

UACES 43rd Annual Conference

Leeds, 2-4 September 2013

Conference papers are works-in-progress - they should not be cited without the author's permission. The views and opinions expressed in this paper are those of the author(s).

www.uaces.org

The Changing Nature of EU Inter-Institutional Relations: The Case of Inter-Institutional Agreements on Rules of Conduct for EU Lobbyists and Public Servants

Michelle Cini

UACES Annual Conference, Leeds, 2-4 September 2013.¹

The Lisbon Treaty witnessed the introduction of a new decision-making provision (Article 295) which for the first time permitted EU institutions to making *binding* inter-institutional agreements (IIAs). IIAs are not a recent phenomenon however. Just as there is no consensus on why there are now so many of these agreements - more than 100 according to Hummer (2007) - there are also many different perspectives on the functions they perform (Brandsma, 2012). IIAs have been said to be useful in filling in the gaps in the Treaty as a response to the Treaty's incomplete contract in a process labelled as 'informal constitutionalisation' (Christiansen and Reh, 2009: 9). They have also been described as a stepping stone towards more formal decisions (Chrysochoou, 2001: 153). They are claimed in some cases to improve the quality of law, transparency and democracy in the EU and to stimulate debate (Versluis, van Keulen and Stephenson, 2011: 63; Puntcher Riekman, 2007); they are also said to assist cooperation providing benefits for all EU institutions (Hummer, 2007; Puntcher Riekman, 2007) while at the same time allowing institutions to side-step formal procedures (Lelieveldt and Princen, 2011: 92). IIAs may even be used to enhance the status of individual institutions such as the European Parliament (Judge and Earnshaw, 2008: 49, 66, 240).

The new Lisbon provision raises the prospect that IIAs will continue to proliferate as new opportunities arise for binding agreements. This draws attention to the little that we know about this instrument of EU governance and makes it all the more important that researchers to understand better how such decisions are taken. More broadly the research sits within the context of a research agenda on the changing nature on inter-institutional relations in (post-)crisis Europe. While contemporary research on the EU often touches either on the way in which the EU institutions engage with each other or indeed the changing balance of relations across the EU institutions, and how the economic (or euro area) crisis has altered this balance – normally to the advantage of the European Council and the disadvantage of the European Commission, research on inter-institutional relations has become somewhat segmented. For example, there is an interesting body of literature, mainly written by lawyers on the concept of 'institutional balance'; a more political literature on the impact of treaty change and specific decision-making procedures on the relative power of specific institutions. There are numerous case studies around dealing with specific policy relations across the EU institutions, often highlighting the interplay of formal and informal relations. It is difficult, however, to both step back to try to understand inter-institutional

¹ This paper was written in the context of a multi-lateral research group funded by the European Commission's Jean Monnet Programme (DEUBAL - Decision-Making in the European Union before and after the Lisbon Treaty). A slightly revised version of this paper (with a slightly different title) forms part of a special issue proposed by the DEUBAL coordinators, and likely to be published in *West European Politics* in 2014.

relations and the change in the balance of existing relationships holistically, whilst also acknowledging the complexity and the nuanced nature of the relationships that characterise the EU institutional landscape at the meso- and micro- levels. Unsubstantiated generalisations about EU inter-institutional relations prevail within EU discourse; and many of the claims made about inter-institutional relations, while true for certain issues or policy domains, is not true for others.

The focus of this particular paper is on decision-making on inter-institutional agreements, and as such it does not address all (or even a small number) of the challenges that might be posed by initiative a new research agenda on EU inter-institutional relations. But it does form part of this agenda even if this paper's goal is much less ambitious. Thus the paper asks why IIAs can be negotiated successfully in some cases but not in others. That is, 'what makes for a successful IIA?'. The research contributes to the existing literature on IIAs by emphasising the importance of the interplay of shared values and mutual interests in decision-making on inter-institutional agreements. The research focuses on two cases: the regulation of EU lobbying; and the regulation of the conduct of EU public servants. In the first case the decision-making process culminated in an IIA, whereas in the second, though an IIA had been proposed, no agreement was possible.

The two cases differ in terms of their outcome (and dependent variable), but they are similar in the sense that they both deal substantively with public ethics issues (see Yin, 2009; Ancker, 2008). Moreover both cases involve decision-making between the European Commission and the European Parliament; and both took place over the course of the 2000s. Adopting this approach helps isolate the factors that explain the different decision-making outcomes. The case studies are based on an in-depth documentary analysis. The data used from a review of policy statements (mainly speeches) and official documents and reports published primarily by the European Commission and the European Parliament as well as by Parliamentary Committees and individual members and employees of those two institutions. This literature covers the years between 1999 and 2013. All of the documents used in this study are in the public domain.

The rest of the paper is organised in the following way: the first section briefly reviews the literature on EU inter-institutional agreements and generates from this literature a framework based on the interplay of shared values and mutual interests. The second and third sections examine the two cases in light of these factors. The second section shows how and why actors in the European Parliament (EP) and European Commission were able to work together to construct an inter-institutional register of EU interest groups. The third section shows how and why actors in the Commission advocating an inter-institutional ethics regime with an ethics committee at its core failed to achieve agreement on this issue. A fourth section summarises the findings, while the Conclusion considers how these finding contribute to the literature on inter-institutional decision-making.

