

The complex relationship between transparency, legitimation and accountability – some evidence from the fight against corruption

Agustí Cerrillo Martínez, Benedetto Ponti

As an institutional value, transparency has spread widely and become popular. The present essay underlines the many trade-offs linked to interaction of the instruments of transparency and the aims it pursues. Drawing inspiration from the success of transparency as a tool for preventing and fighting corruption, the authors also highlight a significant trade-off between accountability and trust in this sphere, revealing the tensions within the value-principle of transparency, due to its plural and granular nature, and the contingency of outcomes which depend on the context of reference and the awareness with which the instruments are set up and used.

1. A successful institutional value

The recent recognition of transparency as an institutional value has been enormous. If we consider the last 25 years, many elements bear witness to this success at global level. A first well-known element is the extraordinary acceleration of the legal tool of the right to access documents and information held by public bodies, which in symbolic and practical terms is a major vector of transparency¹. The spread of this institution led to the emergence of a standard² which was then embodied in an instrument of international law, designed to consolidate it³. The «success» of the right of access to documents and information (also as a vehicle of transparency) is also evident in qualitative terms, since this right was declared of constitutional importance⁴ and proposed as a basic human right⁵, an interpretation finally accepted by the jurisprudence of regional courts of human rights⁶.

A second element that has ensured the success of transparency as a value was its capacity to intercept and translate into policy the inherent

potential of the so-called digital revolution, especially the capacity of the internet to diffuse information at all levels, making it an extraordinarily effective instrument for implementing the «right to know» the information held by public bodies. This digital aptitude for transparency (which can also be considered a digital aversion for privacy) is encountered and implemented at various levels. The right to access information created a new institutional pathway alongside the traditional one: *reactive* transparency (where citizens request information they wish to know and use, also for the purposes of transparency) was coupled with *proactive* transparency, where it is a specific *duty* of public bodies, imposed by law, to actively make information available and broadcast it via the internet (so-called *compulsory disclosure*)⁷. But the inherent potential of information technology also impacted the understanding of public bodies, leading to promotion of *open government* as a paradigm and model for relating to citizens, a pillar of which is transparency itself⁸. It also impacted the realm of public data, likewise brought into the open paradigm and framed as «commons»⁹, for which not only the right to know is claimed but also and above all, the right to re-utilise so-called *open government data*¹⁰. In this context, transparency has a double connotation: government is more transparent for embracing the paradigm of open data by virtue of the quantity, manner and value of the information provided¹¹; on the other hand, the very use of that information produces transparency¹².

2. The reasons for transparency

The success of transparency as a value depends on the positive effects expected to flow from its pursuit and implementation. The list of objectives is long and has been declined in different ways. Here we refer to a formulation¹³ that lists outcomes of transparency according to whether they affect citizens or the government. The former includes effects of legitimacy/trust in government, participation and satisfaction; the latter includes effects in terms of accountability, (less) corruption, (better) performance, (better) decision-making, (better) financial management, (better) collaboration between different government bodies. These objectives are particularly significant and explain why transparency as a value is commonly indicated as linked to and derived from the principles of democracy¹⁴.

However, as pointed out in the literature, ascribing so many different virtues to transparency indicates that there has been enormous invest-

ment in this value¹⁵. This investment is further underlined by the latest studies, which show that as far as the three pillars of open government (transparency, participation, collaboration) are concerned, implementation concentrated mainly on instruments (mostly technological) to create transparency, so that the implementation policies for the open government paradigm consists essentially in measures to promote transparency¹⁶.

The results of this enormous investment have not always matched the expectations. One area in which promise met expectations is the fight against corruption (*see below*, par. 4-5). In other areas, effects and results were not always in line with assumptions. A thorough review of the empirical literature¹⁷ indicates that as far as the effects on citizens are concerned, a non-negligible percentage had negative (16.6%) or mixed (22.2%) effects in terms of trust in government, while 33% of empirical research indicates uncertain and/or mixed effects in terms of legitimation. As far as effects on government are concerned, as many as 50% of studies reported mixed effects in terms of decision-making and 30% in terms of accountability. Only effects in terms of (*less*) corruption (100% of the empirical research analysed) and (*better*) financial management (80%) therefore seem fully in line with the expectations or virtues of transparency.

