and that they have been taking the appropriate measures to deal with the Commission. Therefore, if they make any decision (such as an appeal) it is because the Irish government had already discussed it with their experts and these experts handled the case's complexity appropriately. In the second claim, Gozzi states that the Italian government is taking the correct steps to deal with the case as it is highly complex and technical in nature. This occurred at the moment during the Commission's investigations when the Italian government needed to provide further information about the case in order for the Commission to make an accurate assessment. By suggesting that the issue is procedural and technical, the claimant is letting the reader know that it might take longer for the issue to be resolved. However, the experts "are taking care of it". Indeed, Minister Donohoe is also justifying the



Irish government's actions (or lack of action in this case) by suggesting that they are taking their time to analyse the Commission's decision and to collect the aid from Apple.

*Table 7.11 Technical Claims in the Apple and Ilva Cases*

|                 | <b>Apple</b>  | <b>Ilva</b>  |
|-----------------|---|--|
| <i>Claimant</i> | Minister Donohoe  | Antonio Gozzi  |
| <i>Claim</i>    | "The Irish authorities have engaged fully with the Commission throughout the State aid investigation. This involved a significant degree of legal and technical complexity, and additional expertise has been engaged where required. | «We are facing a required technical procedure. This will not stop a clear and transparent procedure for the placement of Ilva on the market ». |

Next, we have the types of discursive depoliticisation described by Flinders and Wood (2017) shown in table 7.12. These types of discursive depoliticisation regard negations of the past, present and future. For Ilva, there were two claims related to the present and one for the future. For Apple, 8.1% of its claims were in relation to negations of the past, 5.4% of its claims were in relation to negations of the present and 8.1% of depoliticisation claims were in relation to negations for the future. One of the past claims was made by Vestager who specified that, in the past, Ireland had been breaching EU rules and, therefore, Apple must return the money (see table 7.9). In this first claim, Vestager is specifying how Ireland performed poorly in the past and explaining why the Commission came to its conclusion. This claim also relates to the present in that the claim has an effect on the depoliticisation of the decision (i.e. *now* is the time to deal with this issue). In this sense, she used both techniques to suggest that because Ireland granted tax rulings, which were unlawful and lasted for over two decades, *now* it must collect the money and accept the consequences, which also negates any other possible scenarios.

Present claims were observed in both the Apple and the Ilva cases. For the Apple case, the journalist states that the content inside the Commission's letter indicates that Ireland is guilty and leaves no room for other interpretations. By doing this, the journalist is depoliticising the Commission's action (more on this in the next part of the results section of this chapter). For the "present" claim in Ilva, the claimant leaves no option but to suggest that Ilva must implement immediate action in regards to the environmental damage caused by the company. The claimant suggests that there is no alternative and what Ilva and the Italian government have done to the environment is illegal and, therefore, must be immediately rectified. As such, the present claim for the Ilva case was also coded as TINA, as there is also "no alternative". The

future claim for Apple occurred when claimants referred to the negative outcomes that *will* occur to Ireland if they have to collect the money from Apple. Here, the claimant, or claim maker, is suggesting that it will be the worst possible outcome for Ireland’s finances and that it will lead to negative relations with future companies in the future. The actor in this claim is pushing for the decision to be appealed (as this was made regarding Ireland’s appeal against the Commission). If the claim maker explains that the consequences will be terrible, then the audience might believe that there is no alternative but to appeal. Thus, this strategy is also strongly connected with TINA, as the claimant ensures that all other possible solutions regarding how to treat the Commission’s actions are dissolved.

*Table 7.12 Past, Present and Future Depoliticising Claims*

|              | <b>Past</b>  | <b>Present</b>   | <b>Future</b>  |
|--------------|--|--|--|
| <i>Apple</i> | At a press conference announcing the decision, the European Commission's Competition Commissioner, Margrethe Vestager, said: "Tax rulings granted by Ireland have artificially reduced Apple's tax burden for over two decades, in breach of the EU state aid rules. Apple now has to repay the benefits." | The content of the Commission's letter is damning and essentially is stating that it already believes the country is guilty. | If, ultimately, it is decided that Ireland's tax rulings were illegal state aid, the commission could order that Apple should then pay the tax due, and that Ireland should recover from the company, the tax owed. That - despite the clear tax windfall - would also be the worst outcome. Ireland's financial reputation would be badly tarnished, and its ability to attract large overseas investment greatly diminished. |
| <i>Ilva</i>  | N/A  | "Italy must be put in a position to immediately implement environmental remediation".  | N/A  |

#### *7.7.4 Role of journalists in both Cases*

In both cases, journalists were involved in making it seem that certain actors wanted to depoliticise the case. This can occur when the journalist paraphrases the actions of certain actors. Table 7.13 shows four examples of claims coded with the claimant as the journalist. A total of 11% of claims were coded where the claimant was the journalist for Apple and 12.5% for the Ilva case. The first example for Apple illustrates how the journalist paraphrases Vestager

to suggest that she believes that the only way to know whether a case is state aid or not is to ask the Commission. In this way, the journalist uses Vestager’s words to suggest that the Commission’s actions are “impractical and unacceptable”. Similarly, in the second claim, the journalist states that the Commission refused to engage in any type of discussion on expert reports. In this instance, the journalist is rephrasing what Finance Minister Mr. Noonan has said in the past, regarding how the Commission behaved with the Irish authorities, to make it more appealing to the readers. In both instances, the journalists have used the words of others to further their argument about the wrong doing of the Commission. Moreover, another result shows the Irish Newspapers suggesting that the Commission has actively tried to “depoliticise”, even if this was not the case. Here, the journalist complains about the depoliticisation by implying that the Commission is actively removing choices from the Irish government.

The first example shown for Ilva is quite similar to the previous two observed in the Apple case. The journalist describes the actions by Vestager as “shutting the door”, which also contributes to the possible delegitimation of the European Commission. However, for Ilva, the last example uses the phrase “diffusing the tension” to later explain how the Italian authorities and the Commission are working closely together. In this sense, the journalist is providing evidence to the readers of the cooperation between the two actors in trying to solve the situation.

*Table 7.13 Role of Journalists in Discursively Depoliticising the Actions of Other Actors*

| <b>Case</b>  | <b>Claim</b>  | <b>Depoliticisation Type</b> |
|--------------|---|------------------------------|
| <i>Apple</i> | While European commissioner for competition Margrethe Vestager claims only to be targeting the "outliers", she has also said the only way for a company to know for certain it has received the correct advice from a sovereign tax authority is to ask the commission. That's an impractical and unacceptable state of affairs and is a clear affront to member state sovereignty. | [40]                         |
| <i>Apple</i> | This includes a complaint that the Commission refused to engage in any discussion on expert reports before making its decision, but criticised the contents of the same reports in its findings.  | [70]                         |
| <i>Ilva</i>  | Instead, Margrethe Vestager, the Commissioner responsible for Competition, wants to shut the door on any other type of suspect for Ilva.  | [20]                         |
| <i>Ilva</i>  | Another effort to diffuse the tension is made by the Undersecretary for European Affairs, Sandro Gozi.  | [70]                         |

Moreover, in one of the analysed newspapers for the Apple case, an editorial highlighted that Ireland is suffering “reputational damage from the tax controversy, which began last year in the US, when Apple told a Senate subcommittee that it had negotiated a special deal with the Irish Government on tax – a statement Apple subsequently retracted.” (Editorial in *The Irish Times*, October 2014<sup>148</sup>). In the same article, the journalist uses their editorial piece to discursively depoliticise the potential outcome that the Commission’s decision could have in Ireland if it were to be labelled as “UWRA” by stating: “If, ultimately, it is decided that Ireland’s tax rulings were illegal state aid, the Commission could order that Apple should then pay the tax due, and that Ireland should recover from the company, the tax owed. That – despite the clear tax windfall – would also be the worst outcome. Ireland’s financial reputation would be badly tarnished, and its ability to attract large overseas investment greatly diminished” (Editorial in *The Irish Times*, October 2014). By stating that this could be “the worst possible outcome”, the journalist is using a “negation to the future” (Flinders and Wood 2017). That is, the journalist’s statement suggests that the Commission’s decision could have a detrimental effect on Ireland’s reputation and, thus, this outcome has to be either stopped or prevented at all costs. By contrast, there were no editorials found in the sample of the Italian newspapers analysed. This may indicate that journalists were more willing to share their opinion in the Apple case, which was further politicised, rather than in the Ilva case.

## **7.8 Phases of Depoliticisation**

This section provides the reader with more detailed explanations of the phases of depoliticisation based on the results of this chapter. More specifically, while chapter 6 provided the phases for politicisation in both the Apple and the Ilva cases, this section sets out a model of phases through which depoliticisation might occur in appealed and not appealed state aid cases. As explained in chapter 6, Bates, Jenkins and Amery (2014) have previously provided patterns of partial re-politicisation which aimed at raising questions about the relationship between governance, technology, society and state. Similarly, this section gathers the main discursive depoliticisation techniques to determine which patterns could be applied to other appealed and non-appealed state aid cases. First, I will outline the different phases of the Apple case (appealed) and the Ilva case (non-appealed).

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<sup>148</sup> See the online version of the article available at: <https://www.irishtimes.com/opinion/editorial/a-bite-out-of-apple-1.1947923>

### *7.8.1 Phases of Depoliticisation for Appealed Cases*

#### *7.8.1.1 Phase 1 – Between Notification and Decision Date*

The first phase of depoliticisation strategies occurred between the moment the Commission gave notice to the memberstate that it was going to investigate the aid (21/02/2014) and just before the Commission made its final decision (30/08/2016). First, we have tendencies of not wanting to discuss, or trying to shut down, any type of question from journalists to those involved in the state aid conflict which seem to occur between the notification date and the decision date. This occurred because members from the Irish government did not want to give too much information to journalists about the possible details of how much money they might have to recover from Apple. As governments do not want to be thought of as incapable or incompetent, they attempt to shut down any form of questioning by journalists which tends to occur during the period that the case is being investigated by the Commission. In general, it seems that they were attempting to shut down throughput legitimacy questions. Negations of the future were also a prominent discursive technique used before the Commission made its decision on the Apple case as members of the Irish government tended to threaten that if the Commission were to find Ireland guilty of providing unlawful state aid to apple, this decision could have negative repercussions for the future. Meanwhile, technical claims were also used as a way to justify the member states' ability to handle its dealings with Apple during the Commission's investigation. Several claimants believe that a way to legitimise its double Irish tax ruling toward apple was by suggesting that the Irish government officials have enough knowledge on state aid to know when they have crossed the line or not. By doing this, they framed their claim in a way which would suggest that technocratic experts are on the case.

#### *7.8.1.2 Phase 2 – After the Decision Date*

During phase 2, both actors from the Commission and the Irish government had certain claims which were more popular than others. Regarding members of the Irish government, first we have TINA. After the decision date, the Irish government decided to appeal the Commission's decision as it thought that the Commission was encroaching the country's sovereignty. As previously stated, because the Irish government had to justify its decision to appeal to its constituencies, it decided to do so by using TINA. TINA played an important role in depoliticising the action of the appealed case as the member state wanted to convince its

constituencies that it was the right response to the Commission's decision. This type of strategy could also be translated to other appealed state aid cases where the member state has to justify its reasons for going against the Commission. Thus, in other appealed cases TINA could also be expected to occur after both the Commission's decision and the moment when the appeal is made. Meanwhile, the Commission mostly used negations of the past as a way to justify why its ruling is legitimate. During their press releases and press conferences the Commission provided a multitude of justifications and thus, legitimations for the ways in which it made its decision regarding Apple. These legitimations were mostly about how Apple has not paid the appropriate amount of taxes over the preceding 20-year period. This trend is also likely to be replicated in other state aid cases as the Commission has to constantly legitimise why it makes its decisions regarding how the actions of the member state in question are unlawful.

After the decision was made by the Commission, Ireland was meant to recover the money back from Apple. However, as it was unable to do so by the deadline given by the Commission (see chapter 4 on the specific deadlines that the Commission gives the member states regarding UWRA cases), the Commission sent Ireland to court due to non-compliance (04/10/2017). Before this occurred, members from the Irish government used technical claims to attempt to depoliticise its actions (or rather inactions) regarding the collection of money from Apple which occurred back in February 2017 into an escrow account. Claim makers from the Irish government used this technique as a way to suggest that they are dealing with the decision correctly by having the right state aid experts who know the intricacies of such a complicated legal (refer back to the claim example in section 7.7).

## *7.8.2 Phases of Depoliticisation in Non-Appealed Cases*

### *7.8.2.1 Phase 1- Between Notification and Decision Date*

For the Ilva case, the depoliticisation claims that I termed "appeasing" were the most widely used. Appeasing claims occurred both in phases 1 and 2 of the depoliticisation of the Ilva case. Several of the appeasing claims which occurred during the notification date took place as a way for the member state to suggest that it was cooperating closely with the Commission and providing them with enough information to make the right assessment of the Ilva case. The Commission also made several appeasing claims during this phase which also suggests that they were willing and happy to work with the Italian government. Overall, appeasing claims tend to happen more frequently during the state aid investigation. If the member state agrees with the Commission's ruling, then members of its own government might

try to make it seem that they are working together with the Commission and thus, legitimising the way in which state aid decisions in general are made.

#### *7.8.2.2 Phase 2 - After the Decision Date*

After the decision date, both parties also used what I coined “appeasing” claims which were meant to show that any past tensions were no longer there and that they are willing to work together to sort the Ilva state aid issue. During this second phase, we can also see a number of technical depoliticising claims used by the different actors involved. Technical claims were used as a way of demonstrating that the government is capable of dealing with state aid issues and the knowledge surrounding such a technical policy. After the decision date, in the particular case with Ilva, several members from the Italian government decided to proclaim “only the Italian government can sort Ilva’s problems”, as a way to respond to criticism of the mismanagement of the corporation. This was a way to shut down any other comments which suggest that the problems with Ilva should be resolved either by the Commission intervening (through state aid matters) or by other third parties (e.g. potential buyer of Ilva: ArcelorMittal). This particular justification could be applied to other struggling national corporations where actors might contest the role of the member state in solving an issue regarding the bankruptcy of a national company [e.g. state aid cases that involve national airlines such as ALITALIA (C26/2008) or Olympic airways (SA.16203)].

### **7.9 Discussion: Depoliticisation and Legitimacy**

During the politicisation phase, there are antagonistic forces that can polarise the state aid debate. Therefore, in this sense, to depoliticise is to completely “disavowal” the legitimacy of some actors’ worldviews and deny their political claims becoming part of the general interest (Rancière, Panagia, and Bowlby 2001). This can occur when actors use TINA to shut down the debate. TINA claims in the Apple analysis were also accompanied by the “denial of the future”, where claimants argue that there is no alternative but to appeal the decision. Otherwise, there may be extremely negative consequences for Ireland’s future economy and the employment of thousands of people. As a consequence, this negates the legitimacy of other members of parliament who may want to collect the money and use it for other purposes (e.g. build hospitals, take care of the homeless or use it for the Commission). In this instance, Ireland also tried to delegitimise the EU by first using the depoliticising action of TINA, and then suggesting that the EU is encroaching Ireland’s sovereignty. Together, the intention of these

claims is to demonstrate that Ireland has no other choice, the Commission's decisions are incorrect, and that the ruling made by the commission is illegitimate. Another interesting finding was a claim by tax expert Grant Thornton, who suggested that if Ireland does not appeal, this could allow Ireland's legitimacy to be questioned.

TINA was also used in the Apple case together with other strategies such as the "technical" frame. Irish governmental claimants tried to achieve the depoliticisation of the appeal by suggesting that the action was too technical and complex and that they are dealing with it in the appropriate manner. Here, they are suggesting that the citizens should put their trust in them as they know that appealing is best for the country and will maintain good relations with Apple and other future multinationals. The TINA strategy forms part of what the theoretical chapter calls "Depoliticisation 1 EU". This type of depoliticisation occurs when governments seek support in appealing the Commission's decision. By using TINA, the national government aims to present its action and erase any other possible options to tackle the EU's state aid decision. When this occurs, the discursive depoliticisation of the decision results in the EU losing some degree of legitimacy.

Overall, the Apple case demonstrates how actors can try to remove the legitimacy of other actors' decisions or actions by using discursive depoliticisation. However, in other instances, such as the Ilva case, we observe other types of discursive depoliticisation, including cooperation. Instead of actors trying to delegitimise other actors by depoliticising and "removing" their voice, they can also try to "calm the storm". This happens when actors do not want to be seen as two contradictory entities. Rather, they wish to be seen as cooperative. In the case of Ilva, such cooperation was demonstrated in the prevalence of appeasing claims. This is what the theoretical framework referred to as "Depoliticisation 2 EU". In appeasing claims, actors can attempt to calm any political "flames" and quiet any type of heated political discussions that might antagonise either of the parties involved. As such, we can observe a connection between depoliticisation and legitimacy, as appeasing claims can suggest cooperation between the member state and the EU. These types of "cooperative" claims can reinforce the legitimacy of the EU as a supranational power because both the member state and the Commission are working together for the greater good of the MLG structure. On the other hand, if actors choose to use TINA and antagonise another actor (such as the Commission), like was the case with Ireland, this can have negative consequences for the EU's legitimacy as they are both working against one another (The Commission versus the member state).



Going back to the literature review in Chapter 1, several authors have stated that the EU's legitimacy relies on how efficient it works (see Majone 1998). Thus, the results on the depoliticisation claims suggest that if actors within the MLG are not seen as cooperating with one another but working in disharmony, this can harm the functioning of the EU and, therefore, the overall legitimacy of entities with multiple levels of governance. Thus, whether or not depoliticisation has a negative impact on the Commission, the EU more broadly or the member states, depends on how well they are seen as functioning in a cohesive manner.

But given the way state aid works and how the EU functions, it is almost impossible to avoid all conflicts between member states and higher levels of power. It would also be illegitimate for member states to not have the option to appeal the Commission's decision. Therefore, these present findings do not suggest that state aid rulings be exempt from questions or appeals. Rather, I argue that, in state aid matters, member states can use appeals to discursively delegitimise the Commission and try to justify their decisions to make tax exemptions for large multinationals within their own country.

However, these delegitimations can also provide an opportunity for these cases to be referred to court where the Commission's decision has the possibility to be overruled. Indeed, on July 15<sup>th</sup> 2020, the European General Court (EGC) sided with Apple and the Irish government by ruling against the Commission's decision. During their ruling, the court stated that, "the EU's Competition Commission was "wrong" to declare that Apple's Irish entities had been granted an economic advantage through state aid" (White 2020). In addition, the court stated that the Commission did not prove that "the contested tax rules were the result of discretion exercised by the Irish tax authorities" which led to a selective advantage for Apple's Irish operations (The European Court of Justice in White 2020). This ruling was subsequently added to the additional 17 state aid cases that have been overturned by EU courts (Larger 2019).

As stated by Larger (2019), this pattern may reflect that the Commission is "losing its grip on one of its mightiest weapons: state aid control". During Vestager's time as competition commissioner, she and the Juncker Commission (and now with the Von der Leyen Commission) might have attempted to strategically target large multinational corporations who tend to avoid taxes. However, it appears that this strategy has failed as state aid cases are being appealed and referred to court more often than not. Not only do appealed cases represent a tool for actors to make depoliticising statements that might also delegitimise the Commission's decision, if the EU courts side against the European Commission this can result in a negative outcome for the overall legitimacy of how state aid decisions are made.

## 7.10 Conclusion

In summary, this chapter used Flinders and Wood (2017) concept of discursive depoliticisation and applied it to the Apple and Ilva state aid cases. A claims-making analysis was used to identify depoliticisation claims. The current literature on discursive depoliticisation does not rely on systematic methods that allow others to analyse and identify these claims. Therefore, this novel approach aims to assist future research to recognise these claims. It also furthers the use of claims-making analysis from a tool used mostly for politicisation to one that can also be used for discursive depoliticisation. The discursive depoliticisation strategies used were: negations to the past, negations to the present, negations to the future, framing issues as too technical, normalising relations between actors, TINA, the “no comment” technique and “only one specific actor can solve the issue” (which was only observed in the Italy case). It is also important to note that blame avoidance is widely mentioned in the depoliticisation literature, however no “blame avoidance” strategies were found in the analysis. Future analyses may examine how blame avoidance is used in discursive depoliticisation terms and how to identify this strategy.

