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

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FIRST DRAFT ONLY

Introduction

After a quarter of a century of intergovernmental conferences, high-profile European Council meetings and, not least, a failed exercise in constitution-building, further treaty change initially appeared to be off the EU’s political agenda. One of the prominent discourses at the time of the Lisbon Treaty negotiations was that this treaty would mark the end of a lengthy process of institutional change; and that henceforth the EU would focus more on its policy impact in the real world of economic policy, climate change and foreign affairs than on institutional ‘navel gazing’. While the economic crisis and the European responses to it have meant that treaty reform directed at the EU’s governance systems has made a surprisingly quick come-back, EU governance, more generally, is less likely to be the object of further treaty revision, at least in the short-to-medium term. This does not mean, however, that EU governance (beyond the economic governance sphere) is settled; economic governance reforms may necessitate broader institutional reform in the future; and alternatives to the treaty-change route do exist. This paper considers one such route.

This form of decision-making about governance is reflective of a more generalised pattern of regulation which has been spreading across Europe, regulation which is directed not at member states or specific sectors or businesses, but at public organisations and public servants (high-level appointees, legislators and civil servants). This pattern of regulation is now also visible in the EU institutions, and has recently begun to be structured inter-institutionally. This idea of regulating the governance of the EU institutions collectively, but outside of any inter-governmental agreement, seems to point to a new trend in inter-institutional relations. This paper argues that while this is indeed the case, this trend of inter-institutional cooperation is not without its limits.

To illustrate this argument, the paper focuses on two institutions and two cases. The two institutions are the European Commission and the European Parliament (EP). Of the two cases, the first is that of the reform of lobbying regulation (lobby reform) and the successful efforts to create an inter-institutional Transparency Register. The second covers the failed attempts to create inter-institutional ethics regime, and more specifically a joint or common inter-institutional ethics committee. The structure of the paper is as follows. The first section explains what is meant here by the ‘regulation of governance’ and the literature from which this notion is drawn. The second section looks very briefly at inter-institutional relations in the EU. The third section explains the background to and the agreement of an inter-institutional Transparency Register covering the Parliament and Commission. The fourth explains the failure of attempts to set up an inter-institutional ethics regime for the EU institutions. The conclusions seek to explain why the outcomes in these two cases of public governance regulation differ, and what this tells us about the limits of inter-institutional cooperation in this field of decision-making.

Regulating Governance

Regulation is a concept that is often defined narrowly to mean governmental control of the private sector or of business, whether privately or publicly owned. Yet governments increasingly

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regulate themselves and their own behaviour, often through the use of bodies that set standards, and then monitor and ensure compliance of those standards (James, 2000: 327; Hood, James and Scott, 2000: 284; Hood, et al 1999). This involves the oversight of bureaucracies by other public agencies, though ‘families’ of secondary regulators can be distinguished, and various methods such as audit, inspection and certification identified (Hood, James and Scott, 2000: 284, 285). It might be useful to think of this as the regulation of public government or of public governance. Regulation in this context is not simply a matter of law-making, however, as it may also involve softer mechanisms of supervision and surveillance.2

Public governance may not have as much potential as other forms of decision-making to impact directly on policy outputs and outcomes, and therefore on citizens, but it is a precondition for effective and democratic government. In other words, we might think of public governance in terms of ‘enabling’ rather than ‘delivering’ the provision of ‘goods’. It is ‘government for government’ (OECD, 2009: 10). In other words governance processes are inputs for substantive decision-making. If at all, their outputs and outcomes tend to be measured in terms of the quality of governance (OECD, 2009: 10). The importance of public governance should not be underestimated however. Assuming that a polity’s legitimacy rests on more than just its policy outputs, public governance issues are likely to have some bearing on public trust, reflecting a form of legitimacy which has been labelled ‘procedural’ or ‘throughput’ (Schmidt, forthcoming)

In the UK case, on which most research has been conducted, the regulation of public governance was designed - whether implicitly or explicitly - to ‘mitigate government failures and improve public welfare’ (James, 2000: 328). James has argued convincingly that just as in the case of business regulation this public interest approach may ultimately lead to regulatory failure as a consequence of capture, regulation in the interests of the regulators, or because of unwieldy (compliance) costs (James, 2000). Addressing a rather different research question, Hood, James and Scott (2000: 292) have argued that in the early years of the first Blair government in the late 1990s in the UK, the trend in the regulation of government moved in the direction of what they call ‘enforced regulation’, which involved intervention in inverse proportion to success. This meant that regulation become more formal for poor performers, with a lighter touch for good performers. ‘Enforced self-regulation consists of external enforcement of rules written by regulated bodies and internal enforcement of externally set rules. Different types of regulation are arranged in the form of a pyramid, with self-regulation at the bottom, more interventionist types at the apex’ (Hood, James and Scott, 2000: 292). This lies between pure self-regulation and externally set and enforced regulation.