31

3. The tensions of transparency

These findings should not come as a surprise. Indeed, taking the double point of view on government and citizens, the effects in terms of effective application of transparency can hardly be maximised on both sides, except in an ideal world. Let us consider the pair *accountability (of the government)/legitimation (by the citizen)*. Transparency measures that effectively increase accountability are destined to show whether and to what degree the government was capable of producing results, of allocating and spending resources in an effective way. Since actions are unlikely to completely and efficiently meet the objectives, the failure rate will be all the more evident and visible in relation to the degree accountability achieved. So, in theory, given a certain failure rate of public policies, greater accountability means less legitimation. Besides, this trade-off between accountability and legitimation explains why some albeit more recent transparency laws have evident limits in terms of effectiveness and efficacy. This is actually a precise political objective which aims to achieve the positive effects in terms of legitimation de-

rived from adoption of pro-transparency laws, while avoiding (potential) negative effects (in terms of legitimation) linked to activation of effective accountability dynamics¹⁸. More generally, the literature underlines that pursuing transparency imposes an effective trade-off between seeking legitimation (*spinning narratives*) and effective accountability (*fair and balanced representations*)¹⁹.

32 Similar considerations can be made regarding the other pair: *trust in government/better decision making*. Indeed, in this case it is transparency as a value that creates tension between the two elements. Transparency applied not to responsibility for the results (accountability) but rather to decision-making is not neutral because it tends to mean prying into issues subject to institutional secrecy or to discretion, normally managed away from the indiscreet eyes of outsiders. In this sense, asking for transparency to be applied to a decision-making process implies an often explicit declaration of lack of trust in the public decision-makers. Interestingly, this tension between trust and decision-making, when it refers to outcomes/effects of the principle of transparency with reference to public decision-makers, largely mirrors the tension between representative and direct democracy. However, in the case of technical-administrative decisions, the tension between these two elements reveals the crisis of legal/rational power, understood as non-bargainable specialist knowledge regarding the substance of the choices that are taken.

Note that these tensions manifest in a very particular and specific way in the EU legal system, characterised by a dated lack of democratic legitimation, even in the legislative process. Transparency is therefore proffered to make up for this legitimation gap, which only accentuates the above tensions²⁰. It suffices to consider how often balancing between the reasons of legitimation and trust (sustained by the application of transparency measures) and the need to protect the decision-making process (by preserving a «space for frank discussion» far from the gaze of outsiders)²¹ has been applied in the jurisprudence of the European Court of Justice. Thus, the indications provided by empirical studies reveal elements of contradiction and trade-off between the various outcomes of transparency, which are physiological and reveal its intrinsic complexity²².

The tension between *accountability* and *legitimation* (like that between *trust and decision-making process*) is also subject to the effects of the dynamics elicited by *mediated transparency*, which involves re-elaboration of the data and information made available by the government (also as required by the open data paradigm). The essential operation of reducing and attributing meaning to an over-abundance of information, in order

to make it comprehensible²³, is the task of transparency mediators. This means that the more numerous, diversified and alternative the operations of mediation, the more the resulting accountability pleas emerge as fragmented, controversial and contested²⁴, without considering further asymmetrical effects related to the importance acquired by computational power, an eminent instrument in the mediation of information. Nor is it certain that there is less tension if the reduction and mediation operation for transparency purposes is carried out directly on the government side (i.e. without a third-party mediator). In such cases, the public body is charged with creating transparency and has to handle the trade-off between a complete and balanced account and an unbalanced spin more suited for boosting trust in the government of the day²⁵.

33

4. Transparency: a dual guard against corruption

There is a growing conviction that a purely reactive approach to corruption is limited and inefficient both in dealing with corruption that has actually taken place and in preventing corruption from emerging and flourishing²⁶. There has therefore been a recent burgeoning interest in a preventive approach that attempts to cut short any conflicts of interest or potential malfeasance before they develop further²⁷.

In recent decades, new policies to prevent corruption have begun to develop. These are based on strengthening public integrity²⁸ and countering the traditionally reactive anti-corruption policies that have shown limited effectiveness over time. This approach sees transparency as an element that contributes significantly to integrity, and that can become a key instrument in preventing malfeasance²⁹.

On the one hand, transparency can turn public bodies into «glass houses»³⁰, allowing citizens to see what happens inside in great detail, and thus discouraging wrongdoing³¹. Transparency makes it easier to monitor the activity of public officials and employees, and makes it difficult for conflicts of interest and corruption to arise by doing away with the opacity and secrecy needed for them to flourish³². Transparency has a very clear effect in facilitating and ensuring integrity in public procurement processes, while it is widely recognized that a lack of transparency (opacity) is one of the main conditions for corruption to emerge. Transparency is thus an effective practice for preventing and fighting malfeasance³³. It is crucial to ensure that information about all decisions made by public administrations, the motivations for those decisions and all procedures

used is widely available³⁴. This helps improve the quality of democracy, constitutes a mechanism for good administration, and is also an effective means for preventing conflicts of interest and for fighting corruption³⁵. From this perspective, transparency is a key element of legitimacy and makes it possible to generate public trust.

