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O L L S C O I L L U I M N I G H

*European Parliament and EU External Relations: Increasing
Influence through Informal Institutional Change*

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Bachelor of Arts in Politics and International Relations

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Abstract:

Although detailed research has been undertaken on the European Parliament's evolving power in EU external relations policy, studies place undue emphasis on formal rules governing institutional influence. This paper argues that Parliament has utilised informal institutional change with the aim of augmenting its institutional presence in the realm of EU external relations. Taking a new institutionalist approach to European integration in external relations, this project researches the process of informal institutionalisation which has accompanied the creation of the European External Action Service and the implementation of the European Parliament's new powers relating to the conclusion of international agreements. The results, comparing formal and subsequent informal accords, reveal that the Parliament's power has expanded beyond the provisions contained in the Lisbon Treaty with greater institutional change recorded in the former case study than in the latter. Parliamentary success in the process of informal institutionalisation hinged on many important factors including parliamentary unity in foregoing short-term gains for longer-term payoffs, a low sensitivity to failure and the relative absence of an institutional structure governing interaction between the EU actors.

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Declaration:

I hereby declare that this project is entirely my own work, in my own words, and that all sources used in researching it are fully acknowledged and all quotations properly identified. It has not been submitted, in whole or in part, by me or another person, for the purpose of obtaining any other credit / grade. I understand the ethical implications of my research, and this work meets the requirements of the Faculty of Arts, Humanities and Social Sciences Research Ethics Committee.

Paul Nallon

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List of Abbreviations:

ACTA:	Anti-Counterfeiting Trade Agreement
ALDE:	Alliance of Liberals and Democrats for Europe
AFET:	European Parliament Committee on Foreign Affairs
CCP:	Common Commercial Policy
CFSP:	Common Foreign and Security Policy
DPA:	Declaration by the HR on Political Accountability
EC:	European Community
ECJ:	European Court of Justice
EEAS:	European External Action Service
EP:	European Parliament
EPC:	European Political Cooperation
EPP:	European Peoples Party
EU:	European Union
FMDA:	Agreement between the EU and the USA on the processing and transfer of Financial Messaging Data from the EU to the USA for the purposes of the Terrorist Finance Tracking Programme
HI:	Historical Institutionalism
HR:	High Representative for the Union on Foreign Affairs and Security
MEP:	Member of the European Parliament
RCI:	Rational Choice Institutionalism
SI:	Sociological Institutionalism
SCA:	Statement by the HR in the plenary of the EP on the basic organisation of the EEAS central administration

S&D: Progressive Alliance of Socialists and Democrats

TEU: Treaty on European Union

TFEU: Treaty on the Functioning of the European Union

UN: United Nations

Chapter 1: Introduction

1.1 Introduction

Over the past two decades, the European Union has been attempting to establish a more integrated and effective external relations institutional framework with the aim of providing a basis on which it can project itself in the international system. In parallel, the EU has, to a degree, incorporated the European Parliament into the institutional structure where external relations policy making is discussed and implemented. A formal account of integration in this area concentrates on the legal basis for the strengthening of both external relations policy and the Parliament's role in the aforementioned area. Conventional wisdom, which explains European integration solely by examining the formal accords and treaties, however fails to foresee the importance of more informal institutional arrangements agreed to between the EU institutions (Stacey, 2010; Heritier, 2007). Interregnum integration can occur between formal treaty changes and can alter the institutional balance of power within external relations policy. Therefore, this academic paper will endeavour to answer the following research question: is the European Parliament attempting to gain more influence in EU external relations policy after the entry into force of the Lisbon Treaty? And if so, how and to what extent has it been successful?

1.2 Research Components

In order to comprehensively and convincingly answer this question, an examination of two components of the Union's external relations policy will be conducted; primarily the establishment of the European External Action Service within the Common Foreign and Security Policy, and also the ratification of International Agreements between the EU and third party states or international organisations. This study focuses on the creation of the EEAS as it signified the largest institutional creation within the external relations

policy network since the establishment of the High Representative for CFSP with the Treaty of Amsterdam. In addition the degree of parliamentary oversight over the Service's institutional structure will have a bearing on the degree of European Parliamentary influence on EU external relations policy more generally (Raube, 2011). In terms of the significance of international agreements, they denote the primary instrument by which the Union can strategically strengthen relations with third party states and international organisations. Recent rejections of the ACTA and FMDA treaties illustrate the current importance attached to international agreements by the European Parliament as a means of imprinting its values and growing aspirations on the external relations domain.

1.3 Research Approach

A predominately analytical approach will be undertaken within the new institutionalist framework. It will test the appropriateness of informal institutionalism in explaining potential interregnum integration (that is integration occurring on the basis of informal rule making among organizational actors) in EU external relations (Stacey and Rittberger, 2003, p.863). The theoretical argument put forward in this paper states that a rationalist process of bargaining between actors is likely to give rise to informal rules and norms that have distributional consequences. Rational Choice Institutionalism assumes that institutions are self-regarding, goal orientated actors who perceive their interests, determine strategies and rank them in preference choosing the strategy with the greatest utility (Heritier, 2007, p.10). These informal rules or institutions are shaped by power differentials between the three main EU actors and represent an outcome of, rather than a means towards achieving more influence. However in time, informal institutions engender institutionalisation and possibly interregnum integration (Farrell and Heritier, 2003; Stacey, 2010).

1.4 Academic Relevance of Research

Regarding the academic relevance of the research topic, the existing body of research relies heavily upon the traditional integration theoretical frameworks of intergovernmentalism and neo-functionalism in explain formal integration. The section of literature dealing with informal integration accounts deal primarily with the European Parliament's influence in legislation and in approving the composition of the Commission (Heritier, 2007; Hix, 2002; Farrell and Heritier, 2003; Häge and Kaeding, 2007). In relation to the CFSP and the conclusion of international agreements, literature focusing on the role of the European Parliament is limited and is focused on formal powers of the Parliament in CFSP and the legal aspects of ratifying international agreements (Craig, 2010). This paper will aim to bridge the large gap which exists in the research of informal institutional change and the Parliament's evolving role in external relations policy.

Research focusing upon the process facilitating informal institutional change and the potential for the European Parliament to utilize informal agreements in broadening its influence in EU external relations policy has immense practical importance for both researchers in International Relations and European Studies. Informal accords incrementally grant the Parliament more powers vis-à-vis the other institutions in relation to external relations policy, which may be then formally institutionalised in subsequent EU treaties (Hix, 2002). This process, potentially incentivising interregnum integration, has implications on how policy priorities within this area are orientated and by whom they are directed. Research conducted in this study could be further applied to areas in which the Parliament is beginning to gain influence, in particular in the area of freedom, security and justice and also in fiscal and economic matters of the Union.

1.5 Project Structure

With the intention of presenting a comprehensive and substantiated answer to the aforementioned research question, this paper will adopt the following structure; Chapter One, the present chapter, presents a brief description of the research area this paper will focus on. The following chapter, Chapter Two, will provide the historical background to European integration in relation to Common Foreign and Security Policy and International Agreements. Chapter Three will present a review of the current body of literature and illustrate the gap in the literature which this paper will attempt to fill. Following on, Chapter Four will investigate whether a process of informal institutional change has facilitated increased EP influence over the EEAS while Chapter Five will examine informal institutionalisation and the degree to which the Parliament has gained influence in the negotiation stage of international agreements from its new power to reject such treaties. This will be followed by Chapter Six which concludes that the Parliament has expanded its power beyond the provisions contained in the Lisbon Treaty by successfully bargaining in a process of informal institutional change. Parliamentary success in the process of informal institutionalisation hinged on important factors: parliamentary unity in foregoing short-term gains for longer-term payoffs, a low sensitivity to failure and the relative absence of an institutional structure governing interaction between the EU actors.

Chapter 2: Historical Progression of EU External Relations Policy

2.1 Overview:

In order to conduct an investigation into whether the European Parliament has exploited informal politics for institutional gain following the Treaty of Lisbon, it is necessary to provide a background of European integration in the area of external relations. The aim of this chapter is primarily to account for the evolution of the European Parliament role, up to and including the Lisbon Treaty, in two selected aspects of EU external relations: Common Foreign and Security Policy and the conclusion of international agreements. Outlining the historical development of the EP's evolving powers in both aspects of external relations policy is essential in discerning the alteration in rules governing interaction primarily between the Parliament and the Council. It also aids in establishing the formal basis of Parliament's present power (i.e. the formal provision of the Treaty of Lisbon) and its ability to instigate informal institutional change.