In the literature, depoliticisation is associated with public disengagement as well as political participation in politics (Fawcett and Marsh 2014). The analysis identified several discursive depoliticisation claims in the newspapers for both the Apple and Ilva cases. For the Apple case, several claims from the Irish government about having “no alternative but to appeal the commission’s decision” were found. These claims tried to ensure that Irish citizens would understand that it is in their best interest to appeal the Commission’s decision rather than obtaining the 13 billion euros from Apple. Threats about the future were also made in this regard. Actors stated that the case could damage Ireland’s reputation and therefore not appealing could also have negative consequences for the future of Ireland. These discursive depoliticisation strategies were successful as the government did appeal and received a high acceptance rating for this action. While the Irish government tried to depoliticise the action of appealing, they also attempted to delegitimise the EU and the Commission’s decision. This was also successful as polls showed that the majority of the people regarded the appeal as the only

option for Ireland (Collins 2016). Also, this was seen in the support given by other members of parliament during the 93-36 vote for the appeal.<sup>149</sup>

Regarding the Ilva case, “no alternative” claims were found twice and they differed to those identified in the Apple case. For Ilva, the most important finding was the number of appealing claims. These were the most popular claims used by both members of the commission and of the Italian government to calm any previous tensions that were occurring during the investigation of the case. In this sense, the discursive depoliticisation techniques of these actors focused on the action of cooperation rather than alienation and had no consequences on the legitimacy of the parties involved. Results also showed that when the case was becoming politicised, the Commission was less likely than the Irish government to resort to depoliticising strategies. This suggests that the European Commission, and state aid more broadly, might usually be considered as a “depoliticised” entity and topic of debate. However, actors other than the Commission, such as journalists, might depoliticise the Commission’s actions in their news articles.

The analysis shows that both processes (politicisation and depoliticisation) can occur simultaneously. This is to be expected as actors have different interests and some might try to avoid a topic becoming political, while others have an interest in politicising EU policies such as state aid. Interestingly, these processes have never been studied simultaneously using claims-making analyses until now.

Certain depoliticising claims can create negative consequences for the EU’s overall legitimacy if certain strategies, such as those employed by Ireland, are used. However, it is clear that discursive depoliticisation does not always rely on strategies that aim to alienate other possible outcomes. Instead, strategies can be used that focus on the cooperation between parties and on calming any pre-existing tensions. Overall, the current research generated a new approach to systematically evaluate discursive depoliticisation and also demonstrated that discursive depoliticisation is not always negative (as most of the existing literature seems to suggest). This chapter also showed that depoliticisation instances may occur when a journalist comments on an action made by the Commission or the national governments. That is, an action is depoliticised not by the involved parties but, rather, by journalists. This also highlights the importance of observing members of the government as well as those who frame the news.

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<sup>149</sup> See the news regarding support for the appeal available at: <https://www.euractiv.com/section/euro-finance/news/irish-parliament-backs-apple-tax-appeal-after-angry-debate/>

Indeed, the manner in which journalists portray a specific actor, or the actions of a specific actor, can influence how the legitimacy of this power is perceived. A journalist may also incorrectly interpret the governmental figure's (whether it is the Italian, Irish or the Commission) actions as apolitical and, therefore, report them as such to the public. To conclude, the processes of politicisation and depoliticisation appear throughout state aid cases and both can impact on how the EU and its member states are perceived. However, the impact observed in the current study was not entirely predicted by the literature.

## Chapter 8: Final Discussion and Conclusion

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### 8.1 Introduction

Analysing politicisation and depoliticisation is essential to understanding how different actors can legitimise the actions of their member states, the Commission and the multinationals involved in state aid cases. In state aid cases labelled as “Unlawful with Recovery of Aid” or UWRA, member states are put in the awkward position of being expected to adhere to rules and regulations that come from supranational levels of authority. This requires them to collect money previously given to a specific corporation or industry. Therefore, in this policy, the authority transfer occurs through the general legislative acts and guidelines, where member states delegate the power to adjudicate the proper use of state aid to the European Commission. This transfer of power allows for contestation to occur between its member states who can challenge the Commission’s decision through an appeal.

The foregoing discussion suggests that contestation takes place in UWRA cases, making state aid particularly suitable to address the main puzzle of this dissertation: to examine whether the politicisation of EU policies (such as state aid) can result in a negative outcome for the EU’s legitimacy (see Majone 1998; 2014; Moravcsik 2006; 2018; Laffan 2019) or, rather, if it can bring the “normalisation” of EU decision making processes into the spotlight (Rauh and Zürn 2014; Risse 2015; Statham and Trenz 2015). Authors such as Majone (1998; 2014) and Moravcsik (2006; 2018) have suggested that politicisation can challenge the EU by allowing outsiders to question the functioning of this MLG system. By contrast, others have argued that politicisation can make EU decision making processes more accessible to citizens who can then become more involved in discussing issues such as the European Integration project (see Schmidt 2013; Rauh and Zürn 2014; Risse 2015; Statham and Trenz 2015). Thus, for these authors, politicisation can represent a positive opportunity for the EU to legitimise itself through public deliberation and debate.

While more recently, Schmidt (2019) has suggested that debating whether politicisation is a good or bad thing might be almost “beside the point since, like it or not, it [politicisation] is a ‘thing,’ and here to stay” (Schmidt 2019, p. 20). Schmidt (2019) also suggests that scholars should be more concerned with how politicisation can have differential effects for the EU’s legitimacy. More precisely, according to Schmidt (2019) the effect of politicisation on the EU’s legitimacy will depend on the type of policy and how its design impacts citizens’ perceptions of the EU and its authority. In this dissertation, I have sought to illustrate that this differential

effect can also occur *within* the same policy area. More specifically, the analysis showed that the politicisation of the Apple case followed an “international conflict trajectory” (De Wilde and Lord 2016) but this was not true for the Ilva case. The “international conflict trajectory” can occur when issues are related to a specific policy that advances EU governance (such as state aid) (De Wilde & Lord, 2016). In this type of trajectory, conflicts are presented to citizens as two contesting views: the nation-state versus the supranational institution (EU). As such, nationality and the protection of the nation-state become a key signature of the “international conflict trajectory” (De Wilde and Lord 2016). As previously argued, the Apple case followed this “international conflict” trajectory because the Irish government framed the international conflict as “us” (Ireland) against “them” (The Commission/EU). In this sense, the Apple case took the “politics against policy” route as described by Schmidt (2019). By contrast, in the Ilva case, the politicisation of the state aid case raised questions regarding the aid provided by the Italian government rather than questions surrounding the Commission and its investigation.

This thesis made several novel contributions to the literature. First, I expanded previous understandings of politicisation and depoliticisation by showing that politicisation and depoliticisation are fluid-like or malleable within Multilevel Governance (MLG) structures such as the EU. I argued that these dialectical (discursive) movements that come from different actors can be observed simultaneously in the public sphere through their claims. Therefore, due to their complexity, one cannot simply assess politicisation or depoliticisation as being only positive or only negative for the EU’s legitimacy. Importantly, the existing literature tends to focus on analysing processes of politicisation *or* depoliticisation, rather than analysing both processes simultaneously (see Beveridge 2012; Buller and Flinders 2005; Burnham 2001; 2006; 2014; De Bièvre and Poletti 2020; De Wilde 2007; 2011; 2012; 2015; De Wilde and Zürn 2012; De Wilde, Leupold, & Schmidtke 2016; Flinders and Buller 2006; Hooghe and Marks 2009; Hutter and Kriesi 2019; Jenkins 2011; Kerr, Byrne, & Foster 2011; Kettell 2008; Schmidt 2019; Statham and Trenz 2013; Wood and Flinders 2014; Zeitlin, Nicoli, & Laffan 2019; Zürn 2019; 2014 among many others). Exceptions to this have been studies by Beveridge and Naumann (2014), Bates, Jenkins, & Amery (2014), Jenkins (2011) Kuzemko (2014b) that analyse both politicisation and depoliticisation together, but only at one level of governance. Regarding MLG, studies by Fawcett, Flinders and Wood (2017) and Papadopoulos (2017) have tried to understand how both process work in MLG, however, they do not empirically examine how policy issues can become politicised or depoliticised in MLG *per se*. Recently, Bressanelli, Koop and Reh (2020) analysed the dynamics that occur between politicisation and

depoliticisation as strategic responses within the EU. However, more empirical work was required to examine the extent to which the EU has been simultaneously politicised and depoliticised in the public sphere. I have attempted to fill this gap in the literature by analysing how a single policy issue, such as state aid, can become subject to politicisation and depoliticisation simultaneously. By analysing both processes together theoretically, I was able to advance detailed conceptualisations of both politicisation and depoliticisation in MLG. Through this, I defined both processes as “discursive strategies employed by various social actors from different levels of MLG to either discuss or shut down debates of an issue in the public sphere” (see Chapters 1 and 2). Thus, I did not define these processes in terms of governing strategies but rather in discursive terms, which are employed by different actors to cause issues to become contested or, conversely, to remove them from discussion all together.

Moreover, while previous studies have understood depoliticisation as a discursive phenomenon (Flinders and Wood 2014, 2017; Bates et al. 2014; Jenkins 2011), I extended these studies by evaluating discursive depoliticisation and politicisation through claims-making analysis (see *Koopmans* and *Statham* 1999; *Haunss* 2007; *Lindekilde* 2013; *Statham* and *Trenz* 2013; *De Wilde* 2011; 2013; 2020; *Gora* and *De Wilde* 2019; *De Wilde, Koopmans, Zürn* 2014; *Hurrelmann et. al.* 2016; *Hurrelmann* and *Wagner* 2020) where agents (actors) play a key role. Thus, the second contribution of this PhD is the use of claims-making analysis to study discursive depoliticisation. This is a novel contribution to the literature which uses the analysis of actors claims to evaluate the processes of politicisation and depoliticisation of the EU. By using this method, Chapter 7 aimed to provide future researchers with tools on how to identify several discursive depoliticisation strategies. This method provided a systematic approach to analyse the contribution of different actors to the overall politicisation and depoliticisation of an issue in the public sphere.

The third novel contribution of this thesis pertains to the differentiated nature of politicisation and depoliticisation within the same policy area. As has been shown, previous studies have acknowledged that state aid can become politicised (see *Blauberger* 2011). However, the current literature lacks the in-depth analysis of whether state aid policies indeed become subject to politicisation and depoliticisation simultaneously. In this sense, studying these processes together through a claims-making analysis represents a key contribution to the state aid literature. Past studies have also focused on corporate taxation and its politicisation (*Schmidtke* 2016; *Kneafsey* and *Regan* 2019), however these studies do not examine how actors use their claims to contribute to both the politicisation and depoliticisation of the issue.

Moreover, while I focused on taxation in one of my analysed cases (Apple), I have also examined how another type of industry becomes subject to these processes as well (steel industry in the Ilva case). Thus, I have provided an original and novel contribution to the state aid literature by exploring how politicisation or depoliticisation can become differentiated across distinct state aid cases.

Fourth, a main finding of this dissertation highlighted that politicisation and depoliticisation are closely linked and can be analysed in similar contexts simultaneously. This type of analysis demonstrated that certain discursive depoliticisation techniques can also impact how a conflict can become politicised. For example, attempts by actors from the member states to depoliticise an appeal can actually further contribute to the politicisation of an overall state aid case. Thus, we can observe how politicisation and depoliticisation can simultaneously appear. While Bates, Jenkins and Amery (2014) examined how an issue can be simultaneously subject to politicisation and depoliticisation, their study considered only discourses that occurred at one level of governance (the Father's Clause parliamentary debates in the UK). I distinguished myself from their study as I examined processes of politicisation and depoliticisation at different governance levels throughout this dissertation.

The following concluding chapter will first summarise the main key findings of the empirical chapters of this thesis. Then, the trends and patterns that were identified in the claims-making analysis of politicisation and depoliticisation will be discussed together in section 8.3 of this chapter. I will then review the results from Chapters 6 and 7 to provide a clear comparison of how processes of politicisation and depoliticisation function in appealed cases versus non-appealed cases. Afterwards, I outline the main contributions of my study to the literature on politicisation and depoliticisation. Then, I detail the role of the media in politicising and depoliticising state aid cases in Multilevel Governance (MLG). Next, I describe the contribution of my dissertation to the state aid literature as well as some of the main limitations of the analysis conducted in this thesis. Finally, the overall conclusion of the thesis is presented.

## **8.2 Key Findings**

This dissertation has evaluated: the claims made by different actors involved in the politicisation and depoliticisation process; how different actors (the Commission, the Irish and Italian governments as well as Apple and Ilva) legitimise their own actions and delegitimise others; the links between the politicisation and depoliticisation of state aid issues and the



legitimation of actors/institutions/states; and lastly, the role of the news media in this process and the way journalists can have a role in discursively depoliticising an issue.

The first empirical contribution of this dissertation comes from Chapter 4 where I identified the member states with the most cases labelled as Unlawful with Recovery of Aid (UWRA) as well as the member states that are most likely to appeal the Commission's decision. Specifically, Chapter 4 looked at the universe of state aid cases and provided an overview of which cases were appealed. The results of Chapter 4 found that Germany and Italy had the most unlawful aid. However, when restricting the analysis to the appeals made *only* by the member state, it was shown that Germany appealed 18% of the time and Italy 11% (when accounting for the overall number of cases). Meanwhile, Austria and Ireland appealed 33% of cases, France 24% of cases, Greece 21%, Spain 18%, and Poland 14%. This means that member states do not tend to get involved in appealing state aid cases labelled "negative recovery of aid" (or UWRA) very often. This might be due to the fact that the CJEU has previously ruled in favour of the European Commission more often than not. However, this is likely to change in the future as more cases are being referred to court and the CJEU is tending to rule against the Commission more frequently (e.g. the Commission has lost 17 out of 41 state aid cases in court since November 2018; see Larger 2019). Overall, the aim of Chapter 4 was to provide the reader with a general overview of the universe of UWRA cases. Indeed, Chapter 4 served as a foundation to understand whether the coded contested cases were more likely to obtain news coverage in Chapter 5 of this thesis.

Chapter 5 addressed the following questions: What triggers the national news coverage of state aid cases? How often are these cases covered in the media? And, finally, which of these state aid cases can be used to conduct a claims-making analysis? The analysis conducted in Chapter 5 used the results from the coding of the appealed cases (Chapter 4) to determine that state aid issues are more likely to be covered in the media if there is conflict (i.e. appeal or referral to court). These results confirmed past studies on the role of conflict in creating news coverage (Galtung and Ruge 1965; Milioni et al. 2015) and, more specifically, within the context of the EU (de Vreese, Peter and Semetko 2001; Peter and de Vreese 2004; Boomgaarden et al. 2013; Lloyd and Marconi 2014). Chapter 5 also provided the reader with the ten most covered state aid cases. Two of which were selected for the claims-making analysis in Chapters 6 and 7. This ensured that each of the state aid cases had sufficient articles from the same news source. The two selected cases were the Apple case in Ireland and the Ilva case in Italy. Of the two cases, one was appealed (Apple) and one was not (Ilva), with both gaining

high levels of news coverage allowing for the claims-making analysis to be performed. Appealed cases were expected to trigger patterns of politicisation that delegitimise the Commission's decision and, more generally, the EU. In contrast, non-appealed cases that gain large news attention were expected to follow other forms of politicisation where the actions of the member state and/or corporation were questioned rather than the actions of the Commission or the EU.

Chapter 6 evaluated the politicisation of the Apple and Ilva cases through a claims-making analysis and showed that both cases were politicised (however, the Apple case was shown to be more politicised than the Ilva case). Chapter 6 found that the Commission became the most polarising institutional actor during the politicisation of the Apple state aid case (the Commission received the most "extreme" claims, both positive and negative). Moreover, the analysis in Chapter 6 also evaluated how the three main actors in the Apple case (the Commission, the Irish government and Apple) attempted to legitimise their actions in the Irish news media. The Irish government was more successful at catering to its national audience by being more visible in the media than the Commission. This meant that the political legitimations of the Commission in justifying its state aid decision in the Apple case did not have as much space in the evaluated Irish media when compared with the political legitimations that the Irish government made regarding the appeal. As previously explained, the type of politicisation observed in the Apple case has been described as following an "international conflict trajectory" (De Wilde and Lord 2016). I argue that this trajectory occurred in the Apple state aid case as a consequence of the appeal made by the Irish government. The appeal allowed the Irish government to publicly question the manner in which the Commission made its decision. This in turn allowed the Irish government to frame the politicised issue as "us" (Ireland) versus "them" (the Commission/EU). For Ilva the politicisation of the state aid case followed a different path. Here, the Italian government was challenged by claim makers from within the member state (e.g. citizens) and other non-governmental actors (e.g. NGOs) who were unhappy with how the government handled the aid given to Ilva. Also, the study of Ilva confirmed that it is possible for the national media to focus on the views of claim makers from the Commission rather than the member state.

After having assessed how the politicisation occurred in both state aid cases, Chapter 7 evaluated the discursive depoliticisation claims and revealed that there were several more techniques used by different claim makers in both cases. More specifically, Chapter 7 examined which discursive depoliticisation claims were used by actors at different governance levels.

The chapter also evaluated how actors used these techniques to legitimise their own actions or delegitimise the actions of others. The results of Chapter 7 identified several discursive depoliticisation claims in the newspapers for both the Apple and Ilva cases. In the Apple case, several claims from the Irish government about having “no alternative but to appeal the Commission’s decision” were found. These claims tried to ensure that Irish citizens would feel as though there is no other option but to appeal the Commission’s decision rather than obtaining the 13 billion euros from Apple. Claims involving threats about the future were also made in this regard as actors from the Irish government, as well as parliamentarians from the Labour party, stated that the case could damage Ireland’s reputation and, therefore, not appealing could also have negative consequences for Ireland.

Other claim makers such as tax expert Grant Thornton suggested that if Ireland did not appeal, this could undermine Ireland’s authority. Thus, most of the Irish claim makers identified in the analysis attempted to discursively depoliticise the action of the appeal by removing any political choice (using TINA) when it came to responding to the Commission’s decision. I argue that these discursive depoliticisation strategies seem to have been successful because the government was able to obtain enough support in the national parliament to appeal the Commission’s decision. Moreover, a poll conducted by the Irish Times showed that 47% of people surveyed were supportive of the appeal (see Collins 2016). In contrast, TINA claims in the Ilva case were used differently. For example, Antonio Gozzi (who is the CEO of European steel giant, Duferco) made a TINA claim regarding Vestager: “Commissioner Vestager has made it clear that the launch of an investigation into any illegal state aid against Ilva is a necessary act because there have been reports from Ilva's competitors and from others countries (especially Belgium and the UK)” (Claim made by Antonio Gozzi in *La Repubblica* 27<sup>th</sup> January 2016). Here, TINA was used to suggest that the investigation was necessary and Gozzi used Vestager to show that it was in the interest of Duferco for Ilva to be investigated. Duferco was one of the companies who, in 2014, encouraged the Commission to open an investigation against Ilva. By using TINA, Gozzi also legitimised the Commission’s role in investigating the state aid case. Another important finding was the use of “appeasing/normalising relations” claims that were found in the discursive depoliticisation analysis of the Ilva state aid case. These were the most frequently used claims by the members of the commission and of the Italian government to calm any previous tensions that were occurring during the investigation of the case. Also, the discursive depoliticisation techniques of these actors seemed to focus on cooperation rather than alienation, and reaffirmed the role

of the Commission as a state aid regulator. This shows that legitimations and delegitimations towards the Commission's investigation differed when evaluating depoliticisation in the two analysed state aid cases.

Overall, the analysis shows that both processes (politicisation and depoliticisation) can occur simultaneously and that some forms of politicisation can make use of a depoliticised rhetoric (for example, the appeal made by the Irish government). This is to be expected as actors have different motivations and some might try to avoid a topic becoming political, while others may have an interest in politicising EU policies such as state aid. Interestingly, these processes have never been studied simultaneously using a claims-making analysis and this represents one of the main contributions of this research to the literature (see Hay 2007; Beveridge and Naumann 2014; Jenkins 2011; Berkhout 2012; Bates, Jenkins and Amery 2014). The analysis also showed that the depoliticising action of discursively using TINA to appeal the Commission's decision can actually add to the overall politicisation of the state aid case. This in itself represents one of the patterns which I will now continue to further explore in the next section of this chapter.