34 Another aspect of transparency is that it turns citizens into thousands of potential auditors, involving them in the fight against corruption³⁶. In general, transparency makes it possible for public bodies to be monitored and held accountable³⁷. In this way, it reduces corruption by preventing much of it from occurring in the first place³⁸. When public officials or employees know they may be under public scrutiny, their behaviour tends to be more exemplary. In addition, transparency makes it possible to detect cases of malfeasance. Thus, transparency also stands as an element of control and accountability.

In view of all this, our starting point is that transparency can have two key effects as an instrument for preventing and fighting corruption: one regarding legitimation and trust, the other regarding accountability and control. To go beyond this first general conclusion, we must narrow our analysis to the different elements that define transparency mechanisms in order to confirm the extent to which these two effects are reflected in anti-corruption policies.

5. Regulating transparency and its impact on preventing and fighting corruption

In order for transparency to be effective in achieving its goals, the information that public administrations make available to citizens must help people understand what really goes on inside them. For this to happen, public information needs to be readily available and accessible, as well as being of high quality and re-usable. There also need to be mechanisms in place to guarantee that these characteristics are fully complied with.

The way each of these elements is shaped influences transparency and its effects. We see below that the information generally disseminated by public bodies facilitates trust on the part of citizens, making it an instrument of legitimation. However, sometimes this is not sufficient to be an effective instrument of accountability or monitoring of the actions of public officials and employees.

First, information must be readily available and complete. Public bodies must provide all the facts related to the decisions they make, as well

as the reasons why certain decisions have been made, and the procedures governing the process³⁹. If there are greater risks of irregularities and malfeasance in certain fields of administrative activity, the information disseminated in those fields must be even more complete and detailed (examples are public procurement, urban planning, benefits and subsidies). This is already envisaged in most of the regulations concerning the dissemination of public information⁴⁰. However, public bodies are often not required to disclose certain types of data that would facilitate the monitoring of public activity and that would in particular help flag situations that might give rise to or cover up a case of corruption. For example, this is the case of information related to public officials' and employees' assets, officials' public agendas, their contacts with lobbies, and lists of the gifts they may receive. This is also true of material regarding preparatory meetings prior to making public decisions; when there is corruption, this information is often gathered in informal or opaque environments (for example, notes, drafts or external reports)⁴¹.

35

Secondly, what is made public must be quality information, i.e. it must be able to achieve its intended purpose: effectively facilitating citizens' knowledge of public activity and the monitoring of that activity⁴². In particular, when we refer to quality information, this means that it is objective, truthful, up-to-date and useful⁴³. Some transparency laws set out different obligations in relation to high-quality information⁴⁴. However, despite this, what is disseminated or provided by public bodies often does not meet these standards, for example because it contains errors, is not up-to-date, or is biased⁴⁵. Such low-quality data may be impossible to analyse, or may generate unreliable results if it is indeed analysed⁴⁶. In this way, public activity cannot be monitored in an ineffective way and although the information provided can aid legitimacy, it does not constitute a real monitoring and accountability mechanism.

Third, the information must be accessible. Standards must be followed that allow the data to be consulted by any person, regardless of their personal circumstances (for example, it must comply with the provisions of EU Directive 2016/2102 of the European Parliament and of the Council of 26 October 2016, on the accessibility of public sector organization websites and mobile applications). In addition, the information must be well organized, easy to find, freely accessible, and must include indexes, search functions, etc⁴⁷. In recent times, different regulations on transparency have contemplated the creation of transparency portals. These are online platforms through which public bodies disseminate information⁴⁸. Transparency portals disseminate a large quantity of data

in the same place, in an organized, easy-to-use manner⁴⁹. Public bodies sometimes also produce information in clearly designed graphic formats in a language that the general public can easily understand, thus greatly facilitating access to it.

36 As well as being able to peruse material that has been proactively distributed by public bodies, citizens may request access to any other data held by those bodies, through provisions in the transparency regulations that ensure their right to access all public information. However, in practice, public bodies themselves may put obstacles in the way of certain material being disclosed. For example, it may avoid giving out information because it could lead to a case of corruption being uncovered. A request may also be hindered by not being replied to or receiving a delayed response.