Another way of thinking about the regulation of public governance is as comprising the ‘secondary overseers of public bodies beyond the courts and the legislator, the two classic primary regulators of government in constitutional theory’ (Hood, James and Scott, 2000: 283). However, it is argued that a new system of regulation has evolved over the past thirty or more years, and that that new system of regulation became more ‘formal, complex and specialised despite – or perhaps because of – the ostensible “New Public Management” drive to “let the managers manage”’ (Hood, James and Scott, 2000: 283-84; see also Hoggett, 1996 and Power, 1997). Whilst we are ‘at an early stage in developing theories to explain why regulation develops and to evaluate the costs and benefits of the activity’ (James, 2000: 328), the observation that this evolution has been witnessed to a greater extent in some countries (the UK and the US, most notably) compared to others (e.g. France) points to comparative research as a useful approach to take in designing research on this question.

Single country studies have their merits too of course. A research project in the late-1990s, led by Chris Hood at the LSE, produced a wealth of information on this regulatory trend in its UK guise. It also sought to define the parameters of what Hood and his colleagues called ‘regulation inside government’. Firstly, the project defined standards broadly to include ‘…resource inputs,

2 For this reason ‘regulation’ may be too misleading a concept to be used in this way and an alternative (broader) concepts needs to be found.
procedures, outputs or outcomes’ which reflect aims such as ‘economy, efficiency, effectiveness, quality and equality’ (James, 2000: 328). Second, it identified three core features regulation inside government: (1) that the regulator has a degree of authority over the regulated bodies and sets standards for them; (2) that the regulator monitors performance and uses persuasion or direction of regulated bodies to change their behaviour; (3) that there is an organisational separation between the regulator and regulated bodies, so that regulation is distinct from internal management (James, 2000: 328; Hood et al, 1998, 1999). The illustrations given include the UK’s National Audit Office and ombudsmen.

A justified critique of this argument about regulation inside government is that there is a confusing overlap between regulation and accountability. Accountability, which is defined as ‘an obligation for a person or organisation to justify actions to another body in terms of some authorisation for the activity given by that body’ (James, 2000: 328) could possibly also serve as a definition for regulation inside government. To get round this problem, James (2000: 328) and Hood, James and Scott (2000) make it clear that while both regulation and accountability involve the exercise of authority, regulation ‘focuses on authority relationships where an organization controls another at “arm’s length” rather than internal management accountability…’ (James, 2000: 328), whilst also placing a particular emphasis on rules or rule-like structures in mediating those relationships.

Whilst dangers of conceptual overlap between regulation and accountability are great, however, there are also dangers in only viewing regulation inside government in terms of arm’s length regulation. One of the arguments presented in this paper is that regulation inside government may take both external (arm’s length) and an internal form; and that the internal form is distinctive enough from conventional forms of accountability for conceptual clarity to be maintained.

Inter-Institutional Relations

In the early decades of the European integration project the European Parliament (or Assembly) and the European Commission often saw themselves as allies in the project to ‘build Europe’. The supranational European institutions were the vanguard of the integration project, advocating more Europe and defending the Community method. At a general level this is no less true of the European Parliament than it is of the European Commission.

In the 1980s, however, things changed. In the often-told narrative, the European Commission, under Jacques Delors’ leadership became an assertive leader of the integration process, promoting the single market, monetary integration and political union, as well as the expansion of the EU’s borders. The European Parliament, it members having been directly elected since 1979, went on to gain new decision-making powers from the mid-1980s, through the provisions of the Single European Act and in subsequent treaty changes. The extension of the codecision procedures, in which the Parliament gained decision-making powers of similar weight to the member states, epitomised this transformation. Commentators stopped labelling the Parliament as a ‘talking-shop’ and started to reassess its role within the European Community and later the Union. All this altered fundamentally the relationship between the two institutions. In what might at first appear contradictory, the reformed decision-making rules meant that inter-institutional cooperation and coordination was more important than it had ever been before. However, at the same time the Commission and Parliament, or rather those working within the institutions also viewed each other with some suspicion, perhaps not as rivals or competitors, but as institutional ‘others’.

The way in which this ‘othering’ of the European institutions occurred was through assertions, whether formal or informal, of institutional autonomy and distinctiveness. While uninformed sections of the general public perceived the EU institutions in a rather amorphous collective way, as ‘Brussels’, the institutions themselves sought to reinforce at every opportunity their difference one from the other.
Something seems to have changed in the 2000s, however. There appears to be a greater willingness by the institutions to cooperate on issues that previously were felt to issues central to the autonomy of the individual bodies. Christiansen identifies a similar pattern of ‘coherent governance’ (Christiansen, 2001), arguing that this is a function of the growing interconnectedness of EU policy processes and the strengthening of a “supra-institutional” allegiance among EU officials.” (Christiansen, 2001: 747). Alternatively it may reflect a very different perception of the role of the EU institutions, one which has less to do with their influence in the wider EU, and more to do with their relations with each other. In other words, it may be a reflection of a new era of maturity and confidence vis-à-vis conventional decision-making under co-decision/OLP. However, this shift should not be overstated. There is some evidence that inter-organisational conflict over informal rules was still rife in the early 2000s, as Bouwen’s case study of the debates on the White Paper on Governance demonstrates (Bouwen, 2007).