Framing Inter-Institutional Decision-Making on IIAs

As concrete expressions of inter-institutional cooperation, inter-institutional agreements (IIAs) can be broadly defined as any informal or semi-formal bilateral or multilateral agreement involving two or more EU institutions. They cover a wide

subject matter including budgetary and scrutiny policy, legislative decision-making as well as issues such as transparency, subsidiarity, comitology, the Ombudsman and democracy. A useful instrument of EU internal governance, IIAs have proliferated over the past 40 years, though it is only since the 1990s that they have become a focus for academic research.

Most of the commentary to date on inter-institutional agreements has come from lawyers. Their contribution has involved the mapping of inter-institutional agreements (Hummer, 2007) and somewhat lengthy consideration given over to their legal form and effect (Klabbers, 1994; Monar, 1994; Snyder, 1996). For non-lawyers, the most engaging aspect of these discussions and one that has been further developed since the mid-2000s is on the impact of inter-institutional agreements on the EU's 'institutional balance'. This questions the extent to which agreements outside the framework of the treaties serve not only functional ends but also alter in a more fundamental way the relationship between and among the EU institutions (Hummer, 2007: 70; Driessen, 2008; Johnson, 2012).

A project funded by the Austrian Ministry of Education, Science and Culture in the mid-2000s helped to expand on these themes. The project was particularly interested to discover whether IIAs benefit (or not) the European Parliament and what their impact was on EU-level democracy. Much of this work was published in a special issue of the *European Law Journal* in 2007 (see Slominski, 2007). In this volume Kietz and Maurer (2007) analyse cases in which inter-institutional agreements have been used by the Parliament to wrest control from the Commission and the Council. They show how the Parliament 'created facts' on the ground in the hope that they might later be codified. Puntischer-Riekmann (2007) argues that IIAs may strengthen the Parliament and thereby enhance EU democracy; yet there are also risks involved for EU democracy as IIAs are also rather opaque instruments of governance. Eiselt and Pollak (2007) show how IIAs are useful in addressing technical issues but are no substitute for institutional reform of a more formal kind. And beyond the special issue, but within the wider project, Maurer, Kietz and Völkel (2005) explore the conditions under which the Parliament benefits from IIAs, arguing that this is more likely when the initiative is based on a clearly defined treaty base. By contrast Eiselt and Slominski (2006) take issue with the tendency in the literature on IIAs to focus on the benefits to the European Parliament. They argue that the Parliament is certainly not the only institution to benefit from such agreements.

While this debate in the literature is concerned with the interests and benefits that result from IIAs, it is by drawing on a broader literature that we identify an alternative approach. Christiansen's research on inter-institutional cooperation in the EU can provide an ideational perspective on inter-institutional agreements (Christiansen, 2001). His argument is that while EU intra-institutional relations were subject to fragmentation in the 1990s, a contrary trend became apparent with regard to inter-institutional relations. There were three reasons for this: the existence of 'a shared allegiance as civil servants of the EU'; the 'experience of working within a common bureaucratic culture'; and 'the presence of an epistemic community of experts in the highly technical matter of EU policy-making' (Christiansen, 2001: 765). All three point to the importance of shared inter-institutional values as the basis on which inter-institutional cooperation can flourish.

Only one study of IIAs explicitly considers ideational factors. Maurer Kietz and Völkel's (2006) paper is also innovative in that it applies a broad theoretical framework to an IIA case (foreign policy). In so doing it recognises that both 'distributional bargaining' or 'interests' (206: 213) on the one hand and principles and ideas on the other might be important in shaping inter-institutional agreements. They claim that 'interests and ideas are involved in different ways depending on the level of inter-institutional interaction' (Maurer, Kietz and Völkel, 2006: 213); that ideas are likely to be more important for higher level (constitutional) issues, while interests will matter more at the operational level. While rejecting this multi-level approach this paper adopts a framework which combines ideas and interests in a manner similar to the approach used by sociological institutionalists. Thus it sees institutions as governed by normative principles out of which (perceived) interests of those institutions emerge. More specifically, the framework expects *shared values* and *mutual interests*, acting together, to shape decision-making outcomes in the two cases discussed below.

The Regulation of Lobbying

The European Parliament first debated lobbying regulation in 1989. This resulted in the publication of the Galle Report (European Parliament, 1991), a detailed document which amongst other things proposed a code of conduct to prevent abuses such as the selling of documents and the misuse of premises; the establishment of 'no go' areas in the Parliament; and the annual registration of lobbyists. In addition the Report recommended that Members of the European Parliament (MEPs) should be required to declare their own and their employees' financial interests. There was substantial resistance to the initiative in the Parliament reflecting the different national experiences of MEPs and their different understandings of their role as parliamentarians (European Parliament, 2009: 94). An absence of urgency on the issue led to a protracted debate over several years, making it impossible to get agreement before the end of the parliamentary term in 1994 (European Parliament, 2008c: 8; Shepherd, 1999: 155-58; Chabanet, 2007: 2). A second attempt, after the election, watered down some of the earlier proposals (European Parliament, 1996). Yet this second proposal was also contentious and almost failed. A last minute compromise and an emphasis placed on the symbolic nature of the proposal, together with the fact that the media had begun to take some interest in the initiative's progress seemed to sway opinion (European Parliament, 2008c: 9 and 2009: 94). The Report was approved and the Parliament's rules of procedure were amended accordingly (European Parliament, 1996). A code of conduct, based on a voluntary code already in existence was approved in May of the following year (Chabanet, 2007: 10).

