

UACES 44th Annual Conference

Cork, 1-3 September 2014

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 Regulation of Ethics in the European Parliament

Michelle Cini

School of Sociology, Politics and International Studies (SPAIS),

University of Bristol, UK

michelle.cini@bristol.ac.uk

Paper prepared for the UACES 44th Annual Conference, Cork, Ireland, 1-3 September 2014.

Introduction¹

Trust in public institutions and actors is in decline; yet there is no consensus on how to respond to this trend. Researchers and commentators have proposed various strategies, some of which address the conduct of public actors. The latter speaks to the relevance of procedural or ‘throughput’ legitimacy (Schmidt 2013) in explaining low levels of public trust. The assumption is that it matters not only what public actors do, but *how* they do it; and that the standards expected of these public actors are likely to be higher than for ordinary citizens.

Behaviour that breaches those standards betrays the trust of the people they represent. Such behaviour may subvert the public interest and violate democratic norms. It may divert attention away from more pressing matters of public policy. And, of course, it may undermine citizens’ confidence in the integrity of democratic institutions (Allen 2010: 106).

One constructive way to address these issues is through the introduction of rules that encourage high standards of ethical conduct. Even if it is unclear whether these ethics systems have any direct impact on ethical conduct they may help to improve public perceptions. While the causal link between ethics and trust is often assumed rather than proven, the trust argument has become an important justification for the introduction of standards governing conduct in public life.

A substantial literature has emerged on the subject since the mid-1970s. Most of it deals with US cases, and most of this is on public administration (see Menzel 2005: 154). A solid body of research now also exists on Australian, Canadian and UK public ethics (e.g. Preston 2001; Gay 2004; Mancuso 1995; Allen 2008, 2010) and more recently on (non-UK) European cases (Huberts *et al* 2008). At the supranational level research on the European Union has focused exclusively on the European Commission (Cini 2004, 2007, 2013; Nastase 2012). There is so far no academic research on public ethics in the European Parliament.

The European Parliament (EP) is among a number of legislatures in Europe which have recently established new ethics systems. The EP reform was prompted by a newspaper ‘sting’ in March 2011 which implicated a small number of Members of the European Parliament (MEPs) in what became known as the ‘cash-for-amendments’ or ‘cash-for-laws’ scandal. The

¹ This paper was prepared between January-June 2014 during which the author held the Pierre Keller Visiting Professorship at the Weatherhead Center for International Affairs (WCfIA), Harvard University, and while teaching at the Harvard Kennedy School. The author would like to thank the staff and faculty of the Weatherhead Center for their financial and logistical support during this visit.

new system that was proposed and subsequently introduced in the aftermath of the scandal included a code of conduct and an ethics advisory committee. While this went much further than anything proposed in the past, it was also criticised for not going far enough.

This paper reviews the European Parliament's ethics system. It does so by drawing on existing research on parliamentary (or legislative) ethics, establishing a framework which draws on theoretical debates on institutional change. For the empirical case, the paper rests on the secondary literature on parliamentary ethics and ethics reform, as well as on official documents, speeches, NGO reports and reputable media sources.² The research asks why parliaments have been reluctant to introduce ethics reforms. This reluctance is puzzling given the aforementioned decline in public trust. To address this puzzle the paper considers both the substance of the new EP ethics system and the process by which it was introduced. Its primary objective is to explain the reform outcome approved by the Parliament at the end 2011. The paper argues that to understand the reform it is as important to identify the factors that constrain maximalist reform outcomes as it is to focus on drivers of change

The paper begins by showing how the theoretical debate on institutional change points to a framework within which to explain (ethics) reform outcomes. A brief review of the legislative ethics literature fills out some of the detail of this framework insofar as it focuses on parliament preference for self-regulation and party political contestation and negotiation. The second section summarises the content of the EP ethics system as agreed at the end 2011 and makes sense of the criticisms directed at it. The third section charts the process by which the reform was introduced, with the aim of identifying the factors that shaped the reform outcome. The penultimate section discusses the ethics reform as a product of these factors. The conclusion sums up the argument and draws out some more general implications for parliamentary ethics and institutional change.

Institutional Change and Parliamentary Ethics Reform

Research on institutional change provides a framework for explaining (ethics) reform processes and outcomes. Conceptualising reform in this way makes sense if we understand reform outcomes as a system (that is, as an institution). Institutional change is often said to be driven by exogenous factors. These might be shocks or crises (Pollack 1996; Pierson 2004), socio-economic or political changes, new ideas, institutional isomorphism or rational

² The author plans to conduct interviews for this project in mid-September 2014. Later iterations of this paper will reflect these interview data.

anticipated effects (Gorges 2001: 138-140). External effects on institutions need not only be driven by depersonalised factors, however, but can also involve an explicit role for agency (see Bovens 2007: 107; DiMaggio 1988; Rao et al 2000: 240; Levy and Scully 2007; Schmidt 2010: 15-17). Colyvas and Powell (2006: 343), for example, identify legislatures and social movements as potential drivers of institutional change.