It is one thing to claim that these changes have taken place, however; it is quite another to demonstrate empirically that they have. In the following sections two illustrations of inter-institutional cooperation in this field of the regulation of public governance are selected as a way of testing out whether there is adequate evidence to back up the argument made in this paper; and thus to judge whether the argument is convincing. Towards the end of the paper we examine efforts to create an inter-institutional ethics regime. First, however, we turn to lobbying regulation and the EU’s Transparency Register.

**The Transparency Register**

Since the 1990s the EU Institutions have developed initiatives to provide for a more formalised framework for interest group participation, including the Principles and Standards for Consultation (European Commission, 2002) and the Transparency Register. Most of these measures have focused on enhancing the transparency of existing participatory and lobbying practices. Progress on these issues occurred in three distinct phases: (1) the European Parliament’s early initiative; (2) the Commission’s tentative first steps (3) the European Transparency Initiative (ETI), proposed by the Commission, but subsequently leading to the establishment of an inter-institutional Transparency Register.

The debate of lobbying regulation began in the European Parliament (EP) in 1989. This was at a time when there were concerns about the possibility that Members of the European Parliament (MEPs) and parliamentary intergroups were acting on behalf of interest groups or representing themselves. It was not uncommon, for example, to see amendments to proposals ‘sometimes with the company logo still on the amendment sheet submitted’ (European Parliament 2003:36). Thus in 1991, the Galle Report\(^3\) proposed a code of conduct with minimalist standards aimed at preventing abuse (such as prohibiting selling on documents and use of institutional premises); the establishment of ‘no go’ areas in the Parliament’s buildings including members’ offices and libraries; examination of lobbying and intergroups; and, the registration of lobbyists on an annual basis, spelling out the rights and obligations of those on the register, and specifying penalties for failure to comply. A final, and contentious, proposal required MEPs annually to state their financial interests and those of their staff, on a separate register. However, since no consensus could be reached on the proposed definition of interest groups and the financial interests of MEPs and their staff, the report was not discussed in the plenary session (European Parliament 2003:36).

In 1994 a second attempt at regulating lobbying was undertaken by the EP’s Committee on the Rules of Procedure, the Verification of Credentials and Immunities. This time the Ford Report drew on the experiences of the member states, and proposed a much simplified mechanism for

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3 Marc Galle, Chairman of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, was appointed to submit proposals for a code of conduct and a register of lobbyists.
regulating lobbying. It proposed amendments to the Parliament’s Rules of Procedure, according to which the Quaestors\(^4\) should grant interest representatives a pass in exchange for acceptance of a code of conduct and registration. With regard to financial interests, each MEP was required to make a detailed declaration of his or her professional activities. MEPs had to refrain from accepting any gift or benefit in the performance of their duties while registered assistants had to make a declaration of any other paid activities. In a further resolution based on a second report drawn up by Mr Ford, the EP decided to supplement the Rules with a Code of Conduct for lobbyists\(^5\). This second reform introduced a de facto mandatory register and a code of conduct. It was de facto mandatory because it allowed those who registered to receive a non-transferable pass allowing them access to the Parliament, valid for up to one year. To be an effective lobbyist, one really had to register. The following year, in May 1997, Parliament approved a code of conduct, based on the voluntary code already in existence (Chabanet, 2007: 10). These principles in the Code of Conduct were subsequently incorporated into the Transparency Register. The EP would not discuss lobbying regulation again until 2007 in response to the European Commission’s Transparency Initiative.

The European Commission’s approach to regulating lobbying has been very different to that of the European Parliament. Traditionally the Commission favoured a less regulatory approach based on the typically neo-corporatist arrangement similar to that which governs the European Social Dialogue,\(^6\) alongside open but structured and transparent mechanisms to engage with interest groups with a preference for sectoral self-regulation. It was resistant to the drawing up of codes of conduct for these groups. The first steps towards a formalisation of the relationship between the Commission and interest groups were outlined in two 1993 Communications on An Open and Structured Dialogue Between the Commission and Special Interest Groups and on Increased Transparency in the Work of the Commission. The Communication on An Open and Structured Dialogue Between the Commission and Special Interest Groups aimed at formalising the relationship between the Commission and interest groups in order to make it more transparent while addressing ‘broadening participation in the preparation of Commission proposals and on the wider availability of Commission documents’. The Commission’s proposals are clearly aimed at addressing the governance concerns related to lobbying practices, and respecting the socio-political and administrative contexts, while there is a clear commitment to providing a level playing-field by granting all stakeholders fair and equitable access to the development and implementation of public policies.