Meanwhile the European Commission began to feel troubled by the regulatory approach adopted by Parliament, fearing that it might undermine its ability to gather information from interest organisations. The Commission favoured a self-regulatory approach leading it to set up a system which provided guidance for interest groups, primarily public affairs consultancies, in helping them develop their own industry standards in the form of professional codes of conduct (Shepherd, 1999: 157). In its 1992 Communication promoting an 'Open and Structured Dialogue with Special Interest Groups' the Commission also agreed to set up a directory of groups later known as CONECCS (European Commission, 1992: 2--3). This was primarily

established as an internal resource however, and was only later used as an instrument to improve transparency externally.

Another decade passed before lobby regulation was revisited by the EU institutions and an inter-institutional agenda emerged. This happened in the context of a renewed interest in lobby reform after 2005 in both the Commission and the Parliament. This was a key element within the Commission's European Transparency Initiative (ETI) (Kallas, 2005; Cini, 2008). The ETI was based on the view held by the new Commissioner, Siim Kallas, that there was a need for tighter control of relations between lobbyists and Commission officials (Kallas, 2005). There was some disagreement over the extent of the Commission's involvement however; and not all Commissioners believed that it should in any case be a priority. Even those in the Commission who advocated reform were reluctant to impose mandatory registration, and after a period of consultation the Commission adopted a voluntary scheme and a code of conduct based on the earlier 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 (European Commission, 2007). The web-based Register became operational in May 2008 (European Commission, 2007).

The Commission was keen to extend its initiative beyond its own institutional walls and proposed or, as Commissioner Kallas put it at the time, 'suggested' a *common* inter-institutional register and Code to cover the Commission, Parliament and the Council (Kallas, 2008: 3, 8). Kallas has stated that this was his original ambition from the very start of the European Transparency Initiative as he realised that it was the model that stakeholders (or interest groups) preferred (Kallas, 2008: 4). Kallas also noted the extent of the consensus on the issue by this stage and claimed that the differences between the institutions were merely administrative (Kallas, 2008). By all accounts the Parliament's response was a favourable one (Kallas, 2008; European Parliament, 2008c: 5). The Committee on Constitutional Affairs (AFCO) responded first by organising a workshop with stakeholders (in October 2007) and then by appointing the MEP Alexander Stubb (replaced after the election by Ingo Friedrich) to draft a Report (European Parliament, 2008c). This included a motion for a (non-legislative) Resolution which was ultimately approved by the Plenary on 8 May 2008. Overwhelming support for the initiative across the political spectrum can be seen in the voting data of the five Committees that gave their Opinion on the AFCO Report; as well as in the results for AFCO itself and in the final plenary vote (European Parliament, 2008c).

Even so the Parliament had concerns over issues such as whether a common Register would be mandatory; the degree of financial information to be published; which organisations would have an obligation to register; and whether the sanctions proposed would provide an adequate deterrent to those tempted to provide misleading information (European Parliament, 2008c; Wallis, 2011). There was also some concern that groups, especially those representing civil society, should not be deterred by the new system from contacting MEPs (European Parliament, 2008a, 2008b). In an initiative unique to the Parliament, the voluntary application of the 'legislative footprint', a list attached to a parliamentary report indicating the interests consulted, was accepted as part of the project (European Parliament, 2008b; Wallis, 2011). The Committee Report proposed that this should also be considered by the Commission.

In accepting the Resolution, the Parliament expressed its support for the Commission's idea of a 'one-stop shop' for lobbyists. The Parliament called for an Inter-Institutional Agreement to be signed by the Commission, Parliament and the Council (European Parliament, 2008c). Diana Wallis, one of the Parliaments Vice-Presidents at the time, has implied that this suggestion came from her and Alexander Stubb, the parliamentary rapporteur (Wallis, 2011). From the outset the Agreement was expected to set up a common mandatory register, to entail full financial disclosure, a common mechanism for removal from the register and a common code of ethical conduct. However, it was 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). It was agreed that a joint working group be set up to consider the implications of the proposal (European Parliament, 2008c: 6).

This High-Level Working Group (HLWG) was led by Diana Wallis, Vice-President of the Parliament, supported by MEPs Isabelle Durant, Jo Leinen and Carlo Casini for the Parliament and for the Commission the responsible Commissioners, Siim Kallas, and after the 2009 election Maroš Šefcovič (Commission, 2009a). The Council was also invited, but did not attend (Wallis, 2011). The Group held meetings over the course of 2009 and 2010 to deal with concerns that were raised in the Parliament about the operation of the proposed Register. There was no evidence to suggest that this was a very difficult process as the lines of division separating the two institutions were very clear, and in a very short time, in fact already by April 2009, the Working Group had agreed a joint set of guidelines and a revised draft of the code, as well as the setting up of a common webpage (European Commission, 2009b).