While the primary focus in the institutionalist literature has been on external drivers of change, researchers have also explained change endogenously, as a product of institutional entrepreneurship or leadership for example (see Greif 2004; Rittberger 2003: 2, 14-15). Colyvas and Powell's model of endogenously-driven institutional change argues that change must be derived from an understanding of the process by which institutions become legitimated and 'taken-for-granted' (Colyvas and Powell 2006: 308-12). This happens over time through the embedding of organisational routines and practices, as participants learn a new 'institutional vocabulary' and gain experience and understanding in dealing with new ideas, practices and processes, as individual cases are dealt with and routines are developed, and ultimately as a 'symbolic universe' (Berger and Luckman 1967: 94-5) is created. Practice and replication are crucial mechanisms which lead to resilience and sense-making (Colyvas and Powell 2006: 312).

Yet there is nothing inevitable about this process as there may be various barriers to institutional change. While these barriers may not prevent change, but they can limit and shape it. From this perspective reform outcomes becomes the product of the interplay of 'reform impetus' and 'countervailing forces'.

Parliamentary ethics systems have lagged behind other systems of public and professional ethics even if there has been substantial variation cross-nationally. It is no exaggeration to state that politicians 'are notoriously loath to enact ethics laws that constrain their own behavior' (Rosenson 2003: 42-43); and rarely will politicians enact such laws other than under intense pressure (Allen 2010: 120). Where ethics rules have been introduced, these have been the consequence of external pressures (mainly scandals). Why might politicians be so reluctant to introduce reforms that might improve their standing with the general public? We can find some hints in the literature on individual cases (see in particular Allen 2010). One explanation is that it is linked to parliamentary preference for self-regulation. The UK House of Commons, for example, exercises 'exclusive cognizance' over its own procedures based on the constitutional principle of parliamentary privilege (Allen 2010: 108; Allen 2008:

299; Leopold 2004: 340). UK Members of Parliaments (so-called ‘*honourable* members’) are also expected to be responsible for their own conduct, which means that they are traditionally subject only to minimal oversight. Moreover, parliaments have had to defend their rights against the encroachment of executives, and also at times against judicial interventions (Leopold 2004: 341). As such, where rules are felt to be necessary, parliaments and the politicians within them have argued for self-regulation so as to resist interference from outside bodies.

While the parliamentary preference for self-regulation offers one set of explanations, ethics reform is also subject to the vagaries of the political contestation and bargaining. Process issues tend only to become a priority for parliaments under certain circumstances – normally where there is a scandal. Ethics often becomes politicised with party politics influencing the outcome of reform (Gay and Rush 2004: 1). Allen (2010: 120) notes how political parties are often responsible for meting out punishment to MPs and also for pushing for reform. In the latter case, ethics reform at best becomes subject to inter-party bargaining and compromise; and at worst is tainted by inter-party conflict and political competition (Allen 2010: 117). It is no surprise therefore that researchers have found that ethics reforms tend to be proposed by weak governments.

The Ethics System and the Critique

The European Parliament’s new ethics framework comprises a Code of Conduct with a revamped Declaration of Financial Interests³ and an Advisory Committee. The Code deals expressly with conflicts of interest.⁴ It states that MEPs should act in the public interest when performing their roles; that they should not act in the interest of any other actor, should not gain financial benefit or any other reward in exchange for influence, and should ‘seek to avoid any situation which might imply bribery or corruption’ (European Parliament 2012a: art. 2(b)). The Code sets out core ethical principles: disinterest, integrity, openness, diligence, honesty, accountability, and respect for the European Parliament’s reputation (European Parliament 2012; art. 2(1)); and instructs MEPs to (a) take steps to address any conflict of interest; (b) report any conflict to the EP President; or (c) ask the Advisory Committee for advice. MEPs are expected to acknowledge any conflict of interest before speaking or voting

³ This is now annexed to the Rules of Procedure (European Parliament 2014), replacing what was formerly Annex 1 of the Rules (European Parliament 2009)

⁴ Article 3 defines a conflict of interest as ‘where a Member of the European Parliament has a personal interest that could improperly influence the performance of his or her duties as a Member’.

in the Parliament, and when they are proposed as a rapporteur, though they only need to do this where the conflict of interest is not already written into their Declaration of Financial Interests.⁵

The Code covers the completion of a Declaration of Financial Interests. This requires MEPs to fill out a form and list, amongst other things, their prior occupation, their secondary employment and their investment interests. The form is then submitted to the President early in the parliamentary term and any change of circumstance thereafter must be reported within 30 days. The Code also limits the acceptance of gifts on the part of MEPs to only those with a value of less than EUR150. These are subsequently identified a Register (European Parliament 2012: art. 5). The Code includes rules on the reimbursement of travel, accommodation and subsistence and on the direct payment of expenses by third parties; and it also prevents former MEPs from using EP facilities for lobbying purposes.

An Advisory Committee was set up to support the Code. It is composed of five MEPs appointed by the EP President from amongst the Bureau⁶ and the Constitutional and Legal Affairs Committees. Political experience and balance is taken into account as part of the appointment process and each member of the Committee holds the chair in rotation for a period of six months. Reserve members are appointed from the political groups not represented on the Committee, to cover if anyone from the Committee is accused of breaching the Code. The Advisory Committee meets roughly every month and offers guidance to MEPs on request within 30 days. The President can also ask for guidance on a possible breach of the Code.