The Commission is more explicit than the EP in classifying interest groups into profit and non-profit organisations, and also in outlining the formal and ad hoc channels for interaction with interest groups. The Commission is also explicit in outlining the absence of specific rules such as accreditation, registration or a code of conduct because it ‘has always wanted to maintain a dialogue which is as open as possible with all interested parties without having to enforce an accreditation system’. While portraying the activity of interest groups as providers of expertise in a positive light, the Commission, unlike the EP outlines in its official document the instances of misbehaviour by lobbyists that need to be addressed: ‘Misdemeanours have occurred, such as lobbyists selling draft and official documents; lobbyists misrepresenting themselves to the public by the use of Commission symbols; lobbyists who are in possession of a press card and therefore have direct access to press conferences and press releases. […] Some problems of confidentiality also exist’. The EP’s approach is implicit as its code of conduct outlines what lobbyists should not do without openly stating that there is evidence of misbehaviour. From the Commission’s perspective, structuring the dialogue with interest groups aims to ensure the balance between

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4 Quaestors are the five MEPs who look after the financial and administrative interests of the European parliamentarians.
6 The European Social Dialogue procedure was created in 1992. It requires the Commission to consult the European social partners on all legislative proposals in the social field and allows them to sign European collective agreements which can be implemented with the autonomous means of industrial relations or by giving them legal force through Council Decision.
interests groups’ contribution to policy-making whilst ensuring a level playing field and safeguarding the public interest.

In the Communication the Commission also agrees to the creation of a directory of non-profit organisations and special interest groups. The Commission does not feel able to decide whether or which consultancies, legal advisors, public relations/public policy and other private firms should be included in the directory and thus prefers to ‘encourages the lobby sector to draw up its own directory, containing all the relevant information’ (European Commission 1993: 3) which would clearly curtail any claims to the transparency-enhancing properties of the register. This is not a mechanism to ‘conferr any form of official recognition by the Commission, nor the granting of any other privileges such as special access to information, buildings, officials, etc. Responsibility for the information provided, as well as for its accuracy, will necessarily remain that of the organization listed’. The information requirements are minimal: name of the organisation; address/telephone/fax; date of foundation; legal status and structure; names of senior officials; names of member organisations; principal objectives of the organization.

(European Commission 1993: 2) In principle, this directory which the Commission envisages would eventually become a common database also for the EP is primarily conceived as a tool for EU public servants. Its public availability would turn it into a tool to enhance transparency as also citizens and business could have access to information about lobbying activity (an issue addressed by the Communication on Increased Transparency in the Work of the Commission). The Communication does not however provide scrutiny mechanisms but it does allow for review via a progress report in 1993 while ‘[a]ny additional measures considered necessary in the light of this assessment will subsequently be taken’.

In a similar fashion to the EP’s Rule 9(4) the Communication outlines Commission staff’s rights and obligations by referring to Title II of the Staff Regulations while maintaining ‘its strict security policy towards lobbyists’ and the setting up in 1993 of a Security Committee to monitor developments closely, specifically ‘to prepare the Commission’s position on each instance of a possible conflict of interest between a member of staff’s employment after leaving the Commission and his or her responsibilities whilst at the Commission’. Thus both the EP and the Commission’s early attempts at structuring the regulation of lobbying fostered a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.

It was not until 2005 that the Commission began to take the issue of lobbying regulation seriously. Commissioner Siim Kallas’s European Transparency Initiative (ETI) became the vehicle for this. Although the ETI grouped together a number of initiatives (see Cini, 2007, 2008) it was the lobbying regulation issue that was the most high-profile element of the initiative. There were two dimensions to this: on the one hand, consultation practice; on the other, lobbying practice. On the former, the aim was to find out whether the general principles established in the 2002 Communication and the minimum standards for consultation within that document had been applied in a satisfactory manner (European Commission, 2006: 5). On lobbying practice, the issue was more complicated and much more controversial. Ultimately the issue under debate was what kind of action to take: whether it was necessary or possible to impose mandatory registration on lobby groups or whether the Commission might simply rely on

7 This became subject to extensive lobbying by opposing interests on the one hand (and in particular by the European public affairs consultancies, EPACA and SEAP), and by a coalition of civil society groups – ALTER-EU (The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) was set up on 19 July 2005. It is a coalition of over 160 civil society groups, trade unions, academics and public affairs firms concerned with the increasing influence exerted by corporate lobbyists on the political agenda in Europe, the resulting loss of democracy in EU decision-making and the postponement, weakening, or blockage even, of urgently needed progress on social, environmental and consumer-protection reforms (http://www.alter-eu.org/en/about-alter-eu) on the other (see Balme and Chabanet, 2007). NGOs had long complained that corporate interests are favoured by the Commission, and have argued that a more transparent system could allow clearer judgements to be made about the role of money and interests in the EU’s decision-making process.
a voluntary self-regulatory system attached to a common code. Following a period of consultation, the Commission published its Green Paper on the European Transparency Initiative (European Commission, 2006). This proposed the adoption of a voluntary registration scheme and a code of conduct based on the existing industry code. Registration was to be rewarded by early access to consultation, and a system of monitoring and sanctions was to be introduced. Interested parties were invited to respond to the Paper during a further period of consultation. On 21 March 2007 the Commission published a follow-up to the Green Paper in the form of a Communication, in which it announced its decision to establish a public register of interest representatives working in the EU institutions. The gist of the proposal followed the 2006 Green Paper. The Register became operational in May 2008, with registration voluntary and web-based. In addition, a common code of conduct for lobbyists was drafted (European Commission, 2007a). Signing up to the Register assumes acceptance of the principles of the Code. Groups themselves are responsible for uploading accurate information. Where groups do not abide by the code, the sanction is, ultimately, removal from the Register.