Although the Parliament's position was that a mandatory regime was preferable, it accepted that in the first instance it would go along with the Commission's voluntary framework. In any case it was recognised that in tying registration to access to the Parliament the new system would be in any case be quasi-mandatory (Wallis, 2011). A further difficulty concerned the definition of a lobbyist which the Parliament felt had been too narrow in the Commission's version of their Register (Wallis, 2011). Bringing lawyers, think tanks, the Churches and local and regional authorities - who balked at being labelled as lobbyists - into the Register led to some heated arguments and 'a lot of negotiations' (Wallis, 2011) with the groups concerned; yet a suitable compromise expanding on the Commission's earlier definition was eventually found. Moreover, there was a feeling in some quarters that the information provided in the Register, especially on financial disclosure, would be too vague to be meaningful; and that its voluntary status meant that the system as a whole would be weak. However, despite these concerns, many of which were pushed into a future review of the agreement two years on (mid-2013), an Inter-Institutional Agreement was eventually approved by both the Parliament and the Commission by May 2011 (European Parliament and European Commission, 2011). The joint register and code of conduct became operational a few weeks later on 23 June 2011 coordinated by the new and highly innovative Joint Secretariat based in the Commission's Secretariat-General and staffed by officials from both the Commission and the Parliament (Greenwood and Dreher, 2013: 143--4).

In spite of some of the technical difficulties and the different interpretations held by the two institutions of best practice lobby regulation, the agreement to set up an inter-

institutional Transparency Register was not particularly contentious. Both institutions accepted the need to improve the existing system; both saw efficiencies arising out of a common approach; and both acknowledged that working together to that end would demand compromises on both sides. While the Commission was able to set the agenda with its pre-existing Transparency Register, the Parliament was able to do what it does best, and propose amendments to the Commission's baseline proposal. Ultimately the IIA that resulted took some negotiation but without any of the rancour that sometimes characterises Parliament-Commission interactions. Both institutions were satisfied with the outcome.

Regulating the Conduct of Public Servants

Since the 1990s public organisations across Europe have been developing new ways to regulate the conduct of public servants. This has led to a proliferation of ethics rules, codes and guidelines, ethics committees, and training and consciousness-raising initiatives. A similar trend is visible within the EU institutions. While some provisions in the European treaties and in the Staff Regulations for officials date from the 1960s, it was only after 2000 that the Commission, in particular, began to take ethics seriously. The agenda was forced upon the Commission as part of the reform programme that followed the scandal surrounding the resignation of the Commission in March 1999 and with it the concomitant accusations that the Commission was rife with corruption, fraud and other forms of unethical conduct (see for example Macmullen, 1999).

For Members of the European Commission the route to ethical salvation was to come via internally-agreed Codes of Conduct, the first of which was formally agreed in September 1999. It has since been revised twice in 2004 and 2011 (European Commission, 1999). The Codes identify the standards of conduct expected of Commissioners. They deal with financial interests and assets; business travel, receptions and professional representation; post-employment 'cooling off' periods; as well as the receipt of gifts, honours and other benefits (European Commission, 1999, 2004, 2011; Cini, 2010, 2013). Advising the Commission President on the post-employment aspects of the Code is an Ad Hoc Ethical Committee (European Commission, 2003). This is a rather opaque body², composed of three senior European notables.

By contrast the post-1999 ethics regime for Commission's officials was dealt with in a more regulatory manner by means of the revisions to the EU's Staff Regulations (European Union, 2004; Cini, 2010). These were rewritten in 2004 to include reworked provisions on the loyalty obligations of officials, rules on whistleblowing and new disciplinary procedures to apply in the event of misconduct. Beyond these provisions other initiatives have encouraged greater awareness of ethical issues. A network of ethics contacts was established throughout the Commission's services; individual departments such as DG Competition have developed bespoke Codes; and new training courses on ethics have been set up. The one-stop-shop website on ethics

² See however the documents made public after the umbrella NGO ALTER-EU made an access to documents request – at www.alter-eu.org/conflicts-of-interest-former-Commissioners-relevant-documents

issues which is a work-in-progress provides officials with a useful central online resource (Năstase, 2012). The European Parliament's officials are also subject to the EU's Staff Regulations. Beyond general framework there are relatively few bespoke initiatives on ethics relating solely to parliamentary officials, though importantly, since 2009, parliamentary assistants, now categorised as temporary agents, are covered by these rules (with the exception of the provisions on political neutrality) (European Parliament, 2011: 27).

While MEPs have been quick to challenge the Commission for its ethical failures they have been much slower and more reluctant to revise their own ethics system. Although there were numerous criticisms of the Parliament in the past along the lines that 'MEPs fiddle their expenses' (van der Laan, 2003: 1), these did not until very recently reach the intensity experienced by the Commission. Yet MEPs have had a framework to guide their conduct since 1996 (European Parliament, 1996; Chabanet, 2007: 8); and since the mid-1990s they have been required to make and update declarations of financial interests (ECPRD, 2001: 61). These and other rules on transparency and financial interests are enshrined in the Parliament's Rules of Procedure (ECPRD, 2001: 58). However, '...for a long time the vast majority of Members ... paid no heed whatsoever to the obligation to declare their financial interests (Chabanet, 2007: 9) and the ethics rules, in any case rather limited in scope, were poorly enforced. Since the mid-1990s support for revisions to the existing system has grown, driven by an influx of new and primarily young and reform-minded MEPs. The establishment of the Campaign for Parliamentary Reform (CPR)³ in March 2001 coincided with hostile press attention over the failure of some MEPs to declare their interests (see *European Voice*, 7 June 2001 and 19 July 2001; see also ECPRD, 2001: 61). This gave moral weight to the arguments of the reformers and provided the context for the agreement of a Single Statute in 2005 (European Parliament, 2005).