Breaches of the Code are notified to the Advisory Committee which may hear from the MEP concerned. The Committee then makes a recommendation to the President. The EP President hears from the Member concerned and then adopts a reasoned decision laying down, if necessary, a penalty. Penalties range from ‘a simple reprimand, to a fine, to a proposal to deprive the Member of one or more official roles’ (European Parliament [OPPD] 2011: 25-26). This decision is subsequently notified to the Member and announced in a plenary session of Parliament, appearing on the EP website for the remainder of the parliamentary term.

The Parliament was praised for the speed with which it set up this new ethics system. As a member of the Advisory Committee commented in a newspaper article in 2013: ‘The EU is

⁵ Note that the Parliament’s ethics webpage also includes ‘right to access documents’ Regulation 1049/2001.

⁶ The Bureau decides on administrative and staff matters in the Parliament.

often blamed (sometimes rightly) for taking far too long to go from idea to implementation. On this occasion, that charge cannot be levelled at the European Parliament' (Regner 2013). However, this and the recognition that the ethics system was a step-change for the European Parliament has not stopped NGOs and even the Advisory Committee itself from identifying defects in the system. Criticisms point to omissions, to a lack of clarity, and to other design flaws. Later, critics would also identify problems associated with the practical implementation and enforcement of the regime (though these are beyond the scope of this paper).

First, critics point to omissions in the design of the ethics system. The first omission is the absence of post-employment restrictions, the so-called 'revolving doors' issue, was highlighted by the critical NGO umbrella group, ALTER-EU, who called for a two-year cooling off period after MEPs leave the Parliament, before they are able to take on a lobbying position linked to their previous role (de Clerck 2011a). A second issue is whether MEPs should be allowed to take second jobs (Brand 2011a; Roovers 2012). A third is the absence of any independent element on the Advisory Committee (FoEE et al 2013: 26). The argument here is that self-regulation is 'not an adequate response to the risks of overlap between the public and private interests of officials acting and legislating on behalf of the public interest' (FoEE et al 2013: 7). A fourth is the inadequacy of the sanctions available to those in breach of the Code, namely that there ought to be an exclusion period for MEPs, and a suspension of their right to vote.

Second, critics argue that the ethics system does not provide enough assistance to MEPs on what really constitutes a conflict of interest (FoEE et al 2013: 3, 8, 25-26). This is in spite of the fact that the Code itself was supplemented by Implementing Measures drafted in April 2013 (European Parliament 2013a) and a Users' Guide produced in July that same year (European Parliament 2013b). This allows too much discretion within the system, leaving it up to Members to interpret the rules themselves as they see fit. There has been some suggestion that the Advisory Committee's remit should be broadened to include advice on how to complete the Declaration of Financial Interests (FoEE *et al* 2013: 26) for example. A related problem is that it is unclear who would be responsible for judging a case involving the EP President.

Third, there are a series of criticisms which point to a number of disparate design faults. The most damning criticisms relate to the Declarations. These can be submitted in handwritten

form in any language. This can make them illegible (FoEE 2012), leading to the proposal that Declarations should be completed online and should form part of a searchable database that allows the data contained within the form to be aggregated (FoEE *et al* 2013: 26; Roovers 2012). It is also argued that there should be some kind of automatic ‘flagging system’ of updates made by MEPs (FoEE *et al* 2013: 4). In sum, the system places a great deal of faith in transparency as a cure for ethical misconduct, rather than a more proactive regulatory approach (de Clerck 2011a). ‘If the code is to be meaningful, it should not only be used to highlight conflicts of interest, but also to address them’ (FoEE *et al* 2013: 8). From this perspective the enforcement of the code is ‘insufficient’ (FoEE *et al* 2013: 25). There is no system of supervision over Declarations. MEPs fill out the forms (or do so partially) and no one checks them to ensure their accuracy or follows up on anomalies. This gives the impression that the ethics rules themselves are not taken particularly seriously (FOEE *et al* 2013: 3) and amount to little more than a ‘paper exercise’ (Regner 2013). A solution could be for the Advisory Committee to undertake random checks (FoEE *et al* 2013: 26).

In establishing any ethics system difficult decisions as to what should be included and omitted need to be taken. There can be no assumption that a maximalist line is necessarily the best approach. Yet the danger in introducing a partial system is that it could lack the credibility needed to have the effect that those introducing it desired (Mittelmaier 2011). It is interesting therefore to examine why it was that the outcome of the ethics reform in the European Parliament took the form it did. Why did the reform fail to include some of the issues raised by critics of the new system? This question is addressed in the sections that follow.

The Reform of the Parliament’s Ethics System

In mid-2010 journalists working for a British newspaper had set up a sting operation (*The Sunday Times*, 21 March 2011).⁷ The two journalists, Claire Newell and Jonathan Calvert, claimed to work for a lobbying firm called Taylor Jones Public Affairs, representing private clients who wanted to water down rules on banking regulation⁸ (Mittermaier 2011). Of the MEPs contacted, three were filmed accepting payment of up to EUR 100,000 per year in exchange for tabling amendments to the legislation. The scandal was widely publicised and

⁷ See The Sunday Times video of the meeting with Strasser at <http://www.youtube.com/watch?v=w3G0HCb2jxU> (accessed 22 May 2014).