The European Parliament began its new debate on lobbying regulation in 2007 prompted by the Commission’s 2007 Communication. Thus following the ETI initiative and, more specifically, the Commission’s proposal for a common register and code, and after much debate with civil society and within Parliamentary Committees, the motion for a European Parliament (non-legislative) Resolution was put to and approved by the plenary on 8 May 2008 (European Parliament, 2008a). There were two elements to the Resolution. The first emphasised the importance of ‘lobby groups’ to the Parliament and that MEPs should know the identity of the groups trying to influence them. It stressed the importance of equal access, with particular reference to civil society groups, and proposed that rapporteurs should in future decide, should they wish, on a voluntary basis, to use a ‘legislative footprint’: that is ‘an indicative list, attached to a Parliamentary report of registered interest representatives who were consulted and had significant input during the preparation of the report’ (European Parliament, 2008b). It also stressed the importance of the Commission attaching similar reports to its draft legislation. The non-obligatory nature of the legislative footprint reflects, according to Anneli Jäätteenmäki (ALDE shadow rapporteur) ‘A practical compromise. In a Union of twenty seven members, it is necessary to respect the political traditions of each country and a voluntary system will allow those who want to show transparency in their work to do so’ (ALDE, 2008).

The second element of the Resolution was a more direct response to the Commission’s proposal in its Communication of early 2007. In this the Parliament expressed its support for the Commission’s initiative on interest groups within the ETI and also agreed with the Commission’s (relatively) inclusive definition of a lobbyist. It supported the Commission’s idea for a ‘one-stop shop’ allowing lobbyists to register with both the Commission and the Parliament, and called for an inter-institutional agreement by the Council, Commission and Parliament on a common mandatory register for all institutions, full financial disclosure, a common mechanism for removal from the register and a common code of ethical conduct. However, ‘Bearing in mind… the essential differences between the institutions, Parliament reserves the right to evaluate the Commission’s proposal when it is finalised and, only then, to decide on whether to support it’ (European Parliament, 2008b). The Parliament also called for mutual recognition of registers should a common agreement fail to be agreed. Finally the Parliament asked that a joint working group be set up immediately to consider the implications of a common register by the end of 2008.

The High-Level Working Group led by Diana Wallis (for the EP) and the appropriate Commissioner, Maros Sefcovic (for the Commission) met on a number of occasions during 2009 and 2010. Having ironed out some difficulties during this time, an Inter-Institutional Agreement was eventually signed in May 2011. This was subsequently backed by the plenary. The joint register and code of conduct became operational on 23 June 2011, coordinated by a new Joint Secretariat based in the Commission, but staff by both Commission and Parliament officials. The
migration of information from the EP and Commission Registers to the common register will take place during a 12-month transition period.8

Towards an Inter-Institutional Ethics Regime

The rules that govern the ethics of EU officials are contained within the EU’s Staff Regulations (or Statut).9 Since the 1960s these Regulations have provided legal-formal guidance on the kind of behaviour which is and is not permitted from officials. Yet, following the resignation of the Commission in March 1999, the Staff Regulations were judged to be lacking in a number of respects, and the reform that followed the appointment of the Prodi Commission led to a rather lengthy process of revision – lengthy, because the Staff Regulations apply to officials beyond the Commission, and as EU legislation, they demand inter-institutional agreement. Some of these rules and revisions impinge upon the way officials interact with lobbyists. For example, they include guidance on how to deal with conflicts of interest. Issues covered include independence, freedom of expression, outside activities, spouse’s interests and post-employment obligations. Crucial to all these issues is that officials should perform their public tasks with impartiality and that they owe loyalty to the EU. The general rule is that where there could be some doubt as to whether a potential conflict exists, the official should gain the approval of the appointing authority (i.e. personnel department). On the issue of post-employment obligations, an official must inform their institution for a period of two years after leaving the institution where there could be a conflict of interest (see Cini, 2007: 123-9). This latter point is particularly important where officials leave the Commission to become lobbyists or consultants. Other relevant provisions related to whistle-blowing (in the sense of internal reporting of misconduct) and stricter disciplinary proceedings for the breach of the Regulations. Although officials’ conduct is also governed by a Code of Conduct, this is more about how the Commission should behave when dealing with the public than on any ethical or lobbying-related issue.