### **8.3 Patterns and Trends of Politicisation and Depoliticisation**

In chapter 6, I sought to identify, and differentiate between, phases of politicisation. Then, chapter 7 served to process depoliticisation in a similar manner. This section aims to bring the phases of both politicisation and depoliticisation together to provide the reader with a clear comparison of how these processes function in state aid. Also, this section seeks to formulate some possible generalisations about how appealed and non-appealed cases can become subject to politicisation and depoliticisation, along with the resulting legitimations and delegitimations of the Commission, the member state and the corporations involved. Thus, in the analysis conducted on the two state aid cases, I have been able to detect patterns of relations that can go beyond the understanding of the individually analysed state aid cases. I argue that some of the patterns that occurred in the Apple case could also occur in other appealed state aid cases involving large multinationals, such as Amazon or Starbucks. I will also show that the patterns in the Ilva case could be replicated in state aid cases that are not appealed but gain extensive media coverage.

### *8.3.1 Patterns of Politicisation and Depoliticisation in the Appealed Case (Apple)*

Table 8.1 shows the discovered patterns from Chapters 6 and 7 on how actors used their claims to politicise or depoliticise the Apple state aid case. During phase 1 of this case, different types of actors (e.g. members of the US senate, citizens, journalists) attempted to politicise the issue by raising questions about the throughput and output legitimacy of Ireland's tax benefits toward Apple. For example, members of the US senate raised economic-effect justifications (output legitimacy) and stated that the corporation was benefiting from tax deals that could negatively impact competition (even before the Commission made its final decision) as seen in the analysis conducted in Chapter 6. Meanwhile, through the use of their claims, Irish officials were already threatening to appeal during the investigation of the state aid case. For example, several claims by members of the Irish government stated that if the decision were to be "UWRA", they would appeal as this could jeopardise Ireland's economic future. These claims attempted to depoliticise the future act of appealing while also furthering the politicisation of the state aid debate.

Claims made by members of the Irish government during phase 1 referred to both throughput and output legitimacy, and aimed to evaluate the Commission's actions as well as the outcome of the state aid investigation. Similarly, contestations and threats that occur during the investigation phase are likely to occur when multinationals are based in EU countries considered to be tax havens such as The Netherlands, Ireland, Luxembourg and Cyprus which "are among the world's 15 worst corporate tax havens" (Oxfam International Report 2016). Furthermore, countries that rely heavily on being a tax haven are more likely to attempt to further their relationship with the multinationals who have investments in the country. Thus, if the Commission challenges their tax practices, these countries are likely to take a similar stance to Ireland and contest the throughput and output legitimacy of the EU. Indeed, the Irish government wanted to maintain its relationship with Apple, which was the main reason why the country provided the tech giant with the double Irish tax arrangement in the first place.

Meanwhile, during phase 1, the Commission tended to justify its actions using the legality frame (throughput legitimacy), the economics effects (output legitimacy), and the "effectiveness" justifications. We can expect that, for all state aid cases, throughput and output legitimacy justifications by the Commission will occur during the investigation phases as they are likely to attempt to justify their actions through their press releases and press conferences. This is because the Commission wants to explain and justify its state aid decision to show that they have followed the correct rules and procedures (throughput legitimacy), and also that they

play an important role in fomenting competition in the EU (output legitimacy) in all state aid cases.

In terms of the depoliticisation strategies during phase 1, and to counteract these throughput and output legitimations by the European Commission, actors from the Irish government attempted to shut down any questions related to how the state aid case was being investigated. This included questions about the Double Irish tax system that allowed Apple to pay less taxes. In an attempt to shut down any questions regarding the investigation, members of the Irish government and Apple repeatedly stated that “the State and company have no case to answer in respect of the state aid investigation.” (Claim made by Finance Minister Michael Noonan and Apple in the Irish Independent, 15 of March 2016). Moreover, claim makers from the Irish government also attempted to prevent questions about the throughput legitimacy of the member state’s handling of the direct foreign investment made by Apple during this phase.

During this first investigation phase, technical claims were made to suggest that state aid experts from the Irish member state were handling the case appropriately, as seen in the depoliticising claims investigated in Chapter 7. For example, Minister Donohoe stated that “the Irish authorities have engaged fully with the Commission throughout the State aid investigation. This involved a significant degree of legal and technical complexity, and additional expertise has been engaged where required.” (Minister Donohoe in the Irish Times 30 May 2018). Minister Donohoe was suggesting that there was a high level of expertise on the Irish side and that they had taken the appropriate measures to deal with the Commission at the time of the investigation. This illustrates that claimants from the Irish government wanted to show that their experts handled the case’s complexity accordingly. This could also be seen as an attempt to remove any discussions regarding whether or not the Irish government provided unlawful aid to Apple. Similar claims may also occur during the investigation of a state aid case where the member state attempts to prepare for the outcome of the state aid decision by asserting that it will appeal the decision if it is labelled as UWRA.

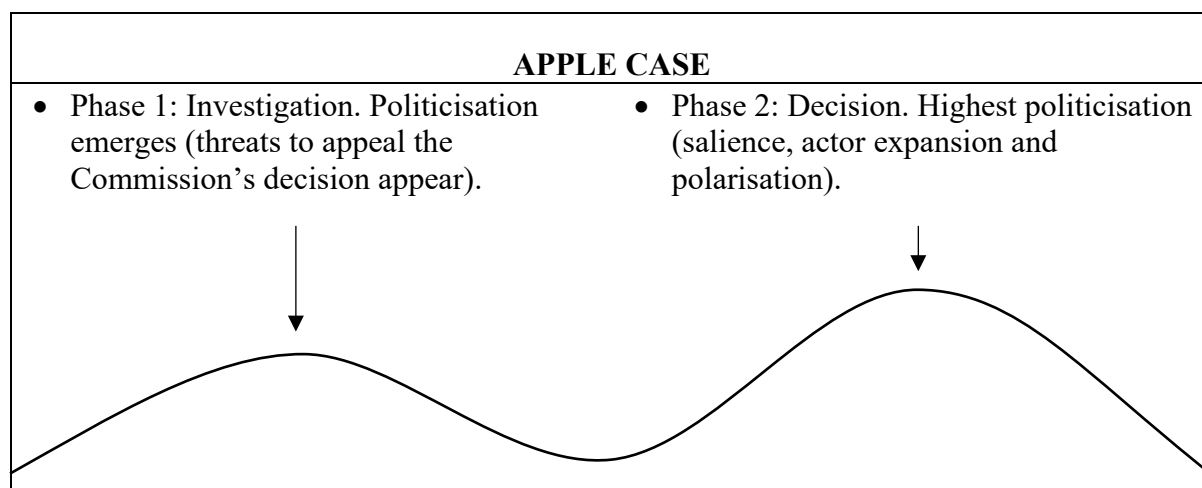
Table 8.1 Comparing Politicisation and Depoliticisation in the Appealed Case (Apple)

| <b>Appealed Case (Apple)</b>                 | <b>Politicisation</b>   | <b>Depoliticisation</b>   |
|--|---|---|
| Range to the Politicisation/Depoliticisation | High Salience, High Actor, High Polarisation  | 33 depoliticisation claims were spotted   |
| Phase 1 (Notification – Decision Date)       | Questions about the throughput and output legitimacy were regarding the member state’s handling of state aid. Irish officials were already making suggestions about the possibility of appealing the Commission’s decision.   | The member state made attempts to shut down throughput legitimacy questions. Threats to appeal were made by the member state and corporation to depoliticise a future appeal. Technical claims were also used to justify the way in which the member state handles state aid information (through technocratic experts).  |
| Phase 2 (Post Decision Date)                 | Actors from the member state relied on the “legality frame”, which questions the throughput legitimacy of the state aid decision, and the “effectiveness frame”, which questions the output legitimacy of the Commission’s decision. The Commission tended to justify its actions using the legality frame (throughput legitimacy), the “effectiveness” and the economics effects (output legitimacy) justifications. | The member state focused on using TINA as a main depoliticisation strategy. Technical claims were also used by the member state to depoliticise the way in which state aid is evaluated within the member state. By doing this, member states attempt to obtain throughput legitimacy of its state aid decisions. TINA was used by the member state to justify its appeal, specifically with parliament and Irish citizens (and, therefore, obtain input legitimacy in its decision to appeal). |

Salience, polarisation and actor expansion occurred more prevalently after the Commission’s decision (second phase) (see Figure 8.1). During this second phase, the Commission tended to justify its actions using the legality frame (throughput legitimacy), the economics effects (output legitimacy) and the “effectiveness” justifications in order to specify why it made the right decision regarding the Apple state aid case. Actors from the Irish government relied on the “legality frame” and, as a result, questioned the throughput legitimacy of the state aid decision made by the Commission. By questioning the throughput legitimacy

of the Commission’s decision, the Irish government tried to gain acceptance for its appeal. They also attempted to gain acceptance for appealing the decision by using a particular depoliticisation strategy: TINA. During the second phase, the Irish government tried to frame the its response to the Commission as having no other alternative but to appeal. By using TINA, members of the Irish government attempted to obtain consent in parliament and in the media. In the parliamentary debates, which were covered in some of the news articles, the appeal unified several political parties within Ireland (with certain exceptions) for going against the Commission’s ruling. The Commission’s decision was considered by many parliamentarian representatives as a violation of Ireland’s sovereignty. By discursively depoliticising the appeal in parliament and in the media, the Irish government obtained sufficient input legitimacy in its decision to appeal in parliament (by gaining a sufficient majority).

*Figure 8.1 Politicisation and Depoliticisation Phases in the Appealed Case (Apple)*



The findings on the politicisation and depoliticisation of the appealed case could be applicable to other state aid cases that involve large multinationals and tax ruling practices. As mentioned throughout the thesis, in 2013 the Commission created a Task Force Tax Planning Practices to follow up on allegations of the favourable tax treatment of certain companies (particularly in the form of tax rulings and multinationals). Some of the ongoing investigations include McDonalds, Amazon, Fiat and Starbucks, all of which are large corporations. According to the investigation, these corporations might be involved in unlawful tax ruling practices. However, all of the cases have been appealed so far. Thus, we could expect that these types of cases (e.g. McDonalds, Amazon, Fiat and Starbucks) might follow similar trends with



how actors at the member state level choose to politicise the state aid case, and discursively depoliticise the decision to appeal the Commission's decision domestically.

### *8.3.2 Patterns of Politicisation and Depoliticisation in the Non-appealed Case (Ilva)*

The non-appealed case analysed in this dissertation (Ilva) was politicised to a lesser extent than the Apple case. Nevertheless, it gained large amounts of news coverage with most of its actor expansion and polarisation occurring during the first phase of politicisation (during the investigation of the aid) rather than during the second phase (after the decision of the Ilva state aid case was made). The case also had less depoliticisation claims (24) than the Apple case (33). During the first phase of politicisation for the Ilva case, the most frequently used claims by the members of the Italian government were in relation to legality justifications (throughput legitimacy) (see table 8.2). Again, throughput legitimacy is used by the Commission to legitimise how it conducts its state aid investigations by following the law and rules. This is aimed at reassuring the member states (and the public more generally) that all the procedures are legitimate. Meanwhile, members of the Italian government tried to justify some of the previous laws approved for Ilva in the hope that the Commission would not raise questions of alleged state aid (in the end only 2 out of 5 instances of aid were deemed unlawful). These justifications were also throughput legitimacy frames which were used to justify the Italian handling of the Ilva state aid case (or at least some part of the legal handling of the corporation). Regarding the discursive depoliticisation strategies used during the first phase of the case, both the member state and the Commission relied on “appeasing” or normalising claims to demonstrate that both sides were cooperating without conflict. By doing this, they were legitimising the throughput legitimacy process of the state aid investigation and highlighting that fact that the Italian government were providing the right information for the Commission to make its final decision.

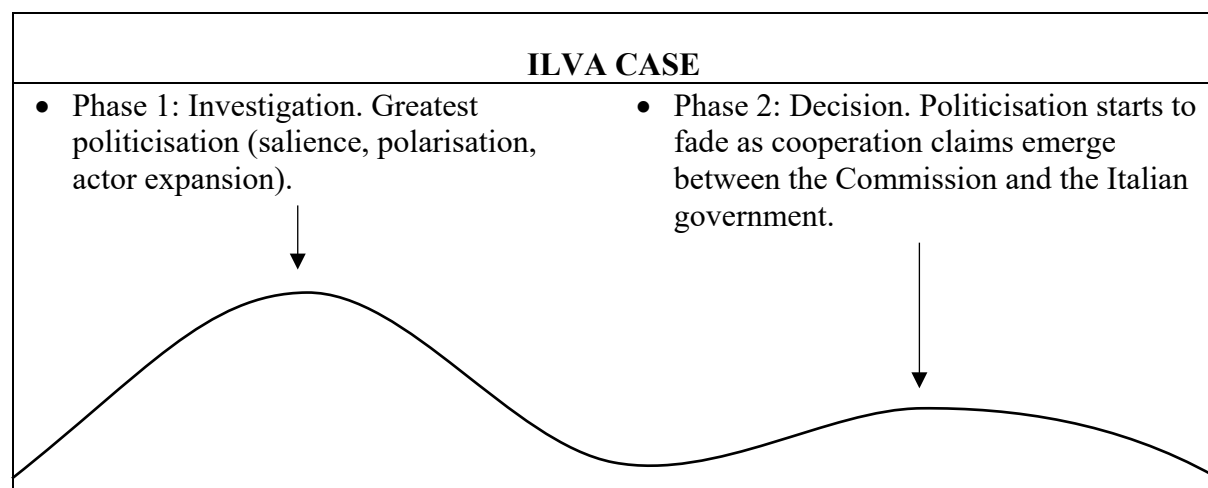
*Table 8.2 Comparing Politicisation and Depoliticisation in the Non-Appealed Case (Ilva)*

| <b>Non-Appealed Case</b>                     | <b>Politicisation</b>   | <b>Depoliticisation</b>   |
|--|---|---|
| Range to the Politicisation/Depoliticisation | High salience, medium actor expansion, high to medium polarisation.   | 24 depoliticisation claims were identified.   |
| Phase 1 (Notification – Decision Date)       | Throughput legitimacy was used by the Commission and the member state. The Input legitimacy of the Commission was put into question.  | Both the member state and the Commission used appeasing claims to demonstrate that no conflict was occurring between the two parties to highlight the throughput legitimacy of the state aid investigation.   |
| Phase 2 (Post Decision Date)                 | Most used justification by the Commission’s officials was regarding the “effectiveness” frame (output legitimacy). Members of the Italian government were satisfied with the outcome stating that the amount equated to a small reimbursement compared to the more than two billion euros that were investigated. By also using the legality frame and throughout legitimacy, the Italian government legitimized the Commission’s decision. | Appeasing claims by both the member state and the Commission were used. Technical claims were also used as a way of demonstrating that the government is capable of dealing with state aid issues and implementing the Commission’s state aid decision. |

For the second phase, the justifications most frequently used by Commission officials relied on the “effectiveness” frame (output legitimacy). This was as a way to justify the outcome of its state aid decision to the public. During this phase of politicisation, members of the Italian government were satisfied with the outcome stating that the amount equated to a small reimbursement compared to the more than two billion euros that were investigated. By also using the legality frame and throughout legitimacy, the Italian government legitimized the Commission’s decision. In terms of depoliticisation, and similarly to phase 1, appeasing and normalising relations claims were also used during the second phase of depoliticisation by both the Commission and members of the Italian government. As previously stated, appeasing claims came from both the Italian government and the Commission while trying to “calm down” any tensions surrounding the state aid investigation. For example, “After months of

public quarrels and political misunderstandings, there is an attempt, in Rome and Brussels, to restore the relationship between the Italian government and the European Commission on a ridge of better collaboration” (claim coded in the analysis by representative from the Italian government in *Il Sole*, 15 April 2016). This claim shows how the Italian government and the Commission attempted to resolve any tensions after the state aid decision was made. Moreover, this allowed for the politicisation that occurred during the investigation phase to fade (see Figure 8.2). Also, technical claims were also made by the Italian government to show that it is more than capable of implementing the Commission’s decision. Technical claims included statements about how the state aid investigation is technical and the handling of the case by national authorities is procedural. Thus, the claimant is letting the reader know that the experts “are taking care of it”.

*Figure 8.2 Politicisation and Depoliticisation Phases in the Non-appealed Case (Ilva)*



Overall, the findings of the Ilva case can be applied to other non-appealed state aid cases involving several actors. Like Ilva, cases receiving extensive news attention might become politicised due to internal tensions regarding the government’s handling of state aid. More importantly, if they do become politicised, this politicisation is likely to occur during the investigation phase. Other state aid cases that could follow a similar path to the Ilva case might involve national corporations that evoke complaints regarding possible unlawful aid (and thus triggering the investigation), or national companies facing bankruptcy where thousands of people depend on the outcome of the investigation to maintain their employment. However, appeasing claims as a depoliticisation strategy might not necessarily always transfer to non-appealed state aid cases. In the Ilva case, these types of claims were made in an attempt to show

that the Italian government was cooperating with the Commission and can be seen as a consequence of past tensions between the two entities.

These patterns provide the literature with expectations for the possible moments when state aid cases can become subject to politicisation and depoliticisation by different claim makers. By doing this, I hope to have contributed to the literature on state aid which, to my knowledge, has never attempted to do an analysis on how state aid policy can be used for politicisation and depoliticisation. Moreover, the patterns also show that in appealed cases, there were inquiries into the legitimacy of the Commission in terms of throughput legitimacy (when national actors attempt to question the decision-making processes by the Commission) and of output legitimacy (questionings about the outcome of the Commission's decision). Also, in non-appealed cases, the throughput legitimacy of the Commission was put into question during phase 1. This means that similar patterns of questioning the European Commission arise during the investigation phase, but seem to decline in non-appealed cases once the decision is taken. In terms of discursive depoliticisation techniques, actors from the member state attempted to shut down questions using throughput legitimacy justifications. These justifications attempted to shut down any questions regarding past tax decisions with Apple. On the other hand, after the Commission's decision in the Ilva case, "appeasing" claims were used to calm the tensions that occurred during the investigation of the state aid case. However, the use of appeasing claims might be limited to state aid cases with similar national contexts, including a setting where the public is already dissatisfied with the aid given to the corporation.

## **8.4 Contributions of this thesis to the literature**

### *8.4.1 In terms of Politicisation*

In academic literature, it is generally argued that the EU obtains its legitimacy indirectly from its member states (Lindseth 2010; Majone 1998). These authors understand that member states legitimise the EU by accepting to be part of the European Integration project. Thus, member states have to contribute and abide by EU norms and rules. The authors see the EU as an instrument that is in control of each of its member states (Moravcsik 2006). However, if the EU's policies become politicised, this can have negative consequences on the indirect legitimacy that is gained from its member states. Therefore, large parts of the literature suggest that the EU and its policies should remain depoliticised (Majone 1998; Moravcsik 2002). Similarly, consociationalists have argued that conflict can make heterogeneous polities such as the EU unstable (Bartolini 2005). Consociationalist authors have argued that the EU relies on

its technocratic elites to operate smoothly, but behind closed doors (Bartolini 2006; Papadopoulos and Magnette 2010). Overall, these authors argue that this makes compromise between member states and the EU much more difficult as politicisation and conflict could tear the EU apart.

At the same time, there are other scholars who believe that the EU's policies should be openly debated (Scharpf 1999; Hix 2008; Schmidt 2006). These authors understand that actors at the EU and member state levels can use the media to communicate their positions to citizens more directly. This position has been argued by many as being "politically legitimating" (Schmidt 2017, p. 21; 2019, p. 20). Authors such as Schmidt (2006) argue that "politics" is needed to create policies that need to be implemented. However, in the EU, this has not happened, as the polity lacks the "political" aspect, making the EU an entity that has "policy without politics" at the EU level and the opposite at the national level (Schmidt 2006). This means that politicians are able to contest and debate ideas at the national level, while at the EU level they are simply required to implement the policies. In turn, this creates a multilevel democratic deficit where citizens end up frustrated at the EU as they do not have meaningful policy choices regarding the EU, at the national level (Mair 2007; Meir 2013). Thus, authors like Schmidt (2006) suggest that politicisation (and contestation) at the national level can reduce the multilevel democratic deficit which it currently entertains. Adding to this understanding of how politicisation might affect the EU's legitimacy are authors such as Statham and Trenz (2013), De Wilde (2011), Rauh and Zürn (2014) or Risse (2015) who have studied politicisation and its relation to public spheres. For these authors, public debate is necessary for democracy to take place and for any authority to have legitimacy. These types of studies understand that the growing number of discourses of the EU can help to construct some form of European public sphere. In this sense, contestation and political legitimation are tightly linked (Statham & Trenz 2015, p. 9).

