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# **The Limits of Inter-Institutional Co-operation: Defining (Common) Rules of Conduct for EU Officials, Office-holders and Legislators**

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## **Introduction**

The conditions under which inter-institutional cooperation and conflict arise have long been of interest to students of the European Union's policy process. While much of this research has been conducted on legislative and budgetary decision-making, this paper adopts an alternative approach and focuses on decision-making on governance itself. As such, it speaks to a broader literature on the 'governance of governance' (or 'meta-governance') which sees decision-making institutions active in the process of agreeing general principles, creating institutional frameworks, and devising specific rules and norms which shape the way in which governance, in practice, occurs.

Whilst meta-governance in an EU context takes many different forms, this paper focuses on the forging of Inter-Institutional Agreements (IIAs) between and amongst the EU's three main institutions, the European Commission, the EU Council and the European Parliament. The primary focus is on the Commission-Parliament relationship. Whilst IIAs have been instigated and, in many cases, approved on a vast array of issues, the two cases, discussed below, involve attempts to agree, on the one hand, on the establishment of an inter-institutional register for EU lobbyists; and on the other, on an inter-institutional advisory group on ethics. Both of these cases fall under the 'meta-governance' rubric. In the first case, agreement was possible; whereas in the second, it was not. This paper considers why agreement was possible in one case but not in the other. In addressing this question, the paper hopes to shed light on the scope for, and limits to inter-institutional cooperation on meta-governance issues.

The paper proceeds as follows: the first section introduces the concept of meta-governance and shows how Inter-Institutional Agreements have become one of the

many instruments used by the EU institutions to shape the governance of the EU. The second and third sections then summarise the two cases. The second section provides an empirical summary of the way in which the European Parliament and European Commission worked together to construct an inter-institutional register of EU interest groups. The third section shows how attempts to set up an inter-institutional ethics regime and an ethics committee for the EU institutions have (so far) failed. A fourth section then draws out the different factors in each case that led in the first case to the success of the inter-institutional agreement, and in the second, its failure. The conclusion sums up the findings and draws out some implications for future research.

### **Meta-governance and Inter-Institutional Agreements in the EU**

Meta-governance, like governance itself, is a concept whose definition is open to dispute and whose meaning is subject to conceptual stretching. Yet it provides a useful way of understanding an important function of government, that is, its involvement in the framing of governance rules, one step back from the governing process itself. Since the 1980s, a consensus has emerged over the importance of viewing governance as a process conducted by interdependent networks of actors, some public, some private (for example, Pierre and Peters, 2000). A focus on meta-governance implies that this process is itself subject to governance— hence the ‘governance of governance’ (Kooiman and Jentoft, 2009: 819).

Meta-governance normally implies the involvement of the State or State actors (Kooiman and Jentoft, 2009: 822), the assumption being that whilst governance is often devolved and networked, meta-governance is not. This is line with Scharpf’s argument that governance occurs in the ‘shadow of hierarchy’ (Scharpf, 2004: 40). Not everyone agrees with this assumption however, and Kooiman and Jentoft (2009), in particular, argue that meta-governance can itself be the product of networks of actors, that is of ‘interactive governance’. There is also some disagreement over what meta-governance is. For example Kooiman and Jentoft construct a framework in which meta-governance is a process of identifying the values, norms and principles that underpin the governing process, whilst others adopt a more Statist perspective, and see meta-governance the support by governments of particular actions, the promotion of action within networks, the attachments of conditions to the release and

deployment of resources and, not least, the changing of the rules of the governance game by altering prevailing beliefs, narratives and practices (Sørensen, 2006; Baker and Stoker, 2012: 1027-28).

Jessop (2004) adopts this kind of statist approach, and even applies it to the European Union. He sees meta-governance as providing the ‘groundrules for governance’ (2004: 3). One of four modes of meta-governance he identifies involves the ‘reflexive design of organisations, the creations of intermediating organisations and the management of organisational ecologies’ His focus is broader than that taken in this article, however, as it is interested in the concept of ‘*multilevel* metagovernance’, in which he sees the EU playing a role in establishing new frameworks of governance at and for the supranational (and global) level. More narrowly, governments (and other decision-making bodies) have increasingly come to regulate themselves and their own behaviour, often through the use of bodies that set standards, and then monitor and ensure compliance of those standards (James, 2000: 327; Hood, James and Scott, 2000: 284). This involves the oversight of bureaucracies - beyond the primary oversight of the courts and legislators - by other public agencies, and the application of various tools of oversight, such as audit, inspection and certification (Hood, James and Scott, 2000: 283-85).