⁸⁸ They also asked for amendments on the rules on handling electronic scrap, but it was too late for that to be taken forward (Shields, 2013).

this provoked the leadership of the European Parliament sitting in the Parliament's Bureau to act swiftly to investigate the MEPs and to consider reforms to the ethics system of the EP (see Mittelmaier 2011). Strong statements were made by leading individuals within the Parliament. For example, Martin Schultz labelled what the three MEPs did 'a disgrace', and called on them all to resign (European Parliament 2011a).

Of the accused MEPs, Ernst Strasser, a centre-right Austrian MP, a former Minister of the Interior, down from the Parliament fairly soon after the allegations were made (FoEE *et al* 2013: 4). Strasser claimed that he had resigned to save his party further embarrassment. He also argued that he knew that the lobbyists were fake, but he was trying to find out more about the people involved (FoEE *et al* 2013: 4).⁹ Later in his legal defence he claimed he thought they were US Secret Service.¹⁰ Strasser's resignation had been demanded by his national party, the Austrian People's Party (European Parliament 2011a- comment by Joseph Daul). OLAF's findings on Strasser were passed to the Austrian authorities who brought charges. Strasser later received a four-year prison sentence for influencing legislation in exchange for money (Regner 2013; FoEE *et al* 2013: 4). Critical NGOs noted, however, that he continued to receive his transitional allowance and kept his access badge allowing him entry to the Parliament's buildings (FoEE *et al* 2013: 4).

Zoran Thaler, a centre-left Slovenian MEP, a former Minister of European Affairs, also left the Parliament, but Adrian Severin continued to protest his innocence and although he was suspended from his political group and had his parliamentary immunity lifted on the request of the Romanian authorities, he remained an MEP for the rest of the 2009-14 parliamentary term (Brand 2011a). No sanctions were placed on him by the EP (Cingotti 2012).¹¹ Severin's defence was that the absence of clear rules preventing MEPs from taking a second job meant that there was no restriction on his payment for work on behalf of a lobby group.

A first response to the scandal within the Parliament was the initiation of an internal investigation into the allegations by the EP President, Jerzy Buzek. The MEPs' offices were sealed to protect evidence and Buzek made contact with relevant domestic anti-corruption agencies. The EU's anti-corruption body, OLAF, announced that it too would investigate the case. Initially, this was resisted by the Buzek on the advice of the Parliament's legal service,

⁹ Original Austrian source in German is Der Standard.

¹⁰ This led the Judge in the case, Georg Olschak, to say that his defence was one the most outlandish things he had hear in his 20 year career (reported by Shields 2013).

¹¹ Separate charges were brought by the Romanian authorities against two of Severin's assistants for a fraud of EUR400 000 for established fictitious services from 'shell' companies (Cingotti 2012).

and a team of four OLAF investigators were prevented from carrying out an initial inspection of the MEPs' offices on 22 March (Brand 2011c and d). Buzek argued that MEPs enjoy full immunity under parliamentary rules (Brand 2011d; European Parliament/OPPD 2011: 25) and that OLAF did not have the right to investigate unless EU funds were implicated (Nielsen 2012). This provoked an outcry from Green and Far Left MEPs and eventually led Buzek to concede that OLAF could investigate as long as their investigation involved only a breach of administrative rules rather than an investigation that could lead to criminal charges (Brand 2011d). OLAF was therefore allowed access to evidence that had been forwarded to the Parliament, including digital data supplied by *The Sunday Times* (Brand 2011d; European Parliament *et al* 1999).

As well as leading the investigation, Buzek stressed that Parliament had to learn from the scandal and show 'zero tolerance' to corruption (FoEE 2013: 5; see also European Parliament 2011a – comment by Diana Wallis). This meant strengthening the Parliament's ethics framework (Brand 2011a). The issue was discussed by the Bureau on 4 April (Brand 2011c) and possible reforms were identified. The aim at the time was to get a reform accepted by end July (Brand 2011e). Even at this early stage reference was made to the need to tighten up the disclosure rules and establish an ethics committee (Brand 2011e). A few days later the Conference of Presidents (composed of Political Group leaders) gave their blessing to the establishment of a cross-party Bureau working group on this issue to be chaired by Buzek himself.

The working group met weekly over ten weeks for 2-3 hours from April 2011 to the end of June (European Parliament 2011e; Brand 2011f; BBC 2011a). Each meeting was preceded by agenda-setting meeting of the EP President and the Vice-Chairs, Diana Wallis and Stavros Lambrinidis (European Parliament 2011e). The group was composed of ten MEPs who worked together on a Code of Conduct, an ethics committee and on the implementation of the Transparency Register. The latter had already been agreed, but there was some discussion in the group as to whether Parliament might introduce the use of a legislative footprint¹² (Brand 2011f; EUD 2011). On the Code and the Ethics Committee, the working group began by drawing on eight current examples of legislative ethics systems, using a comparative table of

¹² The legislative footprint provides a record on the process by which a proposal was drafted and revised including lobbyists engaged in that process.

relevant rules (European Parliament 2011e).¹³ These were intended to provide the group with options for the design of the Parliament's ethics system. From a repertoire of ethics rules, the group could pick the system which was most appropriate for the Parliament, both organisationally and politically. This produced what Diana Wallis called a 'conglomerate of what existed in varied forms across Europe' (Wallis 2011). However, some voices expressed concern about this approach. Mittelman (as reported in EUD 2011), then head of Transparency International, suggested that some of the examples, especially the German one, were not good models. In the Constitutional Affairs Committee on 24 May, Andrew Duff, the ALDE shadow on the dossier, had concerns over the methodology used by the working group, namely that 'We accept that there must be changes...but I think that we should not simply aggregate the procedures of national parliaments to build up a sort of fortress... I think that we must do something that is qualitatively better (reported in EUD 2011).'¹⁴