The public sphere provides an arena for contestation and for issues to be debated and known to audiences who might not have been aware about EU policies such as state aid. More recently, Schmidt (2019) has also argued that ever since the recent series of crises that the EU has weathered, it has undergone a new formulation from "politics without policy" to "politics against policy" or "politics against polity" in more extreme cases (such as Brexit) (Schmidt 2019, p. 3). As explained in Chapter 1, Schmidt (2019) argues that the new type of politicisation of the EU has occurred because actors at the national level of governance contest EU policies and decision making processes, which has led to a growing trend of "the increasing

supranationalization of decision-making in an era of globalization” (Schmidt 2019, p. 8). Thus, in this new era of policy making, supranational powers have more authority over lower levels of governance and this creates politicisation that is *policy against policies* (as seen in the Apple state aid case in this dissertation). Therefore, politicisation can bring political legitimations by EU institutions (such as the Commission) while simultaneously attracting negative discourses which can also trigger the “politics against policy” at the national level of governance (Schmidt 2019, p. 20).

So, with which of these views does this dissertation align itself? I have been able to conclude that politicisation does not always lead to the EU’s delegitimation. This is consistent with the arguments of Schmidt (2006; 2017; 2019) as well as De Wilde (2011), Rauh and Zürn (2014) or Risse (2015). My view is similar to these authors as I also argue that politicisation can evoke discussions regarding the EU’s functioning (or, in the case of this dissertation, the Commission). I also argue that politicisation allows for the supranational levels of governance to justify their own decision-making processes and, in some instances (e.g. the Ilva case), the Commission can be provided with even more space in the national news media.

In terms of state aid cases, the Commission is able to politically legitimise itself through press releases and press conferences. This can also be done through interviews where the national media allows actors from the supranational level to justify its actions and decisions. However, and more similar to what Schmidt (2019) argues, it seems that politicisation is able to take a “politics against policy” route, or a more legitimating route depending on the stance of the national level of governance toward the state aid decision. For example, the decision of the Ilva case was legitimated by the member state and other claim makers. The Ilva case also had a unique set of circumstances where the company and national government involved had already lost a large degree of authority within its constituencies in the Taranto region (as the plant caused environmental and health issues in the region). Therefore, in the Ilva case, the national government and the corporation involved had already lost the trust of the public in the way they manage the state aid. Arguably, this is why the politicisation of the Ilva case did not “politics against policy” route.

A key finding from my analysis relates to polarisation. In the Apple case, the Commission was the most polarised actor of the three analysed objects (the Irish Government, the Commission and Apple). This allowed for both extremely positive and extremely negative claims being made regarding the Commission. However, 72.36% of the total number of claims about the Commission were negative. This indicates that even if the Commission received more

extremely positive views than the Irish government and Apple, the majority of its overall claims would still remain mostly negative in nature. Moreover, in the Ilva case, the Commission received the least neutral claims and was found to be the most polarising actor. While it was the most polarising actor, the Commission received less negative claims than the Italian government in the Ilva case. When more negative claims are made in the public sphere regarding the Commission's handling of the state aid case, this could have consequences on how the Commission's authority is perceived at the national level of governance. Indeed, these negative claims are more visible in the public sphere and have perhaps influenced perceptions of how the Commission handled the state aid case.

Overall, my findings seem to align with De Wilde and Lord's (2016) argument that polarisation between EU and domestic actors can differentially affect the EU's legitimacy. Moreover, the findings of this dissertation are also consistent with Baglioni and Hurrelmann (2016) and Leupold (2016) who suggest that national demands are a contributing factor as to whether the EU is legitimised or not. This is because the national context (where the state aid case takes place), determines the degree of salience, polarisation and actor expansion. In the Apple state aid case, the national demands were created by those in the Irish government who sustained that the case could damage Ireland's reputation by setting a bad example for other multinationals who might want to invest in the country. Meanwhile, the national demands in Italy were slightly different. Even though most of the inhabitants of the Taranto region are dependent on Ilva for jobs, the company's mishandling of environmental hazards and health issues were such that it affected the way in which the politicisation was viewed. The narrative tended to showcase how there were more problems with Ilva and the way in which the Italian government handled the aid, rather than being understood as a problem to do with the Commission or its ruling per se.

In terms of contribution to the politicisation literature, I hope to have demonstrated that, even within the same policy area, politicisation is differentiated. Thus, not only is there differentiation that occurs in terms of politicisation between EU policies, but it can also occur within the same policy area. That is, within the same policy field, the consequences of national actors' and the Commissions' justifications for their own decisions can vary greatly and this was observed for both politicising and depoliticising claims. The politicisation of the Ilva state aid case occurred during the investigation (phase 1), which means that if there were delegitimisations against the Commission, they were more likely to occur during this period. When the decision was made, the Italian government decided not to appeal, claiming that it

was “pleased” with the Commission’s ruling. This allowed for less delegitimations towards the EU as the decision was publicly accepted by the Italian government. By seeming to work with one another, the Italian government and the Commission increased their indirect legitimacy by communicating their position and by transferring their attempts to resolve the Ilva issue to the media.

In contrast, the politicisation of the Apple case occurred after the Commission’s decision (phase 2). This politicisation saw delegitimations by the member state against the Commission’s decision and also against the Commission as an institution. Indeed, through its claims, the Irish government attempted to delegitimise the Commission’s ruling as well as question whether the Commission made its decision based on “political ambitions”. Put simply, in state aid cases, the position taken by members from the national government in the public sphere (via their claims) is key to whether the politicisation results in the positive or negative perception of the EU’s authority at the national level of governance.

Overall, the findings of the politicisation of state aid cases suggest that indeed, there seems to be some form of differentiation in politicisation which occurs. This differentiation in terms of politicisation can occur even within the same policy. The way claimants polarise certain objects has an effect on the way that politicisation develops and on the way it affects the EU’s legitimacy. Thus, national contexts matter when it comes to how each of these cases became politicised as do the actions taken by the different actors involved in the state aid case (whether or not they choose to appeal the Commission’s decision).

#### *8.4.2 In terms of Depoliticisation*

The analysis on discursive depoliticisation used Flinders and Wood (2017) as a starting point to understand what the term means and also what an analysis of this type of depoliticisation could look like. The analysis on discursive depoliticisation used claims-making analysis as a novel way of identifying different types of strategies. The aim was to provide future researchers with a systematic method to evaluate discursive depoliticisation (see also the coding guide provided in the Appendix C). By analysing discursive depoliticisation through claims-making analysis, I was able to observe and detail the overall pattern of attempts by actors to politicise or depoliticise appealed and non-appealed state aid cases, which is again a key contribution to the state aid literature.

Some may argue that analysing discursive depoliticisation through claims-making analysis might be a contradiction, as this type of analysis is typically used to evaluate whether



there is some form of contestation made in public debates (i.e. politicisation). Indeed, claims in the media are often used to identify instances where individuals contest an actor or an issue. However, here, I have used the same method of analysis to identify the absence of contestation or debate (i.e. depoliticisation). Specifically, I use this analysis to understand how actors (or claim makers) use their words in an attempt to make an issue or action apolitical. The coding guide on depoliticisation asks the coder: is the actor trying to make the issue apolitical by attempting to remove a political choice from a decision or an issue? For example, the intention of the actors may be the depoliticisation of an issue (e.g. state aid) or an action (e.g. an appeal), which involves further discussions about the politicised issue. Also, while claims can be interpreted as an intervention that may lead to depoliticisation, the claim maker could be successful in their attempt to depoliticise the issue or action involved. In the Apple case, several claims were found from the Irish government about having “no alternative but to appeal the commission’s decision”. These claims attempted to ensure that Irish citizens would feel as though there is no alternative but to appeal the Commission’s decision (which occurred) rather than obtaining the 13 billion euros from Apple (which did not occur).

TINA was the most widely used strategy by members of the Irish government to depoliticise the action of appealing against the Commission. As shown in Chapter 6, the use of this strategy by Irish governmental leaders was successful in parliamentary debates. This is no clearer than in the debates that were shown in the national Irish media where claims from citizens or other non-governmental actors (e.g. lawyers) stated that the action of appealing was the only way forward. In this sense, the attempt to appeal the Commission’s decision was a successful discursive depoliticisation strategy used by the Irish government. National actors also claimed that the state aid decision damaged Ireland’s reputation and therefore Irish claimants suggested that appealing was the only way forward. Again, these discursive depoliticisation strategies were successful as the government went through with its appeal and received a high acceptance rating for this action (as seen in polls from the Irish Times<sup>150</sup>). While the Irish government tried to depoliticise the action of appealing, they also attempted to delegitimise the Commission’s decision simultaneously. National claimants came from a variety of political parties and united through the use of TINA to argue that the government must appeal the decision. In this sense, during the politicisation against the European Commission, domestic actors (who belong to different political parties) united in their

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<sup>150</sup> Ibid.

discursive strategy to construct a somewhat unified depoliticising response from Ireland against the Commission. By doing this, they also formed two polarising sides in the politicisation of the Apple state aid case: the Irish Government/Apple versus the Commission (and, in turn creating, the international conflict trajectory). As I will further explain in this chapter (section 8.7), this could have damaging repercussions on the perceived legitimacy of future state aid decisions (particularly the state aid cases that involve multinational corporations and tax practices).

Regarding the Ilva case, the most important finding was the number of appeasing claims evident in the analysis of discursive depoliticisation. This finding supports the work of Berkhout et al. (2012, p. 5) and Flinders and Wood (2014) who argue that, if politicisation leads to polarising and contradicting ideas being discussed and debated, then depoliticisation would result in the cooperation and harmonisation of a policy. Therefore, I have attempted to show through this dissertation that actors can indeed use their claims to calm past tensions and, thus, depoliticisation is not necessarily associated with negative connotations, as is often the case in the literature (e.g. Jenkins 2011). Indeed, depoliticisation has been regarded as a process that does not allow the public to engage in politics and, thus, makes the public in general unable to exercise their political agency (Jenkins 2011). However, as seen in the analysis of this dissertation, I argue that a less extreme version of depoliticisation can harmonise past tensions between actors at different governance levels if the discursive depoliticisation techniques of these actors focus on the action of cooperation rather than alienation. This particular strategy was successful in the Ilva case as politicisation decreased after the decision was released (Figure 8.2).

Another key finding shows the role of journalists in discursive depoliticising the actions of either the Commission or the Irish/Italian governments. Critically, this can also further contribute to the literature on discursive depoliticisation. This highlights the importance of observing and evaluating the claims made by journalists and the way they frame the news. For example, in Chapter 7, a journalist is seen paraphrasing the Commission's decision to investigate Ilva. For this particular claim, the investigation was phrased as "inevitable". By doing this, the journalist discursively depoliticises the Commission's action but the Commission itself is not directly quoted. That is, the Commission is not directly responsible for discursively depoliticising any actions. Rather, the journalist is using her claim to discursively depoliticise the Commission's investigation by phrasing it as "inevitable". This

highlights the important role that journalists can play in depoliticising an action by other actors (e.g. the Commission).

### **8.5 The Broader Picture: Overall Interpretations from Analysing Politicisation and Depoliticisation Simultaneously in MLG**

The departing point of this dissertation was Hay's (2007) *Why we hate politics*, which maps processes of politicisation and depoliticisation together. As such, I have attempted to follow this line of investigation by analysing both processes together in state aid policy. By doing this, I have attempted to grasp the different strategic interactions which occur among actors who are at different governance levels. This reveals the dynamics between different actors involved in the politicisation/depoliticisation of the state aid cases and their role in legitimising or delegitimising the Commission, or the EU more broadly. In the literature, authors like Fawcett et al. (2017), Papadopoulus (2017), and Bache and Flinders (2004) considered movements of politicisation and depoliticisation in Multilevel Governance (MLG). However, these studies lack an investigation of both movements simultaneously to further explore the dialectical interplay that occurs between politicisation and depoliticisation. More specifically, I have explored how actors politicise or depoliticise a policy (such as state aid) through their claims while legitimising or delegitimising a MLG structure. The processes of politicisation and depoliticisation appear throughout state aid cases and both can impact the way in which the EU and its member states are perceived. Importantly, both of these processes can also occur during the same periods of time. Thus, they do not have to be mutually exclusive. For example, as previously argued, by discursively depoliticising the decision of appealing, the Irish government also contributed to the overall politicisation and delegitimation of the Commission.

Authors such as Bartolini (2005) have seen the Multilevel governance aspect of the EU as the main problem that the EU has in terms of maintaining its legitimacy, as that form of governance structure "is simply too complex". When politicisation is occurring, Bartolini (2005) suggests that political parties at the EU level are too weak to reach citizens at the nation state level (Bartolini 2005). However, for this study both cases had different members from EU political parties involved in public discussions (e.g. members from the EU's Centre left Socialists or European People's party). This shows that when politicisation occurs, EU claimants can gain a voice, and this voice can also be heard. However, they are not always heard to the same extent. For the Apple case, EU claimants had less of a voice as their claims

were not as prevalent. Meanwhile, for the Ilva case, the EU actors had a stronger voice. This was noticeable in the way legitimations towards the EU occurred as well as the number of claims made from EU actors during the politicisation of the case. The complexity of the Multilevel governance of the EU makes it harder for the EU to maintain its legitimacy in circumstances such as in the Apple case. This is because in this particular instance, the national media and national claimants seemed to make their arguments against the EU much more successfully. National claimants in these types of cases make the EU seem like an abstract entity which becomes the “other”, while the nation state is perceived as a unified entity. That is, the politicisation of the Apple case showed a unified Ireland in opposition to the Commission.

What also became blatantly clear in the analysis is that it takes a case such as Ilva, where the company has already experienced poor management and high levels of controversy (e.g. the mishandling of state aid and the large increase in cancer rates in Taranto due to Ilva), for the EU not to be the most polarising and negatively perceived actor. Thus, cross cutting factors become crucial to understand whether the EU’s authority is questioned or not. The analysis of both processes allowed me to observe the different factors at play throughout the politicisation of the case. Specifically, the Ilva case showed that politicisation first occurred during the investigation, but was used by actors (the Italian government and the Commission) to calm any tensions that arose during the politicisation of the state aid case investigation. Observing the actors attempts to remove tension was only possible through the analysis of discursive depoliticisation, which provided a different understanding of how actors can use their claims not only to politicise but also to appease and calm past tensions.

Discussions can take place with different viewpoints without ending in the demise of a political actor. However, it is when discussions and disagreements are also used to divide and frame the “other” as the enemy, that politicisation could have negative consequences for the EU. MLG structures need to be debated in order to be improved (therefore the idea that MLG structures need to be apolitical in order to function more efficiently does not necessarily hold after the conducted analysis). However, at the same time, the context and the way the opinions and justifications are formed is what determines whether or not the politicisation of state aid could be regarded as positive or negative for the Commission in general. Similarly, discursive depoliticisation does not always have to be bad for the EU if the actors between different governance levels try to cooperate with one another.

## 8.6 MLG and the role of the media in Politicising or Depoliticising State Aid issues

The claims-making analysis, which aims to determine whether or not a case has been politicised or depoliticised, was conducted in this thesis through the national media lens. Based on the literature, I assumed for my analysis that EU politicisation still largely occurs at the domestic level (see Kriesi 2016, p. 32). This is also made evident in the way claims were made in reference to the Apple state aid case in the Irish media. For this case, the national media had a stronger attachment to Ireland as a nation state. Indeed, the media showed more interest in Irish claimants, than EU claimants, and gave more weight to the claims that described the Irish government and the Irish public as a united force against the Commission.

However, for the Ilva case, the opposite occurred. The Italian media paid more attention to EU claimants, demonstrating that the media is not always “one dimensional”. This confirms that the European public sphere is framed by the media organisations of each member state (De Vreese, Peter and Semetko 2001) that often cover news about the EU with a national focus. As such, politicians and news stories from the “home” member state (where the news is being covered), will gain more coverage than those from other member-states (Lloyd and Marconi 2014). However, this is not always the case. For the Ilva case, the media paid more attention to EU claim makers who held more weight in the contestation. This could also have further implications for studies on politicisation more generally. Specifically, the analysis could be expanded beyond salience, polarisation and actor expansion, to include the voices and opinions from the Commission as well as from other member states, which would add a transnational form to the study of politicisation. Indeed, scholars who analyse politicisation within a MLG could add a fourth ingredient to the politicisation recipe: i) salience, ii) polarisation, iii) actor expansion, *and* iv) voices and opinions from other member states.

In the literature, authors such as Hooghe and Marks (2008) suggest that the media could never change public opinion in a way that it is positive towards the EU. However, what we see with the Ilva case is that the media can provide the EU with a voice. In turn, this may help the EU not to be the most negatively perceived actor when one of its policies becomes politicised. The fact that this occurred in the Ilva case highlights something important: for politicisation of state aid policies not to be completely negative for the EU’s legitimacy, the case needs to have a similar list of contributing factors to those found in the Ilva case. In the Ilva case, the politicisation of the state aid policy was not negative for the EU’s legitimacy, given that Ilva and the other actors involved (including actors from the Italian government) had already failed in the eyes of the Italian public. Moreover, the Italian government provided Ilva with several

large sums of money which reflected negatively on both the member state and the corporation. This is because the Italian government gave a considerable amount of aid to a company that lacked the appropriate management to deal with its financial situation, along with having damaged the environment and the health of the people who live near or around the Taranto region. In this sense, for the Ilva case, the Commission was seen by many as the expert who could come in and force both the member state and Ilva to get back on track.

### **8.7 Contributions of this thesis to the State Aid literature**

As explained in past chapters, the literature on state aid has not paid much attention to the role of actors in the politicisation of state aid cases. For example, studies by Schmidtke (2016) have focused on the politicisation of corporate taxation rather than examining different types of state aid cases. By contrast, this thesis provided a broader analysis of state aid to understand the evolution of politicisation and/or depoliticisation through the detailed analysis of two distinct state aid cases. By doing this, the study not only evaluated corporate taxation but also the technology and steel industries. This study also provided the reader with an analysis of how these cases were used as tools for actors to legitimise or delegitimise the Commission's actions and its authority when it came to state aid. Moreover, as described in Chapter 4, the studies on state aid from a political science perspective have made reference to the policy being subject to politicisation (Blauberger 2011). Also, the literature has pointed out that tensions which arise from state aid conflicts tend to attract considerable public attention at the national level and this in turn could bring into question the role of the Commission as a state aid enforcer (Blauberger 2011). However, there has not been an attempt to use state aid cases to empirically assess how they can become subject to politicisation or depoliticisation across different national news media. This could be as a consequence of the literature tending to focus on the legal aspects of state aid (e.g. Craig and de Búrca 2015). However, analysing the politicisation and depoliticisation of state aid policy can increase our understanding of how people legitimise or delegitimise the Commission's decision, as well as the role of the Commission as a state aid regulator. By contrast, the political side of state aid has tended to examine the reasons why certain member states might give more state aid than others (e.g. Zahariadis 2013; Finke 2020), but have not focused on how the policy might become subject to politicisation or depoliticisation.

In 2013, the Commission decided to investigate the tax practices of multinationals. After this, several news media started referring to the DG-Competition Commissioner,

Margrethe Vestager, as “Silicon Valley’s dragon slayer”.<sup>151</sup> The latest development of the European General Court decision on the Apple state aid case (which took place in July 2020), can have major implications for the overall legitimacy of the Commission’s role as a state aid watchdog. The court siding with the Irish government and Apple could serve as a precedent for other upcoming cases (especially those that deal with large multinationals and tax ruling practices). Other member states might see the Apple state aid decision and use similar justifications to gather support for the appeal against the Commission, but also, to justify providing tax benefits to multinationals in their own countries. I will now explain how the results of the claims-making analysis of the Apple case can be applied to other state aid cases.

In the Apple state aid case, several claims analysed in this dissertation showed that the Irish government viewed the 2016 Apple state aid case as a political decision. Senior Irish governmental figures claimed that Vestager was “trying to make an example out of Ireland as part of her wider ambitions to become head of the Commission” (claim identified in the Irish Independent 2017<sup>152</sup>). This was also seen by many as being connected to the European Commission and, more specifically, the DG-Competition under Vestager, as having a stronger stance on tax ruling practices since 2013.<sup>153</sup> This stronger stance saw the European Commission launching investigations into tax rulings granted to several large multinational corporations (e.g. McDonalds, Starbucks, etc). Notably, the European Commission also reviewed Luxemburg Leaks, which exposed tax rulings granted to large multinationals and asked member states to provide the Commission with information regarding their tax rulings.<sup>154</sup> This stronger stance against tax ruling malpractices and multinationals, has led to many seeing Vestager’s role as “Silicon Valley’s dragon slayer” come to fruition (Keen 2018). As previously stated, this gained Vestager a reputation as a “watchdog” for tech giants. However, when it comes to the analysed appealed case, could the Commission have been trying to take a bite from the wrong Apple? This is the question that Gormsen (2016) raised in criticism of the Commission’s approach to the Apple state aid case.