It was not until 2011 that the Parliament finally agreed to overhaul its legislative ethics regime. This was a direct response to the 'cash-for-laws' scandal that hit the Parliament in March of that year, the result of a 'sting' by the UK newspaper, *The Sunday Times*. Undercover journalists recorded four MEPs admitting that they would accept bribes in exchange for proposing amendments to draft EU legislation (*The Sunday Times*, 20 March 2011). This provoked the President of the Parliament, Jerzy Buzek, to set up a Working Group of MEPs 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 the Code. The new ethics system came into force on 1 January 2012 (European Parliament, 2011: 23).

Since initiating its reform in late 1999 the Commission has twice pushed for joint inter-institutional ethics system with the Parliament (and ideally also with the Council). On both occasions the Parliament (and Council) have rejected the Commission's overtures. The Parliament, by contrast, has engaged in decision-

³ See the website of the Campaign for Parliamentary Reform at www.ep-reform.eu/en/the_pledge.php

making of a rather different kind. This rests on the Parliament's scrutiny role vis-à-vis the executive. It involves a continuation of the role it has played effectively since the 1990s, in the run-up to the Commission's resignation, when it put pressure on the Commission to respond to accusations of ethical misconduct. The Parliament continues to find new ways to shape the Commission's ethics framework while rejecting participation in joint initiatives.

For officials, the situation is rather different. As mentioned earlier, officials working in both the Commission and the Parliament are employed under the Staff Regulations. This means that many of the formal ethics rules that apply to officials in the Commission also apply to officials in the Parliament. When the Staff Regulations were revised in 2002 and 2003 ethical issues did not constitute a particularly contentious element in the negotiations. Other more difficult issues dominated discussions in the planning stage in the inter-institutional Staff Regulations Committee. At subsequent stages of the legislative process the Parliament had little influence since a revision of the Staff Regulations was subject to the consultation procedure and as such the Parliament was able only to present an Opinion on the Commission's proposal.

The idea of setting up an inter-institutional committee, provisionally labelled the Advisory Group on Standards in Public Life after its UK equivalent was first raised by the Committee of Independent Experts (CIE) in highly influential Second Report published in September 1999 (Committee of Independent Experts, 1999: para 7.7.1--5, Recommendation 7.16.9; see also *European Voice*, 29 July 1999). The reference in the Report is rather vague with little detail on the form the Committee should take other than that it should be a 'joint' committee incorporating not only the Commission (Van Gerven, 2000). As a consequence a reference to an Advisory Group appeared in the Commission's 2000 White Paper on the Reform (European Commission, 2000) and this led the Commission to draft a proposal under the inter-institutional agreement procedure later that same year. This was transmitted to the Council in late 2000 and to the Parliament in early 2001. Although the Commission was keen to promote inter-institutional cooperation on this matter, early attempts to negotiate suggested that pursuing the initiative at this time would be pointless, and it was quickly set aside (Bounds, 2005).

The Commission's proposal remained on the table to be reactivated several years later in 2005 in the context of the European Transparency Initiative (ETI). The catalyst for this was the media storm over accusations that President Barroso had taken a holiday on the yacht of an old friend who had been in receipt of substantial EU funds. Responding to this criticism 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 as he alone was responsible for his own ethical conduct under the Code of Commissioners (*European Voice*, 4 May 2005). He stated that this oversight should take the form of an inter-institutional initiative. Referring to the 2000 proposal, he argued that he was ready and willing to negotiate with Parliament on this issue (Bounds, 2005).

This was in line with the spirit of the ETI which planned to develop ethical standards in the EU institutions. The Commission used this framework at the time to channel the argument in favour of an inter-institutional approach to ethics. Kallas even made

references to the creation of a ‘European ethical space’ though what this meant in practice was never clarified (Cini, 2007: 180--96). A Commission Inter-Departmental Working Group (European Commission, 2005) tasked with drafting a Communication on ethics linked the inter-institutional initiative to a revised version of Code of Conduct for Commissioners. Indeed the College’s view was that future revisions of the Code ‘...would only be useful if it ...[was] part of an inter-institutional debate on an inter-institutional Advisory Group’ (European Commission, 2005b: 7).

From the Parliament’s perspective inter-institutional decision-making on ethics continued to be a matter of keeping the Commission in check rather than agreeing to work cooperatively with the Commission to create some kind of inter-institutional regime. As the issue was seen as political rather than administrative or technical, an inter-institutional agreement was not deemed an appropriate instrument to use to this end. This is illustrated in the way in which the Parliament responded to Commission requests to link the revision of the Commissioners’ Code to an inter-institutional agenda. First of all the Parliament had already made sure that the revised Inter-institutional Framework Agreement signed between the two institutions in 2010 included a reference to the Parliament’s right to scrutinise the Code (European Parliament and European Commission, 2010); and second the Parliament asked that a confidential version of the Code – not yet in the public domain – was given to their Conference of Presidents for consideration behind closed doors prior to its formal approval by the College of Commissioners.