2.2 Common Foreign and Security Policy

The CFSP is at the cornerstone of the EU's foreign, security and defence policies having been established in 1993 as a separate intergovernmentalist pillar within the EU framework. Although the CFSP has its institutional basis within the Treaty of Maastricht, its thematic ideals are firmly rooted in the structure of the EPC or European Political Cooperation which aimed to 'discuss topical affairs, exchange views and share information' (de Waele, 2011, p.2). Although the incorporation of the CFSP transformed the EU's institutional framework, it failed to instigate a transformation of the EP into an integral actor in external relations policy. Article J.7 the Treaty of the European Union stated that the Parliament should be 'kept informed' of CFSP positions and policies (TEU). Key foreign policy instruments such as Common Positions and Joint Actions (the former

requiring member states to adopt national policies that mirrors the EU position and the latter refers to EU operational actions agreed to) were firmly to be enacted at the behest of member states with unanimity formally enshrined (Dover, 2010, pp.244-245). Council domination persisted with the establishment of the High Representative for CFSP in the Treaty of Amsterdam.

The most significant institutional reorganisation of CFSP occurred with the ratification of the Lisbon Treaty which created a new institutional structure to aid the implementation of the CFSP. Article 27(3) of the Treaty on European Union, as amended by the Lisbon Treaty, provides that:

‘In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service...The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission’

(Article 27(3) TEU)

In relation to the EEAS and CFSP more generally, the Lisbon Treaty continued to concentrate power in the European Council and the Council of the EU with significant formal intergovernmental control over the appointment of the High Representative, the head of the EEAS (Craig, 2010, pp.411-412). Formally, the Council had the final say on the EEAS set-up which required Commission consent but which significantly only needed mere consultation with parliament. Although in comparison to the co-decision procedure, consultation may be described as second-order participation, the requirement under the aforementioned Article creates a formal entry point for the EP within the EEAS institutional network (Raube, 2011, p.8). In relation to the financing of the new communitarian organisation, the EP had formal budgetary control with parliamentary approval necessary for any alterations to the staffing and financing frameworks of the EU institutions. Therefore the parliament was uniquely placed to interpret its formal consulting

role as a consenting one in the establishment of the EEAS (Raube, 2011). Formal budgetary power over the operational financing of the EEAS would not be treated separately from the formal consultation on the establishment of the organisation.

2.3 International Agreements

The growing institutional prominence of the European Parliament has been more evident in the conclusion of international agreements. As the legal basis empowering the Community to conclude international agreements is found in the Treaty of Rome, the EP historically had no involvement in the negotiating or ratifying agreements. The Treaty only accorded the EC power to conclude international agreements in relation to the Common Commercial Policy, the maintenance of relations with international organisations such as the UN or the establishment of an association with the Community (Craig, 2010, pp.396-397). The inclusion of a provision relating to CCP in the founding document of the EU illustrated the importance of trade as a soft power instrument in external relations policy (Meunier and Nicolaidis, 2011, p.276). With the direct elections to the Parliament in 1979, European parliamentarians began to call for increased powers. An expansion of European Parliamentary influence occurred with the Single European Act providing Parliament with assent power over some international agreements such as Association Agreements and accession treaties of new member states (Scully, 2010, p.169). Since Maastricht, the EP has also gained assent power over agreements in the framework of international organisations (such as the WTO) and agreements with budgetary implications (Raube, 2011, p.5). Over time increasing formal powers have been augmented by informal arrangements, the most significant being the Inter-Institutional Agreement of 2005 guaranteeing that the EP will be provided with 'early and clear' information during treaty negotiations (*Ibid*).

The ratification of the Lisbon Treaty reformulated the EPs powers relating to the conclusion of international agreements and widened the scope of Parliamentary assent over such treaties. Article 218(6) of the Treaty on the Functioning of the European Union as amended by the Treaty of Lisbon states that:

‘The Council shall adopt a decision concluding the agreement...(a)after obtaining the consent of the European Parliament in the following cases (iii) agreements establishing a specific institutional framework by organising cooperation procedures [or] (v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where the consent by the European Parliament is required’

(Article 218(6) TFEU)

The institutional novelty of this article is that for the first time in its history, the EP had gained power of consent over international agreements of the nature outlined above. With the introduction of the treaty, an important link was established covering fields to which the ordinary legislative procedure applies (Craig, 2010, p.401). This has greatly widened the policy scope of international agreements which require parliamentary approval. Consent of Parliament is now necessary for a majority of international treaties and agreements signed by the EU as a separate legal personality. Although the Lisbon Treaty provisions increase EP influence over the approval of international agreements, the rules still exclude the potential for Parliament to be officially and actively involved in treaty negotiations. The Council remains arguably the most powerful institution: it authorizes the opening of negotiations, adopts negotiating directives, authorizes the signing and concludes international agreements (Eckes, Fahey and Kanetake, p.32). The Lisbon Treaty does not confer any authority for EP involvement in the decision-making of the treaty negotiation phase. Rather the formal rules only require the Parliament to be ‘immediately and fully informed’ at all stages of the negotiation and conclusion of specific agreements by the negotiator, usually mandated to the Commission (Art. 218(10) TFEU).

2.4 Concluding Remarks:

From outlining the historical progression of these two important aspects of EU external relations policy, it is clear that the EP had a stronger institutional presence in the procedure concluding international agreement than within the CFSP policy network. The perceived national exclusivity of foreign and security policy combined with the relatively short historical presence of CFSP helped contribute to the underdeveloped position of the EP. Reforms encompassed within the Lisbon Treaty provide the formal basis for European Parliamentary influence over contemporary EU external relations policy. The prerogatives granted under the Treaty will provide the foundation for the forthcoming analysis in Chapter 4 and 5 on informal institutional change and the potential for increased European Parliamentary influence within the aforementioned policy areas.

Chapter 3: Literature Review

The literature relevant to the research of European integration and the strengthening of the European Parliament's prerogatives is diverse and details the varying approaches to integration and applies them to the ever expanding areas of European Union policy. A literature review provides a summary of those topics considered to be most relevant to the research topic. The below review commences with an investigation into the various theoretical frameworks in understanding integration which will then be followed by a specific discussion on new institutionalism and its contribution to the research area. Subsequently an analysis of the increasing powers of the European Parliament will be conducted with regard to powers granted outside formal agreements. In order to conduct this analysis, detailed research is provided into informal institutions which form the majority of power transfers in between formal treaty adaptations. This will then be followed by a review of the current literature on the application of various frameworks, mainly focusing on new institutionalism, on the influence of the European Parliament in relation to external relations policy. An in-depth literature analysis will be undertaken on the European Parliament's role in influencing the establishment of the External Action Service and the power to negotiate and implement international agreements signed by the European Union.

3.1 Theoretical Frameworks

Theories of European Integration have focused primarily on two key and opposing theoretical positions of intergovernmentalism and neo-functionalism with various decades been associated with specific periods of integration. Writers in these two traditional frameworks focus their attention on the role of national governments and supranational institutions respectively.

3.1.1 Neo-Functionalism

The neo-functionalist approach to the process of integration focuses on the role of supranational institutions, such as the European Parliament, and other non-state actors as the driving forces of the integration process (Pentland, 1973). This therefore places the state in a secondary role, guiding rather than spearheading the process (Strøby Jensen, 2010, p.71-72). In specific reference to the European Parliament, Strøby Jensen outlines that the progression from economic to political integration will be accompanied by the development of supranational institutions which over time and with increased socialization will lead to the triumph of the supranational agenda over the national one (2010). The European Parliament, it is argued, will in time become one of the main institutions in the European Union as it has as its source democratic legitimacy and also will command the lead in the supranational agenda with elite socialization (*Ibid*, pp.75-77). However the perceived breakdown of neo-functionalism from the 1950s to the 1970s did not illustrate elite socialization; ‘the expected transfer of elites’ political loyalties to a new core of officials in Brussels did not transpire’ (Stacey, 2010, p.7).