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<sup>151</sup> See <https://www.vice.com/en/article/nd5zk/meet-the-woman-behind-googles-2-7-billion-fine>

<sup>152</sup> Claim also available online at: <https://www.independent.ie/irish-news/politics/ireland-on-collision-course-with-brussels-after-apple-court-move-36198666.html>

<sup>153</sup> See [https://ec.europa.eu/competition/state\\_aid/tax\\_rulings/index\\_en.html](https://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html)

<sup>154</sup> See <https://www.jonesday.com/files/upload/European%20Commission%20Tax%20Ruling%20Investigations%20FAQs.pdf>

Gormsen (2016) argues that the Commission's approach is problematic as it is based on a novel interpretation of EU state aid law. For Gormsen (2016), the Commission's Apple state aid ruling violates the "principle of legal certainty, but also the legitimate expectations of the undertaking concerned" (2016, p. 1141). While, Gormsen (2016) makes this argument from a legal perspective, I have considered this same question from a political perspective. I do not attempt to answer whether the ruling is right or wrong, but rather how actors (including Gormsen herself) have used specific justifications to delegitimise the Apple state aid case. The analysis conducted in this thesis suggests that, after the decision by the European General Court on the 15<sup>th</sup> July 2020, multinationals may refer to the Apple state aid as an example of the Commission making incorrect assessments regarding their state aid decisions, which also validates arguments such as the one described above by Gormsen (2016). These types of arguments could serve as a domino effect for other ongoing investigations into multinationals (e.g. Amazon) who are currently also fighting the Commission.<sup>155</sup>

Overall, I argue that other member states might use the Apple case to further delegitimise the role of the European Commission as the watchdog for state aid decisions. If the Commission's decisions continue to be contested, and if these contestations are re-affirmed by the General Court, then this may lead to legitimacy problems for the European Commission in the future. Indeed, member states could further challenge the Commission's role in investigating state aid as well as the functioning of competition policy in MLG. As such, analysing these state aid cases represents an important contribution beyond the politicisation/depolicitisation literature as it shows that if the Commission is not careful with its rulings, these rulings may be contested in a way that can jeopardise the current MLG system.

While the Ilva case showed that the Commission's actions were delegitimised to a lesser extent when compared to the Apple case, and given the Commission's stronger stance against multinationals, I argue that cases similar to the Apple case will likely become a more frequent situation in the future (especially if there are large multinationals involved). The stronger stance of the Commission against tax avoidance and multinationals could backfire if the General Court continues to side with the member states. This is not to say that the Commission is right or wrong in going after multinationals. Rather, I argue that the multinationals and member states involved with tax benefits might challenge the Commission's ruling more often as they see that

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<sup>155</sup> See Press Release for Amazon available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_3701](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3701)



other cases, such as Apple, are now more successful in court. In this sense, the Apple case could serve as a domino effect for other multinationals that could take advantage of the Court's ruling. This in turn could affect the way "politics against policy" (as Schmidt 2019 suggests) works as public perception of the Commission's role in state aid could be jeopardised more often.

## **8.8 Limitations of the study and future research**

The study of the politicisation and discursive depoliticisation of state aid policies in this dissertation has some limitations. First, the empirical analysis of this thesis focused only on claims spotted in national newspaper media for both politicisation and discursive depoliticisation processes. As such, I was not able to garner an overall picture of all the mobilised groups (e.g. lobby groups) who might be pushing for a particular point of view behind closed doors. Moreover, the study of this dissertation did not examine how third party countries portrayed the politicisation/depoliticisation of the same state aid case. A Factiva search of newspaper coverage from all member states resulted in large coverage for Apple (1643 news articles across other member states excluding Ireland) but not for Ilva (which only received 37 news articles in all other member states outside of Italy). Thus, a comparative claims-making analysis (which requires the same amount of news sources from the third party country) could not be conducted for Apple and Ilva. Nevertheless, the investigation of the politicisation and depoliticisation of the Apple case in third party countries both within the EU (such as Germany, which had 362 news articles written about the Apple state aid) and outside (such as the USA, which had 779 news articles written about the case) is encouraged as a future avenue for research. This type of analysis could reveal more about the politicisation and depoliticisation of the Apple state aid case beyond the national news media.

Chapter 1 described how politicisation could be analysed from 3 different perspectives (micro, meso and macro). According to Zürn's (2016) analysis which only focuses on studies of politicisation, I would fit into the study of politicisation that falls into the macro perspective as I analyse politicisation through public debate (2016). Meanwhile, Wood (2015) describes politicisation and depoliticisation as multilevel concepts that can be applied to theoretical critiques (such as Burnham 2014 or Strange 2014), mid-range analytical frameworks (such as Flinders and Buller 2006) and micro level of analyses (Bates et al. 2014; Beveridge and Naumann 2014; Kettell 2008; Rodgers 2009). As previously explained, the analysis conducted throughout this dissertation fits into the meso-micro perspective as I have conceptualised how these processes can be politicised and depoliticised by different claim makers in MLG (meso),

and at the same time, I have also examined the empirical relations between politicisation and depoliticisation (micro). More specifically, for the empirical analysis, I relied on claims that the news media allowed me to evaluate. This means that there might be many claims that exist (outside of the public sphere) which can contribute to the politicisation of the state aid cases which were not analysed. These claims could also influence how mobilised lobby groups could push for a particular issue to become politicised. Thus, further contributions could be made in this area through insights gained from interviews conducted with individuals from corporations or lobby groups who might want to push for an appeal against Commission's decision. Politicisation and depoliticisation, as suggested in the conceptual and theoretical framework of this dissertation (chapters 1 and chapter 2), can occur in different settings. However, this specific analysis was only able to cover the public sphere setting. Therefore, future studies on how processes of politicisation and depoliticisation work simultaneously, and in MLG, could allow other forms politicisation to be observed.

Moreover, I also acknowledge that an issue being debated in the mass media may or may not be the result of politicisation. This is because not everything that occurs in the public sphere has been politicised, and not everything that occurs in the private sphere is "apolitical" either. Politicians often attempt to make issues part of the "political" behind the scenes and this can occur without any form of news coverage. Therefore, politicisation can also occur behind the scenes, which is one of the main limitations when analysing these processes through the national media lens. At the same time, the analysis of the claims of depoliticisation showed that both processes can be observed and studied simultaneously in national news media.

Both analyses on politicisation and depoliticisation relied on the "tone" variable to make assessments about the legitimations and delegitimisations made towards the EU and the national claimants. Coding the tone relies heavily on the perception of the coder as to whether it was extremely negative (-2), negative (-1), neutral (0), positive (+1) or extremely positive (+2). However, the three coders had decent levels of reliability when it came to coding the issue as either "positive" or "negative". This shows that the coding for the tone was acceptably accurate in making sure that different coders achieved the same results. Similarly, claims-making as a method has some limitations which also come from having different coders interpreting different texts. Thus, the best way forward was to make sure that the analysis always had an "object" (which could only be the EU, the Irish or Italian governments and Apple or Ilva) in order to be able to spot the claim more easily. Another limitation of the claims-making analysis, was the language barrier with the Italian newspapers. I trained the Italian

coder with English articles first and then ensured that all the claims that the coder spotted were translated. The training began with 5 sessions, of 4 hours each, to make sure that the coding guide was interpretable enough for the coding of the Italian newspapers. However, I still relied on her interpretation of the Italian language in order to make sure that all the claims were accurately spotted.

Finally, the analysis was limited to two state aid cases, and this also imposes certain limits on making generalisations to other EU policy areas. At the same time, state aid was selected because of its very particular supranational nature. After all, state aid has been named one of the Commission's "superpowers" and is "one of the strongest tools at the European Commission's disposal to ensure that the EU can impose common standards and goals across the continent".<sup>156</sup> Moreover, state aid has been at the centre of the EU's biggest strategic decisions which have, at times, been called out for being "too political" in nature (see claims by Ireland's ex Minister for Finance Michael Noonan in regards to the Apple state aid decision in chapter 6). If we are to understand how an EU policy such as state aid can become subject to politicisation/depoliticisation, we may also be able to better understand the political games that occur in other areas (e.g. trade policy). Indeed, there are considerable similarities between discussions regarding state aid and trade agreements/negotiations (for example, Brexit negotiations, see Szyszczak 2020). Therefore, the analysis on state aid cases in this dissertation can shed light on other economic policy areas (e.g. trade) where the EU's powers might be contested.

## **8.9 Conclusion: The Differentiated Politicisation and Depoliticisation within State Aid Policy**

Overall, this thesis has sought to understand the consequences of politicisation and depoliticisation, when analysed simultaneously in national newspaper media, on the Commission's and the EU's legitimacy. Specifically, I examined how actors legitimised or delegitimised the actions of the Commission, the member state, and the corporations involved in state aid conflicts.

In terms of the politicisation of state aid policies, its consequence for the legitimacy of the EU depends on the context of the country, as well as the company itself. For the Apple

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<sup>156</sup> See <https://www.politico.eu/article/brussels-loses-one-of-its-superpowers-state-aid-control-subsidies-tax-breaks/>

case, politicisation made the EU the most polarising actor which resulted in more individuals having more extremely negative views towards it. The case also saw Ireland using its sovereignty as one of the main justifications, which confirms previous studies highlighted in the literature review by Schmidtke (2016). Indeed, Irish corporate taxation cases such as Apple, have been previously analysed by Schmidtke (2016), and they have been used as an example of an “international conflict trajectory” (de Wilde and Lord 2016). Similarly, the study in this dissertation found that, in Ireland, the politicisation of the EU governance on tax was framed by both the Irish media and Irish politicians as evoking cultural concerns about maintaining Irish sovereignty (Schmidtke 2016). This dissertation showed that, indeed, the justifications provided by different actors involved in the Apple state aid case tended to use the “sovereignty frame” as a way to evoke what Schmidtke (2016) calls “cultural concerns”. Thus, the Apple case was framed in terms of an international conflict trajectory, which championed the “us” (the Irish state) against “them” (the Commission or the EU more broadly) mentality. This was triggered by the appeal and resulted in the unification of competing parties within the member state to oppose the Commission. Importantly, this did not occur in the Ilva case which indicates that not all state aid cases behave in the same manner.

By analysing the Ilva case, we can see that the EU fared much better when compared to Italy’s loss of legitimacy. For the Italian case, the EU was not seen as another entity which could hinder Italy’s sovereignty as occurred in the Apple case. This shows that processes of politicisation and depoliticisation could both be regarded as negative and positive for the EU’s legitimacy. This depends on the context of the situation, the way in which actors from the member state choose to frame their claims, and the way that politicisation differentiates. More specifically, what I have shown is that the differentiation in politicisation does not only occur between EU policies, but there can also be differentiations within the same policy that should be taken into consideration when analysing both politicisation and depoliticisation simultaneously. The politicisation that occurred in the Irish versus Italian media was different due to several key factors. The Irish media tended to emphasize claim makers from the Irish government, and from Ireland in general, rather than actors from the Commission. This allowed for more delegitimations towards the Commission to occur. Meanwhile, the opposite happened in the Ilva case, where more EU actors were seen making claims regarding the state aid. Additionally, other claim makers also had more positive claims made towards the Commission than towards the Italian government or Ilva. This allowed for more delegitimation of the Italian government than of the Commission.

This dissertation also made several contributions to the literature on depoliticisation. First, the current literature focuses on the negative impacts of depoliticisation and is often seen as a process that does not allow the public to engage in politics. This means that citizens and the general public are unable to exercise their political agency (see Jenkins 2011). However, this study highlighted that a less extreme form of discursive depoliticisation can actually result in cooperation. This is consistent with studies by Berkhout et al. (2012) which suggest that depoliticisation can calm past tensions between actors. Moreover, the literature on depoliticisation often relies on the discursive depoliticisations made by elite actors or governmental leaders (Flinders and Wood 2014; 2017). I have also demonstrated that journalists can choose to frame the actions of the Commission or the national government as depoliticising or not.

I argue that the appeal in the Apple case allowed for more delegitimisations of the Commission's decision as a mechanism to justify this action by the member state. Thus, for the Apple case, the discursive depoliticisation tactics used were successful for the Irish government who was able to gain enough support in parliament to appeal the Commission's decision. While attempting to gain support for the appeal, TINA was also used as a way to delegitimise the Commission's state aid decision. This means that while attempting to "sell" the appeal, the Irish government did so by delegitimising the way in which the Commission's ruling was made. Meanwhile, for the Ilva case, both the Commission and the Italian government used appeasing claims which aimed at calming previous tension and showing a more cooperative side to both actors. Thus, the depoliticisation techniques evaluated in the Ilva case could be seen as positive for both Italy and the Commission. Not all the politicisation of EU policies have only negative or positive effects. Rather, politicisation has distinct consequences on the EU's legitimacy even within the same policy field.

Similarly, discursive depoliticisation could also be seen to have positive effects on the legitimacy of both national and EU powers (if one sees cooperation as a less extreme version of depoliticisation). So, should the EU remain a depoliticised body as Majone (1998) has proposed? After the analysis conducted in this dissertation, I would argue, no. And neither is it feasible for an EU policy, such as state aid, to be completely depoliticised. As Schmidt (2019) states, the politicisation of EU policies is, for better or worse, "here to stay" (2019, p. 20). Thus, it is more a matter of acknowledging the differential way in which the processes of politicisation/depoliticisation occur within MLG governance in order to better understand their impact on the legitimacy of the Commission or the EU.

After evaluating both processes, I argue that even if we could go back in time (prior to the 1st July 2016, after transparency requirements for state aid became mandatory) to a completely depoliticised state aid policy, it should still be subject to contestation in the public arena. Citizens from the member states need to be able to be aware of what happens in EU politics (even if most of them are not interested in EU politics). However, this does not mean that issues always need to be politicised in order for people to pay attention to them. Rather, there is a middle ground, where the EU becomes a form of regulatory body (such as in the Ilva case) which can help its institutions to be legitimised, and re-enforce the overall role that supranational institutions have in MLG. The effects of politicisation in state aid depend on the way in which actors at the national level choose to frame the Commission's decision. If member state uses divisive language during the justifications of their actions, then this creates further polarisation which in turn may delegitimise the EU. This divisive language of "us" (member state) versus "them" (the EU) is what can affect the EU's legitimacy, which is what occurred in the Apple state aid case [the "international conflict trajectory" conceptualised by De Wilde and Lord (2016)].

If the EU's legitimacy is derived indirectly by its member states (Lord and Beetham 1998, p. 11) or borrowed (Lindseth 2010), then the claims made by actors from the Irish government in national news media delegitimised not only the Commission's state aid decision but also the authority that the Commission has as a state aid enforcer. Thus, the Irish government is also inherently helping to delegitimise the authority that they themselves have already given to the Commission. Overall, I argue that the indirect legitimacy and authority of the Commission as an EU institution was put into question in the Apple state aid case. This could potentially have negative future consequences as other member states, who also rely on providing FDI companies with low taxes, might use similar arguments during their appeals against the Commission (e.g. cases like Amazon or Starbucks). Meanwhile, in the Ilva case, the Commission/EU was not portrayed negatively in the national news media because the Italian government was the focus of most discussions given the poor management of the corporation, and the pre-existing negative public perception of the corporation itself. Also, the Italian government legitimised the role of the Commission in the press, and dispersed discursive depoliticisation claims of cooperation and, thus, provided the EU with indirect legitimacy through their claims. Thus, in this sense, the results show that discursive depoliticisation is not necessarily always detrimental to the EU's legitimacy. The analysis demonstrated that discursive depoliticisation does not always rely on strategies that aim to

alienate other possible outcomes. Instead, strategies can be used which focus on the cooperation between parties and on calming any pre-existing tensions. Thus, it appears that politicisation and depoliticisation do not necessarily always affect the EU's legitimacy in only one way (positive) or another (negative). Rather, the various degrees of politicisation, and strategies of depoliticisation, can not only fluctuate across time, countries, claimants and settings (De Wilde, Leupold and Schmidtke 2016) but also even *within* the same policy area, as shown in the appealed and non-appealed cases in state aid throughout this thesis.

Since 2013, the Commission has focused on pursuing multinationals more stringently. However, given the European General Court's recent decision in favour of the Irish government (September 2020), it appears that the Commission may have bitten off more than it can chew. Indeed, the Apple case might be used as an example by other multinationals who are facing similar paths of contestation against the Commission. If the Commission continues to lose court battles against large multinationals like Apple, this can have future implications for the legitimacy of state aid decisions and, more critically, whether the Commission should remain the authority on state aid rulings. I want to conclude with the thought that state aid is one of the EU's most supranational policies and the Commission has tended to rely on this policy to further European Integration. If the legitimacy of one of "Brussels' superpowers" (Larger 2019) starts to decline, this may mean trouble for the overall legitimacy of state aid policy and, more generally, the Commission. As such, examining how state aid policy can become subject to politicisation and depoliticisation should remain a focus of future research.

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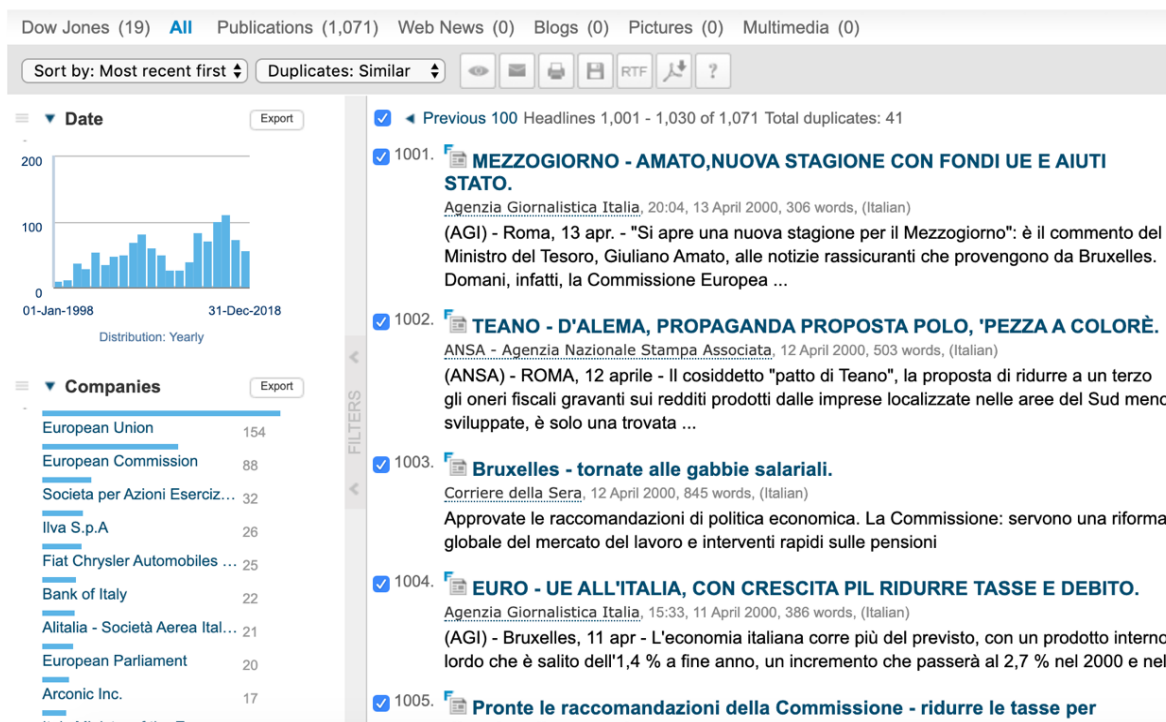
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# Appendix

## Appendix A

Figure A1: Search in Factiva



## Appendix B

### *Codebook: Politicisation*

This codebook was developed with the aim to conduct a claims-making analysis. It uses state aid cases as the main issue to analyse public discourse. The overall question that seeks to be answered through this analysis is: how do actors legitimise and delegitimise the EU through their claims?

The goal of the claims-making analysis<sup>157</sup> is to evaluate how different actors (including the European Commission or more specifically the DG-Competition) use state aid cases to legitimise or delegitimise the EU. The different claims will be analysed from the notification date to 6 months after the case has been sent to court. For each of the chosen cases two broadsheet quality newspapers (one centre-left wing and one centre-right wing) will be analysed.<sup>158</sup>

### **What is a claim?**

Specifically to this study, a claim can be defined as the expression of a **political opinion by physical or verbal action** in the public sphere regarding state aid. This definition implies two important delimitations: **(1) instances of claim-making must be the result of purposive strategic action of the claimant** and **(2) they must deal with state aid policy**. The claim can be made by the journalist of the article as well.