The Commission’s enthusiasm for an inter-institutional response may be viewed rather cynically as a short-term delaying tactic or as a way of deflecting attention towards the lack of an ethics system in the Parliament. The inter-institutional approach might also allow the Commission to pre-empt future parliamentary criticism over ethical issues if it is closely locked into a system with the Parliament. Not surprisingly the Parliament resisted any loss of autonomy on ethics-related issues. To agree to the Commission’s request for an inter-institutional system would have allowed the Commission to set or at least shape its agenda, reversing the traditional scrutiny relationship of Commission and Parliament – and this was unacceptable to the Parliament. As such, no inter-institutional agreement was possible in this case.

Shared Values and Mutual Interests as the Conditions of Successful Inter-Institutional Decision-Making

In the two cases discussed decision-making on inter-institutional agreements was shaped by both shared values and mutual interests. This section spells out how, in each of the two cases, shared values and mutual interests – or the lack of them – contributed to the success or failure of inter-institutional decision-making. Although the two cases are similar in that they both dealt with public ethics issues, namely the regulation of the conduct of actors involved in EU decision-making, and both involved the Commission and the Parliament over the course of the first decade of the 2000s, the detail of the cases differed substantially. In the first case the decision-making process ran smoothly and an Agreement was ultimately signed.

The first case charted the evolution of lobby regulation in the EU institutions. The case shows how the agreement to seek a joint approach to the setting up of a Transparency Register was based on values shared between the two institutions:

namely a recognition that in order to be legitimate modern public organisations should have a rigorous system of lobby regulation; and a belief that this regulation should be efficient and simply to use from the perspective of both the institutions operating it and the stakeholders affected by it. The joint system proposed provided a concrete way to operationalize these values. The two institutions could see quite easily the benefits to be had from cooperating on this issue. Lobbyists would still be able to contribute fully to EU decision-making, but they would be less able to abuse their position in that process. This was important given that both institutions were heavily dependent on the advice and expertise of interest organisations. Agreement would demonstrate to the outside world that both institutions saw both the pitfalls and the advantaged of engagement with outside interests, and the necessity of introducing greater transparency into the EU decision-making process. These are not only mutual benefits, they are shared benefits and they relate directly to the shared values already discussed. Indeed it is impossible to divorce the normative values from the perceived interests of the two institutions. The benefits that come from cooperation reflect the ideas that the two institutions hold about lobby reform and their roles and obligations vis-à-vis interest groups. Although the two institutions began in the 1990s with rather differing stances on how interest organisations should be regulated, the convergence of such ideas made cooperation possible.

In the second case, with the exception of rules for officials which are by their very nature inter-institutional, the experience of the two institutions was very different, and attempts to create a joint inter-institutional ethics system were unsuccessful. The values of the two institutions were differed from the point at which an inter-institutional agreement was first posited; and five years later when the issue reappeared on the agenda, little had changed. It is perhaps ironic that it was pressure from the Parliament that shunted the Commission into its new era of ethics reform at the end of the 1990s and throughout the 2000s it was pressure from the Parliament that effected change when enthusiasm for yet another revision of the Commissioner's Code of Conduct waned. But the Parliament's position was very different from that of the Commission. There was relatively little external pressure on it, even from NGOs whose focus of attention remained primarily with the Commission. There was a continued adherence to a view of parliamentarianism which saw the Parliament answerable only to its electorate and determined to maintain its autonomous position. Even the new system adopted in 2011 rejected the idea of an independent committee to oversee the conduct of MEPs.

As a consequence of the values held there were no mutual interests in the setting up of a common ethics system. The Commission had everything to gain and could see the advantages to itself in such an approach in that it would make it more difficult for the Parliament to criticise it. As a consequence, the Parliament could only lose from any joint agreement. For the Parliament, then, this was a zero-sum game in which a common ethics system would have undermined its ability to scrutinise the Commission on ethics-related issues.

Thus, what we see from these two cases is that in the first case the winning combination of shared values and mutual interests creates a relatively easy inter-institutional decision-making process and a successful agreement at the end of it. By contrast in the second case, the absence of shared values and a lack of mutual interests make agreement impossible. The first case points to the perfect conditions under

which inter-institutional decision-making might result in an agreement. The second case reflects a worst case scenario.

Conclusion

This paper began by asking why it might be possible to negotiate successfully IIAs on some issues but not on others. To put it differently we might ask what makes for a successful decision-making process culminating in an inter-institutional agreement. To answer this question the paper examined two cases of inter-institutional decision-making. The two cases were similar in terms of their general characteristics; yet their outcomes were very different. In the first case on lobby regulation inter-institutional decision-making led to an Inter-Institutional Agreement. In the second case, though an IIA was proposed, no agreement was possible. Drawing from the literature on inter-institutional decision-making the paper developed a framework which address a more theoretical question, namely, how ideas and interests matter in decision-making on IIAs. More specifically, the theoretical framework focused attention on the interplay of shared values and mutual interests in shaping the decision-making outcome of the two cases. The research showed how in the first case shared values and mutual interest led to agreement, whilst in the second case a lack of shared values, and an absence of mutual interests prevented agreement. It also showed that in both cases, shared values and mutual interests seemed inextricably linked together to such an extent that it was difficult to see the boundary between them.