The concept of spillover dominates neo-functionalist literature with Haas basing his assumption that cooperation in one area of policy making will place pressure on another connected area which will lead to further integration or a spillover affect (Haas, 1958). However this process relies on the Commission, rather than the EP, acting as a political entrepreneur and active promoter. Therefore the European Parliament is deemed to be a recipient rather than an initiator of political spillover.

In addition neo-functionalist literature pivots exclusively on spillover occurring formally through treaty provisions. The integration paradigm fails to account for any informal methods of power transfer which can occur between treaty amendments but which may constitute a limited form of spillover. Informal agreements between the

Council of the EU and the European Parliament, it can be argued, amount to a transfer of power from the national governments to a purely supranational identity.

3.1.2 Intergovernmentalism

In contrast, an intergovernmental conceptual account of European integration is characterised by a state-centric framework which 'is driven by the interests and actions of nation states' (Hix, 1999, p.15). From this understanding, states are rational actors that evaluate their position in the system of states and which then define their interests based on this (Cini, 2010, p.88). From its inception, intergovernmentalists have portrayed the European Parliament as a necessary instrument of national governments in making cooperation in a policy area, which they voluntarily delegated sovereignty to, more effective (Cini, 2010, p.90). The establishment of the EP, in its modern form in 1962, can also be attributed to the need for national governments to regulate the supranational European Commission and maintain national indirect national influence over the Community budget. Although this perspective can, to a degree, successfully account for the establishment of the Parliament, it fails to account for the subsequent evolution of the supranational institution. The undue significance afforded to intergovernmental bargaining by intergovernmentalism in Inter-Governmental Conferences fails to comprehensively encompass the importance of informal politics in framing the substance of those inter-state negotiations (Wincott, 1995).

The intergovernmentalist explanation of the process by which the European Parliament has gained influence in European policy making is based on the premise that EU states delegate their executive powers to surmount collective action problems, reduce transaction costs and potentially to establish credible commitments (Pierson, 1998, p.302; Wincott, 1995, pp.259-260). Moravcsik assumes that community institutions are highly

reactive agents operating in a passive structure that serves the interests of states, who decide to delegate powers to the European level in response to growing pressure of international interdependence (1993). However, although this theory may provide a limited explanation on the establishment of the European Parliament, none of the literature on intergovernmentalism can fully account for the large scale enlargement of parliamentary powers which have allowed the EP to become a competitor to the Council as the source of legitimacy for the Union. Intergovernmentalists are 'reluctant to admit that there is a European integration process, as such' (*Ibid*, p.89). Therefore intergovernmentalist literature is even more redundant than neo-functionalism in attempting to understand any process of integration or power transfer which can occur over time. Notwithstanding the importance of the state, the undue focus on domestic politics leaves a substantial area of integration which intergovernmentalism fails to account for, specifically the influence which supranational organisations can yield through the use of informal accords which may be incorporated in subsequent treaty discussions.

Although intergovernmentalism is defunct in outlining how the Parliament has emerged as a challenger to the primacy of the Council in the EU political system, the theory does have one strong element which is worthy of appraisal. As intergovernmentalism draws upon rational choice theory, it has some interesting conceptual tools which have been used in other theories, such as new institutionalism, in attempting to clarify why breaches transpire in state control over the integration process (Pierson, 1996, pp.125-6). Aspinwall and Schneider attempt to incorporate the preferences of all actors within the institutional network of the EU when they explore how structural and individual bias shape political positions, actions and outcomes (2001, pp.1-2). Enquiries into the impact of institutions and agents have led to the emergence of a new theoretical framework on integration.

3.1.3 New Institutionalism

Investigations into European integration are a relatively recent area of research which has, in the majority, focused upon legal and formal aspects of integration. However increasing calls for a transcendence of this conventional debate has led to the emergence of a body of research on the importance of institutions in providing the context where actors conduct political bargaining (Rosamond, 2000, p.114).

New institutionalism contends that institutions matter since ‘political struggles are mediated by prevailing institutional arrangements’ (Chrysochoou, 2001, p.113). Institutions have the potential to shape political behaviour, thus going beyond the formal organs of government to embrace ‘standard operating procedures, so-called soft-laws, norms and conventions of behaviour’ (Bulmer, 1993; North, 1990). Arguments in favour of this theoretical trend emphasize that it is not solely through researching history making treaties that an explanation of the evolving European integration project can be derived (Chrysochoou, 2001, p.113). Small but significant institutional alterations also play a vital and somewhat misunderstood role in European integration. Chrysochoou argues that in recent times a renewed focus has been placed upon institutionalism in part because of the unintended consequences regarding the influence of institutions, the increasingly autonomous role which institutions play in the European policy process and also the agenda setting powers of supranational institutions which limit the capacity of states to exercise formal control over integration (Chrysochoou, 2001, pp.112-3).

Bache *et al*'s overview of new institutionalism includes the investigation of three separate strands; rational choice institutionalism, historical institutionalism and sociological institutionalism (2011). RCI investigates behaviouralism focusing upon the constraints which formal institutional structures enforce on other players. It also highlights the difficulty of principals, in this case national governments, in directing the activities of

their agents, for example the European Parliament (*Ibid*, p.24). Rational Choice Institutionalists also assume that actors, such as the EP, will undertake strategies that aim to maximise their rational self-interests and preferences (Rosamond, 2000, p.116). Academic literature in this regard has been most successful when focused on EU legislative processes, of which the European Parliament is a significant actor. For example, Tsebelis and Kreppel undertake a RCI approach in arguing that the European Parliament has been given conditional agenda setting power with the introduction of the cooperation procedure in the Single European Act (1998). Garrett and Tsebelis also focus on the formal rules governing interaction between the Council and the Parliament concluding that the European Parliament will in the future continue to advance the integration agenda as long as its preferences are unconstrained by the will of European citizens (2000, p.32).

In comparison Historical Institutionalism has two central facets, it is historical as it emphasises that political development should be viewed over time and it is institutionalist as it ‘stresses that many of the contemporary implications of these temporal processes are embedded in institutions’ whether they be formal rules or social norms (Pierson, 1996, p.126). Historical institutionalists tend to operate with a wider definition of an institution incorporating both formal and more informal rules that structure relations between different actors (Rosamond, 2000, p.115). This perspective generally presents a more generous interpretation on the influence of actors such as the Parliament. Institutions have the ability to shape the preferences of actors and in doing so ‘structure political situations and leave their own imprint on political outcomes’ (Thelen and Steinmo in Rosamond, 2000). Therefore actors are not fully aware of institutional consequences. In relation to the European Parliament, historical insitutionalists tend to argue that its path of subsequent integration was and is determined by the context bound decision to directly elect MEPs in 1979 and by subsequent formal and informal rules changes (*Ibid*, p.117)

Rational Choice and Historical Institutionalism are considered to be the main perspectives within new institutionalist thought when evaluating supranational actors exclusively. Sociological institutionalism, the third and lesser utilized perspective, takes a comparatively distinctive approach by focusing on the role of culture or norms governing behaviour within the institutional setting and the manner in which processes of communication and persuasion are directed within institutions (Borzel and Risse, 2000; Hall and Taylor, 1996; Rosamond, 2010). Applying it to the case of the European Parliament, a sociological institutionalist approach would focus on the importance of democratic legitimacy as a norm in increasing the institutional influence of the actor (Bache *et al*, 2011, pp.26-27). However SI has historically proved weak in explaining how norms have emerged and the process by which they change (Stacey and Rittberger, 2003, p.866). In addition, it fails to implicitly account for the importance of reducing transaction costs which most scholars have identified as key instigator of institutional change (*Ibid*).

Within new institutionalist literature, a majority of the research conducted into European integration have taken a rational choice institutionalist approach. Stacey attempts to extend RCI to develop a bargaining theory of institutional change focusing specifically on the ‘incomplete contracting’ of formal agreements (2010). The RCI bargaining model outlined by the author successfully predicts dynamics in the informal sphere of the EU and highlights the important of new informal institutions in constraining the preferences of actors within the EU integrative network (*Ibid*, p.228). Study in this area is also augmented by Farrell and Heritier who argue that the introduction of co-decision has increased the circumstances under which informal institutions may emerge from repeated interaction between actors and which may have an important impact on subsequent institutional outcomes (2003). In particular attention to the European Parliament, the paper concludes that a process of continuous constitution-building, constrained by both formal and informal

institutions, may favour actors such as the European Parliament who have little input to Treaty negotiations (Farrell and Heritier, 2003). It is therefore essential that this relatively under-researched institutionalist area of study is investigated further.