While meta-governance may not have as much potential as other forms of decision-making to impact directly on substantive policy outputs and outcomes, it is nonetheless understood as a precondition for effective and democratic government. In other words, meta-governance is important in terms of ‘enabling’ rather than ‘delivering’ the provision of ‘goods’ (OECD, 2009: 10). The importance of meta-governance should not be underestimated. Assuming that a polity’s legitimacy rests on more than just its policy outputs, meta-governance issues are likely to have a bearing on public trust, reflecting a form of legitimacy which has been labelled input legitimacy, but which might also be allied to what others have labelled ‘procedural’ or ‘throughput’ legitimacy (Schmidt, 2012).

Assuming a broad institutionalist understanding of meta-governance, in line with the discussion above, it is clear that there are many different instruments that might be used to take decisions affecting EU governance. This paper focuses on just one of

them: Inter-Institutional Agreements (IIAs). IIAs are themselves somewhat difficult to pin down, and until the mid-2000s there was hardly any research conducted on them; even now there is a somewhat limited literature.<sup>1</sup> To understand IIAs, however, it is first necessary to set them in the broader context of the EU's obsession with inter-institutional relations, and what lawyers like to talk of as 'institutional balance'. Thus, it is important to recognise that since the setting up of the EEC, debates on inter-institutional relations have revolved around the theme of conflict and cooperation. For example, in the case of the relationship between the Commission and Parliament, the first decades of the European integration project saw the European Parliament (or Assembly) and the European Commission as allies in the project to 'build Europe' (Westlake, 1994). By the 1980s, however, circumstances had changed and conflicts were more prevalent. As both the European Commission under Jacques Delors' leadership, and the European Parliament, its members having been directly elected since 1979, became more assertive, the relationship between the two institutions altered substantially.

Something seemed to have changed again by the 2000s, however. There appeared to be a greater willingness by the institutions to cooperate on issues that previously were felt central to the autonomy of the individual bodies. Christiansen identifies a similar pattern of 'coherent governance' (Christiansen, 2001), arguing that this is a function of the growing interconnectedness of EU policy processes and the strengthening of a "supra-institutional" allegiance among EU officials' (Christiansen, 2001: 747). However, this shift should not be overstated. Inter-organisational conflict over informal rules – for example over the White Paper on Governance, an example, which fits well with the focus of this paper - was still rife in the early 2000s (Bouwen, 2007).

This inter-institutional love-hate relationship between Commission and Parliament, which also stretches to the Council and other EU institutions, does not mean that the EU's institutions do not cooperate. Indeed, the EU would not function if this were the case. One form that this cooperation takes is the approval of IIAs. The notion of an Inter-Institutional Agreement is somewhat amorphous in that it is not normally Treaty

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<sup>1</sup> See, however, the Symposium on Inter-Institutional Agreements published in *European Law Review* in 2007 (Volume 13, No. 1).

based<sup>2</sup> and encompasses texts which are not always labelled as IIAs, such as Letters and Declarations. While one author included unilateral statements by one institutions in his tally of IIAs (amounting in his view to 123 by 2009) (Hummer, 2007), a more intuitive approach would be to view IIAs as any informal or semi-formal bilateral or trilateral agreement involving the Commission, Parliament and Council.<sup>3</sup>

There is some disagreement over why IIAs have proliferated in the EU over the past forty years. There are various explanations in the literature. IIAs are necessary to fill in the gaps in the Treaty, thus serving as a form of ‘informal constitutionalisation’ and a response to the Treaty’s incomplete contract (Christiansen and Reh, 2009: 9); they serve as stepping stones towards more formal decision-making (Chrysochoou, 2001: 153); they serve the aggrandisement of the European Parliament and to relocate the EP in the EU system (Judge and Earnshaw, 2008: 49, 66, 240); they improve the quality of law, transparency and democracy in the EU and stimulate debate (Versluis, van Keulen and Stephenson, 2011: 63; Puntsher Riekman, 2007); they smooth cooperation, providing benefits for all EU institutions (Hummer, 2007; Puntsher Riekman, 2007); and they shed light on how institutions can act differently to the formal procedures (Lelieveldt and Princen, 2011: 92). Generalising across all IIAs has proven difficult however. This is not because they cover a broad range of topics, including budgetary and scrutiny policy, legislative decision-making, and not least, meta-governance issues, such as transparency, subsidiarity, comitology, the Ombudsman and democracy. Two recent efforts to agree IIAs in this latter category have been on the initiative of the European Commission. These have called for the setting up of an inter-institutional system of lobbying regulation; and the creation of an inter-institutional advisory committee on ethics. It is to these two cases that the paper now turns.

### **Towards an Inter-Institutional System of Lobbying Regulation?<sup>4</sup>**

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<sup>2</sup> There is a loose reference to IIAs in Article 218 TEC. Article 10 TEC demands of the institutions a ‘duty of sincere cooperation’ (note: references from Nice Treaty, not Lisbon Treaty)

<sup>3</sup> Multilateral agreements involving other EU bodies may also be included.

<sup>4</sup> This section draws heavily on research conducted by Dr Nieves Pérez-Solórzano Borragán. See also Pérez-Solórzano Borragán and Cini (2011).