### **A claim has:**

- 1) One claimant (person stating/performing the claim)
- 2) One location
- 3) One issue (which is always state aid)
- 4) One form (how is the claim performed: a statement, a protest, etc.)
- 5) One object (the person whom the claimant is making the statement about)
- 6) One date
- 7) If available, claims have one addressee (when the claimant “urges” a certain group of people to do an action)
- 8) If available, one frame/justifications (the “why” of the statement)

A claim corresponds to a **few words, a specific sentence, a paragraph** or **several paragraphs**, as long as the claim was made by the same actor. The claim only has **one single argument** and has to contain an object actor, issue, frame (justification), form and sometimes (if available) an addressee. **A claim can also be also an action made by the subject actor. Claims can have the same claimant and object (if the claimant seeks to justify his/her/their actions).**

*Note: All claims are coded in an excel file for the claims-making analysis.*

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<sup>157</sup> The articles were retrieved from Factiva. The search string was validated in a pre-test.

Table B1 Example of a Claim:

| Text part coded as claim   | Coding of variables   |
|--|---|
| <p>Several politicians have spoken in alarmist terms about the European Commission's [state aid] decision being a serious encroachment of Ireland's sovereignty.</p> | <ul style="list-style-type: none"> <li>• <b>Claimant:</b> Several politicians (non-specified)</li> <li>• <b>Issue:</b> State Aid decision</li> <li>• <b>Evaluation:</b> Negative</li> <li>• <b>Object:</b> The European Commission</li> <li>• <b>Justification/Frame:</b> The decision is a serious " encroachment of Ireland's sovereignty" [210]</li> </ul> |

**Some rules:**

- 1) As previously mentioned, the “issue” of the claim is always the state aid case (Apple or Ilva) or related to the state aid case in some way (e.g. new tax rulings considered as a consequence of the state aid decision).
- 2) The object **HAS** to be explicitly present in order for a claim to be present. The object is always related to the European Union (it can be described as the EU more generally, the Commission, the EU parliament, ECJ or any other of its institutions). It can also include EU officials (e.g. the EU commissioner, Vestager or other related EU actors). The object can also be: The Irish/Italian government or Apple/Ilva (depending on the case that is being evaluated).
- 3) A news article can have several claims, it is therefore important to read the whole article first before conducting the analysis.
- 4) Statements and actions made by different actors are considered different claims.
- 5) A claim has to make reference to the same day and place.
- 6) Claims with different objects are also considered different claims.
- 7) A claim may contain all elements (the ideal claim) or it can also be incomplete (the latter is usually present and is considered to be normal). Often, no justification (frame) or addressee is given to the claim. However, the text needs to include an action made by an actor to be categorized as a claim.
- 8) **Some of the verbs that refer to an action are:** said, stated, demanded, criticized, decided, demonstrated, published, voted, wrote and arrest among many others that describe an action. The claim has to refer to something the actor actively did and not an inference of what she/he did.
- 9) **Some of the nouns that can refer to an action are:** statement, letter, speech, paper (newspaper, magazine), report, blockade, deportation, eviction, decision (See Koopmans 1999; 2002).
- 10) Journalist voice: Sometimes the journalist might make it clear that it is her/his opinion (I think this/I argue this). However, other times it might be harder to disseminate between what is a fact and what is an opinion made by the journalist. A way to distinguish the two is the words that the journalist might use to make an opinion rather

than a statement. If the journalist uses certain words to express either a liking or disliking for the topic then it is coded as a claim. Expressions such as: want, are in favour of, oppose, reluctant to, are divided over can be counted as part of a claim. The publication of the opinion article is regarded as the action (form). The journalist's opinion must moreover be EXPLICIT, any implicit, 'between the lines' commenting should be disregarded (Koopmans 2002, p. 9).

- 11) If the claim continues on another page, it is still considered to be part of the same claim. However, an announcement to an article (e.g. table of content or anything that appears on the front page of a newspaper) does not count as a claim.
- 12) Repeated claims: Two identical statements made by the same actors but on different days or at different locations count as two separate claims (Koopmans 2002, p. 6).
- 13) Missing values: The code zero has a meaning "no" or "none" and should not be used for missing values. The code 999 should be used for missing values, such as when a claim is incomplete, thus not all elements are present.
- 14) Figures and Statistics **DO NOT COUNT AS CLAIMS.**

### General codes for Identification and Location

These variables are used to identify the claims in terms of coding and locate them in time and space. The variable DATE refers to the actual date of occurrence of the claim.

*Variable name* NEWSPAPER<sup>159</sup>

Variable label 'newspaper in which the claim is found'  
*Please note that numbers ending with 1 are used for the leftist/liberal newspaper, numbers ending with 2 for conservative newspapers, numbers ending with 3 for tabloids.*

Ireland (1)  
 1.1 The Irish Times  
 1.2 Irish Independent

Italy (2)  
 2.1 Il Sole  
 2.2 La Repubblica

*Variable name* SOURCE

Variable label 'fill in if article is in print or online sample'  
 Value labels 1 Print Sample  
 2 Online Sample/Posted Article on Facebook

*Variable name* TITLES

Variable label 'title of article in original language (copy/paste)'

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<sup>159</sup> For information on the political position of the newspaper visit: <https://www.eurotopics.net/>

Value labels            string variable

*Variable name* ID

Variable label        ‘identification number of claim’

Value labels         1 to X digit code

*Variable name* BODY

Variable label        ‘body of claim’

Value labels         string variable

*Variable name* DATEARTICLE

Variable label        ‘date of publication of claim’

Value labels         8-digit code (MM-DD-YEAR)

*Variable name* SECTION

Variable label        ‘section of the newspaper’

Value labels         string variable

*Variable name* LENGTH

Variable label        ‘length of the article’

Value labels         depending on the article

*Variable name* PAGE

Variable label        ‘page number’

Value labels         1 to 2 digits depending on where the article is located

*Variable name* WEEKDAY

Variable label        ‘weekday’

Value labels         Monday-Sunday

*Variable name* PLACE

Variable labels        ‘country in which the claim was made’

Value labels

- 1        ‘Ireland’
- 2        ‘Italy’
- 3        ‘Greece’
- 4        ‘Germany’
- 5        ‘Poland’
- 6        ‘Denmark’
- 7        ‘Switzerland’
- 8        ‘United Kingdom’
- 9        ‘Spain’
- 10       ‘Portugal’
- 11       ‘Malta’
- 12       ‘Cyprus’
- 13       ‘Austria’
- 14       ‘Slovenia’
- 15       ‘Hungary’
- 16       ‘Romania’
- 17       ‘Bulgaria’

|    |                  |
|----|------------------|
| 18 | 'Croatia'        |
| 19 | 'Czech Republic' |
| 20 | 'Luxembourg'     |
| 21 | 'Netherlands'    |
| 22 | 'Belgium'        |
| 23 | 'Slovakia'       |
| 24 | 'Latvia'         |
| 25 | 'Estonia'        |
| 26 | 'Lithuania'      |
| 27 | 'Sweden'         |
| 28 | 'Finland'        |
| 29 | 'France'         |
| 30 | 'Macedonia'      |
| 31 | 'Serbia'         |
| 32 | 'Turkey'         |
| 33 | 'US'             |
| 49 | 'Other'          |

**Note:** If the claim was made by the “EU General Court” then code 20 for Luxembourg

*Variable name HEADLINE*

Does it say anything relevant to the discussion on the EU’s legitimacy? (if yes, then we can go to the next variable ‘headline tone’)

Variable label       ‘headline’  
Value labels         binary: 1=yes; 0=no

*Variable name HEADLINETONE*

IF yes, then:

Variable label       ‘headline tone’  
Value labels         -2 to 2 (depending on how negative or positive it refers towards the EU. Only the EU matters for the headline)

|     |  |
|-----|--|
| -2  | Negative   |
| -1  | Slightly negative/more negative than neutral or ambivalent |
| 0   | Neutral or ambivalent                                      |
| 1   | Slightly positive/more positive than neutral or ambivalent |
| 2   | Positive   |
| 999 | Not applicable   |

## LOCATION

*Variable name LOCATIONMLG*

Variable label       ‘location in MLG of the claimant (e.g. if it’s a lobby group based in Brussels which focuses in EU issues is 2. If the claim is based outside of Europe=999)’  
Value labels         National=1; Europe=2; Local/Regional=3; International=4; Not applicable=999.

## CLAIMANTS

Claimants are the actors making the claim (**WHO** makes the claim?). Claimants can include organizations (e.g. the United Nations) as well as individuals. If the actor has a characterization

(e.g. Leader of the Labour Party, Kevin Rudd), then the affiliation to the individual should also be coded.

*Variable name CLAIMANT*

Variable label 'summary of first actor'

Value labels

*State actors (10)*

- 11 Government/executive/state representative
- 11.1 Irish Government
- 11.2 Irish Department of Finance
- 11.5 Italian Government
- 11.6 Taranto's municipality
- 12 Parliament/legislative
- 13 Courts/judiciary
- 14 Police and other security/military forces/Detectives
- 15 State executive agencies (general)
- 16 Welfare/social security agencies
- 17 Any form of agencies

*Professional organizations and groups (30)*

- 31 Economic actors/markets/commentators
- 32 Private companies
- 32.1 Apple
- 32.2 Ilva
- 33 Employers' organizations
- 34 Media and journalists
- 35 Research institutes and think tanks (incl. individual experts)
- 36 Economic actors/markets/accountants (economic function)
- 37 University/Research institutes and think tanks (incl. individual experts)//academics
- 38 Lawyers
- 39 Other professional organizations and groups
- 43 Airlines

*Society and organizations (60)*

- 61 Welfare movements and organizations
- 62 Charity groups and networks (more general groups / NGOs and foundations)
- 63 Cooperatives and social economy enterprises (social function)
- 63.1 64 Trade Unions
- 64.1 Valerio D'Alò, UILM (union)
- 65 Iron federation
- 66 Antonio Battaglia (Peacelink)
- 69 Other solidarity, human rights and welfare organizations

*Advocacy and policy-oriented groups (70)*

- 71 Activists (person does active work in the community)
- 73 Citizens' initiatives
- 74 Religious-based groups (e.g. churches, the Pope, Ökumene)
- 79 Other civil society organizations

*Other actors (80)*

- 81 People/citizens (includes reference to local citizens, etc.)
- 82 The elite
- 83 Tax experts
- 84 The American Chamber of Commerce Ireland
- 85 Celebrities (actors, sport people, musicians etc.)
- 86 Lobby groups
- 87 EU Commissioner (Vestager)
- 88 Apple CEO Tim Cook
- 88.2 Del Yocam (Former Apple executive)
- 89 OECD

*Supranational actors (EU and UN) (90)*

- 91 EU Commission
- 92 EU Parliament
- 93 Council of the EU
- 94 ECJ
- 95 Other EU bodies
- 96 UN/UNHCR/ ECHR
- 97 Europe/Europeans
- 98 EU
- 99 Other supranational actors
- 111 Individual politicians' / group of politicians (non-specified)
- 148 EU member state('s) (any/some/all of them)
- 150 US president
- 150.1 Donald Trump
- 150.2 Member of the US Senate/US Senate
- 150.3 US TREASURY Secretary Jacob Lew
- 150.4 Chuck Schumer
- 150.5 Bernie Sanders
- 150.6 Brad Badertscher
- 150.7 Carl Levin
- 151 Irish Prime Minister
- 151.1 Leo Varadkar
- 152 Tánaiste Frances Fitzgerald
- 153 Centre left Socialist (EU Parliament)
- 154 Democrats (EU parliament)
- 155 Regulators
- 156 Phil Hogan
- 157 Polish government
- 158 US Stock Exchange filing
- 159 MEP Matt Carthy
- 160 Commissioner Joaquin Almunia
- 161 MEP Carlo Calenda
- 162 State Aid EU Competition head of Unit
- 163 European Steel Association (EUROFER)
- 163.1 Axel Eggert
- 164 MEP Cozzolino
- 165 MEP Rosa D'Amato (M5S)



999 'Unknown/unspecified'

*Ireland (100's)*

- 101 Fianna Fáil
- 101.1 Fianna Fáil Spokesperson on Finance. (Fianna Fáil (43 TDs) Also includes spokesman Michael McGrath)
- 101.2 Pearse Doherty
- 101.3 Minister Donohoe
- 101.4 Department for Finance
- 101.5 John McGuinness
- 201 Labour (7 TDs) Leader Brendan Howlin
- 201.2 Tanaiste Joan Burton
- 301 AAA's Paul Murphy
- 401 PBP's Richard Boyd Barrett
- 501 Social Democrats Catherine Murphy
- 601 Green Party (2 TDs) Eamon Ryan
- 701 Fianna Gail Taoiseach Enda Kenny
- 801 Agriculture Commissioner / Minister (Mr Creed)
- 802 Katherine Zappone

*Italy (1000's)*

- 1000 Maurizio Sacconi
- 1001 Antonio Gozzi
- 1002 Carlo Messina
- 1003 Italy's president
- 1004 Federica Guidi, Minister of Development
- 1005 Gianni Pittella – member of the senate
- 1006 Tomaselli (Democratic Party)
- 1007 Environment Commission president Ernete Realacci
- 1008 M5S
- 1009 Minister of the Environment, Gian Luca Galletti
- 1010 Mucchetti, president of Commission Instrustry
- 1011 Vincenzo Cesareo, president of Taranto industrials

*Variable name CLAIMANTNAT*

Variable label 'Nationality of first claimant' (if explicitly stated in the article)

Value labels

- 1 'Ireland'
- 2 'Italy'
- 3 'Greece'
- 4 'Germany'
- 5 'Poland'
- 6 'Denmark'
- 7 'Switzerland'
- 8 'United Kingdom'
- 9 'Spain'
- 10 'Portugal'
- 11 'Malta'
- 12 'Cyprus'
- 13 'Austria'

|    |                  |
|----|------------------|
| 14 | 'Slovenia'       |
| 15 | 'Hungary'        |
| 16 | 'Romania'        |
| 17 | 'Bulgaria'       |
| 18 | 'Croatia'        |
| 19 | 'Czech Republic' |
| 20 | 'Luxembourg'     |
| 21 | 'Netherlands'    |
| 22 | 'Belgium'        |
| 23 | 'Slovakia'       |
| 24 | 'Latvia'         |
| 25 | 'Estonia'        |
| 26 | 'Lithuania'      |
| 27 | 'Sweden'         |
| 28 | 'Finland'        |
| 29 | 'France'         |
| 30 | 'Macedonia'      |
| 31 | 'Russia'         |
| 32 | 'US'             |
| 34 | 'Australia'      |
| 49 | 'Other'          |

*Variable name* CLAIMANTSCOPE

Variable label 'scope of claimant'

Value labels

|     |                              |
|-----|------------------------------|
| 1   | Trans-/supra-/inter-national |
| 2   | National                     |
| 3   | Sub-national                 |
| 999 | Unknown/unclassifiable       |

The scope of claimant refers to the extension of the organization or institution. For unorganised groups, it refers to the scope of mobilization. If there are two levels, code the highest level of scope. If there is uncertainty, look for label. Example: German chancellor Angela Merkel (This would be coded as "2 National")

*Variable name* CLAIMANTGEN

Variable label 'gender of actor'

Value labels

|     |  |
|-----|--|
| 1   | Male                                   |
| 2   | Female                                 |
| 999 | Not related/not relevant/Not specified |

### FORM

This variable is used to code the form of claims. When unspecified, you should always choose main value, e.g. verbal statements (90). Questions that can be asked are: Did the actors involved make or do an action? Did they protest? A speech? What is being done? What is the action? HOW is the claim inserted in the public sphere?

- Examples of FORM: calls on, holds a speech calling for, sets fire to, deport, publish a report stating that, protest.
- Other verbs indicating action include but are not limited to: said, stated, demanded, criticized, decided, demonstrated, published, voted, wrote, and arrested. Nouns directly referring to such action include but are not limited to: statement, letter, speech, report, blockade, deportation, and decision. In short, anything that fits into one of the categories in the FORM variable.

Repressive measures and political decisions are coded only for actors with binding decision-making power (i.e. state actors).

*Variable name* FORM

Variable label 'form of action'

Value labels **Political decisions**

- |    |   |
|----|---|
| 1  | Decision by government/parliament   |
| 3  | Formal proposal of new legislation by government/parliament   |
| 4  | Adoption of new legislation by government/parliament  |
| 5  | Implementation of new legislation by government/parliament  |
| 6  | Official document (as well as sending official documentation)   |
| 7  | Administrative decision   |
| 8  | Decision to appeal  |
| 9  | Decision by court/judge/attorney general  |
| 10 | Decisions/proposal by inter-state, international and supranational institution or executive agencies (e.g. EU state aid ruling) |
| 11 | Asking the Commission to do something   |
| 12 | EU country specific recommendation  |
| 13 | Investigating potential state aid   |
| 14 | Issuing a formal response to the Commission   |
| 15 | Holding a committee or having official meetings   |
| 16 | Making accusations  |
| 19 | Other political decisions   |
| 21 | Giving state aid to a bankrupt national company   |
| 22 | Giving aid through tax benefits   |
| 23 | Giving aid to the fisheries   |
| 24 | Giving aid to a region  |
| 25 | Giving aid to an airport  |
| 26 | Opening a state aid investigation   |
| 27 | Decision by the European Commission to initiate court proceedings   |
| 28 | Reprehend a member state for failure of collecting money from corporation   |
| 29 | Publishing a technical document   |
| 30 | Announcing a state aid decision / state aid ruling  |
| 31 | Charging or billing someone (e.g. Ireland)  |
| 32 | Collecting the money  |
| 33 | Providing information to the commission about state aid   |

*Violent protest actions*

- |    |                       |
|----|-----------------------|
| 41 | Violent demonstration |
|----|-----------------------|

- 42 Threats
- 43 Decline to comment
- 44 Large destruction of property (e.g. arson or bomb attack)
- 45 Sabotage
- 46 Light physical violence against people
- 47 Severe physical violence against people
- 48 Cultural and symbolic violent actions
- 49 Other violent actions

*Confrontational protest actions*

- 51 Illegal demonstration (non-violent)
- 52 Boycott
- 53 Strike
- 54 Self-imposed constraints (hunger strike, suicide)
- 55 Blockade
- 56 Occupation
- 57 Perturbation of actions by others
- 58 Cultural and symbolic confrontational actions
- 59 Other confrontational actions

*Demonstrative protest actions*

- 61 Collection of signatures for initiative/referendum
- 62 Presentation of signatures for initiative/referendum
- 63 Petition/collection of signatures (street/online, collective goal)
- 64 Public rally/assembly
- 65 Demonstration/protest march (legal and non-violent)
- 66 Symbolic demonstrative actions
- 67 New media actions' (e.g. blogs and deliberative social network)
- 69 Other demonstrative actions

*Conventional actions*

- 71 Judicial action
- 72 Lobbying/political pressure
- 73 Launching of initiative/referendum
- 74 Participation to committees/consultation/negotiations
- 75 Creation of new organization
- 76 Closed-doors meeting
- 77 Appeal the Commissions' decision
- 77.1 Making complaints/accusations (non-official)
- 77.2 Criticizing the Commission in public
- 78 Perform a tax analysis
- 79 Other conventional actions'

*Verbal/written statements*

- 91 Direct information to the public/official communication
- 92 Declaration in the media/interview
- 93 Press conference/release
- 94 Written statement/ letters
- 95 Firmly rebuking a state aid decision/defending Ireland's/Italy's position

- 96 Advertisement campaign
- 97 Parliamentary debate/intervention' (incl. in committees)
- 98 Legal arguments made in documents (non-court related)
- 99 Court statements

*Social media actions and Emails*

- 101 Twitter post
- 102 Facebook Post
- 103 Instagram
- 104 Emails

*Other*

- 200 Supporting the Commission regarding the Apple case in EU parliament
- 201 Non-specified forms of giving opinion
- 202 Denying accusations
- 203 Opening an investigation (by US Senate)
- 204 Visiting Dublin
- 205 Secure cabinet
- 206 Side against Ireland
- 207 Ask for permission
- 208 Having concerns
- 209 Following procedure
- 210 Sending a complaint
- 211 Selling part of the corporation
- 212 Trial a company
- 213 Asking for payments
- 214 Challenge the government
- 215 Granting aid by the Commission
- 216 Push for investigations to take place
- 217 Request for acceleration/other forms of procedures
- 218 Making a warning
- 219 Being afraid
- 220 Restore relations/try to calm the situation
- 221 Not opposing to something/someone

## ADDRESSES

These variables are used to code the addressees of claims, i.e. the main actor who is held explicitly responsible for acting with regard to the claim. More specifically, at whom the claim is explicitly addressed as a call to act. **An action has to be instigated for the claim to have an addressee.** Examples of verbs that would follow with the categorization of an addressee: “we *asked* them to; we *urged* Sergio Mattarella to do something”

**Note:** not every claim has to contain an addressee. In fact, an explicit addressee as I define it here will rarely appear.