3.2 Informal Institutions and the European Parliament

Research into informal institutions is a relatively new addition to literature on European integration and focuses primarily upon the European Parliament and its utilization of informal accords to maximise and in some cases expand the powers which have been delegated to it under successive EU treaties. The majority of the literature combines analysis of formal and informal institutional change in the continuous constitution building in Europe. Stacey and Rittberger (2003), Farrell and Heritier (2003) and Kreppel (2003) have adopted this dualistic approach in explaining changes in power relations in the intervening period between treaties amendments.

In particular Farrell and Heritier identify, quite successfully, four key factors which place the European Parliament in a pivotal position against other EU institutions to maximise their impact upon institutional outcomes (2003). The factors which favour the parliament in bargaining situations include: the formal institutional framework, differing time horizons, differing sensitivity to failure and differing levels of resources (*Ibid*, pp.582-583). First, particular formal institutions such as the right to veto invite the emergence of more informal accords that overcome inevitable deadlock. Secondly the six month Council Presidency means that the Council has a shorter time horizon than Parliament and therefore is more vulnerable to pressure. Thirdly MEPs are deemed to have a lower sensitivity to failure as parliamentary elections are generally second order elections meaning therefore that they are less vulnerable to policy failures than member states. Finally COREPER, representing the Council, has a limited organisational means to sustain

lengthy negotiations with Parliament and therefore is disproportionately prone to negotiating an early settlement. They illustrate their point by applying this framework to the co-decision process and conclude that the use of this procedure has casually led to the creation of informal institutions which have subsequently altered future treaties (*Ibid*, p.577).

Stacey (2010) and Heritier (2007) conduct in-depth analyses on informal accords and informal institutional change respectively. Stacey examines informal accords specifically and illustrates their significant historical impact on the Parliaments role in the process of approving the European Union budget and also the affect of informal accords in strengthening the EP's position vis-a-vis the Council in the arena of legislative politics (Stacey, 2010). Alternatively Heritier's account of institutional change is more theoretically laden and conducts numerous empirical analyses on the Parliament, Council and Commission. The author investigates the change in rules governing the Parliament's role in legislation, the Presidency of the Council, the Parliament's role in approving the Commission and the composition of the Commission (Heritier, 2007). In particular attention to the EP, Heritier concludes that the process of institutional change is spurred by functional demands, requiring the creation of formal rules. These formal rules require the design of informal rules of clarification which may be subsequently adopted as formal rules or not (*Ibid*, p.241).

Comparatively, Crum (2006) adopts a more exclusive approach looking in particular at informal institutions especially inter-institutional agreements, which define institutional relations, in a specific area of European policy and over a limited time period. Crum utilizes the framework of informal institutional making in a unique fashion by applying it to a specific policy area of European policy rather than policy process. He investigates 'whether the European Parliament has been able to use the institution of the

High Representative as a lever to increase its powers in the EU's CFSP' during the period 1999-2004 (*Ibid*, p.383). Crum finds that the EP's sensitivity to failure in CFSP is much higher and therefore the Parliament was unable to use the institution of the HR as a lever to increase its influence (2006). Distinctively, Crum is substantially more critical of the institutionalist approach to the study of informal institutional making becoming one of the only institutionalist researchers to find that an intergovernmental approach is more advantageous (*Ibid*, p.399). During the period investigated no informal institutions were created or altered which affected the relationship between the EP and the HR. Consequently the author deems it sufficient to conclude that the relationship was based solely on the formal Treaty provisions formulated by member state governments. However the investigation undertaken in subsequent chapters of this study place into question the exclusivity of intergovernmental formalism supported by Crum.

From the extensive investigation of the current literature, there is a tendency for researchers to take a broad approach investigating interregnum integration over a long time period and identifying the specific instruments which the European Parliament have exploited to broaden their involvement in competencies which are formally not present. Investigations by Farrell and Heritier review the co-decision process and historically account for the European Parliament's expanded use of the informal institutional framework to establish parity of position with the European Council (2003). Similarly Hix's article adopts a similar approach dissecting both the Treaties of Maastricht and Amsterdam for areas of ambiguity which the Parliament has manipulated in both co-decision and the appointment of the Commission President. Only a relatively small percentage of the literature is dedicated to investigating the influence of a single supranational institution on a single policy area within a short and distinct time frame. The solitary academic article which has undertaken the above framework is Raube's

contribution which assesses the ‘emerging relationship that becomes evident in the implementation phase of the Lisbon Treaty between the Parliament, the High Representative and the European External Action Service’ (2011, p.1).

3.3 European Parliament’s Role in CFSP and in the Conclusion of International Agreements

Literature in regard to forming a link between increasing the European Parliament’s role in the domain of the Common Foreign Security Policy and interregnum integration is very scarce. The existing academic literature is predominately focused on CFSP as a policy area reviewing its historical development, its purpose and decision-making process. However there is a small segment of the existing literature which investigates the role of the European Parliament in foreign, security and defence policy of the Union.

From investigating the broad array of literature, Dover (2010) and, Bache, Bulmer and George (2011) provide the most up-to-date and succinct accounts of CFSP from its nascent stages up to and including the reforms ushered in by the Lisbon Treaty. However these broad accounts of CFSP fail to identify the European Parliament as a substantial actor, influencing the structure and decision making process of the policy area. De Waele’s account of the institutional network, which CFSP operates within, includes a short investigation of the European Parliament, pointing out that the parliament exercises substantial influence over the budgetary sphere of CFSP (2011, p.35).

Crum’s (2006) work is the solidarity scholarly article which specifically examines the relationship between the Parliament and the High Representative to establish if the EP has gained any formal powers through relational bargaining. The article concludes that there is little evidence of the Parliament gaining any formal powers from the High Representative. However this does not rule out the institutionalist perspective in helping to

explain the process of integration in EU foreign policy. Crum actually perceives it to be the right approach to adopt as it highlights:

‘The EP’s sensitivity to failure is much higher in the CFSP’ as it ‘recognizes the High Representative as its best bet for seeing a CFSP develop and in due course acquiring parliamentary influence over it’

(2006, p.399)

Interestingly within CFSP academic literature, only two texts examine the role of Parliament’s influential Committee on Foreign Affairs and the Subcommittee on Security and Defence. Rumrich, for example, investigates the role of both institutions and concludes that, through the use of Rules of Procedure, the Parliament ‘is able to outgrow its assigned role of a weak institution within CFSP, by providing an efficient forum for CFSP matters’ (2006, p.215). However his account is weakened by the dated nature of the research relative to the wide-ranging reforms institutionalised in the Lisbon Treaty.

Nevertheless, it evident from the body of literature that research in this area has failed to keep pace with treaty revisions in this area of policy coordination and literature is only now being advanced which critiques the creation of the EEAS. A recent working paper initiated the study of the emerging relationship between the EP and EEAS in the rearranged external relations institutional setting (Raube, 2011).Raube in his study historically analysed the creation of the EEAS in order to ascertain whether the relationship between the HR and the EP has altered. The conclusions drawn determine that the EP was able to re-structure this relationship by co-negotiating the establishment of the Service and thereby extending parliamentary oversight over EU external relations (*Ibid*, p.16). In particular, the paper should be commended for its precise nature in framing the timetable and the details of interactions between the EP and the EEAS. It also highlights the Parliament’s exploitation of its budgetary powers in reframing the power balance in the operation of the CFSP. Rumrich’s research on the Parliament’s role in the field of CFSP

and Raube's article on the EEAS provide a basis for further investigation. The relative absence of collected works in this area provides an incentive for examining whether the EP has furthered its influence over a policy area, which historically it has been an absent actor, by utilizing informal institutionalisation.