Acknowledgement of the political dimension in the work of the group is important. Within the Parliament the Constitutional Affairs Committee Chair and Rapporteur, Carlo Casini, acknowledged later in the process that the emergence of a 'broad consensus' on the Code was 'also due to the work done by all political forces at the highest level' (European Parliament 2011d). All was not plain-sailing. It was reported in the media that by the end of June some members of the group were concerned that its content would be watered down by the large political groups (Brand 2011f). More specifically concerns were raised publicly by two members of the group representing the Greens and the European United Left/Nordic Green Alliance (UEL/NGA). Claude Turmes, the Green MEP from Luxembourg said he was 'not optimistic' that the Parliament would adopt tougher rules as the working group had failed to reach agreement on the reforms. He expected a lot of opposition, particularly on the issue of second jobs held by MEPs (Brand 2011f). Cornelis (Dennis) de Jong, the Dutch UEL/NGA MEP said that the EPP, on the centre-right, was most hesitant to accept changes, though an EPP official rejected this claim (Brand 2011f). A parliamentary official following the work of the group said that both the EPP and S&D were split on how far the reforms should go

¹³ The countries used as models were France, Germany, Poland, Ireland, Finland, Slovakia, Portugal, and the UK.

¹⁴ The working group engaged in an exchange of views with civil society groups during the design of the reform (European Parliament 2011e). The idea of holding a public consultation on the reforms at the end of May was ultimately dropped (EUD 2011).

(Brand 2011f).¹⁵ A critical NGO representative noted in June that he believed that some early progressive suggestions had, by the end of the process, been thrown out (Hoederman 2011).

With the deadline of the end of June approaching, the working group submitted their recommendations first to the Bureau and then to the Conference of Presidents (European Parliament 2011c; European Parliament [OPPD] 2011: 23). Both bodies approved the recommendations in early July. Because of the summer recess there was a hiatus at this point, and it was not until the autumn that the issue was picked up again to be discussed in the Constitutional Affairs Committee (AFCO). After revisions on technical matters, and which improved on the earlier text (Wallis 2011), the Code was unanimously approved (with one abstention) on 17 November. The proposals were then put to a plenary vote on 1 December. 619 MEPs voted in favour, two were against and six abstained (Brand 2011g). The new arrangements came into force on 1 January 2012.

Explaining the Parliament's Ethics System

What can we draw from this account of the reform process? First, it is clear that scandal and media attention that followed the introduction of the new ethics regime drove the EP leadership to react quickly. Strong words were spoken by leading politicians in the European Parliament. Yet beyond this there was relatively limited action by the Parliament towards the individuals implicated in the scandal. Political reprimands were left to their political parties, whether national or European; legal responses came primarily from national authorities. There were frequent references to an internal investigation, but it was not clear what kind of investigation, if any, actually took place. At the very least there seemed to be no internal sanctioning by the Parliament. One has to ask whether there really was any parliamentary response to the misconduct directed at the individuals concerned. If there was, then it was not conducted openly.

The point is reinforced when we take into account the resistance of Parliament to the investigation by OLAF. This was a defensive response based on a legal argument that ultimately did not hold water. The claim was made that OLAF did not have the right to investigate MEP-related cases that did not involve EU funds. However, this turned out to be incorrect. The reaction to the OLAF investigation presented the Parliament in a negative light

¹⁵ The timing of this discussion was sensitive. At the same time the Bureau was deciding whether to release a confidential report detailing the abuse of parliamentary assistant allowance by MEPs. The General Court on 7 June had ordered the report, written by the internal auditor Robert Galvin and dating from 2006, be made public (Brand 2011f; European Parliament 2008).

as, regardless of its motives and the merits of the legal argument, it seemed to be resisting investigation by an appropriate body. This reflected a desire to retain control over the process, though a willingness to accept the authority of national investigative bodies does not wholly support that conclusion. We witness here the sensitivities of the Parliament with respect to its inter-institutional relations with another EU body. The Parliament's response was not just one of retaining autonomy in a general sense but of ensuring that its position in relation to other EU institutions was protected.

The Parliament was certainly constrained in what it could do at this point because of the absence of a clear system of ethics rules. It is therefore to its merit that the leadership of the Parliament moved quickly to respond to the scandal by initiating an ethics reform. Steps were taken to ensure that the issue would be dealt with quickly. The emphasis was on starting a wholly internal process of review which would reflect the party political composition of the Parliament. This was to be a peer review driven by the Parliament's leadership with no external input. The process echoes the outcome of the reform in its establishment of an internal ethics committee, also with no external input. But it also reflects the way in which self-regulation is a *sine qua non* of decision-making with the Parliament. No external experts were invited to participate in the reform process, and the proposal that there should be an external dimension to ethics decision-making by the Parliament was dismissed out of hand. As far as we can tell there was no debate on this issue. The ruling out of the possibility of an external dimension to reform also means a rejection of an inter-institutional committee (as had previously been proposed by the Commission).