Fourth, the data must be re-usable, i.e. it must allow citizens to analyse it and thus to supervise, monitor and oversee public activity. Citizens must also have the right to re-use public information to create new material that can be widely disseminated, allowing other citizens to learn about it. Open data has already been highlighted as an effective anti-corruption strategy with a significant impact on public integrity⁵⁰. Indeed, as recognized in the G20 Anti-Corruption Open Data Principles, open data can contribute to preventing, detecting, investigating and reducing corruption. Because of this, all data must be distributed in formats that make it easy to re-use (for example, XML or CSV formats rather than PDF), and it should not be subject to any licensing or conditions that make it difficult to re-use (for example, it should not incorporate personal data or work protected by intellectual property laws).

These principles are provided for in Directive (EU) 2019/1024 of the European Parliament and of the Council, of 20 June 2019, on open data and re-use of public sector information. The EU standard states that public bodies must prepare and provide documents according to the principle of «open documents by design and by default», so that they can be freely used, re-used and shared by anyone for any purpose⁵¹. This complies with the provisions of the G20 Anti-Corruption Open Data Principles adopted during the Turkish presidency in 2015, which recognize that in order to contribute to the fight against corruption, data must be open by default.

Open data must be disseminated in an open format, i.e. «a platform-independent file format and made available to the public without restrictions that prevent the re-use of documents»⁵². Likewise, the data needs to be disseminated in machine-readable formats, that is, in «structured file formats that allow computer applications to easily identify, recognize

and extract specific data, including factual statements and their internal structure»⁵³. To facilitate their re-use, attempts should be made to simplify access to data sets, for example by creating a single point where all the documents to which the directive applies can be retrieved; these should be in accessible formats, easy to find and re-usable by electronic means (article 9.2)⁵⁴.

Finally, mechanisms must be articulated to ensure application of the rules on transparency and access to public information, with special attention to preventing and fighting corruption. Most transparency laws designate independent bodies to oversee transparency guarantees. Sometimes these bodies also supervise the compliance of public bodies with obligations to disseminate public information and its re-use⁵⁵.

37

Alongside these mechanisms, public bodies must also provide channels for citizens to inform the competent authorities of cases of corruption that they might detect from perusal of public information they have accessed. In parallel, the necessary measures must be promoted to protect any whistle-blowers from possible reprisals⁵⁶.

6. Handle with care and awareness

Transparency has therefore proved to be an effective instrument for detecting and reducing corruption. However, the literature also indicates that exposure of corruption can have negative effects on legitimation and trust in government, if it is produced by transparency «from the outside» (*citizen auditor* effect), rather than «from within» (*casa di vetro-glass house* effect). For example, has been highlighted that «transparency reforms that reveal pervasive corruption may breed resignation and withdrawal from public and civic endeavours rather than induce and empower citizens to mobilize for better government»⁵⁷, and that in all cases the effect in terms of *confidence in government* is neutral⁵⁸.

These elements confirm that even where the efficacy of transparency manifests in clear and uncontroversial terms, namely with reference to the prevention/reduction of corruption, it is likely to elicit tensions and *trade-offs* between the *diverse outcomes* with which it is commonly associated (in this case: *less corruption/more trust in government*). Transparency is a value and an essential instrument, but must be managed with care and awareness, without taking for granted that in every context it can always manifest all the virtues for which it is appreciated and actively promoted.

Note

¹ J. M. ACKERMAN, I. E. SANDOVAL-BALLESTEROS, *The Global Explosion of Freedom of Information Laws*, in «Administrative Law Review», n. 58(1), 2006, pp. 85-130, <http://www.jstor.org/stable/40712005>; H.H. PERRITT, Z. RUSTAD, *Freedom of information spreads to Europe*, in «Government Information Quarterly», Vol. 17, Issue 4, 2000, pp. 403-417. ISSN 0740-624X, [https://doi.org/10.1016/S0740-624X\(00\)00050-2](https://doi.org/10.1016/S0740-624X(00)00050-2).

² M. SAVINO, *The right to open public administration in Europe: emerging legal standards*, Paris, OECD-OCSE, Sigma Papers, 2010, n. 46, p. 1-41. ISSN: 2078-6581.

³ The Council of Europe Convention on Access to Official Documents («Tromsø Convention»), signed in 2009 and in force in June 2020: <https://www.coe.int/en/web/access-to-official-documents>.