Since the 1990s the EU institutions have developed initiatives to provide for a more formalised framework of interest group participation, including the Principles and Standards for Consultation (European Commission, 2002) and, more recently, a register for EU lobbyists, known as the Transparency Register. Most of these measures have focused on opening up participatory and lobbying practices to greater external scrutiny. Progress on these issues has occurred in four phases: (1) the European Parliament's early initiative; (2) the Commission's tentative first steps (3) the European Transparency Initiative (ETI); and (4) inter-institutional co-operation.

### *The European Parliament's Early Initiative*

The debate on lobbying regulation began in the European Parliament (EP) in 1989. This was at a time when there were concerns that Members of the European Parliament (MEPs) and parliamentary intergroups were acting on behalf of interest groups. Thus in 1991, the Galle Report proposed a code of conduct with minimalist standards aimed at preventing abuse (such as prohibiting selling on documents and use of institutional premises); the establishment of 'no go' areas in the Parliament's buildings including members' offices and library facilities; examination of lobbying and intergroups; and, the registration of lobbyists on an annual basis, spelling out the rights and obligations of those on the register, and specifying penalties for failure to comply. A final, and contentious, proposal required MEPs to state their financial interests and those of their staff, on a separate register. However, since no consensus could be reached on the proposed definition of interest groups and the financial interests of MEPs and their staff, the report did not even get as far as a debate in the plenary session (Chabanet, 2007)

In 1994 a second attempt at regulating lobbying was undertaken by the EP's Committee on the Rules of Procedure, the Verification of Credentials and Immunities. This time the Ford Report (European Parliament, 1996) drew on the experiences of the member states, and proposed a much simplified mechanism for regulating lobbying. It proposed amendments to the Parliament's Rules of Procedure according

to which the Quaestors<sup>5</sup> would grant interest representatives a pass in exchange for acceptance of a code of conduct and registration. With regard to financial interests, each MEP was required to make a detailed declaration of his or her professional activities. MEPs had to refrain from accepting any gift or benefit in the performance of their duties while registered assistants had to make a declaration of any other paid activities. In a further resolution based on a second report, the EP decided to supplement the Rules of Procedure<sup>6</sup>. This second reform introduced a *de facto* mandatory register and a code of conduct. It was *de facto* mandatory because it allowed those who registered to receive a non-transferable pass allowing them access to the Parliament, valid for up to one year. To be an effective lobbyist, one really had to register. The following year, in May 1997, Parliament approved a code of conduct, based on the voluntary code already in existence (Chabanet, 2007: 10).

### *The European Commission's Tentative First Steps*

The European Commission's approach to regulating lobbying was very different to that of the European Parliament. Traditionally the Commission favoured a less regulatory approach based on a neo-corporatist arrangement similar to that which governs the European Social Dialogue,<sup>7</sup> alongside open but structured and transparent mechanisms to engage with interest groups with a preference for sectoral self-regulation. The Commission was resistant to the drawing up of codes of conduct for these groups. The first steps towards a formalisation of the relationship between the Commission and interest groups were outlined in two 1993 Communications on *An Open and Structured Dialogue Between the Commission and Special Interest Groups* and on *Increased Transparency in the Work of the Commission*. The Communication on *An Open and Structured Dialogue Between the Commission and Special Interest Groups* aimed at formalising the relationship between the Commission and interest groups in order to make it more transparent while addressing 'broadening

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<sup>5</sup> Quaestors are the five MEPs who look after the financial and administrative interests of the European parliamentarians.

<sup>6</sup> See Rule 9(4) of the Rules of Procedure and Annex X Provisions governing the application of Rule 9(4) - Lobbying in Parliament).

<sup>7</sup> The European Social Dialogue procedure was created in 1992. It requires the Commission to consult the European social partners on all legislative proposals in the social field and allows them to sign European collective agreements which can be implemented with the autonomous means of industrial relations or by giving them legal force through Council Decision.

participation in the preparation of Commission proposals and on the wider availability of Commission documents'. The Commission's proposals were clearly aimed at addressing governance concerns related to lobbying practices, not least by providing a clear commitment to providing a level playing-field by granting all stakeholders fair and equitable access to the development and implementation of EU policy.

The Commission also agreed to the creation of a directory of non-profit organisations and special interest groups. However, it did not feel able to decide which consultancies, legal advisors, public relations/public policy and other private firms should be included in the directory and thus preferred to 'encourage[...] the lobby sector to draw up its own directory, containing all the relevant information' (European Commission 1993: 3) which clearly curtailed any claims to the transparency-enhancing properties of the register. This was not, however, a mechanism to 'confer any form of official recognition by the Commission, nor the granting of any other privileges such as special access to information, buildings, officials, etc.'. Moreover, the information requirements were minimal: name of the organisation; address/telephone/fax; date of foundation; legal status and structure; names of senior officials; names of member organisations; principal objectives of the organization (European Commission 1993: 2). In essence, the directory, known as CONECCS, was primarily conceived as a tool for EU public servants. Its accessibility to the public turned it, almost by accident, into a tool to enhance transparency.