We also find some evidence of party political input into the process of designing the new ethics system. As Diana Wallis confirms, the Code of Conduct was approved after 'concentrated political discussions' (Wallis 2011) in which it became clear that the focus of the reform would be transparency. This, according to Wallis, was all that could be agreed on 'whatever our political family'. It meant that the emphasis was placed on public disclosure rather than on banning particular activities. In reaching this conclusion, there were clearly disagreements in the working group over what should and should not be included in the reform. There is some indication of two cleavages emerging during the reform process. The first was a left-right split which divided the two largest political groups. In this case, there is some indication that the EPP was more resistant to certain aspects of the reform than parties on the left. The reason given for this is that MEPs on the right tended to have closer relations with business interests, and were more likely to have second jobs outside Parliament.

However, there is no hard evidence to back this up. The main split however was between the two large groups and two smaller groups on the left of the political spectrum that is the Greens and the United European Left/Nordic Green Alliance. These two groups were most vocal in promoting a more maximalist line on ethics reform. Precisely how this shaped the final reform outcome is subject to further investigation. However, as the working group included individuals from these groups, and the working group was ultimately able to propose a reform on time, we can assume in the absence of firm evidence that some compromise was struck which could be agreed by all parties.

Both the parliamentary preference for self-regulation and party political contestation and negotiation were identified at the start of this paper as likely explanations for the reform outcome. In the empirical account of the reform process, a third factor was also important in influencing the reform. This was the administrative practice associated with the working group, and more specifically the practice of drawing on pre-existing examples of ethics systems as a point of departure for deciding on a model which might suit the Parliament. These pre-existing systems are not ideal-types, or models in any abstract sense, but are themselves the product of compromise, reflecting the particular circumstances of individual cases. While they might be perceived as offering a broad range of options, they also close off certain options. Using a set of pre-existing legislative ethics systems as a point of departure for discussion of an EP ethics system is a common and in many respects a sensible way for a non-expert working group to engage in proposing an ethics system for the Parliament. The need to come to a relatively speedy decision meant that the group could not start with a blank sheet of paper, or undertake a longer-term project of investigation. Given the circumstances, the approach adopted made sense. But it also has to be recognised that this approach limited the options available to the group. Selecting a relatively small number of examples (eight) did give a good overview of the kinds of systems on offer, but it also created a false distinction between a maximalist approach and a minimalist one. Settling for somewhere in the middle might seem reasonable, therefore. As such, this factor also contributes to an explanation of why the reform outcome went so far and no further

Conclusion

At the end 2013, a former Chair of the EP's Advisory Committee, Evelyn Regner, made a case for the further reform of the 2011 EP ethics system. She argued that EP 'standards should be envied by those in the vanguard of transparency and a deterrent for those of

dubious character. We need the highest common denominator, not the lowest’ and that ‘There needs ... to be an unbiased and honest discussion of parliamentary openness and ethics. Ethics cannot be reduced to a mere accounting exercise’ (Regner 2013).

With trust in public institutions and actors low, the introduction of ethics systems provides an opportunity for public actors to demonstrate that they have in place good internal governance systems, designed to encourage high standards of conduct. Yet parliaments have been reluctant to introduce ethics system and where such they have been introduced they have often been criticised for their limited scope and effectiveness. This is certainly evident in the case of the European Parliament. Even if ethics rules were to make only a modest contribution to enhancing the legitimacy of the EP, this resistance suggests a disregard for public opinion, as reflected in media commentary on the Parliament. For example, an editorial in the *Financial Times* (FT) around a month before the 2014 European elections argued that the Parliament ‘bears some ... of the blame’ for the loss of faith that the general public have experienced in the European Union. It went on to say that:

...the EU assembly is still lax in addressing internal abuses. Too many legislators exploit its generous expenses system for the benefit of family members and non-accredited staff, not to mention political parties and even themselves. Too many legislators take little part in committee work and make the minimum appearances at plenary sessions necessary to claim the full daily allowance (*Financial Times* April 2014).

While the article goes on to accuse Eurosceptic parties of being amongst the worst offenders, the general impression of parliamentary impropriety lingers.

Focusing on the European Parliament, framed within the wider literatures on parliamentary ethics and institutional change, this paper has shown ethics reform to be the product of a combination of external reform pressures and internal countervailing forces. The external impetus for reform came from a felt need within the Parliament to respond quickly to the ‘cash-for-laws’ affair in 2011, and from the media attention directed at the EP in the aftermath of the scandal. The countervailing forces explain the constraints placed on the substance of the reform. At the start of the paper, two factors were identified as possible explanations of the 2011 reform outcome. The first of these related to the parliamentary preference for self-regulation; the second, to party political contestation and negotiation. In the case study presented above both of these factors help to account for the ethics reform. Evidence supporting the first explanation is found the EP’s commitment to self-regulation, a

product of its desire to resist external interference; evidence in support of the political explanation can be identified in the politicisation of ethics internally within the Parliament. The case study throws up a third explanation for the reform outcome however, one which was not identified in the initial framework: this might be termed the administrative explanation. This points to the importance of internal working practices that lead to the promotion of certain reform outcomes while others are curtailed. Evidence supporting this explanation is found in the practices of the working group on ethics.