⁴ See sentence no. 20/2019 of the Italian Constitutional Court and among others the comments of O. POLLICINO, G. REPETTO, *Not to be pushed aside: the Italian Constitutional Court and the European Court of Justice*, in «VerfBlog», 2019/2/27: 10.17176/20190324-205058-0 and of B. PONTI, *Il luogo adatto dove bilanciare. Il «posizionamento» del diritto alla riservatezza e alla tutela dei dati personali vs il diritto alla trasparenza nella sentenza no. 20/2019*, in «Istituzioni del Federalismo», n. 2/2019, pp. 525-547.

⁵ P. BIRKINSHAW, *Freedom of information and openness: fundamental human rights?*, in «Administrative Law Review» n. 58, 1/2006, pp. 177-218. <http://www.jstor.org/stable/40712007>.

⁶ See Inter-American Court of Human Rights, Case of *Claude Reyes et al. v. Chile*. Judgment of 19 September 2006, Series C no. 151; European Court of Human Rights, Case of *Magyar Helsinki Bizottság v. Hungary* (18030/11), Judgment of 8 November 2016.

⁷ From this point of view, see among others the specific declinations of the law adopted in the UK (in force since 2005, with the mechanism of «publication schemes» alongside the «right to request information»), in Italy (NB where publication of many types of information is compulsory for all public bodies was introduced by d.lgs. no. 33 of 2013, and precedes inclusion of right of access to information by d.lgs. 97/2016), in Spain (*Ley 19/2013 de transparencia, acceso a la información pública y buen gobierno*) and in many German Länder.

⁸ D. LATHROP, L. RUMA, *Open government: collaboration, transparency, and participation in practice*, O'Reilly media 2010; E. CARLONI, *L'amministrazione aperta. Regole e limiti dell'open Government*, Maggioli, Rimini 2014.

⁹ M. A. HELLER, *The Tragedy of the Anticommons*, in «Harvard Law Review», January 1998; L. LESSIG, *The Future of Ideas: The Fate of the Commons in a Connected World*, Random House USA Inc New York 2001; E. OSTROM, *Reformulating the Commons*, in «Swiss Pol. Sci. Rev.», 1999, vol. 6, p. 29 ss.

¹⁰ K. JANSSEN, *Open Government Data and the Right to Information: Opportunities and Obstacles*, in «Journal of Community Informatics», Vol. 8 n. 2, 2012; B.S. NOVECK, *Rights-based and tech-driven: Open data, freedom of information*,

and the future of government transparency, in «Yale Hum. Rts. & Dev.», vol. 19, 2017, pp. 1-10.

¹¹ G. MAGALHAESA, C. ROSEIRA, *Open government data and the private sector: An empirical view on business models and value creation*, in «Government Information Quarterly», Vol. 37, Issue n. 3, 2020, pp. 101-248, <http://dx.doi.org/10.1016/j.giq.2017.08.004>; J.C. BERTOT, P.T. JAEGER, J.M. GRIMES, *Using ICTs to create a culture of transparency: E-government and social media as openness and anti-corruption tools for societies*, in «Government Information Quarterly», vol. 27, issue 3, 2010, pp. 264-271, <http://dx.doi.org/10.1016/j.giq.2010.03.001>.

¹² R. MATHEUS, M. JANSSEN, *A systematic literature study to unravel transparency enabled by open government data: The window theory*, in «Public Performance & Management Review (PPMR)», vol. 43, issue n. 3, 2020, pp. 503-534; B. PONTI, *Open Data and Transparency: a Paradigm Shift*, in «Informatica e Diritto», vol. 1-2, 2011, pp. 305-320, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2087397.

¹³ M. CUCCINIELLO, G.A. PORUMBESCU, S. GRIMMELIKHUIJSEN, *25 Years of Transparency Research: Evidence and Future Directions*, in «Public Administration Review», vol. 77, 2017, pp. 32-44, <https://doi.org/10.1111/puar.12685>.

¹⁴ F. MERLONI, *Trasparenza delle istituzioni e principio democratico*, in ID. (ed.), *La trasparenza amministrativa*, Milano, Giuffrè, 2008, pp. 3-28.

¹⁵ A. FUNG, M. GRAHAM, D. WEIL, *Full disclosure. The perils and promise of transparency*, Cambridge University Press, Cambridge 2007; C. HOOD, *Transparency in Historical Perspective*, in C. HOOD, D. HEALD (eds.), *Transparency: The Key to Better Governance?*, Oxford University Press, Oxford 2006.

¹⁶ K.-T. TAI, *Open government research over a decade: A systematic review*, in «Government Information Quarterly», Vol. 38, Issue 2, 2021, <https://doi.org/10.1016/j.giq.2021.101566>.