*Variable name*ADR

Variable label ‘addressee’

Value labels string variable

*Variable name*ADR

Variable label 'summary addressee'

Value labels see CLAIMANT for labels

999 'no addressee'

*Variable name*ADR<sub>NAT</sub>

Variable label 'Nationality of addressee' (if explicitly stated in the article)

Value labels See ClaimantNAT for labels

## ISSUE

This variable is used to code the issue of claims, i.e. their substantive content (it answers: what is the claim about?). The issue always relates to state aid case (it can talk about broader issues that surround the state aid case (e.g. Tax affairs in the country; Tax rules; Tax base).

*Variable Name* ISSUE1

Variable Label: Main Issue of the Claim

Value labels:

999 No *main* issue or not identifiable  
220 Commission's investigation (before decision)  
250 Commission's decision/ruling  
300 Issues related to a court's decision

*Other issues that surround state aid policies:*

406 Apple tax affairs /Apple tax arrangements / Apple's tax-free status in Ireland (specific only to Apple)  
407 Irish tax rules (Specific to Irish Tax rules)  
410 Tax rules in general/tax wars (not necessarily Ireland)  
411 Selling of the Ilva company  
412 Ilva dealings with how the company ran/with environmental issues  
413 State aid of Ilva more generally speaking / state aid negotiations regarding Ilva

## OBJECT

The object, explicitly or obviously, must always be present for a claim to exist. If there is more than one specific way to refer to the object, the ultimate reference should be coded as the object. If this rule does not allow a decision, use the first reference in the order of which the objects are mentioned.

*Variable name*OBJ

Variable label 'object of claim'

Value labels string variable

*Variable name*SOBJ

Variable label 'object of claim'

Value labels                      string variable

*EU related objects:*

- 1.1    The EU (or mentions of Brussels)
- 1.2    The European Commission
- 1.3    European Council
- 1.4    The European Parliament
- 1.5    The Court of Justice of the European Union (CJEU)
- 1.6    European Central Bank (ECB)
- 1.7    Council of the European Union
- 1.8    European Court of Auditors (ECA)
- 1.9    European External Action Service (EEAS)
- 1.10   European Economic and Social Committee (EESC)
- 1.11   European Committee of the Regions (CoR)
- 1.12   European Investment Bank (EIB)
- 1.13   European Ombudsman
- 1.14   European Data Protection Supervisor (EDPS)
- 1.15   EU Commissioner (Vestager)
- 1.16   Juncker

*State aid case specific objects:*

- 2        Irish Government
- 2.1     Revenue Commissioner (part of the Irish government)
- 3        Apple
- 4        Italian Government
- 5        ILVA

**POSITION**

*Variable name* POSIT

Variable label                      position of claim toward the object, i.e. the EU (e.g. -1 anti-EU rhetoric, attacks, protests; in +1 claims in favour, increase distribution, solidarity acts; 0 ambiguous claims e.g. reduce flow but increase help)

Unless clearly stated, the position is neutral.

Value label

- 2       Negative
- 1       Slightly negative/more negative than neutral or ambivalent
- 0        Neutral or ambivalent
- 1        Slightly positive/more positive than neutral or ambivalent
- 2        Positive
- 999     Not applicable

**Table B1: Justifications**

| <b>Justifications/Frames</b>                     | <b>Description</b>   |
|--|--|
| <b>EU's Procedure/Effectiveness Frame [110]:</b> | <ul style="list-style-type: none"> <li>- Claims about the EU's ability (or inability) to get things done; make the necessary decisions (either reasonably or not).</li> <li>- Examples can include: "It was the wrong decision based on created facts".</li> </ul>   |
| <b>Protection of EU interest [120]:</b>          | <ul style="list-style-type: none"> <li>- Claims which describe the EU as advancing the common interest of all Europeans/all member states.</li> <li>- Used for statements which present the EU as a safeguard to the US's hegemony.</li> <li>- Statements which describe the EU as a one polity, or a unitarian entity which is comprised by its member states.</li> </ul>   |
| <b>Politically Driven Frame [130]:</b>           | <ul style="list-style-type: none"> <li>- These are justifications that might relate to the state aid case being "politically motivated" by either the Commission, Vestager, the member state or company involved.</li> <li>- These frames can also relate to the Commission/Vestager/member state/company trying to make positive headlines for the EU/Commission/member state/company or wanting to push for a specific agenda or for their own interest.</li> <li>- Mentions about the EU wanting to isolate a member state/country (for political purposes).</li> </ul> |
| <b>National Identity (Sovereignty) [210]:</b>    | <ul style="list-style-type: none"> <li>- Justifications which relate to the country (Ireland) wanting to maintain its sovereignty/national interests.</li> <li>- References about taking control of their "own" country and rules.</li> <li>- Keyword: Sovereignty.</li> </ul>   |
| <b>Ireland's reputation and future [220]</b>     | <ul style="list-style-type: none"> <li>- Any justifications that relate to this case damaging or tarnishing the country's reputation.</li> <li>- It may also refer to any negative consequences that the state aid might have in the country's future or current situation with other countries and/or EU relations.</li> <li>- Positive mentions about the future are also included.</li> </ul>   |
| <b>Economic Effects [310]:</b>                   | <ul style="list-style-type: none"> <li>- Used for general references to the economic performance/prosperity.</li> <li>- Arguments that refer to economic effectiveness/ineffectiveness.</li> <li>- Cost effectiveness of a policy/government expenditure/public infrastructure/profits/sales.</li> <li>- Keywords: money/market/business/tax/profits.</li> </ul>   |
| <b>Labour/Cost-benefit [320]:</b>                | <ul style="list-style-type: none"> <li>- Justifications based on employment/labour/unions.</li> <li>- Mentions about losing jobs/employment considerations.</li> </ul>   |
| <b>Procedural Frame [330]:</b>                   | <ul style="list-style-type: none"> <li>- Justifications that relate to the way the member state/company works/acts/behaves.</li> <li>- Justifications expressing the way the member state/company have handled the state aid case.</li> <li>- Mentions about compliance/technicalities.</li> </ul>   |
| <b>Solidarity/Equity [340]:</b>                  | <ul style="list-style-type: none"> <li>- Frames which relate to the state aid improving/decreasing societal aspects of life (homelessness/environment/housing).</li> </ul>   |
| <b>Legality [350]</b>                            | <ul style="list-style-type: none"> <li>- Used for statements which argue that EU/Apple/Ireland did not follow the appropriate rules.</li> <li>- Mentions about the EU rules/decisions based legal order.</li> <li>- Statements about how the EU has abused its powers.</li> <li>- Mentions about legal/illegal/legality/unfairness.</li> </ul>   |



## Appendix C

### *Code Book: Depoliticisation*

What is a depoliticisation claim?

Specifically to this study, a “depoliticisation” claim can be defined as the expression of a **verbal action** in the public sphere which aims to make an issue apolitical. Similar to a “normal” or conventional claim, there are two important delimitations: **(1) instances of claim-making must be the result of purposive strategic action of the claimant** and **(2) they must deal with state aid policy**. When the coder is coding depoliticizing claims, she/he has to think: is the actor trying to make the issue apolitical? Is the claimant trying to remove any type of political choice?

#### **A claim has:**

- 1) One claimant (person stating/performing the claim)<sup>160</sup>
- 2) One location
- 3) One issue (which is always state aid)
- 4) One form (how is the claim performed: a statement, a protest, etc.)
- 5) One object (the person whom the claimant is making the statement about)
- 6) One date
- 7) If available, claims have one addressee (when the claimant “urges” a certain group of people to do an action)
- 8) If available, one frame/justifications (the “why” of the statement)

For discursive depoliticisation claims, there are no justifications. Instead we have discursive depoliticisation “types”. All the claims need a “type” in order to be a depoliticisation claim. The way one differentiates between “normal” and “depoliticising” claims is by spotting whether any of the below types are embedded in the claims. In this sense, the coder needs to take into consideration the whole context in which the claim takes place as well as the content of the claim. Unlike normal claims, these depoliticising claims cannot be made by journalists. These claims can only be made by political actors.

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<sup>160</sup> In order to code the claimant, object, addressee see “Codebook for politicisation”.

**Table C1: Types of Discursive Depoliticisation Claims**

| <b>Code</b> | <b>Type of depoliticising claim</b>  |
|-------------|--|
| 10          | <b><u>Claims which relate to the past:</u></b><br>If there are claims that relate to an issue that occurred in the past (denial in relation to the past). For example, actors may argue that an issue was more problematic in the past or the way previous governments dealt with the aid might have been worse. This can happen if member states try to legitimise their handling of the aid.                                       |
| 20          | <b><u>Claims which relate to the denial in relation to the present:</u></b><br>If there are claims that relate to specific issues (denial in relation to the present) where rules cannot be broken at a particular moment. This might occur when the Commission tries to frame their decision to either investigate Ireland or Italy. Claims with: “must”.   |
| 30          | <b><u>Claims which relate to the denial in relation to the future</u></b><br>Any claims that relate to how changes made by the Commission or the Irish/Italian government could cause societal chaos and collapse (denial in relation to the future).  |
| 40          | <b><u>No Alternative (TINA) claims</u></b><br>“No Alternative” claims can happen in debates where Irish or Italian leaders might try to justify why there is no other option but to do something specific (e.g. appeal the Commission’s decision). Mentions of blocking any other possible options.  |
| 50          | <b><u>Technical Claims</u></b><br>Claims relating to the state aid being too “complex” or “technical” and therefore “normal” citizens should not be aware of state aid processes.  |
| 60          | <b><u>Normalising relations between actors / Full engagement or cooperation between authorities:</u></b><br>This occurs when political actors try to downplay their interactions. This aims to depoliticise an issue by suggesting that it is not contested or by suggesting that the relationship between actors is “normal” and there are “no tensions” involved. Trying to calm tensions by doing or stating a particular action. |
| 70          | <b><u>Declining to comment / No case to answer / Shut down options:</u></b><br>In here, claimants refuse to comment and therefore taking away the possibility to dispute/discuss an issue. Also includes removing oneself from a situation in order to avoid confrontation.  |
| 80          | <b><u>Only one who can solve the issue:</u></b><br>Includes mentions of the specific government/commission being the only actor who can solve an issue.  |

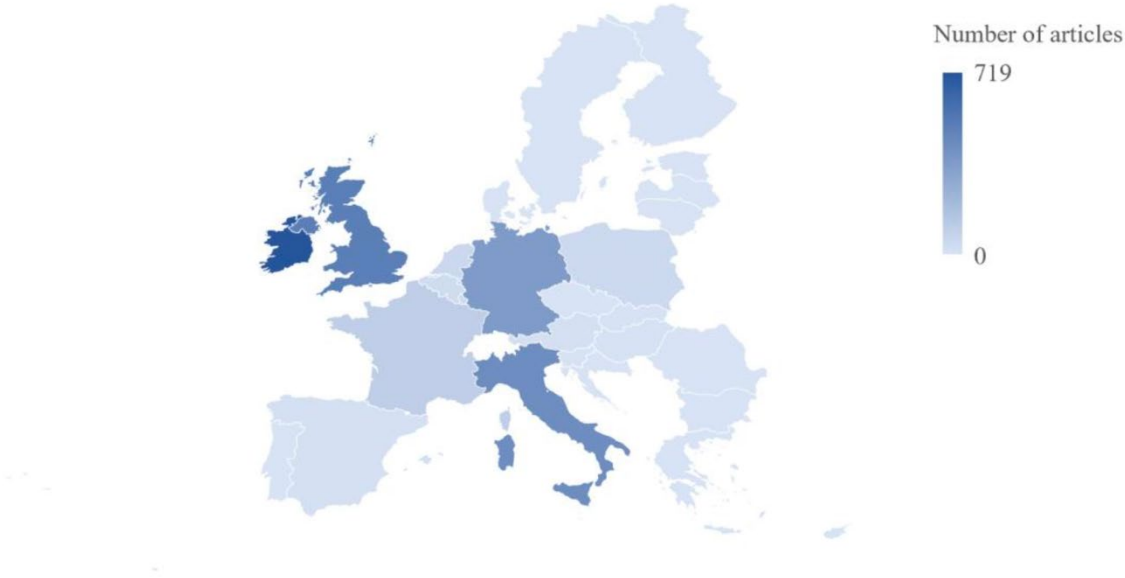
## Appendix D

### *Third Party News Coverage for Selected Cases*

**Table D1: Apple State Aid Case**

| Countries      | Number of articles |
|----------------|--------------------|
| Austria        | 17                 |
| Belgium        | 35                 |
| Bulgaria       | 0                  |
| Croatia        | 0                  |
| Cyprus         | 0                  |
| Czech Republic | 0                  |
| Denmark        | 1                  |
| Estonia        | 0                  |
| Finland        | 0                  |
| France         | 106                |
| Germany        | 362                |
| Greece         | 0                  |
| Hungary        | 7                  |
| Ireland        | 719                |
| Italy          | 432                |
| Latvia         | 0                  |
| Lithuania      | 0                  |
| Luxembourg     | 42                 |
| Malta          | 3                  |
| Netherlands    | 55                 |
| Poland         | 50                 |
| Portugal       | 2                  |
| Romania        | 0                  |
| Slovakia       | 3                  |
| Slovenia       | 3                  |
| Spain          | 15                 |
| Sweden         | 2                  |
| United Kingdom | 508                |

**Figure D1: News Coverage of the Apple State Aid Case Across Third Country Member States**



**Table D2: Ilva State Aid Case**

| Countries      | Number of articles |
|----------------|--------------------|
| Austria        | 0                  |
| Belgium        | 0                  |
| Bulgaria       | 0                  |
| Croatia        | 0                  |
| Cyprus         | 0                  |
| Czech Republic | 0                  |
| Denmark        | 0                  |
| Estonia        | 0                  |
| Finland        | 0                  |
| France         | 2                  |
| Germany        | 8                  |
| Greece         | 0                  |
| Hungary        | 0                  |
| Ireland        | 1                  |
| Italy          | 906                |
| Latvia         | 0                  |
| Lithuania      | 0                  |
| Luxembourg     | 1                  |
| Malta          | 0                  |
| Netherlands    | 0                  |
| Poland         | 0                  |
| Portugal       | 0                  |
| Romania        | 0                  |
| Slovakia       | 0                  |
| Slovenia       | 0                  |
| Spain          | 0                  |
| Sweden         | 0                  |
| United Kingdom | 25                 |

**Figure D2: News Coverage for the Ilva Case Across Other EU Countries**



Institut d'études politiques de Paris

ECOLE DOCTORALE DE SCIENCES PO

Programme doctoral de science politique

*Centre d'études européennes et de politique comparée (CEE) (UMR 8239)*

Doctorat en science politique

# Le rôle des acteurs dans la légitimation ou la délégitimation des structures de GMN

*Une analyse des prises de position (claims) visant à politiser et dépolitiser la politique d'aides d'État de l'UE*

Résumé long de la thèse en français

Elena Beatriz Escalante Block

Thèse dirigée par Colin Hay, Professeur des universités, Sciences Po Paris

Soutenue le 11 mars 2021

## Jury :

M Dirk De Bièvre, Professor of International Politics and Chair of the Department of Political Science of the University of Antwerp

M Colin Hay, Professeur des universités en science politique, Sciences Po Paris (**directeur de recherche**)

M Christopher Lord, Professor at ARENA Centre for European Studies, Oslo (**rapporteur**)

Mme Nonna Mayer, Directrice de recherche émérite CNRS, SciencesPo Paris

M Claudio Matera, Assistant Professor for the Chair of International and European Law and Governance at the University of Twente

M Pieter de Wilde, Professor for European Politics at Norwegian University of Science and Technology (NTNU) (**rapporteur**)

En août 2016, la Commission européenne infligeait à Apple une amende de 13 milliards d'euros pour des arriérés d'impôts. Le géant de la tech se trouvait ainsi mis en demeure pour des avantages fiscaux dont il avait bénéficié en Irlande. Dans le domaine des aides d'État, c'est à ce jour la plus lourde sanction jamais prise à l'encontre d'une entreprise ou d'un État. L'acteur majeur de ce récit, Margarethe Vestager, a été qualifiée de « chasseuse de dragons de la Silicon Valley » (Keen 2018). L'idée que la commissaire Vestager puisse finalement demander des comptes aux grandes sociétés lui a valu une réputation mondiale de « chien de garde » face aux GAFAs. Mais tant Vestager que la Commission ont essuyé un sérieux revers avec les réactions négatives suscitées par cette amende de 13 milliards d'euros, et cela vaut à la fois pour Apple et pour le gouvernement irlandais, qui décida par la suite de faire appel de cette décision. Des acteurs du gouvernement irlandais ont estimé que l'action de la Commission constituait une « atteinte à la souveraineté » de leur pays<sup>161</sup>, tandis que les représentants d'Apple qualifiaient la décision de Bruxelles de « défi à la réalité et au bon sens<sup>162</sup> ». Les commentaires de ce genre montrent comment les acteurs ont tenté de délégitimer les actions de la Commission en politisant dans les médias les affaires liées aux aides d'État<sup>163</sup>. Dans la littérature, des auteurs indiquent que la politisation des politiques européennes (tels que les dossiers d'aides d'État) peut avoir un impact négatif sur la légitimité de l'Union européenne (cf. Majone 1998 ; Moravcsik 2006 ; Lindseth 2010). Ils appellent à une UE moins politisée, susceptible de fonctionner avec plus d'efficacité en l'absence de tiers remettant en question sa façon de travailler ou contestant sa légitimité (cf. Majone 1998 ; Moravcsik 2006 ; Lindseth 2010). Les citations ci-dessus, émanant de représentants d'Apple et du gouvernement irlandais, semblent confirmer que la politisation peut effectivement représenter une menace pour la légitimité de l'UE. La littérature comporte cependant une autre facette, selon laquelle la politisation peut favoriser la « normalisation » des processus décisionnels européens et la plus grande implication des citoyens dans les débats sur le projet d'intégration européenne (cf. Schmidt 2013 ; Rauh et Zürn 2014 ; Risse 2015 ; Statham et Trenz 2015). Selon ces auteurs, la politisation peut donc constituer pour l'UE une opportunité positive de gagner en légitimité.

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<sup>161</sup> Les déclarations de représentants du gouvernement irlandais relatives à la décision de la Commission sont disponibles à l'adresse : <https://www.irishtimes.com/business/economy/apple-tax-appeal-the-three-arguments-government-to-use-1.2777679>.

<sup>162</sup> Cf. <https://www.reuters.com/article/us-eu-apple-stateaid/apple-says-14-billion-eu-tax-order-defies-reality-and-common-sense-idUSKBN1W1195>.

<sup>163</sup> Les médias constituent en l'occurrence un forum ouvert dans lequel les acteurs peuvent contester les actions du gouvernement ou de l'UE (Koopmans et Statham 2010).



### *Le puzzle de recherche*

La littérature existante semble souligner que le rôle de la politisation et de la dépolitisation peut être seulement soit positif soit négatif pour la légitimité de l'UE. Cette distinction binaire constitue le puzzle conceptuel autour duquel s'articule la présente thèse. Le propos de ce travail est de montrer que cette dichotomie supposée, qui appréhende la politisation et la dépolitisation comme ayant un impact exclusivement positif ou négatif sur la légitimité de l'UE, est problématique. La difficulté provient du fait que ces processus sont conçus comme relevant du « tout ou rien ». Cette thèse considère au contraire qu'ils présentent une certaine fluidité au sein de structures de gouvernance multiniveau (GMN) telles que l'UE. Compte tenu de leur complexité, on ne peut donc simplement considérer la politisation ou la dépolitisation comme étant exclusivement positive ou négative pour la légitimité de l'UE. En examinant les deux processus conjointement, cette thèse vise à comprendre de quelles manières les acteurs peuvent légitimer ou délégitimer les structures de GMN telles que l'UE à travers des processus de politisation et de dépolitisation. Ces processus sont plus précisément évalués à la lumière de l'interaction dialectique à l'œuvre entre eux. Dans cette optique, nous définissons les deux processus comme des « stratégies discursives employées par divers acteurs sociaux pouvant être issus de différents niveaux de la GMN soit pour discuter d'une question soit pour clore le débat dans la sphère publique ». Ces processus ne sont donc pas définis en termes de stratégies de gouvernance, mais plutôt en termes discursifs, ceux-ci étant employés par différents acteurs afin que des questions fassent l'objet d'une discussion ou, au contraire, pour qu'elles soient retirées du débat.