Ethics rules are also directed at office-holders and politicians. Interestingly, in the EU context, the rules and guidelines governing the conduct of Commissioners and MEPs are different from those of EU officials in that they tend to take a ‘softer’ form (Cini, 2007: 109; Cini, 2010). However, Commissioners’ conduct is governed, first and foremost, by the Treaty provisions. These are rather vague. Article 213(2) states that:

The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties...The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the member concerned be, according to the circumstances, either compulsorily resigned in accordance with Article 216 or deprived of his right to a pension or other benefits in his stead.10

Until the late 1990s these rules were felt to be adequate. The Nice Treaty injected greater individual responsibility into the actions of Commissioners, so that they are now obliged to resign at the request of the Commission President (Lequesne and Rivaud, 2003: 699). This was a consequence of the experience of March 1999 when Edith Cresson was put under pressure to resign from the Commission but refused to do so, precipitating the resignation of the College in its entirety.

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8 Please note that this research is ongoing and the information in this section of the paper will be developed further following interviews to be conducted in early 2012.
9 Also the revised Financial Regulation which is not dealt with in this paper.
10 Article 216, EC Treaty
Yet even before the Commission’s resignation, there were moves to clarify the expectations of Commissioners’ behaviour – by making use of Codes of Conduct. The first of these was drafted in January 1999 (European Commission, 1999), as a consequence of a pre-resignation deal done with the European Parliament (Cini, 2007: 110-111). This was expected to be one of a suite of three codes ultimately agreed later in 1999 (European Commission, 1999). These dealt with Commissioners’ conduct in a general sense and their relationships within the Commission. There was nothing specifically on lobbying. However, the first Code did emphasise the ‘independence’ of Commissioners as well as the limits that have to be placed on that independence (see also CIE, 1999: point 7.5.2; European Commission, 1999). Moreover, it covered such issues as financial interests and assets (and declarations thereof), rules for business travel and for receptions and professional representation; as well as rules on the receipt of gifts, honours and other benefits (Hine and McMahon, 2004: 27; see also Cini, 2007: 111). All of these have implications for the relationship between members of the Commission and those groups and individuals that try to influence them.

A further revision of the Codes was made in 2004, at which time the two Codes were merged into one document (European Commission, 2004). This revision was provoked by the Eurostat affair (see Cini, 2007: cht. 4 passim.). Further guidance was offered on the Commissioners’ obligation to complete a Declaration on Financial Interests when appointed, and to update it regularly. This would henceforth be published on the Commission website.\(^\text{12}\) The revised Code also included a clarification of the rules on gifts. The limit of €150 on the value of any gift remained as it had been. Above this amount and the gift had to be handed to the Protocol department. Where there was some doubt, the Commissioner should consult the Office of Infrastructure and Logistics (European Commission, 2004: point 1.2.1).

While the European Parliament has been quick to criticise the Commission for its failure to address ethical concerns, it has been slower and more reluctant in addressing similar problems itself. Although, in the period before 2005, there was certainly negative press attention paid to the Parliament, especially over the view that ‘MEPs fiddle their expenses’ (van der Laan, 2003: 1), this criticism has never reached the level experienced by the Commission. This meant that the Parliament was never under the same kind of political pressure (or spotlight) that the Commission had, and had avoided being forced politically to respond to criticism by instituting a whole-scale reform of its internal procedures, as the Commission did in the period after its resignation in 1999.

Since the late 1990s, however, there have been calls, both externally and internally, for the further clarification and strengthening of the rules governing the conduct of Members of the European Parliament. Most recently, this has taken the form of demands for an MEP Statute or a strengthened code of conduct.\(^\text{13}\) Back in the 1990s, however, an initial agreement presented in the Nordmann Report and approved in July 1996. The debate leading to this agreement was contentious, as the proposals were considered by many to be ‘draconian’ (Chabanet, 2007: 8). The initial draft of January 1996 was rejected and the final outcome presented in rather loose terms, was a compromise. Under these rules each MEP is required to make a declaration of financial interests, and is responsible for updating their entry. The Register is public and can be consulted on the Parliament’s website (ECPRD, 2001: 61). MEPs have to refrain from accepting any gift or benefit. Registered assistants also have to make a declaration where they were engaged in paid activities beyond the Parliament. Once agreed, these rules were incorporated within the Parliament’s Rules of Procedure.\(^\text{14}\) However, Chabanet comments that ‘…for a long time the vast

\(^{11}\) The first code was on Commissioners, the second on the relationship between Commissioners and their Departments, and the third on the Commission’s services.

\(^{12}\) [http://europa.eu.int/comm/commission_barroso/interests/index_en.htm](http://europa.eu.int/comm/commission_barroso/interests/index_en.htm) check this link

\(^{13}\) See the website of the Campaign for Parliamentary Reform at [www.cp-reform.en/the_pledge.php](http://www.cp-reform.en/the_pledge.php)

\(^{14}\) Ethics rules that apply to national parliamentarians from a particular country may also apply to MEPs from that country (as in the UK case). National groupings of MEPs may also establish their own Codes, as in the case of the Dutch MEPs ([http://international.sp.nl/codeofconduct.stm](http://international.sp.nl/codeofconduct.stm), 14 May 1999.)
majority of Members … paid no heed whatsoever to the obligation to declare their financial interests (Chabanet, 2007: 9).