This finding contributes to the literature on inter-institutional decision-making on IIAs in a number of ways. It demonstrates the usefulness of framing research on IIAs theoretically, providing an antidote to the dominant legal approach that remains dominant in the literature. In addition, it focuses attention on the role of ideas and values in explaining inter-institutional decision-making. Finally, in a literature in which a debate about the European Parliament's role has figured strongly, it shows that focusing on only one side of the inter-institutional equation is likely to present a rather skewed set of conclusions about the functions and effects of IIAs. Focusing on ideas and interest, and on all parties to the agreement, is likely to be the way forward for such research.

References

- Brandsma, Gijs Jan (2012) "Hidden Parliamentary Power: Informal Information-Sharing between EU Institutions from Agenda-Setting to Execution", Paper presented at the UACES Conference, Passau, Germany, 3--5 September.
- Chabanet, Didier (2007). "The Regulation of Interest Groups in the European Union", Discussion Paper presented at the Connex Thematic Conference on Accountability, Florence, 29--30 June 2007.
- Christiansen, Thomas (2001), "Intra-institutional Politics and Inter-institutional Relations in the EU: Towards Coherent Governance?" *Journal of European Public Policy*, 8:5, 747--69.
- Christiansen, Thomas and Christine Reh (2009). *Constitutionalizing the European Union*. Basingstoke: Palgrave.
- Chrysochoou, Dimitris N. (2001). *Theorizing European Integration*. London: Sage.
- Cini, Michelle (2007). *From Integration to Integrity: Administrative Ethics and Reform in the European Commission*. Manchester: Manchester University Press.

Cini, Michelle (2010). “Éthique et Réforme Administrative de la Commission Européenne”, *Revue Française d’Administration Européenne* , 133, 45--60.

Cini, Michelle (2013). “Institutional Change and Ethics Management in the EU College of Commissioners”, *British Journal of Politics and International Relations* , DOI: 10.1111/1467-856X.12008.

Committee of Independent Experts [CIE] (1999). *Second Report of the Committee of Independent Experts*, September.

Driessen, Bart. (2008). “Interinstitutional Conventions and Institutional Balance”, *European Law Review*, 33:4, 550--562.

ECPRD [European Centre for Parliamentary Research and Documentation] (2001). “Parliamentary Codes of Conduct in Europe: An Overview” , Strasbourg: European Parliament), www.ecprd.org/Doc/public/OTH/CodeofConduct.pdf, 2001/11/00.

Eiselt, Isabelle, Johannes Pollak and Peter Slominski (2007). “Codifying Temporary Stability?: the Role of Interinstitutional Agreements in Budgetary Politics”, *European Law Journal* , 13:1, 75--91.

Eiselt, Isabelle and Peter Slominski (2006). “Sub-constitutional Engineering: Negotiations, Content and Legal Value of Interinstitutional Agreements in the EU”, *European Law Journal* , 12:2, 209--225.

European Commission (1992). *Communication on ‘An Open and Structured Dialogue between the Commission and Special Interest Groups*. Official Journal 93/C 63/02.

European Commission (1999). *For a European Political and Administrative Culture: Three Codes of Conduct*, Brussels, March.

European Commission (2000). *Reforming the Commission: A White Paper, Part II Action Plan*, COM (2000) 200 final/2, Brussels, 1 March.

European Commission (2003). *Commission Decision setting up the ad hoc Ethical Committee foreseen by the Code of Conduct of Commissioners*.

European Commission (2004). *Code of Conduct for Commissioners*, SEC(2004) 1487/2

European Commission (2005). *Commission Staff Working Document Report of the Inter-Departmental Working Group on a Possible “European Transparency Initiative”*, SEC(2005) 1300 final.

European Commission (2007). *Communication from the Commission of 21 March 2007 – Follow-up to the Green Paper ‘European Transparency Initiative’* COM (2007) 127 final

European Commission (2009a). *Conference of Presidents Minutes of the Ordinary Meeting of 15 October 2009*, PV CPG 15.10.2009, PE7/CPG/PV 2009--04, PE 429.03/CPG.

European Commission (2009b). *The European Transparency Initiative: the Register of Interest Representatives One Year After*, Communication from the Commission to the European Parliament and the Council, COM (2009) 612, 29 October.

European Commission (2011). *Code of Conduct for Commissioners*, SEC(2011) 2904.

European Parliament (1991). *Galle Report*, PE 2000/405, 16 March.

European Parliament (1996). *Report on the amendment of Annex I of the Rules of Procedure concerning transparency and Members' financial interests (Nordmann Report)*, European Parliament, 30 May, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A4-1996-0177&language=EN>

European Parliament (2005). Members' Statute. European Parliament resolution on the amendment of the decision of 4 June 2003 on the adoption of the Statute for Members of the European Parliament, P6_TA(2005)0245 (2005/2124(INI))/

European Parliament (2008a). Development of the Framework for the activities of interest representatives (lobbyists) in the European institutions, Procedure File, INI/2007/2115.

European Parliament (2008b). Framework for the activities of lobbyists in the EU institutions, Text adopted by the Parliament, P6_TA-PROV(2008)0197, A6--0105/2008.

European Parliament (2008c). Report on the Development of the Framework for the Activities of Interest Representatives (Lobbyists) in the European Institutions, Committee on Constitutional Affairs (Rapporteur: Alexander Stubb) A6-0105--2008, 2 April.