¹⁷ M. CUCCINIELLO, G.A. PORUMBESCU, S. GRIMMELIKHUIJSEN, cit., pp. 39-40.

¹⁸ The case of the FOIA legislation adopted in the last 20 years by countries in the western Balkans is paradigmatic: the need for legitimation (related to the process of joining the EU) also led to adoption of formally very advanced laws (the extreme case being the Serbian law of 2003, long considered the most advanced in the world), but very weak from the point of view of practical performance, and later reformed in order to make it weaker: M. KMEZIĆ, *Rule of law and democracy in the Western Balkans: addressing the gap between policies and practice*, in «Southeast European and Black Sea Studies», 2020, vol. 20, pp. 183-198, DOI: 10.1080/14683857.2019.1706257; D. MILOVANOVIĆ, M. DAVINIĆ, AND V. CUCIĆ, *Free access to Information in Serbia*, in D.C. DRAGOS, P. KOVAAND, A.T. MARSEILLE (eds.), *The Law of Transparency in Action, A European Perspective*, 2019, p. 501 ss. BIRN *Freedom of Information and Journalists in the Western Balkans: one step forward, two steps back*, 2019, available at <https://bird.tools/publications/freedom-of-information-and-journalists-in-the-western-balkans-one-step-forward-two-steps-back/>. Similar moves, albeit less intense, to make laws weaker can also be found in consolidated democratic contexts: see B. WORTHY, *The politics of freedom of information*, Manchester University Press, Manchester 2017.

¹⁹ S. GRIMMELIKHUIJSEN, 'Being transparent or spinning the message? An experiment into the effects of varying message content on trust in government', in «Information Polity», 2011, vol. 16, pp. 35-50; S. PIOTROWSKI ET AL., *Numbers over Narratives? How Government Message Strategies Affect Citizens' Attitudes*, in «Public Performance & Management Review», 2019, vol. 42, pp. 1005-1028, DOI: 10.1080/15309576.2017.1400992.

²⁰ See contribution by Hélène Michel in this volume. See also: J. LODGE, *Transparency and Democratic Legitimacy*, in «J. Common Mkt. Stud.», vol. 32, 1994, p. 343; P. LEINO-SANDBERG, M. Z. HILLEBRANDT, I. KOIVISTO, (eds.), *(In) visible European Government: Critical Approaches to Transparency as an Ideal and a Practice*. (UACES Contemporary European Studies), Routledge, 2022.

40 ²¹ D. ADAMSKI, *How wide is 'the widest possible'? Judicial interpretation of the exceptions to the right of access to official documents revisited*, in «Common Market Law Review», 2009, vol. 46, pp. 521-549.

²² P. RICHTER, *Es werde Licht! Und es ward Licht? - Zur Wirkung von Transparenz auf die Legitimität öffentlicher Verwaltung*, *Politische Vierteljahresschrift*, no.58 (2), pp. 234-257.

²³ B. PONTI, *La mediazione informativa nel regime giuridico della trasparenza: spunti ricostruttivi*, in «Diritto dell'informazione e dell'informatica», 2019, 2, pp. 383-421; M. KASSEN, *Open data and its intermediaries: a cross-country perspective on participatory movement among independent developers*, in «Knowledge Management Research and Practice», 2018, vol. 16, issue n. 3, pp. 327-342.

²⁴ B. WORTHY, R. HAZELL, *Disruptive, Dynamic and Democratic? Ten Years of FOI in the UK*, in «Parliamentary Affairs», vol. 70, issue 1, 2017, pp. 22-42, <https://doi.org/10.1093/pa/gsv069>; there is a significant statement (later regretted) by prime minister Tony Blair who promoted introduction of FOIA in the UK: «The truth is that the FOI Act isn't used, for the most part, by «the people». It's used by journalists. For political leaders, it's like saying to someone who is hitting you over the head with a stick, «Hey, try this instead», and handing them a mallet. The information is neither sought because the journalist is curious to know, nor given to bestow knowledge on «the people». It's used as a weapon» (T. BLAIR, *A Journey*, Random House, Hutchinson 2011, p. 516).

²⁵ S. GRIMMELIKHUIJSEN, *Being transparent or spinning the message? An experiment into the effects of varying message content on trust in government*, cit.; S. PIOTROWSKI ET AL., *Numbers over narratives? how government message strategies affect citizens' attitudes*, cit.; B. PONTI, *La trasparenza come fattore abilitante della cittadinanza amministrativa*, in A. BARTOLINI, A. PIOGGIA (eds.), *Cittadinanze amministrative, Studi per il 150° anniversario delle leggi di unificazione - Vol. VIII*, Firenze University Press, Firenze 2016, pp. 215-235.