The agreement of a Statute took much longer. This has also been extremely contentious (Cini, 2007b). Various issues, many of which have entered the public domain, have driven this agenda: the adverse publicity surrounding the non-attendance of MEPs at roll-call votes, even when they were claiming their daily allowances; the inflated cost of air travel undertaken by Members; and the weak accounting of administrative expenses, especially where family members were the recipients of payments. Other important issues, not least the standardisation of MEPs’ salaries and the location of the Parliament, also formed part of this same agenda. Despite some quite vehement opposition to change amongst a number of MEPs, support for change grew substantially in the period after 1999, driven in part by the influx of a large number of young MEPs at this point. The establishment of the Campaign for Parliamentary Reform (CPR) in March 2001 coincided with some very hostile press attention over the failure of some MEPs to declare their interests (see European Voice, 7 June 2001 and 19 July 2001, for example: see also ECPRD, 2001: 61). The latter led to some improvement in the implementation of the Declaration.

Although not entirely autonomous, and subject to certain Treaty provisions, in organisational terms the EP has largely governed itself through its own Rules of Procedure. These are amended periodically. Indeed, for a number of reasons the Parliament has been subject to very little external scrutiny, particularly if we compare it to national parliaments. Nugent (2003: 226) explains that this has a lot to do with the ‘special institutional setting in which the EP operates’ (Nugent, 2003: 226): that is, the unusual relationship that exists between the European Union’s executive and legislative institutions. Nugent points in particular to the fact that the EU Executive is not as concerned about the European Parliament as are national governments over national parliaments; and that there is less of an identification between the Executive and Legislature at the European level. While the latter may be accurate, there are certainly some policy areas where the former is no longer the case. The EP’s autonomy is now more convincingly explained as a legacy of the past, which may be ripe for change. This may be difficult to achieve – or at least could not happen without a political fight – and it is in any case unclear whether it would really be worth the effort, given that the Council and Commission could, if so inclined, (and perhaps where they have the support of the European Court of Auditors and the European Ombudsman) wield substantial influence over how the Parliament governs itself.

The European Parliament’s Rules of Procedure establish ground rules for the conduct of MEPs on subjects ranging from transparency, financial interests and measures to combat corruption (ECPRD, 2001: 58). Special rules on privileges and immunities have been covered by a separate Protocol. In certain cases, however, such as during criminal investigations, immunities may be waived. Rule 2 of the Rules of Procedure establish that MEPs may not be bound by any instruction regarding their mandate. The aim of this provision is that this should preserve the independence of their office and their public image of trustworthiness. Moreover, MEPs are also now required to declare financial interests and assets that could post a conflict of interest in the performance of their duties. They do this when they take office, as well as orally before issues of interest are debated in the Parliament. MEPs are responsible for updating their Declaration, which is kept by the Parliament’s five Quaestors15. The Register is public and can be consulted on the Parliament’s internet site (ECPRD, 2001: 61).

Ethics rules that apply to national parliamentarians from a particular member state may also apply to MEPs from that country. For example, the Code that applies to members of the UK

15Quaesters are MEPs who are given responsibility for administrative matters within the Parliament
Parliament also includes MEPs. National groupings of MEPs may even establish their own Codes, as in the case of the Dutch MEPs.16

As such, it would be incorrect to claim that the Parliament has failed entirely to respond to criticism over its ethics – even if, in many circumstances, it has been slow to ensure that its responses are translated into action. This, to a degree at least, is a function of the nature of decision-taking in the Parliament. While the Commission has had trouble enough agreeing reform amongst 15, and then 25 individuals, the Parliament needs a two-thirds majority of votes cast. This hurdle has not always been easily achieved. An example of the difficulties involved in introducing change to the Parliament can be found when examining how parliamentarians responded to demands that declare their interests publicly. Indeed, the reluctance of some parliamentarians to publish their interests led to a rather vicious press campaign by the EU-focused newspaper European Voice in 2001 (ECPRD, 2001: 61; see also European Voice, 7 June 2001 and 19 July 2001). The campaign involved the naming and shaming of MEPs who refused to place information about their interests on the Parliament’s website. Gradually, more and more MEPs came under pressure to follow the line of the more reform-minded MEPs. Those who resisted the pressure continued to be vilified by the newspaper.

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

Whilst the pathways leading to separate Commission and the Parliament ethics committees were separate, there were efforts to set up a joint or common approach to ethics regulation for the EU institutions. This has first appeared in the White Paper on the Reform of the Commission published in early 2000, which sought to set up an inter-institutional advisory group on Standards in Public Life. However, early attempts to negotiate on this matter with the Parliament suggested that pursuing such an ambition would be pointless at that stage, and the matter was dropped. The Parliament’s understandable line on this issue was that the Commission was in no position to be telling the Parliament what to do regarding its ethical standards. The idea of a common approach to ethics did not appear again until the mid-2000s.