### *The European Transparency Initiative (ETI)*

It was not until 2005 that the Commission decided to revisit the issue of lobbying regulation. Commissioner Siim Kallas's European Transparency Initiative (ETI) became the vehicle for this ambition. There were two dimensions to this: on the one hand, consultation practice; on the other, lobbying practice. On the former, the aim was to find out whether the general principles established in a 2002 Communication and the minimum standards for consultation (European Commission, 2002) had been applied in a satisfactory manner (European Commission, 2006: 5). On lobbying practice, the issue was more complicated and much more controversial. Ultimately the issue under debate was whether the Commission should impose mandatory registration on lobby groups or whether it might simply rely on a voluntary self-

regulatory system attached to a common code. The Commission proved reluctant to go down the mandatory route.<sup>8</sup> Following a period of consultation, the Commission published its *Green Paper on the European Transparency Initiative* (European Commission, 2006). This proposed the adoption of a voluntary registration scheme and a code of conduct based on an existing industry code (SEAP, 2000). Registration was to be rewarded by early access to consultation, and a system of monitoring and sanctions was to be introduced. Interested parties were invited to respond to the Paper during a further period of consultation.

On 21 March 2007 the Commission published its Communication, in which it announced its decision to establish a public register of interest representatives working in the EU institutions. It set up a Register which became operational in May 2008, with registration voluntary and web-based. In addition, the Commission drafted a common code of conduct for lobbyists (European Commission, 2007a). The gist of the proposal followed the 2006 Green Paper: there was an approved definition of a lobbyist; signing up to the Register assumed acceptance of the principles of the Code; groups themselves were responsible for uploading accurate information. Where groups did not abide by the code, the sanction was, ultimately, removal from the Register.

### *Inter-Institutional Co-operation*

The European Parliament began a new debate on lobbying regulation in 2007 prompted by the Commission's 2007 Communication. The Commission had put the ball in the European Parliament's court by proposing a common register and Code. This provoked a period of consultation in the Parliament, which involved civil society actors and various interested Parliamentary Committees. The main areas of interest and debate were whether the Register should be mandatory; what degree of financial information should be demanded of registering organisations and individuals; which organisations should have an obligation to register; and whether the sanctions would

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<sup>8</sup> In a debate on the subject in January 2006, held in the International Press Centre (Résidence Palace, Rue de la Loi, Brussels), the European Commission representative, a member of the Kallas Cabinet, argued vehemently that the Commission should play as minimal a role as possible in the regulation of lobbying.

provide an adequate deterrent to those tempted to provide misleading information (European Parliament, 2008a).

The motion for a European Parliament (non-legislative) Resolution was put to and approved by the plenary on 8 May 2008 (European Parliament, 2008b). There were two elements to the Resolution. The first emphasised the importance of ‘lobby groups’ to the Parliament and that MEPs should know the identity of the groups trying to influence them. It stressed the importance of equal access, with particular reference to civil society groups, and proposed that rapporteurs should in future decide, should they wish, on a voluntary basis, to use a ‘legislative footprint’: that is ‘an indicative list, attached to a Parliamentary report of registered interest representatives who were consulted and had significant input during the preparation of the report’ (European Parliament, 2008b). It also stressed the importance of the Commission attaching similar reports to its draft legislation.

The second element of the Resolution was a more direct response to the Commission’s proposal. In this the Parliament expressed its support for the Commission’s initiative on interest groups within the ETI and also agreed with the Commission’s (relatively) inclusive definition of a lobbyist. It supported the Commission’s idea for a ‘one-stop shop’ allowing lobbyists to register with both the Commission and the Parliament, and called for an inter-institutional agreement by the Council, Commission and Parliament on a common mandatory register for all institutions, full financial disclosure, a common mechanism for removal from the register and a common code of ethical conduct. However, it is also stated that [b]earing in mind... the essential differences between the institutions, Parliament reserves the right to evaluate the Commission’s proposal when it is finalised and, only then, to decide on whether to support it’ (European Parliament, 2008b). The Parliament also called for mutual recognition of registers should a common agreement fail to be agreed. Finally the Parliament asked that a joint working group be set up immediately to consider the implications of a common register by the end of 2008.