Making generalisations from one case is always fraught with difficulty. Yet it does seem that there are certain characteristics identified in the EP case that might also explain a more general reluctance by parliaments to engage in ethics reform. Framing these characteristics broadly – in terms of parliamentary preferences, party politics and administrative practices – acknowledges that reluctance to ethics reforms are likely to be explained by drawing on both actor-focused and institutionalist explanations. This kind of framework also allows for the distinctive characteristics of parliaments to be taken into consideration when looking at specific cases. Finally, establishing a framework for analysis, such as this, opens the door to research on comparative ethics politics, which is sorely lacking, particularly with reference to European and parliamentary ethics cases.

References

- Allen, N. (2008), 'A New Ethical World of British MPs?', *The Journal of Legislative Studies*, 14 (3): 297-314.
- Allen, N. (2010), 'Keeping MPs Honest? Ethics Reforms in the British House of Commons', *Public Integrity*, 12 (2): 105-23.
- BBC (2011a), 'European Parliament Agrees on Code of Conduct, BBC News, 7 July.
- BBC (2011b), 'Trial of Austrian ex-MEP Ernst Strasser Opens', 26 November.
- Berger, P. L. and T. Luckmann (1967), *The Social Construction of Reality: A Treatise its the Sociology of Knowledge* (Garden City, New York: Anchor Books).
- Bovens, M. (2007), 'New Forms of Accountability and EU-Governance' *Comparative European Politics*, 5: 104-20.

- Brand, C. (2011a), ‘Inquiries into Scandal of “Influence-for-Cash”’, *European Voice* [online], 24 March.
- Brand, C. (2011b), ‘Spanish MEP Named in “Influence-for-Cash” Scandal’, *European Voice* [online] 28 March.
- Brand, C. (2011c), ‘Lobbying Scandal Triggers Rule-Changes for MEPs’, *European Voice* [online], 31 March.
- Brand, C (2011d), ‘Buzek says OLAF can Investigate “Cash for Influence” MEPs’, *European Voice* [online], 31 March.
- Brand, C. (2011e), ‘Buzek Sets Deadline to Push Reform of MEPs’ Conduct Rules’, *European Voice* [online], 7 April.
- Brand, C. (2011f), ‘Concern over Revised Code of Conduct’, *European Voice* [online], 23 June.
- Brand, C. (2011g), ‘MEPs Approve Stricter Ethics Rules’, *European Voice* [online], 1 December.
- Cingotti, N. (2012), ‘Ethics Code has to Keep MEPS in Check’, *European Voice*, 6 September.
- Cini, M. (2004), ‘Reform of the European Commission: An Ethical Perspective’, *Public Policy and Administration*, 19 (3): 45-54.
- Cini, M. (2007) *From Integration to Integrity: Administrative Ethics and Reform in the European Commission* (Manchester: Manchester University Press).
- Cini, M. (2013), ‘Institutional Change and Ethics Management in the EU's College of Commissioners’, *British Journal of Politics and International Relations*, EarlyView [online], January, DOI: 10.1111/1467-856X.12008.
- Colyvas, J. A. and W. W. Powell (2006), ‘Roads to Institutionalization: The Remaking of Boundaries between Public and Private Science’ in B. Straw (ed) *Research in Organizational Behavior: An Annual Series of Analytical Essays and Critical Reviews*, 27: 305-53.
- De Clerck, (2011a), ‘Rules of Conduct for MEPs Must Be Strict’, *European Voice* [online], 14 April

DiMaggio, P. J. (1988), 'Interest and Agency in Institutional Theory' in L. G. Zucker (ed) *Institutional Patterns and Culture: Culture and Environment* (Cambridge MA; Ballinger Publishing Co.): 3-22.

EUD (2011), 'Buzek defends Parliament's Efforts to Tighten Internal Rules', News Archives, www.eudemocrats.org/end/news.php?uid=367, 24 May, (accessed 17 July 2014).

European Parliament, Council and Commission (1999), 'Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF), *Official Journal of the European Communities* L 136/15, 31 May, pp. 15-19.

European Parliament (2005), 'Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament, 2005/684/EC, Euratom', *Official Journal of the European Union*, L261/1, 7 October.

European Parliament (2008), *The Galvin Report: Audit of 160 EU Parliament Members*, 2008, accessed at: http://wikileaks.org/wiki/The_Galvin_Report:_Audit_of_160_EU_Parliament_members,_2008.

European Parliament (2009), 'Rules of Procedure', 16th edition, March.

European Parliament (2011a), 'Corruption: Resignation', EuroparlTV, 21 March, accessed at: <http://www.europarl.europa.eu/en/player?pid=6171a41d-656f-43fe-9fb1-9ead013fa920>

European Parliament [OPPD] (2011b), 'Parliamentary Ethics: A Question of Trust', Office for the Promotion of Parliamentary Democracy (OOPD), DG EXPO, Brussels.

European Parliament (2011c), 'Parliament Group Leaders endorse new Code of Conduct for MEPs', Press Release, 7 July.

European Parliament (2011d), 'New Code of Conduct for MEPs Unanimously Endorsed by Constitutional Affairs Committee', Press Release, Ref: 20111114IPR31468, 17 November.

European Parliament (2011e), 'Parliament Working Group on Code of Conduct for MEPs and Lobbyists', Press Service, Background, Ref: 20110523BKG20013: 1-4.