From 2005, Kallas’s European Transparency Initiative (ETI), alongside its lobbying reform strand, also included consideration of the ‘ethics’ of officials. This involved a commitment to strengthen the personal integrity of officials and ensure the independence of the EU institutions. This dimension of the Initiative was intended to provoke a debate on the definition of common ethical rules and standards of public office holders in the hope that other EU institutions might be prepared to work together on this. The emphasis was primarily on senior public servants. The Commission’s Communication of 9 November 2005 emphasised the importance of this element of the Initiative:

Experience… shows that by focusing on ethics and integrity, organisations can balance internal rules and trust in a manner that favours administrative simplification and increases effectiveness in policy delivery. By setting the right tone at the top, management can strengthen “soft controls” and introduce greater proportionality in internal controls (Commission, 2005a: 7).

16 See, by way of example, the Dutch MEPs’ code. http://international.sp.nl/representatives/codeofconduct.stm, 14 May 1999
As part of the ETI agenda, the Inter-Departmental Working Group (European Commission, 2005b) raised the possibility of a further revision to the Code of Conduct for Commissioners. However, the College’s view was that: ‘…this would only be useful if it is part of an inter-institutional debate on an inter-institutional Advisory Group’ (Commission, 2005c: 7), but nothing came of initial overtures made to the Parliament on this issue.

Even within the Commission alone, little had been achieved on the ethics dimension of the ETI by early 2006 (Interview, Commission SG/B/2, 3 February 2006). At this point responsibility for coordination was allocated to the Bureau of European Policy Advisors (BEPA) as lead service. In early February 2006, a member of the BEPA team was invited to draw up a call for tender for a study of ethics rules, published in April 2006. The findings of the study, available at the end July 2007, was designed to be used as the basis for future action (Demmke et al, 2007), but once again steps taken to interest the Parliament in a joint approach got nowhere. In 2010, President Barroso once again raised the matter during his reporting of revisions on the Code of Conduct for Commissioners to the European Parliament, and again his tentative and informal proposal fell on deaf ears.17

Conclusions

This paper has sought to explain differential outcomes in two cases of inter-institutional public governance regulation affecting the EU institutions. In the first case, the Transparency Regulation, a European Commission initiative provoked a debate in the European Parliament and this ultimately led, after much discussion and negotiation, to the approval of an Inter-Institutional Agreement and the setting up of a Joint Register and Code of Conduct. In the second case, efforts by the European Commission to engage the European Parliament in discussion over a joint ethics system, comprising a joint (or independent) committee of both institutions which might adjudicate on ethics-related issues, failed to gain any ground with the European Parliament. How might these different outcomes be explained?

There are three possible answers to this question. The first rests with the distinction between ‘government’ and ‘governance’. While both cases focus on the regulation of public governance, the successful case of the Transparency Register primarily involves the direct regulation not of the public servants themselves but rather of the lobbyists with which they interact. As such we might expect there to be less resistance to controls on non-governmental actors and groups than there might be on public servants. However, the College of Commissioners has accepted the principle of an independent committee on ethics, albeit one which has in the recent past only had a limited scope in focusing only on post-employment matters and an advisory character. This directs our attention to the second possible reason for the different outcomes in the two cases; that European parliamentarians (legislators) have a particular resistance to inter-institutional regulation, in part because the initiative comes from the body which they are expected to scrutinise. However, their opposition has also been to any form of external control, and not just of an inter-institutional character, even where this is to be of an advisory nature, as the most recent initiative on an ethics committee has demonstrated. The argument frequently made is that legislators, directly elected by popular mandate, are accountable to their electorates, and not to any other outside body. The lines of accountability that conventionally exist within representative parliamentary democracies would therefore by undermined should alternative external forums be established which establish new forms of accountability. Regulation of ethics in the European Parliament is often understood, whether explicitly or implicitly, from this perspective, leading to the outcomes identified earlier in this paper. Finally, a supplementary consideration has to be the extent of or the perception of controversy attached to the issue being regulated. Although lobby reform was initially controversial, the decision by the Commission to adopt what is in essence a voluntary self-regulatory approach, meant that by the time inter-institutional collaboration emerged onto the EU agenda, institutional choices had already been made, the system selected

17 Please note that this section is tentative and incomplete. Interviews in early 2012 will help to fill in the existing gaps.
mapped nicely onto the existing Parliamentary system, and – aside from one or too matters of debate – the agreement was relatively straightforward.

Thus the paper suggests that inter-institutional cooperation is more likely, on issues of public governance, where practical issues are uncontroversial. However, it also suggests that matters of principle are also at stake when setting inter-institutional agendas. This insight therefore helps to identify, in the particular field of study, where the the limits of inter-institutional cooperation are likely to lie.

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