The High-Level Working Group that followed was led by Diana Wallis, Vice-President of the Parliament between 2007 and 2012, responsible for Transparency and Access to Documents and the Vice-President of the Commission, responsible for

Inter-institutional relations and Administration, Maroš Šefčovič (for the Commission) met over the course of 2009 and 2010. During this time, a number of concerns were raised about the operation of the Register. Certain groups were unclear about their status as lobbyists or stakeholders, in particular the Churches and local and regional authorities. It was clarified that public authorities need not register, but that groups such as Churches could be considered as relevant if they have a distinct office that maintains contacts with the EU institutions (Casini, 2011). There continued to be concerns from both within the Parliament and beyond it that the information provided in the Register was too vague and not particularly enlightening; and that its voluntary status meant that the system as a whole was weak (European Parliament, 2011; ALTER-EU, 2012). However, despite these concerns, many of which were pushed into a future review of the agreement two years on (in mid-2013), an Inter-Institutional Agreement was eventually approved in May 2011. This was backed by the EP's plenary by a show of hands, with a vast majority supporting the initiative. UKIP made a point of stating that they abstained in the vote, not because they did not want more transparency, but because the Register did not go far enough (Hannan, 2011). The joint register and code of conduct became operational a matter of weeks after the vote on 23 June 2011, coordinated by the new Joint Secretariat based in the Commission's Secretariat-General, but staffed by officials from both Commission and Parliament.

### **Towards an Inter-Institutional Ethics Regime?**

Modern organisations have increasingly sought to establish frameworks for regulating and managing the (ethical) conduct of their employees. In the public sector, executive and legislative bodies are no exception to this trend; indeed, many parliaments and governments across Europe now have explicit rules and codes for both to civil servants and, as discussed here, ministers and parliamentary deputies (MPs) (see, for example, Huberts et al, 2008). International organisations, including the EU institutions, have engaged in similar debates, and have begun to introduce similar frameworks (Cini, 2007). This section of the paper reviews the steps taken in this regard by the European Commission (for EU Commissioners) and the European Parliament (for MEPs), highlighting efforts made to set up an inter-institutional ethics committee within the context of an inter-institutional ethics regime. This section is

divided into three parts. The first looks at the setting up of an Ethics Committee in the context of the Commission's post-2000 administrative reform; the second considers Commission attempts to encourage inter-institutional cooperation; and the third emphasises how the Parliament has recently come to develop its own (separate) ethics regime. In sum, this section charts the failure of inter-institutional agreement in the field of ethics.

### *Commission Reform and Ethics*

The conduct of Members of the Commission (or Commissioners) has been governed by a short and somewhat vague treaty provision (Article 213(2)). Since 1999, this has been supplemented by a Code of Conduct for Commissioners. This code was first drafted in January 1999 (European Commission, 1999), as a consequence of an agreement made with the European Parliament at that time (Cini, 2007: 110-111); it was revised in mid-July of that year by the new Commission President, Romano Prodi, and formally agreed by the College in September (European Commission, 1999). The Code covered a range of issues such as financial interests and assets (and declarations thereof), rules for business travel and for receptions and professional representation; as well as rules on the receipt of gifts, honours and other benefits. Relatively minor revisions to the Code were subsequently made in 2004 and 2011 (European Commission, 2004, 2011; Cini, 2012).

One of the most interesting initiatives in the 1999 Code was the setting up of an Ad Hoc Ethical Committee. This had come about as a consequence of criticism faced early on by the Commission with regard to the post-employment activities for Martin Bangemann, who had left the Commission to take up a position close to that of his former Commission portfolio with the Spanish group, Telefonica. The Committee was formally set up on the basis of a Commission Decision approved in 2003 (European Commission, 2003).

The Ad Hoc Ethical Committee has since received very little attention. This is perhaps not surprising as it is a rather opaque body; and its ad hoc status means that its status is rather transient. The aim of the Committee is to provide the College, and the President in particular, with advice on ethical questions where they relate

specifically to the post-employment activities of Commissioners. It also serves to respond to criticism that the College was making judgements about its own ethics, with little external input or accountability. The Ethical Committee responds only modestly to these concerns. Moreover the minutes and correspondence of the Committee are not in the public domain, even though in 2010, a large amount of documentation was released after an access to documents request by the campaigning NGO, ALTER-EU.<sup>9</sup>

In both the 1999 and the 2004 versions of the Code of Conduct for Commissioners, the Committee is discussed in rather similar terms. Both state that the Commission will examine any case notified to it, and will decide whether a reference (for an opinion) to the Ethical Committee is needed. Implicitly, it is made clear that the Commission need not follow the advice of the Committee, with the final decision lying with the Commission President. The composition of the Committee is spelt out in the 2003 Decision. It comprises three individuals who have to demonstrate ‘independence, an impeccable record of professional behaviour as well as a sound knowledge of the existing legal framework and the working methods of the Commission’ (Commission, 2003). ALTER-EU has argued, however, that the independence of the Committee is open to challenge, and that the investigation it conducts seems rather superficial, resting primarily on evidence provided by the Commissioner concerned (ALTER-EU, 2011).

In the 2011 Code of Conduct (Commission, 2011), the Commission made a number of changes to the Committee, most notably that it might in future be invited to comment on more general ethical issues. Commissioner Șefcovič, responsible for administrative matters in the second Barroso Commission, has also stated that he intended to broaden the membership (perhaps to five) of the Committee (ALTER-EU, 2011; Interview with Member of Șefcovič Cabinet, January 2011). However, no action on this front has been taken to date.