An analysis of the EP's role in ratifying international agreements is of paramount importance as with the signing of the Treaty of Lisbon, the Parliament has furthered its position in the integration process by gaining increasing competencies and authority in this area. Curiously the majority of academic debate regarding the conclusion and ratification of international agreements between the EU and third parties is orientated towards the implications of treaty revisions on European Union law. Craig's comprehensive and in-depth academic work intrinsically lays out the practical changes which the Lisbon Treaty instigates (2010). In regard to external action, foreign policy and defence Craig argues that the most significant change made by the Lisbon Treaty is Article 216 TFEU 'which provides Treaty foundation for power to make international agreements, which had hitherto been developed by ECJ's case law' (2010, p.435). Viewing it through the prism of institutionalism, it is evident that interregnum integration occurred through the institutional changes brought about by ECJ case law, which subsequently, has been formally adopted in the Lisbon Treaty.

However research on international agreements, which the European Union as an independent actor has negotiated, is very limited. In order to adequately assess the European Parliament's role in bargaining for itself a role in approving international agreements, it is critical to examine the process of agreement and ratification of recent accords. The Anti Counterfeiting Trade Agreement (ACTA) and the Agreement between the EU and the USA on the processing and transfer of Financial Messaging Data from the EU to the USA for purposes of the Terrorist Finance Tracking Program (FMDA) are both

contemporary examples which emphasize the increased authority which the European Parliament holds in this area. The vacuum within existing literature regarding the process of negotiating and approving international agreements, especially those not related specifically to trade, could provide a beneficial basis on which an analysis can be conducted.

3.4 Research Question

The relative lack of academic research in relation to the Parliament's role establishing of the EEAS and EP powers over the conclusion of international agreements provides an basis on which an evaluation on the role of informal institutional change in expanding European Parliamentary influence over EU external relations. Therefore this project will attempt to answer the following research question: Is the European Parliament attempting to gain more influence in EU external relations policy after the Lisbon Treaty? How is it doing so, and to what extent is it successful?

Chapter 4: Establishing the EEAS

The relationship between the CFSP and the European Parliament is a rather distinctive one within the European institutional framework which involves cooperation within the arena of ‘high politics’ (Crum, 2006, p.387). The Parliament’s limited power within CFSP has often stimulated support for processes of informal institutional change in the pursuit of greater EP powers (Raube, 2011, p.7). This consequently has altered the pace and process of integration with the establishment of the European External Action Service being an interesting case in point. This study will focus on the general trade-off between the European Parliament and the Council of the EU in the creation of the EEAS in order to illustrate whether the parliament has gained influence in external relations policy through utilising the process of informal institutional change. The negotiation process will firstly be outlined followed by an examination of the informal institutional arrangements ensuing. Finally a conclusion will be drawn discussing the appropriateness of informal institutionalism in explaining any possible increase of parliamentary influence within CFSP.

4.1 EEAS Bargaining Process

In line with the formal procedures laid out in the Treaty of Lisbon, the Council drafted a ‘Report on the European External Action Service’ laying out the parameters for the establishment and organisation of the Service. Interestingly the document clearly distinguished between discussions on the institutional make-up of the EEAS and the negotiations on financial and staff regulations which the report recognised as a separate stage in the organisation’s development (Council of the EU, 2009, p.10). The Council was forthright in excluding the EP from any role in the recruitment process of any members of the EEAS including Delegation Heads expressing the view that the HR was to be the

exclusive ‘appointing authority’ with no reference to the Parliament (*Ibid*, p.7). This would have excluded any element of parliamentary accountability over the appointment of senior positions within the organisation. Council’s overall positioning, however, stressed the need for the establishment process to be swift and finalised before the legal entry into force of the Lisbon Treaty (*Ibid*, p.10). Although this analysis focuses in particular on the Council and the Parliament, the Commission also pursued its own interests in particular retaining authority over the external action programmes such as the European Neighbourhood Policy and the European Development Fund (Philips, 2010). It also advocated for high proportion of Commission officials to be allocated the new Service.

Congruently, the EP declared that a decision on EEAS could only be achieved with the consent of the EP as it reiterated ‘its determination to exercise its budgetary powers to the full in connection with these institutional innovations’ (European Parliament, 2009a). Parliament saw the entry into force of the Lisbon Treaty as an opportunity for ‘increased activism’ within external relations (Caballero-Bourdout, 2011, p.37). It thus became clear that Parliament aimed to increase its influence over external relations policy by leveraging issue-linkage during EEAS negotiations. Following the continued and vocal nature of parliament’s demands, the High Representative of the Union for Foreign Affairs and Security Policy initiated an informal debate with the EP, in particular with the Committee on Foreign Affairs (AFET).

Subsequently, the Parliament assigned two very senior rapporteurs, Guy Verhofstadt and Elmar Brok. The appointment of the leader of the Group of the Alliance of Liberals and Democrats for Europe and the Chairperson of the AFET illustrates the determination of the EP to use the opening accorded to it to gain greater parliamentary influence over the EU’s future diplomatic service. The two rapporteurs prepared a working document on a ‘Proposal for the establishment of the EEAS’ which would be used as the

basis for final talks due to be held in Madrid under the Spanish presidency. One of the most significant elements was the stipulation that the service should be held accountable to the EP both in political and budgetary terms (Brok and Verhofstadt, 2010, p.2). In order to achieve this, appointees to senior EEAS posts and strategically important political positions on the ground (Heads of Delegations, EUSRs) would be heard by the relevant parliamentary committee, before taking up their duties, so as to provide them with sufficient political legitimacy and authority (*Ibid*, p.5). These proposals contained conditionalities on democratic accountability to the EP which had no treaty basis or formal legal basis within the *acquis communautaire*, in particular ECJ court rulings. Final negotiations were set to be held in June 2010 in the Spanish capital.

Overnight talks between the Council, Commission and the Parliament concluded with political agreement on the establishment and organisation of the new Service. The European Parliament won significant concessions in a decision which merely required it to be consulted. Two informal texts were annexed to the agreement, one in relation to political accountability and another in regard to the basic organisation of the EEAS central administration (Kovacheva, 2010). The former contains the provisions under which the EP can conduct hearings for newly appointed Heads of Delegations. The HR will ‘respond positively to requests from the European Parliament’ to conduct an exchange of views within the Committee of Foreign Affairs. Committee appearances will occur before the appointees take up their posts in the EU delegations abroad (Official Journal of the EU, 2010a). While debating the legislative resolution approving to the negotiated proposal, Ria Oomen-Ruijten MEP outlined the successes of EP negotiation in altering the structure and nature of the EEAS:

‘It is not an intergovernmental body, and yet it follows the Community method. Parliament has a comprehensive overview of the budget and missions.

Parliament has a say in shaping policy strategies and consults ambassadors. EU officials make up at least 60% of the staff.'

(European Parliament, 2010a)

On the 8th July 2010 the European Parliament agreed to the legislative resolution as forwarded by the European Committee on Foreign Affairs approving the Council document and two informal agreements with overwhelming support: 549 in favour and only 78 against (Official Journal of the EU, 2010a). Council assented to the framework on the 26th July, paving the way for the formal establishment of the Service in the following December.

4.2 Analysis of Informal Institutional Change

From outlining the negotiation process founding the EEAS, it is clear that the European Parliament has gained a greater degree of influence and power compared to the formal prerogatives granted to it by the Lisbon Treaty. It may even be claimed that the Madrid agreement surmounted to a degree of institutional change within European external relations policy. Institutional change can arise when one or more actors have an incentive to alter the existing rules and suggest an altered rule that is more beneficial to them than the pre-existing one (Lake cited in Heritier, 2007, p.14). From this description, it can be argued that the European Parliament favoured alterations to the current rules within the sphere of external relations as formally they have been sidelined. In addition the Council, the significant actor within CFSP, had an incentive to alter the pre-existing rules even though they may slightly reduce their control over European external relations policy. Although ideally the Council would have preferred no EP influence, providing the EP with informal political accountability oversight over the EEAS was necessary in order to establish the Service within a swift timeframe as prioritised by the Council. The Commission was unopposed to any institutional alteration which increased parliamentary

oversight and prioritised the community method on the condition that important policies such as the European Neighbourhood Policy be retained and continued to be formulated by the Commission and not exclusively by the EEAS. Therefore, all three actors facilitated institutional change with the aim of rationally seeking their intended aims in the establishment of the EEAS.