²⁶ F. MERLONI, L. VANDELLI, *La corruzione amministrativa. Cause, prevenzione e rimedi*, Pasigli, Bagno a Ripoli 2010; COMMISSION DE RÉFLEXION POUR LA PRÉVENTION DES CONFLITS D'INTÉRÊTS DANS LA VIE PUBLIQUE, *Pour une nouvelle déontologie de la vie publique*, La Documentation française, Paris 2011.

²⁷ Here we would like to repeat Kaufmann's enlightening words, here reduced to reflecting our topic: «You don't fight corruption by fighting corruption» (D. KAUFMANN, *Myths and Realities of Governance and Corruption*, in «Working

Paper Series. The Brookings Institution», November 2005). In the words of Jiménez Asensio, «prevention is better. It is the authentic essence of institutional integrity» (R. JIMÉNEZ ASENSIO, *Cómo prevenir la corrupción. Integridad y Transparencia*, La Catarata, Madrid 2017).

²⁸ Public integrity is an instrument to foster good administration (OECD, *Trust in Government. Ethics Measures in OECD Countries*, OECD, Paris 2000) and is an instrument to prevent corruption (E. BETH, J. BERTÓK, *Integrity and Corruption Prevention Measures in the Public Service: Towards an Assessment Framework*, in OECD, *Public sector integrity. A framework for assessment*, OECD, Paris 2005; A. D. MOLINA, *A Systems Approach to Managing Organizational Integrity Risks: Lessons From the 2014 Veterans Affairs Waitlist Scandal*, in «American Review of Public Administration», n. 1, 2018).

²⁹ Different empirical studies show that higher levels of information lead to a reduction in levels of corruption. S. ROSE-ACKERMAN, *Governance and Corruption*, in B. LOMBOG (eds.), *Global Crises, Global Solutions*, Cambridge University Press, Cambridge 2004.

³⁰ This «Glass house» was the expression coined in the early 1900s by Italian member of parliament Filippo Turati in his speech to the Italian Chamber of Deputies on 17 June 1908 (*Acts of the Italian Parliament*, Chamber of Deputies, sessions 1904-1908, June 17, 1908, page 22962).

³¹ In the words of the US judge Louis Brandeis, «Sunlight is said to be the best of disinfectants» (L. BRANDEIS, *Other People's Money-and How Bankers Use It (cap. V)*, 1914).

³² OECD, *OECD Principles for Integrity in Public Procurement*, OECD, Paris 2009. Maor affirms that corruption does not arise where there are witnesses (M. MAOR, *Feeling the Heat? Anticorruption Mechanisms in Comparative Perspective*, in «Governance», n. 17, 2004).

³³ A. CERRILLO, I. MARTÍNEZ, *Transparencia administrativa y lucha contra la corrupción en la Administración local*, in «Anuario del Gobierno Local 2011», 2012.

³⁴ For all these, see C. LINDSTEDT, D. NAURIN, *Transparency is not Enough: Making Transparency Effective in Reducing Corruption*, in «International Political Science Review», n. 31, 2010. However, we cannot ignore that some authors question the real positive impact of transparency in the fight against corruption. Bauhr and Grimes observe that transparency can generate resignation and citizens withdrawing from political life (M. BAUHR, M. GRIMES, *Indignation or Resignation: The Implications of Transparency for Societal Accountability*, in «Governance», n. 27, 2014). Bac also notes that in certain circumstances, greater transparency can even have a negative impact on the fight against corruption (M. BAC, *Corruption, connections and transparency: Does a better screen imply a better scene?*, in «Public Choice», n. 107, 2001).

³⁵ M. VILLORIA MENDIETA, *La transparencia, la imparcialidad y la calidad de la democracia*, in «Dilemata», n. 27, 2018.

³⁶ D. KAUFMANN, *Transparency, Incentives and Prevention (TIP) for Corruption Control and Good Governance Empirical Findings, Practical Lessons, and Strategies for Action based on International Experience*, Beijing 2002.

³⁷ L. VANDELLI, *Etica pubblica e buona amministrazione. Quale ruolo per i controlli?*, FrancoAngeli, Milano 2009.