### *Inter-Institutional Cooperation*

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<sup>9</sup> See <http://www.alter-eu.org/conflicts-of-interest-former-Commissioners-relevant-documents>

The specific emphasis on the Ethical Committee in the previous section is relevant to this paper as the Commission's Commission foreshadowed an earlier and more ambitious plan to establish a joint or common inter-institutional approach to ethics, across all EU institutions. The idea of an inter-institutional Advisory Group on Standards in Public Life was first raised as a stated objective in the Commission's White Paper on the Reform of the Commission published in early 2000 (European Commission, 2000). The Commission went as far as drafting a proposal on the Advisory Group in 2000, under the inter-institutional agreement procedure, which was transmitted to the Council in late 2000 and the Parliament in early 2001. Although the Commission was keen to promote inter-institutional cooperation on this matter, early attempts to negotiate with the Parliament and in the Council suggested that pursuing this initiative would be pointless, and the initiative was quickly dropped (Bounds, 2005). The Parliament's line on this issue was that the Commission was in no position to be telling it what to do regarding its ethical standards; that it was Parliament's role to scrutinise the Commission, and this did not seem to fit well with the notion of a cooperative approach on this issue, particularly so soon after the Commission's controversial resignation of 1999 and the role played in the events surrounding this crisis by the Parliament. As a consequence, the idea of a common approach to ethics did not appear on the Commission's agenda again until the mid-2000s. The proposal, however, remained on the table.

The idea of a common framework reappeared again after 2005. It became prominent after the Commission President was accused of a conflict of interest after spending a holiday on the yacht of an old friend who had also been in receipt of EU funds. Following critical media commentary, Barroso wrote a letter to the President of the European Parliament, Josep Borrell, stating that though he felt he had done nothing wrong, he accepted that some oversight of his role might be necessary, but that this should be an inter-institutional initiative. Reviving the 2000 proposal, he argued that he was ready and willing to negotiate with Parliament (Bounds, 2005). The Parliament did not respond positively to this call.

Likewise, Commissioner Siim Kallas's European Transparency Initiative (ETI), launched around the same time, also included a 'ethics' dimension. This was also intended to provoke a debate on the definition of common ethical rules and standards

of public office holders in the hope that other EU institutions might be prepared to work together on this. As part of the ETI agenda, the Inter-Departmental Working Group (European Commission, 2005a) which had drafted the Communication on officials' ethics raised the possibility of a further revision to the Code of Conduct for Commissioners. The College's view was that: '...this would only be useful if it is part of an inter-institutional debate on an inter-institutional Advisory Group' (Commission, 2005b: 7). However, in the face of pressure from the Parliament they were unable to sustain this position, and did eventually agree to a unilateral revision of the Code.

### *The European Parliament acts (unilaterally)*

While MEPs have always been quick to criticise the Commission for its failure to address ethical concerns, they have been slower and more reluctant in keeping their own house in order. Although critical reports, such as those which claimed that 'MEPs fiddle their expenses' (van der Laan, 2003: 1), were not unheard of, this never reached the level of criticism experienced by the Commission. This meant that the Parliament was never under the same kind of political spotlight and pressure; and it also meant that the Parliament had never, until recently, been forced into responding to criticism by instituting a reform of its internal procedures.

Yet a framework for guiding the conduct of MEPs did exist, arising out of the Nordmann Report of 1996 (European Parliament, 1996). The initial draft of this report in January 1996 was considered by some in the Parliament to be 'draconian' (Chabanet, 2007: 8), and was rejected. The final agreement was a compromise. Thus, MEPs have since been required to make declarations of financial interests, and are responsible for updating their own entries. The register of interests is public and can be consulted on the Parliament's website (ECPRD, 2001: 61). MEPs have to refrain from accepting any gift or benefit. Registered assistants also have to make a declaration where they were engaged in paid activities beyond the Parliament. However, Chabanet has remarked that '...for a long time the vast majority of Members ... paid no heed whatsoever to the obligation to declare their financial interests (Chabanet, 2007: 9).

Since the mid-1990s, the debate about the EP's rules of conduct formed part of a wider debate about the drafting of an EP Statute. Despite some quite vehement opposition to change amongst a number of MEPs, support for improvements grew substantially in the period after 1999, driven in part by the influx of a large number of young MEPs at this point. The establishment of the Campaign for Parliamentary Reform (CPR)<sup>10</sup> in March 2001 coincided with some very hostile press attention over the failure of some MEPs to declare their interests (see *European Voice*, 7 June 2001 and 19 July 2001, for example: see also ECPRD, 2001: 61). Gradually more and more MEPs were put under pressure to complete an accurate and up-to-date Declaration.