Although the incentives for institutional change were present at this juncture, it is appropriate to question the nature of the change. By examining the process of negotiations outlined in the previous section, it is evident that alterations in institutional influence occurred through informal institutional change with negotiations between actors after the introduction of the Lisbon Treaty. Informal accords ‘constitute non-legal, unofficial agreements’ in the arrangement of particular aspects of the EUs policy making and oversight process (Stacey, 2010, p.66). One of the principal motives for this informal form of integration is to diminish tension and inter-organisational conflict within the policy network. In addition, informal accords are often agreed to out of functional necessity as formal provisions such as treaties may not contain detailed matters such as policy-making timing or operational procedures (*Ibid*, p.68).

As the literature analysis has exemplified, the European Parliament has a ‘de facto’ advantage in the negotiations of informal accords especially within the informal bargaining procedures of co-decision (Häge and Kaeding, 2007; Hix, 2002; Kreppel, 2003). Three factors disproportionately favour the EP in bargaining situations. Firstly, different actors have different priorities over a policy area with some actors taking a longer view than others (Farrell and Heritier, 2003, p.582). Shorter time horizons can make actors vulnerable to pressure. Examining the process establishing the EEAS, the Council had a shorter time horizon than the Parliament. The first report to the Council on the EEAS of October 2009 expresses the firm view that the High Representative should present her

proposals with the view of adoption no later than April 2010 (Council of the EU, 2009, p.10). When no solution had been adopted by this deadline, the Spanish presidency arranged last minute negotiations in June 2010 to ensure that one of its key presidency objectives was fulfilled. Secondly, different actors have varying sensitivities to failure. In this case, the Council had a heightened sensitivity to failure as the EEAS and also the High Representative were both institutions which the Council had responsibility to establish and appoint. A continuation of a incoherent external relations policy with a fragmented institutional network could diminish EU interests in conflict management, for example, in Israel and Iran. Finally, the European Parliament's acute organisational capacity in comparison to the Council meant that the HR preferred to avoid long negotiations (Farrell and Heritier, 2003, p.583). Baroness Ashton's staff only numbered approximately twenty at the negotiation stage. To summarize, the EP theoretically had a relative, if not distinct, bargaining advantage instigating informal institutional change.

4.3 Evaluating EP Influence over the External Relations Domain

Although it has been argued that the EP had bargaining advantage in informal institutionalisation, an examination of the agreed informal accords is required to determine whether they amount to further integration. In agreeing to the amended Council proposal, the EP negotiated two informal texts, the 'Declaration by the HR on Political Accountability' (DPA) and 'Statement by the HR in the plenary of the EP on the basic organisation of the EEAS central administration' (SCA).

The former informal accord structures the long-term relationship between the EP and the EEAS with parliamentary oversight of the service. One of the substantial elements was the agreement that the HR will positively respond to requests from the EP for an exchange of views with newly appointed Heads of Delegations and EU Special

Representatives to countries and organisations which the Parliament considers as strategically important before taking up their posts (European Parliament, 2010b). This informal provision opens up the possibility of American Senate style hearings with a vote within the Committee on Foreign Affairs demonstrating its approval or disapproval of specific diplomatic appointments to states which the Parliament deems strategically important. Although the EP has no formal authority to block such appointments, the High Representative and EEAS would find it extremely challenging to systemically ignore the democratically elected institution which approves the yearly budget of the Service. This has significant repercussions for EU external relations policy with the parliament, possibly, denying legitimacy of diplomatic staff who do not uphold EP external relations priorities in regards to protecting human-rights internationally and promoting democracy. While the ‘exchange of views’ is only an informal arrangement, the capacity of the EP to interpret the institutionalisation of these rules is significant and amounts to a small but crucial first stage in increasing its influence over external relations policy.

Similarly the SCA directly expressed that one of the priorities of the EEAS ,and therefore EU external relations policy, would be the promotion of human rights and democracy with appropriate structures within the Service realizing these goals (Raube, 2011, pp.14-15). This demonstrates the importance of informal accords in altering policy-making and also highlights the effectiveness of the EP in utilizing its bargaining advantage. In addition, although not specially outlined in the informal accords or final Council decision, the EP insisted on increased oversight of the EEAS budget. The final Council decision of July 2010 only envisaged parliamentary scrutiny over the EEAS operational budget (Official Journal of the EU, 2010). However by the time of its establishment, the Parliament had obtained scrutiny ‘over its [EEAS] administrative budget proper’ (Missiroli, 2010, p.441). By obtaining oversight over capabilities, including human-

resource allocations and management, the EP has ensured the establishment of a Chief Operating Officer for the Service and the institutionalisation of Parliament's expressed aim of 'full budgetary transparency' (Raube, 2011, p.15).

Although the European Parliament has gained measurable influence over EEAS by informal interregnum integration, its success does not exclusively hinge on this process. Parliament enabled a process of informal institutional change to commence because it linked the decision on establishing the EEAS to the alteration of financial and staffing regulations. Without the EP co-decision competence over financial and staffing regulations, the parliament arguably would have been unable to achieve political oversight over the EEAS which the informal accord granted. However it must not therefore be assumed that issue-linkage alone causally explains Parliament's increased influence over the EEAS. To clarify, issue-linkage provided the catalyst bringing the Council to the negotiation table, enabling informal institutional change to occur, and thereby instigating interregnum integration in EU external relations policy.

Chapter 5: Conclusion of International Agreements

Although European Parliamentary influence over CFSP has been historically limited, the Parliament had a greater degree of authority over other spheres of EU external relations policy. One such area has been the approval of international agreements signed by the European Union. The European Parliament has developed two main interests: to counterbalance the information monopoly of the Commission and Council by scrutinising the information and to uphold and promote human rights and democracy internationally (Di Paola, 2003, p.75). Effectively enforcing these interests requires an ongoing ‘parliamentarization’, that is an increase of influence, of the EP in external relations policy especially along elements of legislation and supervision (Rittberger, 2003, p.203). Parliamentary empowerment along these elements can follow both formal and informal rules (Raube, 2011, p.4). With the purpose of investigating whether and how the EP has gained influence over the conclusion of international agreements, this study will focus on two such treaties: the Anti-Counterfeiting Trade Agreement (ACTA) and the Financial Messaging Data Agreement between the EU and the USA (FMDA or occasionally termed the SWIFT agreement). Formal rules governing institutional interaction in two studies are based on the reforms pioneered in the Lisbon Treaty which have been outlined in Chapter Two. In this investigation, the negotiation process of both agreements will be outlined followed by an analysis of any informal institutional arrangements ensuing. Finally, an evaluation will be conducted as to whether formal or informal rule change has been more prevalent in empowering the EP within EU external relations policy.

5.1 FMDA and ACTA Bargaining Process

The FMDA was initiated in July 2009 with Council authorization opening talks with the United States on an agreement regarding the transfer of financial data. The purpose of the

negotiations was to ensure the continuation of the Finance Tracking Program which had existed since late 9/11 and which was orientated towards terrorist activities (European Commission, 2009). Secret negotiations continued until the 30th November when the Council signed the interim agreement to be provisionally applied from 1st February 2010. The EP expressed major concerns on the potential misuse of transferred personal data and expressed its request for judicial redress mechanisms to be included in the agreement to uphold the rights of European citizens (European Parliament, 2009b). These concerns were disregarded by the Commission and Council with the Commission proposing that the Council conclude the final agreement on 18th December, after the entry of the Lisbon Treaty (European Commission, 2009).

Subsequently, the EP Committee on Civil Liberties, Justice and Home Affairs agreed by a slim majority to request that the Parliament withhold consent for FMDA as the Commission and Council had not attempted to allay any of the Parliament's previous concerns. Additionally, MEPs recorded their unease at the Council provisionally applying the agreement before the Parliament's opinion was made clear, in a clear breach of the spirit of Article 218(6) (European Parliament, 2010c). In the plenary vote of the 11th February 2010, a deeply divided house approved the Committee resolution rejecting the agreement with 374 in favour, 196 against and 31 abstentions (European Parliament, 2010d).