European Parliament (2012), 'Code of Conduct', 1 January. EP website [online]

European Parliament (2013a), 'Implementing Measures for the Code of Conduct for Members of the European Parliament with Respect to Financial Interests and Conflicts of Interest', Bureau Decision, 15 April.

European Parliament (2013b), 'Users' Guide – Code of Conduct for Members', July.

European Parliament (2013c), 'Annual Report 2012', Advisory Committee on the Conduct of Members.

European Parliament (2014a), 'Annual Report 2013', Advisory Committee on the Conduct of Members.

European Parliament (2014b), 'Rules of Procedure', 7th parliamentary term, March.

Financial Times (2014), 'Restoring Trust in the European Parliament', Leader, 21 April.

Friends of the Earth Europe (FoEE) (2012), 'Transparency in the European Parliament. Analysis of the Declarations of 33 Interest of Members of the European Parliament', Brussels, July.

FoEE [Friends of the Earth Europe], Access Info, HAI, AITEC, Environmental Law Service, Spinwatch, AK Europa (FoEE et al) (2013), 'European Citizens Opinion Poll on Transparency, Ethics, and Lobbying in the EU' Briefing Paper, February.

Gay, O. (with P. Leopold) (2004) (eds), *Conduct Unbecoming. The Regulation of Parliamentary Behaviour* (London: Politico's).

Gay, O. and M. Rush (2004), 'Introduction' in O. Gay (with P. Leopold) (eds.) *Conduct Unbecoming. The Regulation of Parliamentary Behaviour* (London: Politico's): 1-27.

Gorges, M. J. (2001), 'The New Institutionalism and the Study of the European Union: the Case of the Social Dialogue', *West European Politics*, 24 (4): 152-68.

Greif, A. and D. D. Laitin (2004), 'A Theory of Endogenous Institutional Change', *American Political Science Review*, 98(4): 633-52.

Hoerderman, O. (2011), 'Time to Act: A Strong Code of MEP Ethics is Needed', at www.social-europe.eu, 28 June (accessed 17 June 2014).

Leopold, P. (2004), 'Conclusion' in O. Gay (with P. Leopold) (eds.) *Conduct Unbecoming. The Regulation of Parliamentary Behaviour* (London: Politico's): 331-360.

- Levy, D. and M. Scully (2007), 'The Institutional Entrepreneur as Modern Prince: the Strategic Face of Power in Contested Fields' *Organization Studies*, 28(7): 971-90.
- Menzel, D. C. (2005), 'Research on Ethics and Integrity in Governance. A Review and Assessment', *Public Integrity*, 7(2): 147-68.
- Mancuso, M. (1995), *The Ethical World of British MPs* (Montreal & Kingston: McGill-Queen's University Press).
- Mittelmaier J. (2011), 'Ways to Close the Open Palm', *European Voice* [online], 24 March.
- Nastase, A. (2012) 'Managing Ethics in the European Commission Services: From Rules to Values', *Public Management Review*, 15(1): 63-81.
- Nielsen, N. (2012), 'EU Parliament Reconsiders Code of Conduct Loophole', *EUobserver* [online], 29 June.
- Garud, R, C. Hardy and A. Maguire (2007) 'Special Issue on Institutional Entrepreneurship', *Organization Studies* 28(7).
- Pierson, P. (2004), *Politics in Time. History, Institutions and Social Analysis* (Princeton, N.J: Princeton University Press).
- Pollack, M. A. (1996), 'The New Institutionalism and EC Governance: The Promise and Limits of Institutional Analysis', *Governance*, 9(4): 429-58.
- Preston, N. (2001), 'Codifying Ethical Conduct for Australian Parliamentarians 1990-99', *Australian Journal of Political Science*, 36/1: 45-9.
- Rao, H., C. Morrill and M. N. Zald (2000) 'Power plays: How social movements and collective action create new organizational forms', in B.M. Staw and R. I. Sutton (eds.), *Research in Organizational Behavior* 22, 239-82.
- Regner, E. (2013), 'Follow Austria's Tough Stance on Corruption', *European Voice* [online], 24 January.
- Rittberger, B. (2003), 'Endogenizing institutional change: Moving beyond the institutionalist "holy trinity"', paper presented at the 2nd general conference of the ECPR, Marburg, September.
- Roberds, S. C (2003-4), 'Do Congressional Ethics Committees Matter? U.S. Senate Ethics Cases 1789-2000', *Public Integrity*, 6/1: 25-38.

- Roovers, K. (2012), 'A Champion of Transparency?', *European Voice* [online], 12 January.
- Schmidt, V. (2010), 'Taking ideas and discourse seriously: explaining change through discursive institutionalism as the fourth "new institutionalism"', *European Political Science Review*, 2/1: 1-25.
- Schmidt, V. (2013), 'Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'', *Political Studies*, 61/1: 2-22.
- Shields M. (2013), 'Strasser Jailed for Bribery in European Parliament Sting', Reuters [online].
- The Sunday Times* (2011). 'Insight: Euro MPs Exposed in "Cash-for-Laws" Scandal', 21 March.
- Vogel, T. (2014), 'An Appraisal of the 2009-14 European Parliament', *European Voice* [online], 24 April.
- Wallis, D. (2011), 'Diana on the European Parliament's Transparency Register and the new Code of Conduct', at Dianawallis.org, (accessed 16 July 2014).