Although not entirely autonomous, and subject to certain Treaty provisions, in organisational terms the EP has largely governed itself through its own Rules of Procedure.<sup>11</sup> These establish ground rules for the conduct of MEPs on subjects ranging from transparency, financial interests and measures to combat corruption (ECPRD, 2001: 58). MEPs commit to this when they take office, as well as orally when issues of interest are debated in the Parliament. Special rules on privileges and immunities have been covered by a separate Protocol. In certain cases, however, such as during criminal investigations, immunities may be waived. Rule 2 of the Rules of Procedure establish that MEPs may not be bound by any instruction regarding their mandate. The aim of this provision is that this should preserve the independence of their office and their public image of trustworthiness. Indeed, for a number of reasons the Parliament has been subject to very little external scrutiny, particularly if we compare it to national parliaments. Nugent (2003: 226) explains that this has a lot to do with the 'special institutional setting in which the EP operates' (Nugent, 2003: 226): that is, the unusual relationship that exists between the European Union's executive and legislative institutions. Nugent points in particular to the fact that the EU Executive is not as concerned about the European Parliament as are national governments over national parliaments; and that there is less of an identification between the Executive and Legislature at the European level. While the latter may be accurate, there are certainly some policy areas where the former is no longer the case. The EP's autonomy is now more convincingly explained as a legacy of the past,

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<sup>10</sup> See the website of the Campaign for Parliamentary Reform at [www.ep-reform.en/the\\_pledge.php](http://www.ep-reform.en/the_pledge.php)

<sup>11</sup> Ethics rules that apply to national parliamentarians from a particular country may also apply to MEPs from that country (as in the UK case). National groupings of MEPs may also establish their own Codes, as in the case of the Dutch MEPs (<http://international.sp.nl/codeofconduct.stm>, 14 May 1999).

which may be ripe for change. This may be difficult to achieve – or at least could not happen without a political fight – and it is in any case unclear whether it would really be worth the effort, given that the Council and Commission could, if so inclined, (and perhaps where they have the support of the European Court of Auditors and the European Ombudsman) wield substantial influence over how the Parliament governs itself.<sup>12</sup>

As such, it would be incorrect to claim that the Parliament has failed entirely to respond to criticism over its ethics – even if, in many circumstances, it has been slow to ensure that its responses are translated into action. This, to a degree at least, is a function of the nature of decision-taking in the Parliament. While the Commission has had trouble enough agreeing reform amongst 15, and then 25 individuals, the Parliament needs a two-thirds majority of votes cast. This has not always been easily achieved.

It was not until 2011 that the European Parliament finally agreed to set up its own ethics committee. As often seems to be the case, this was a consequence of a scandal over ‘cash-for-laws’, the result of a ‘sting’ by the UK newspaper *The Sunday Times* in March 2011. Undercover journalists were able to record four MEPs saying that they would accept money in exchange for proposing amendments to EU legislation. This provoked a flurry of activity in the Parliament. In response to accusations that the Parliament’s rules on MEP conduct were lax, a working group of Members, representing all political groups, was set up to propose reforms. There was a debate at this time over whether an *independent* ethics committee ought to be set up, but this was rejected by the working group. It was agreed however that a code of conduct should be drafted and a five-member advisory committee of MEPs should investigate alleged breaches of that Code. The Code was agreed within a short space of time, in July 2011.

### **What makes for successful inter-institutional co-operation?**

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<sup>12</sup> Ethics rules that apply to national parliamentarians from a particular member state may also apply to MEPs from that country. For example, the Code that applies to members of the UK Parliament also includes MEPs. National groupings of MEPs may even establish their own Codes, as in the case of the Dutch MEPs. See, by way of example, the Dutch MEPs’ code. <http://international.sp.nl/representatives/codeofconduct.stm>, 14 May 1999

The aim of this paper has been to identify the factors that led to (or prevented) successful inter-institutional co-operation in two cases of governance policy involving the European Commission and the European Parliament. In the first case, a European Commission initiative provoked a debate in the European Parliament and this ultimately led, after much discussion and negotiation, to the approval of an Inter-Institutional Agreement and the setting up of a Joint Register and Code of Conduct. In the second case, efforts by the European Commission to engage the European Parliament in discussion over a joint ethics system, comprising a joint (or independent) committee of both institutions which might adjudicate on ethics-related issues, failed to gain any ground with the European Parliament. Why was the inter-institutional co-operation successful in the first case, but not in the second.

The first point to make is that in both cases, the two institutions each felt the need to be developing policy on the two issues under consideration. Indeed, in both cases, new policy has been agreed since the late 2000s. It cannot be argued that in either case, the Commission and the Parliament do not have an interest in these policy questions. However, this does not mean that they had a ‘shared’ interest. In the case of lobbying regulation, there was a logic to having a common register, and some degree of common standards. That said, the different approaches of Commission and Parliament could be accommodated within the framework that was ultimately agreed. The Parliament continued to offer a ‘badge’ to those coming into the Parliament building, for example, whereas the Commission did not wish to go down this road. In a sense the common approach agreed was a lowest common denominator approach to lobbying regulation, worth pursuing, but flexible enough to allow for divergent practices, reflecting the different roles of the two institutions, and the different relationships they traditionally had with outside interests.