Following the vote, the three main EU institutions commenced informal talks with the purpose of incorporating the Parliament's proposals into a revised FMDA. The Commission redrafted the Negotiation Directive on 24th March with special emphasis being drawn on the issues of transparency on the use of the data and the need for judicial redress regardless of nationality (European Parliament, 2010e). On the 5th May the European Parliament passed a resolution recommending authorisation to re-open talks and

welcomed the new spirit of cooperation demonstrated (European Parliament, 2010f). It is worthy to note that the Lisbon Treaty did not envisage the direct input of EP positions into the negotiation stance of the Union and the formal rules governing the procedure strictly limit the Parliament to be ‘informed’ at all stages. With Council approval of the revised agreement on the 24th June, the European Parliament granted its consent to FMDA on the 8th July with 484 votes in favour to 109 against (European Parliament, 2010g).

Parliamentary refusal of the first FMDA had important implications for ACTA. It illustrated that the threat of EP veto contained in the Lisbon Treaty was credible and that the EP can obtain beneficial concessions when an agreement is renegotiated (Kreilinger, 2012). ACTA evolved out of the increased need for stringent Intellectual Property Rights enforcement, an area in which the EU has key competitive assets (DG EXPO Policy Department, 2011). The procedure commenced on 20th November 2007 with a recommendation from the Commission to Council seeking authorisation to open negotiations which was duly approved on 14th April 2008 (*Ibid*). With the ratification and introduction of the Lisbon Treaty, parliamentary access to information surrounding treaty negotiations was to be ensured. However, the Parliament consistently expressed its deep reservations in successive resolutions regarding the transparency and state of play of the negotiations which marginalised the institution (European Parliament, 2010h; 2010i). MEPs stressed that unless Parliament was ‘immediately and fully informed at all stages of the negotiations’ it would reserve the right to take action against the enactment of ACTA (European Parliament, 2010h).

In light of vocal nature of Parliament’s demands, the European Commission initiated discussions on an informal accord which would govern interactions between the two institutions on treaty negotiations generally. After extensive talks, agreement was reached in October 2010 on a Framework Agreement which included some limited

concessions which Parliament requested in its submission. One of the most significant elements was the stipulation that the Parliament was to be fully informed on all stages of agreeing to the negotiating directives (Official Journal of the EU, 2010b). This clarifies the rather vague formal rules within the Treaty which empower the Council to adopt negotiating directives but which require the EP to be informed at the significant stages of agreement talks (O’Broin, 2008, p.188). In addition, the informal agreement allowed for a delegation of MEPs to act as observes in Union delegations, providing the Parliament with direct access to the negotiation table.

The incorporation of the Framework Agreement into the informal relationship between the Commission and Parliament brought about a more conducive institutional relationship, with the Commission finally providing Parliament with a draft agreement in October 2010. Subsequently, substantial reservations began to be expressed regarding the unintended consequences of the text, in particular on individual criminalisation and the role of internet service providers (European Parliament, 2012a). MEPs also became under pressure from well organised interest groups such as European Digital Rights which argued that ACTA would restrict the fundamental rights of European citizens (Lillington, 2012). Between the Council’s decision to approve the agreement in August 2011 and the initiation of official parliamentary scrutiny in April 2012, attitudes within Parliament moved from a conciliatory stance to a divided position with the S&D and ALDE increasingly hostile to ACTA with the EPP strongly supporting it. The political division within the EP regarding the position of fundamental human rights overshadowed any discussion on the strategic aims and institutional objectives of parliamentary veto in furthering parliamentary oversight over international agreements.

Having regard to the unanimous opinions of the Committee on Development, the Committee on Industry, Research and Energy, the Committee on Legal Affairs and the

Committee on Civil Liberties, Justice and Home Affairs, the rapporteur from the Committee on International Trade, David Martin, recommended Parliament withhold consent (European Parliament, 2012b). He deemed the final agreement submitted to Parliament as infringing detrimentally upon civil liberties, of which the Parliament depicts itself a defender (*Ibid*). In plenary session, the EP Resolution withholding consent passed the house with 420 votes in favour and 255 against (European Parliament, 2012c). Intriguingly, the resolution contained no request for a renegotiation of the agreement which transpired with the FMDA treaty or any informal talks which would allay the reservations of MEPs.

5.2 Analysis of Informal Institutional Change

From outlining the negotiation process of both international agreements, it is at first hand a little unclear as to whether the European Union has extended its influence beyond the formal rules and scope extended to it by the Treaty of Lisbon. In order to investigate whether a process of institutional change has occurred, the interests of the EP need first to be highlighted.

As Stacey and Rittberger emphasis, actors will alter institutions constraining their behaviour when the benefits from utility gains to be made begin to be greater than the perceived costs (2003, p.873) From this description, it can be reasoned that the Parliament favours changes to existing rules as they were still deemed to be a secondary actor in the procedure negotiating and approving international agreements. Although it had been granted veto power over a majority of international agreements signed by the EU, the EP previously had difficulties transmitting this formal rule into influencing power at the negotiation stage of the procedure. In addition the Council and its main negotiator on international agreements the Commission had numerous incentives to modify existing

institutional arrangements. Providing the EP with increased input during the negotiation process would potentially lessen the risk of parliamentary veto as EP concerns would be more identifiable and could be discussed between the third parties. In addition, it would avoid the diplomatic difficulties which emerged, for example, with the rejection of the FMDA treaty. In this case, the US Ambassador to the EU threatened to bypass the Union in favour of negotiating directly with member states thereby weakening the Treaty's aim of creating an autonomous and important external actor (Nakashima, 2010). Although it has been established that the three actors would benefit variously from a degree of institutional change, it is appropriate to question whether these preferences translated into definable institutional change. An examination of both FMDA and ACTA will be carried out assuming that both agreements constitute a continuous process of interaction between main EU actors. As Farrell and Heritier correctly distinguished, the relationship between formal and informal institutions cannot be assumed to focus on one-shot interactions (2003, p.578).

From analysing the process of negotiation outlined in the previous section; it is evident that small but definable alterations in the institutional balance occurred through informal means following the adoption of the Lisbon Treaty. The Commission, as the chief treaty negotiator, recognised that informal institutional change was necessary as the current procedures could not sustain consistent and continued tension between the actors. In addition, third parties would be hesitant in the future to engage with the EU if they could not ratify what they had negotiated.

Therefore the 2010 Framework Agreement between the Parliament and Commission was approved and incorporated a specific section relating to international agreements. It is important to point out that Framework Agreements involve a smaller degree of institutional change than many other informal accords and do not involve a

substantial shift in the inter-organisational balance of the EU (Stacey, 2010, p.101). Although the typology of the informal agreement limits institutional change, the provisions contained in the 2010 Agreement do constitute limited but definable institutional change favouring the Parliament. Provisions requiring the EP to be informed at all stages of the negotiating directives and the permissance of a delegation of MEPs to act as observers in treaty negotiations were a limited advancement upon the formal requirement to be fully informed during the procedure. They institutionalise and guarantee parliamentary access to treaty negotiations, thereby allowing Parliament to maximise its utility on future strategic positioning based on the full and complete facts which previously had not been the case.

However there are some important caveats which need to be highlighted and which diminished Parliament's capacity to bargain effectively in the process of informal institutionalisation. The first caveat is the timing of both agreements. As the Lisbon Treaty entered into force during the procedure negotiating and concluding both agreements, the Parliament was given a *fait accompli* to accept or veto the agreements. It placed Parliament in an unavoidably obstructionist position which bred mistrust between the three institutions reducing the scope for sizeable institutional change to occur with the consent of the Commission and Council (Eckes *et al*, 2012). Parliamentary focus on the individual provisions with the treaties also created divisions which diverted attention away from the payoffs of uniting behind efforts to maximise informal institutional change. In addition, although the typology of this informal accord allows for a definable level of institutional change, the failure of the Council to recognise 2010 the Framework Agreement has limited the effectiveness of the accord. Therefore the EP will be have difficulty utilizing this small but definable institutional setting stone as a platform for future institutional alteration favouring the EP within external relations.

5.3 Evaluating EP Influence over the External Relations Domain

As has been identified earlier, informal institutionalisation does not correlate with interregnum integration. An examination of the 2010 'Framework Agreement on Relations between the European Parliament and the European Commission' is necessary to ascertain whether the institutional change amounts to integration and increasing EP power over EU external relations policy.