European Parliament (2009). "Building Parliament: 50 Years of European Parliament History 1958-2008", Office of Official Publications: Luxembourg.

European Parliament (2011). "Parliamentary Ethics: A Question of Trust", European Parliament/OPPD: Brussels

European Parliament (2012). Law of Administrative Procedure of the European Union. European Added Value Assessment, PE 494.457, EAVA 004/2012, October.

European Parliament (2013). Rules of Procedure of the Parliament, 7th parliamentary term, <http://www.europarl.europa.eu/sides/getLastRules.do?reference=ANN-09&language=EN>

European Parliament and European Commission (2010). Framework Agreement on Relations between the European Parliament and the European Commission, OJ L304/47, 20 November.

European Parliament and European Commission (2011). Agreement on the Establishment of a Transparency Register for Organisations and Self-Employed Individuals Engaged in EU Policy-making and Policy Implementation, OJ L191/29 of 22 July 2011.

European Union (2004). Staff Regulations of Officials of the European Communities, http://ec.europa.eu/civil_service/docs/toe100_en.pdf

Greenwood, Justin and Joanna Dreger (2013). "The Transparency Register: A European Vanguard of Strong Lobby Regulation?", *Interest Groups and Advocacy* , 2:2, 139--62.

Hummer, Waldemar (2007). "From 'Interinstitutional Agreements' to 'Interinstitutional Agencies/Offices'?", *European Law Journal* , 13:1, 47--74.

Jessop, Bob. (2003). "Governance and Meta-Governance: On Reflexivity, Requisite Variety and Requisite Irony" in Henrik P. Bang ed. *Governance as Social and Political Communication* . Manchester: Manchester University Press.

Johnson, Desmond (2012). "When Agreements lead to Conflict: Interinstitutional Agreements and the Institutional Balance. A Coherent Relationship?" Paper presented at the UACES Conference, Passau, Germany, 3-5 September.

Judge, David and David Earnshaw (2008). *The European Parliament*, 2nd edn . Basingstoke: Palgrave.

Kallas, Siim (2005). "The Need for a European Transparency Initiative", Speech given at Nottingham Business School, University of Nottingham, SPEECH/05/130, 3 March.

Kallas, Siim (2008). "The European Transparency Initiative: A Great Opportunity for Lobbyists", Speech to the America European Community Association, SPEECH/2008/216, Brussels, 25 April.

Kietz, Daniela and Andreas Maurer, (2007) “The European Parliament in Treaty Reform: Predefining IGCs through Interinstitutional Agreements”, *European Law Review* , 13:1, 20--46.

Klabbers, Jan (1994). ‘Informal Instruments Before the European Court of Justice’, *Common Market Law Review* , 31:5, 997--1004.

Kooiman, Jan and Svein Jentoft (2009). “Meta-governance: Values, Norms and Principles, and the Making of Hard Choices”, *Public Administration* , 87:4, 818--36.

Lelieveldt, Herman and Sebastian Princen (2011). *The Politics of the European Union* . Cambridge: Cambridge University Press.

Macmullen, Andrew (1999). “Political Responsibility for the Administration of Europe: the Commission’s Resignation March 1999”, *Parliamentary Affairs* , 52:5, 202--210.

Maurer, Andreas, Daniela Kietz, and Christian Völkel (2005). *Interinstitutional Agreements in the CFSP: Parliamentarisation through the Backdoor*, EIF Working Paper Series, Working Paper, No 5, Institute for European Integration Research, Vienna.

Monar, Jörg (1994). “Interinstitutional Agreements: the Phenomenon and its New Dynamics after Maastricht”, *Common Market Law Review* , 31:4, 693--719

Năstase, Andreea (2012). “Managing Ethics in the European Commission Services: From Rules to Values”, *Public Management Review*, DOI: 10.1080/14719037.2012.664016.

Puntscher-Riekmann, Sonja (2007). “The Cocoon of Power: Democratic Implications of Interinstitutional Agreements”, *European Law Journal* , 13:1, 4--19.

SEAP [Society of European Affairs Professionals] (2000). *Code of Conduct*, Brussels.

Shepherd, Mark. P. (1999). “The European Parliament: Getting the House in Order” in Philip Norton ed., *Parliaments and Pressure Groups in Western Europe* . London: Routledge.

Slominski, Peter (2007). “The Fabric of Governance: Interinstitutional Agreements in the EU”, *European Law Review* , 13:1, 2—3.

Snyder, Francis (1996). “Interinstitutional Agreements: Forms and Constitutional Limitations” in G. Winter ed., *Sources and Categories of European Union Law* . Berlin: Nomos Verlag.

Van der Laan, Lousewies (2003). *The Case for a Stronger European Parliament* . London: Centre for European Reform.

Van Gerven, Walter (2000) “Ethical and Political Responsibility of EU Commissioners”, *Common Market Law Review* , 37:1, 1--5.

Versluis, Esther, Mendeltje van Keulen, and Paul Stephenson (2011). *Analyzing the European Policy Process* . Basingstoke: Palgrave.

Wallis, Diana (2011). “EU Transparency and Lobbying”, Speech at University College London Public Policy, 1 November.

Yin, Robert. K. (2009). *Case Study Research: Design and Methods*, 4th edn . London: Sage.