At a general level it can be said that European parliamentarians (legislators) have a structural reason for engaging reluctantly in inter-institutional regulation. This is particularly the case where the initiative comes from a body which they have a duty to scrutinise. Relations between the Parliament and Commission are not just a matter of finding the right balance between conflict and cooperation, but has to involve recognition of the formal relationship between executive and legislator. This will

inevitably determine the limits of inter-institutional co-operation on issues which impinge on that aspect of the Parliament's function. This is what happened in the ethics regime case, where co-operation was seen potentially to undermine the capacity of the Parliament to be independent in its judgement of the Commission.

Moreover, questions can also be raised over whether such an inter-institutional ethics regime makes sense in a comparative context. Even though a 2007 Report on Ethics discussed both high office holders and legislators, the content of the Report reflected the norm that as these categories of public servant are very different, they need to have discrete codes, rules and committees (Demmke et al, 2007). Indeed, from this perspective, the logic of the Commission's proposed inter-institutional committee (and regime) starts to look rather unconvincing. Barroso's efforts to link such an initiative to the reform of the Code of Conduct might even be interpreted as an effort to delay having to revise the Code.

To a degree, both institutions have evolved in a context in which they were given substantial powers to act independently of the member states. Albeit in different ways, both the Parliament and the Commission continue to hold dear their ability to set their own rules of procedure, within a wider framework agreed intergovernmentally. However, the European Parliament has been particularly hostile to any form of external control, and not just of an inter-institutional character, even where this is to be of an advisory nature, as the most recent initiative on an ethics committee has demonstrated. The argument frequently made is that legislators, directly elected by popular mandate, are accountable to their electorates, and not to any other outside body. The lines of accountability that conventionally exist within representative parliamentary democracies would therefore be undermined should alternative external forums be established which establish new forms of accountability. This can be seen in the Parliament's decision not to set up an independent advisory body in 2011. As the regulation of ethics impinges directly on the conduct of MEPs, the Parliament's opposition to a Commission-inspired ethics regime is understandable from this perspective. The successful case of the Transparency Register primarily involves the direct regulation not of the public servants themselves but rather of the lobbyists with which they interact. As such there was less resistance to controls on non-governmental actors and groups than there might be on public servants.

Partly for the reasons discussed above, the ethics regime initiative lacked an advocate within one of the two institutions expected to participate. It is even debatable whether there was much advocacy at all from the Commission on this issue, despite repeated references to their desire to seek agreement on it. This was not so in the lobbying regulation case, where initially Alexander Stubb took the lead as rapporteur in pushing for an EP Resolution. After his departure from the EP, the work was continued by his replacement, Ingo Friedrich. At a later stage, the torchbearer was Diana Wallis. On the Commission's side, Commissioner Sefcovic has shown himself particularly keen to encourage greater inter-institutional relations with both Parliament and Council (though the latter has been rather slow in responding to his overtures).

Finally, in the case of the ethics regime, the timing of the Commission's initiative did not fit well with that of the Parliament. The 2011 scandal demanded an immediate parliamentary response, and action was taken extremely quickly. The Commission argued its case for a common ethics regime last in 2010 at a point when this issue was not on the Parliament's agenda. One might speculate whether had the timing of the 'cash-for-laws' scandal hit at the point at which Barroso was calling for common action on ethics, a shared agenda might have been possible. One cannot assume this to be likely, however, given the other factors that shaped the success and failure of these two different initiatives.

To sum up, then, from this analysis of the two cases, a number of factors can be identified as important in determining the success or otherwise of inter-institutional co-operation (in matters of governance policy). These are: shared interests; the flexibility of the initiative proposed; the extent to which the initiative would undermine formal functions of one or other of the institutions; the sensitivity of the issue with reference to the independence of the institutions; the existence of actors willing to perform an advocacy role; and the timing of the initiative in light of the individual institutions' issue attention cycle.

## **Conclusion**

This paper has identified the conditions which made for successful inter-institutional co-operation in two cases involving the European Parliament and the European Commission in one field of meta-governance. Although the potential for generalisation from these cases is limited, it is reasonable to predict that on other governance issues the same, or similar, issues will be relevant. Practitioners involved in the coal-face of European politics might intuitively suggest explanations from their own experience; researchers might initially trawl through the existing secondary academic literature for evidence of one kind or another. Finally, further research could use the factors identified in this paper as variables which might form the basis of hypotheses which could then be tested against a range of different cases, whether at the micro level, or again within particular policy types, or indeed across potentially very different policy domains.

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