The Framework Agreement agreed to in October 2010 adjusts the institutional rules governing the relationship between the two institutions in order to reflect the 'special partnership' which has developed since Parliament's empowerment (Official Journal of the EU, 2010b). One of the key alterations contained in the accord was the removal of the provision forbidding MEPs taking part directly in negotiating sessions (*Ibid*). MEPs are afforded the opportunity to be granted observer status in treaty negotiations providing a direct and unobstructed channel of communication for Parliament to subsequently base its opinion on. This provision increases the resources of Parliament to come to an informed and strategically preferential position. Nonetheless, this element of the Framework Agreement only engenders an alteration in the specific ability of Parliament to express its opinion to the Commission. Hence the alteration in institutional rules, as Stacey argues, service 'more to enhance the Parliament's current power' in external relations policy, as opposed to expanding them (2010, p.101).

Although the accord contains conditions which enhance rather than expand the EP's influence, one provision of the agreement has the potential to informally expand its influence beyond treaty enactment. Parliament would have the opportunity to express its opinion on the 'definition of negotiating directives' before they were adopted, potentially allowing MEPs for the first time to alter the priorities and agenda of the Union on specific international agreements before the negotiation process commences (Official Journal of

the EU, 2010b). Previously the EP had no formal or informal influence over the pre-negotiation phase while the provision allowing MEPs to act as observers does not apply to this stage. If parliamentarians were to actively threaten its veto power at this stage of the procedure, the Commission and Council would either have to incorporate parliamentary concerns into the negotiating directive or else terminate treaty talks. Although conjectural, the accord affords Parliament the opportunity to expand its influence in the future. Overall the EP has enhanced rather than expanded its influence in EU external affairs through informal institutionalisation. The majority of its expanded power is based on the formal rules contained within the Treaty of Lisbon.

Chapter 6: Conclusion

6.1 Evaluation of European Parliamentary Influence:

The ultimate aim of this investigation was to uncover whether the European Parliament has progressed its influence in EU external relations beyond the formal provisions in the Treaty of Lisbon. Taking the conceptual approach favouring new institutionalism, this investigation achieved its goal by revealing the process of informal institutionalisation which has expanded EP influence over the EEAS and enhanced parliamentary participation in the conclusion international agreements beyond the prerogatives granted under the Lisbon Treaty.

The first investigation into the creation of the EEAS clearly establishes a significant expansion of parliamentary influence over the Service beyond the restrictions of the treaty. Formally, the European Parliament was only required to be consulted on the EEAS' establishment with no provision for parliamentary oversight over the organisation. The organisation and functioning of the EEAS to formally to be the exclusive preserve of the Council (Article 27(3) TEU). However the negotiation of two informal accords transformed the actor's institutional status within EU external relations providing it with exclusive scrutiny over EU diplomatic appointments and institutionalising its foremost value of budgetary transparency and accountability. The implications of these measures are considerable; parliament has gained an opportunity to de-legitimise newly appointed Heads of Delegation, leading potentially to EP veto over EEAS appointments. Secondly, with oversight over the operational and administrative budget, MEPs can shape the priorities of the organisation by altering spending in specific EEAS departments accordingly.

The following investigation into EP leverage over the FMDA and ACTA international agreements reveals an enhancement rather than expansion in parliamentary

influence beyond the formal rules and prerogatives granted by Lisbon. Formal rules necessitated that the EP be fully informed at all significant stage of treaty negotiations (Art 218 TEU). Therefore the Lisbon Treaty afforded Parliament a significant entry point into the negotiation procedure. The informal accord drawn up between the Commission and EP is, in the majority, in spirit and in line with the Treaty as it adjusts previous informal provisions rather than developing new perspectives on Parliament's role. In order to be fully informed, MEPs are afforded the opportunity to be granted observer status in negotiations. However one informal provision expands parliamentary involvement into the 'definition of negotiating directives', potentially allowing MEPs to shape the mandate and negotiation position of the Union rather than being confronted with an all-or-nothing decision at the end of the process which formally was the case (Official Journal of the EU, 2010b).

6.2 Evaluation of Informal Institutional Change:

Having compared the formal and informal rules governing EP influence in the investigated areas, it is now necessary to ascertain how significant informal institutionalisation has been in expanding Parliament's influence over EU external relations policy. In both research areas the EP has negotiated an associated informal accord with the HR and Commission respectively. However the results have shown a variation in the extent of institutional change with a greater alteration occurring in the DPA and SCA than the 2010 Framework Agreement.

Analysis conducted in Chapter 4 demonstrates conclusively and effectively the importance of informal institutional change in strengthening parliamentary powers being those envisaged under the Treaty. By utilising issue-linkage (linking co-decision powers over the Financial and Staff Regulations with the overall establishment of the EEAS), the

EP initiated a phase of bargaining whereby the EP had a distinct advantage. Factors favouring the EP included their longer time horizons in comparison the HR, their relatively well endowed organisational capacity, their low sensitivity to failure and very importantly their political unity in achieving more influence (Farrell and Heritier, 2003). This gave rise to two significant informal accords which have re-orientated the institutional balance of power between the EEAS and EP in favour of the latter. Collectively, although the influence of the EP in establishing the EEAS was issue-linkage based on the process of informal institutionalisation, this course of action sets an important precedent for further attempts at informal integration if a future revision on the scope of the Service is necessary and called for by the Council.

In comparison the research undertaken in Chapter 5 found that only a limited degree of informal institutional change occurred which enhanced rather than expanded existing formal rules governing Parliamentary influence. Since the Framework Agreement was not solely related to the procedure negotiating and ratifying international agreements, the measures contained did not substantially alter the institutional power balance. In addition, the failure of the Council to recognise the informal accord restricts the capacity of the agreement to alter existing institutional arrangements.

For substantial institutional change to occur, Parliament needs to have a distinct advantage in the bargaining phase. In both the FMDA and ACTA cases, this was not the case. Intense divisions within the chamber, on ACTA in particular, precluded the EP from foregoing short-term gains in order to achieve more attractive payoffs over the long run (Farrell and Heritier, 2003, p.584). S&D and ALDE groups heightened sensitivity to failure in defeating international agreements favoured by the EPP illuminated Parliament's structural disadvantage. Also of significance is the timing of both agreements: as the Lisbon Treaty entered into force during the procedure negotiating and concluding the both

agreements, the Parliament was given a *fait accompli* to accept or veto the agreements. It placed Parliament in an unavoidably obstructionist position which bred mistrust between the three institutions reducing the scope for sizeable institutional change to occur with the consent of the Commission and Council (Eckes *et al*, 2012). Furthermore, it is possible that the EP was unsuccessful in this aspect of external relations as the Council and Commission have a historically structured institutional relationship governing interaction on international agreements. In comparison, the lack of a previous institutional structure governing interaction on the EEAS allowed Parliament to exploit the uncertainty and vague nature of Article 27(3).

6.3 Concluding Remarks

Although this investigation has successfully achieved its stated objective, some important limitations need to be identified for the consideration of future research studies. One overarching limitation is the confined time period of the investigation. It prevents any conclusions being drawn into whether the identified informal institutional changes are formally institutionalised in subsequent Treaty negotiations. If future research could include this last aspect, important conclusions could be drawn in a process of continuous constitution-building within EU external relations policy (Farrell and Heritier, 2003, p.596). Future research in regards to international agreements should be broadened to thoroughly analyse the role of informal institutional change in expanding the Parliament's influence in this aspect of external relations since its first elections in 1979. This could countenance the lack of definitive informal institutional change identified in this study.

Overall, research into the growing institutional presence of the European Parliament in EU external relations deserves much greater scholarly attention. This is especially pertinent in the wake of the Lisbon reforms which have increased the

institutional capacity of EU as an international actor with the creation of the EEAS. Analysis of the EEAS conducted in this project could be augmented by investigating the emerging power distribution between the High Representative and the EP. As the HR develops into a political figure in their own rights and given the EP's success in gaining concessions, the Parliament may be able to further exploit the relative indeterminacies of their new inter-institutional relationship to its advantage (Crum, 2006, p.399).

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