La thèse analyse la question de savoir si la politisation a un impact positif ou négatif sur la légitimité de l'UE en examinant minutieusement une politique européenne spécifique : celle de la concurrence. Au sein du droit de la concurrence, nous nous focalisons sur une politique européenne bien précise, à savoir les aides publiques. Il s'agit de comprendre comment la Commission, les États membres et d'autres acteurs impliqués politisent leurs actions. Nous examinons les désaccords (ou contestations) relatifs aux aides publiques pour déterminer dans quelle mesure ils sont susceptibles de compromettre la légitimité de l'UE. La thèse se concentre sur les aides publiques pour plusieurs raisons. Premièrement, les aides d'État relèvent de la politique de concurrence, l'une des politiques européennes les plus supranationales qui soient, et sont l'un des plus puissants instruments politiques (Cini et McGowan 2009). Cela signifie qu'il y a, en matière d'aides publiques, une forme de transfert

de pouvoir de l'État membre en faveur de la Commission. Or, dans la littérature, certains font l'hypothèse que la probabilité de politisation d'une politique est plus grande lorsqu'il y a un transfert de pouvoir (cf. De Wilde et Zürn 2012, chapitre 7). Ce phénomène intervient quand des niveaux supranationaux de gouvernance ont plus de pouvoir sur les niveaux nationaux, ce qui est source de contestations et de mise en cause de la légitimité de ce transfert de pouvoir. En matière d'aides publiques, ce transfert s'inscrit dans un cadre législatif et dans des actes réglementaires par lesquels les États membres délèguent à la Commission leurs prérogatives de limiter les aides publiques. L'acte de transfert de pouvoir se produit lorsque les États membres délèguent à la Commission le pouvoir de réguler les aides accordées. Mais c'est seulement au moment des décisions officielles sur des cas d'espèce que la Commission européenne est amenée à communiquer et légitimer ces mêmes décisions. Le transfert de pouvoir donne donc à la Commission des occasions supplémentaires de légitimer ses actions. La politique d'aides d'État étant par ailleurs la plus intégrée des politiques européennes, il est intéressant d'explorer la dynamique à l'œuvre entre État nation et UE. Deuxièmement, pour la Commission, les aides d'État sont cruciales dans l'instauration d'un marché unique. Du point de vue méthodologique, le champ des aides d'État regroupe un certain nombre d'affaires présentant des situations extrêmement similaires. C'est un atout majeur pour le chercheur qui peut dès lors comparer les comportements de pays confrontés à des situations semblables. Quel que soit le contexte local, la politique d'aides d'État entrave directement les États membres dans l'attribution d'aides illicites à des entreprises, empêchant ainsi d'éventuelles distorsions au sein du marché unique. Les aides d'État ont été utilisées comme un « outil essentiel de la politique publique menée dans l'Union européenne, qui se traduit par des transferts d'un montant total d'environ 64,4 milliards d'euros en 2013 (pour les aides non liées à la crise) » (Heim et al. 2017, p. 194). Autrement dit, le moindre problème en matière d'aide publique est susceptible d'affecter la manière dont la Commission est perçue. Enfin, cette thèse traite des aides d'État pour une troisième raison, liée aux mesures de transparence adoptées par la Commission européenne le 1<sup>er</sup> juillet 2016 afin que le public puisse avoir connaissance des dossiers. Le site web de la Commission rend visible le « nom du bénéficiaire, le montant, la région, le secteur et l'objectif (Commission européenne 2018). Ces mesures de transparence jouent un rôle crucial dans la politisation d'une politique. Elles permettent en effet l'entrée dans

le domaine public des dossiers d'aides d'État<sup>164</sup>. Celles-ci passent ainsi dans le champ politique, où différents acteurs peuvent en débattre. Il est également important de noter que dans les affaires liées à des aides d'État, les parties au conflit sont au nombre de deux au minimum. Le plus souvent, les deux acteurs en présence sont l'État membre, opposé à la Commission européenne ; ou l'entreprise concernée par l'aide publique octroyée, opposée à la Commission. D'autres affaires peuvent impliquer une multitude d'acteurs (gouvernements locaux, groupes issus de la société civile, ONG, citoyens, journalistes notamment). Cela fait des aides d'État un sujet très « sensible politiquement » (Blauberger 2011, p. 28). Les tensions liées à des conflits y afférents tendent à susciter un vif intérêt de la part du public au niveau national (depuis Alitalia et Alstom jusqu'au chantier naval de Gdansk ou Opel) (Blauberger 2011). Cela a amené certains commentateurs (notamment Blauberger 2011) à estimer que la crédibilité des aides d'État et de la Commission est tributaire de l'évitement du conflit politique.

Cette thèse étudie l'impact de la politisation et de la dépolitisation des affaires d'aides d'État sur la légitimité de l'UE. Ce faisant, elle répond à la principale question de recherche : Comment les acteurs tentent-ils de politiser et de dépolitiser les affaires d'aides d'État et, ce faisant, de légitimer ou de délégitimer les structures de GMN telles que l'UE par leurs prises de position (claims)? La présente recherche répond à cette question en s'appuyant sur deux études de cas, Apple et Ilva, dans l'espoir de mettre en lumière la manière dont différents acteurs peuvent politiser et dépolitiser ces affaires et, dans le même temps, par leurs prises de position, légitimer ou délégitimer l'UE. Cette thèse étudie la politisation et la dépolitisation des deux dossiers sélectionnés en analysant les activités de *claim-making* ; cette analyse évalue les *claims*<sup>165</sup> formulés par des acteurs politiques afin de représenter certaines préférences, certains électeurs ou certaines valeurs (Saward 2006), et de légitimer leurs propres actions. En quelques mots, un « *claim* » est un acte discursif de communication orale ou écrite posé par un acteur (gouvernement, entreprise, journaliste, mouvement social, ONG ou autre acteur de la société civile) dans les médias et exprimant une opinion (Koopmans et Erbe 2004, p. 98). Les *claims* analysés dans le cadre de cette thèse sont tirés des médias nationaux. C'est en effet le lieu où

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<sup>164</sup> Les mesures de transparence adoptées par la Commission européenne sont disponibles à l'adresse : [https://ec.europa.eu/competition/state\\_aid/overview/transparency\\_and\\_evaluation.html](https://ec.europa.eu/competition/state_aid/overview/transparency_and_evaluation.html)

<sup>165</sup> Compte tenu de la polysémie du mot « *claim* », qui peut avoir de nombreux équivalents en français (affirmation, déclaration, prétention, revendication), nous le laissons régulièrement en anglais, en l'accompagnant ou non d'une traduction, NDT.

sont à l'œuvre différents acteurs issus de divers niveaux de gouvernance ; c'est là que ces acteurs peuvent politiser ou dépolitiser un dossier d'aide d'État tout en légitimant ou délégitimant les actions de l'UE et du gouvernement national. Ce phénomène tient au fait qu'il n'existe pas de véritable espace public européen (cf. Adam 2012). Les médias nationaux constituent par conséquent un lieu d'expression crédible pour explorer comment les *claims* de différents acteurs sont représentés dans les conflits portant sur les aides publiques.

Certains auteurs appellent à une politisation de l'UE allant jusqu'à la tenue d'élections publiques, aussi bien du pouvoir exécutif que du législatif (Føllesdal et Hix 2006). Ce n'est pas le propos de cette thèse. Ce travail vise en revanche à démontrer que la politisation peut permettre à l'UE de gagner en visibilité et de faire l'objet d'une contestation, ce qui peut ensuite être source d'opportunités de changement et d'amélioration. Il ne s'agit en outre pas de dire que la politisation d'une politique européenne ne saurait avoir de conséquences négatives pour l'UE. De fait, la politisation peut être défavorable à la légitimité de l'UE si plusieurs acteurs de l'État membre s'alignent contre l'Union. Cependant, si la politisation prend une forme différente, dans laquelle le principal acteur polarisé n'est pas une institution européenne, alors l'UE peut agir en régulateur et être un acteur qui favorise et promeut une concurrence durable. Il est également important de noter que ces processus ne fonctionnent pas selon une logique du « tout ou rien ». Dans des structures à GMN comme l'UE, ce sont au contraire des processus fluides. Ils sont d'une telle complexité qu'on ne peut se contenter de les considérer comme purement favorables ou défavorables à la légitimité de l'UE.

### *Structure de la thèse*

La thèse est construite en deux parties : la première expose les concepts, théories et méthodes sur lesquels elle s'appuie, tandis que la seconde est consacrée aux analyses, discussions et conclusions. Pour entrer plus dans le détail, le chapitre 2 pose un nouveau modèle prédictif afin de comprendre le fonctionnement des politiques d'aides d'État et de saisir comment elles sont politisées et dépolitisées. Ce modèle reprend le cadre de Hay (2007), élargi pour inclure la manière dont ces processus se déroulent simultanément dans une GMN. Ce chapitre montre également de quelle manière ils sont susceptibles d'affecter la légitimité de l'UE. Le chapitre 3 explique les méthodes appliquées aux chapitres 4, 5, 6 et 7. La seconde partie de la thèse s'ouvre sur le chapitre 4. Celui-ci dresse l'inventaire de toutes les affaires relatives aux aides d'État jugées « illicites avec obligation de récupération » du 1<sup>er</sup> janvier 2000 au 1<sup>er</sup> janvier 2018, dans les 28 États membres. Les données ont été collectées à partir de

l'année 2000 pour deux raisons. Premièrement, la Commission européenne a décidé de rendre publiques toutes les affaires d'aides d'État à compter de janvier 2000 (cette décision ayant été prise en 2016<sup>166</sup>). Deuxièmement, cette date a également son importance d'un point de vue théorique puisque ces mesures de transparence font l'objet de tentatives de délégitimation de la part des acteurs impliqués dans le conflit (Heldt 2019). Cela signifie que les décisions publiées sont davantage susceptibles d'être contestées et délégitimées. Cela s'est avéré être le cas dans un domaine proche, avec les négociations sur le *partenariat transatlantique de commerce et d'investissement* (TTIP) : leur politisation est devenue plus probable après que la Commission eut rendu publics les documents relatifs aux négociations commerciales (Heldt 2019). L'analyse présentée au chapitre 4 détermine si un dossier d'aide d'État est ou non « contesté » par un État membre. On considère qu'il y a contestation lorsque l'État membre fait appel de la décision de la Commission ou choisit d'ignorer cette décision. Le chapitre 4 vise à mettre en lumière les États ayant tendance à contester le plus souvent les décisions de la Commission et ceux qui ont tendance à octroyer des aides illicites. Les décisions prises dans les différents États membres (avant, pendant et après la crise financière) font également l'objet d'une discussion, ainsi que le manque de littérature consacrée au traitement médiatique des affaires d'aides publiques. Le chapitre 5 se penche sur les dossiers ayant retenu l'attention des médias. Nous avons utilisé la base de données Factiva pour déterminer si les affaires contestées ont eu une couverture médiatique plus importante que celles qui ne l'ont pas été. La période de collecte des sources va de la « date de notification » à six mois après la « date de décision ». La date dite de « notification » est le jour où la Commission européenne informe l'État membre qu'elle engage une procédure d'examen pour constater s'il y a ou non aide d'État dans l'État membre concerné. Nous procédons à une analyse régressive pour faire apparaître quelles affaires d'aides d'État ont eu la plus forte couverture médiatique, en nous demandant si le fait de faire appel est un facteur déterminant dans ce niveau de couverture. Nous nous appuyons sur cette analyse pour sélectionner les deux dossiers qui font ensuite l'objet d'une analyse de « *claim-making* » aux chapitres 6 et 7. Le chapitre 6 porte sur les cas d'Apple et Ilva. Il vise à comprendre comment s'est faite la politisation de ces dossiers. Nous procédons pour ce faire à l'analyse de « *claim-making* », une méthode standard d'analyse des contenus de débats publics et de sources d'informations. Cette approche diffère d'une analyse de contenu ordinaire dans

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<sup>166</sup> Les mesures de transparence adoptées par la CE sont disponibles à l'adresse : [https://ec.europa.eu/competition/state\\_aid/overview/transparency\\_and\\_evaluation.html](https://ec.europa.eu/competition/state_aid/overview/transparency_and_evaluation.html)

la mesure où elle prend en compte les relations entre les acteurs qui forment la prise de position ou revendication (*claim-makers* ou *claimants*) et ceux qui en sont les destinataires (*addressees*) (Statham et Trezz 2013). L'objectif du chapitre 6 est de saisir comment les acteurs choisissent de politiser et (dé)légitimer les actions de l'UE, de l'Italie et de l'Irlande. Ce chapitre explore la question suivante : comment les acteurs légitiment et délégitiment-ils l'UE quand ils se trouvent politisés ? Suit une analyse du phénomène inverse : la dépolitisation. Le chapitre 7 évalue de quelle manière différents acteurs choisissent, dans les deux dossiers relatifs aux aides d'État, de dépolitiser leurs actions dans le discours en employant des tactiques caractéristiques. Enfin, le chapitre 8 analyse les résultats, propose des schémas de politisation et de dépolitisation intervenant à la fois dans les affaires portées en appel et celles qui ne le sont pas, et propose des conclusions basées sur les chapitres empiriques. La thèse conclut que la politisation peut avoir des effets aussi bien positifs que négatifs sur la légitimité de l'UE (ainsi que sur celle de ses États membres). Le fait qu'un État membre fasse ou non appel de la décision de la Commission joue un rôle essentiel dans la politisation et la dépolitisation d'une affaire d'aide d'État. C'est également un moment clé pour les acteurs, alors susceptibles de délégitimer la décision de la Commission. Dans le dossier Ilva, la Commission/l'UE n'a pas fait l'objet d'un traitement négatif, car c'est le gouvernement italien qui était au centre de la plupart des discussions. Dans l'affaire des aides accordées à Apple, il est clair en revanche que la Commission a perdu de sa légitimité dans les deux journaux irlandais analysés. Chose importante cependant, il ne s'agit pas de dire que la Commission ne peut pas reconquérir une part de sa légitimité dans le contexte des aides publiques en Irlande. Du point de vue de la dépolitisation, les résultats montrent également que la dépolitisation discursive ne se fait pas toujours au détriment de la légitimité de la Commission. Les stratégies de dépolitisation discursive employées peuvent aussi être axées sur la coopération entre les parties et sur la volonté d'apaiser les tensions préexistantes. Contrairement à ce qu'indique la littérature, il apparaît que la politisation et la dépolitisation n'affectent pas nécessairement la légitimité de l'UE de manière similaire. On constate plutôt que les degrés variables de politisation et les stratégies de dépolitisation sont susceptibles de fluctuer dans le temps et en fonction des acteurs qui prennent position, y compris dans le cadre d'une même politique.

En conclusion, cette thèse étudie une politique supranationale spécifique (les aides d'État) afin d'évaluer comment les acteurs utilisent leurs *claims* et comment se déroulent les processus de politisation ; elle tente également d'en apprécier l'impact sur la légitimité de l'UE. Les études examinant à la fois les processus de politisation et de dépolitisation demeurent rares.

Hay (2007) a été le premier à proposer un cadre incluant ces deux processus. À sa suite, d'autres auteurs ont adapté ce cadre (Beveridge et Naumann 2014 ; Jenkins 2011 ; Kuzemko 2014). Cependant, aucun de ces travaux n'a analysé le fonctionnement des processus de politisation et de dépolitisation dans une GMN en examinant les *claims* susceptibles d'intervenir simultanément à différents niveaux de gouvernance. En outre, les récentes études sur la politisation de dossiers liés à des aides d'État (Schmidtke 2016) et sur la politique de concurrence (Coen et Katsaitis 2013 ; Rauh 2016) n'appréhendent pas les deux niveaux d'analyse (Commission et État nation) ni la manière dont les acteurs légitiment leurs *claims*. L'enjeu de cette thèse est donc de contribuer à la littérature en considérant l'UE en tant que GMN ; ce travail examine également la manière dont les acteurs en présence utilisent la politisation de certaines politiques au niveau européen pour tenter de légitimer leurs actions face à celles des autres dans les médias d'information nationaux. La thèse explore : (a) les prises de position (*claims*) de différents acteurs impliqués dans le processus de (dé)politisation (décideurs au niveau européen et national, mais également journalistes dans les médias) ; (b) la manière dont les affaires relatives aux aides d'État se retrouvent (dé)politisées ; (c) la manière dont les différents acteurs impliqués légitiment leurs propres actions et délégitiment celles des autres ; (d) les liens entre la (dé)politisation des questions et la légitimation d'acteurs/institutions/États ainsi que leur propre légitimité globale et (e) le rôle des médias d'information et des journalistes à l'œuvre dans le processus.

D'une manière générale, cette thèse vise à contribuer aux débats actuels sur la politisation, en étudiant ce phénomène conjointement aux processus de dépolitisation. L'état de la recherche présente diverses lacunes. Premièrement, une analyse plus poussée des processus de politisation et de dépolitisation dans les GMN est nécessaire. L'essentiel de la littérature se concentre sur la conceptualisation de ces deux processus d'un point de vue purement théorique et à un seul niveau de gouvernance (Hay 2007 ; Beveridge et Naumann 2014 ; Jenkins 2011 ; Kuzemko 2014 ; Berkhout 2012) plutôt que de les aborder de manière empirique. Ainsi, les études menées par Fawcett, Flinders et Wood (2017) et Papadopoulos (2017) visent à comprendre comment ces deux processus fonctionnent dans la GMN. Mais ces auteurs ne théorisent que trois dimensions de la dépolitisation liées à la GMN (domination technocratique, pluralisme limité et « ombre de la hiérarchie »). Si ces auteurs reconnaissent l'existence de la politisation, ils n'explorent pas la manière dont les questions politiques peuvent se trouver politisées ou dépolitisées dans la GMN en soi, ni leur impact sur la légitimité de cette structure complexe. Cette thèse étudie au contraire ces processus simultanément, avec

une approche à la fois théorique et empirique. Elle dresse ainsi un tableau plus large que ne le ferait une analyse de l'un de ces processus pris isolément.

Deuxièmement, cette thèse vise à évaluer la dépolitisation discursive, en procédant à l'analyse de *claim-making* ; le propos du chapitre 7 est de doter les futurs chercheurs d'outils qui les aideront à déceler diverses stratégies de dépolitisation discursive. L'analyse de la dépolitisation discursive est une approche novatrice, qui vise à fournir une méthode systématique pour analyser les deux processus dans l'espace public. Cette démarche met par ailleurs en évidence le fait que la politisation et la dépolitisation, loin d'être des processus complètement antagonistes, peuvent être analysées conjointement.

Troisièmement, le rôle des acteurs en présence dans les affaires liées aux aides d'État n'a jamais été étudié. La plupart des travaux semblent se focaliser sur l'imposition des entreprises (Schmidtke 2016 ; Kneafsey et Regan 2019). Cette thèse propose quant à elle une analyse plus vaste des dossiers d'aide d'État afin de comprendre comment la politisation et la dépolitisation peuvent influencer l'évolution des différents dossiers. Ce faisant, ce travail ne se contente pas d'étudier l'imposition des entreprises ; il prend également en compte d'autres types d'aides octroyées à différents secteurs : banques, sidérurgie, télécommunications, transports notamment. L'apport de cette thèse réside donc dans une conception novatrice de l'analyse des aides d'État, incluant la façon dont ces questions font l'objet d'une politisation et, dans le même temps, d'une dépolitisation discursive.

Enfin, et cet apport est étroitement lié au point précédent, les études existantes n'ont pas été suffisamment attentives à la question de savoir si la politisation des politiques en matière d'aides d'État et de concurrence a ou non permis aux acteurs de légitimer ou délégitimer les actions de l'UE. La majeure partie de la littérature consacrée à la politique de concurrence et à la politisation ne fait pas le lien entre ces deux sujets. Cette thèse tente donc de combler cette lacune, et étudie comment une politique comme celle des aides d'État, souvent envisagée comme une politique « technique » ou dépolitisée, peut faire l'objet de débats dans les médias.