³⁸ F. MERLONI, B. PONTI, *La trasparenza*, in F. MERLONI, L. VANDELLI (eds.), *La corruzione amministrativa. Cause, prevenzione e rimedi*, Passigli Editori, Firenze-Antella 2010. However, we cannot ignore that this idea is based on the assumption that citizens are able to process information effectively and act accordingly. This, for Etzioni, constitutes one of the limits of transparency (A. ETZIONI, *Is Transparency the Best Disinfectant?*, in «Journal of Political Philosophy», n. 18, 2010).

³⁹ Soylu reminds us that «transparency and accountability require giving citizens and companies much more data with the possibility of easily connecting relevant data sets (e.g. spending and company data), both within and beyond national borders and languages, allowing extended and deeper analyses» (A. SOYLU, Ó. CORCHO, B. ELVESÆTER, C. BADENES-OLMEDO, F. YEDRO-MARTÍNEZ, M. KOVACIC, M. POSINKOVIC, M. MEDVEŠČEK, I. MAKGILL, C. TAGGART, *Data Quality Barriers for Transparency in Public Procurement*, in «Information», n. 13, 2022).

⁴⁰ See, for example, the dispositions of Spanish law 19/2013, since 9 December, on transparency, access to public information and good governance or the Italian Legislative Decree no. 33 of 14 March 2013. On this, A. CERRILLO, I. MARTÍNEZ, *La difusión de información pública como instrumento para la prevención de la corrupción: una aproximación desde la legislación autonómica*, in «Revista Catalana de Dret Públic», n. 52, 2016 and E. CARLONI, *Il paradigma trasparenza. Amministrazioni, informazione, democrazia*, il Mulino, Bologna 2022; F. LOMBARDI, *La trasparenza tradita*, Edizioni Scientifiche Italiane, Napoli 2021.

⁴¹ For example, Spanish transparency legislation states that requests for information that is auxiliary or support information, e.g. notes, drafts, opinions, summaries, communications and internal reports, are inadmissible (article 18.1.b).

⁴² Expressed from the opposite perspective, as by the UN, «Without high-quality data providing the right information on the right things at the right time, designing, monitoring and evaluating effective policies becomes almost impossible» (UNITED NATIONS, *A world that counts. Mobilizing the data revolution for sustainable development*, 2014).

⁴³ See, for example, the provisions of Spanish Law 19/2013, of December 9, on transparency, access to public information and good governance (article 5) or Italian Legislative Decree no. 33 of March 14, 2013 (article 6).

Different actors have highlighted the importance of good quality information. For example, Transparency International considers that «It is important to point out how vital it is, especially in this extraordinary situation, that public information is available in real time and that it is checked, ranked and evaluated so that citizens and different interest groups can access content easily and clearly» (TRANSPARENCIA INTERNACIONAL ESPAÑA, *Transparencia y publicidad activa: COVID-19 y estado de alarma en España. Recomendaciones para la transparencia y prevención de la corrupción en el sector público y privado*, 2020).

⁴⁴ See, for example, the provisions of Spanish Law 19/2013, of December 9, on transparency, access to public information and good governance (article 5) or Italian Legislative Decree no. 33 of March 14, 2013 (article 6).

⁴⁵ As the National Commission for Markets and Competition says: «There remains another fundamental problem for quantitative analysis in this area: data quality. The information published on the different procurement platforms contains a number of inconsistencies and missing data that are not negligible» (COMISIÓN NACIONAL DE LO MERCADOS Y LA COMPETENCIA, *Overview of Public Procurement Procedures in Spain*, Comisión Nacional de los Mercados y la Competencia, Madrid 2019). Some papers confirm that the quality of public procurement data is low: M. FAZEKAS, *Assessing the quality of government at the regional level using public procurement data*, European Commission, Directorate-General for Regional Policy, Brussels 2017; M. MENDES, M. FAZEKAS, *DIGI-WHIST Recommendations for the Implementation of Open Public Procurement Data. An Implementer's Guide*, Brussels 2018.

⁴⁶ A. SOYLU, Ó. CORCHO, B. ELVESÆTER, C. BADENES-OLMEDO, F. YEDRO-MARTÍNEZ, M. KOVACIC, M. POSINKOVIC, M. MEDVEŠČEK, I. MAKGILL, C. TAGGART, *Data Quality Barriers for Transparency in Public Procurement*, cit.

⁴⁷ Similarly, Spanish Law 19/2013, of December 9, on transparency, access to public information and good governance sets out that information must be disseminated in a structured manner (article 5), or Italian Legislative Decree no. 33 of March 14, 2013 (article 9).

⁴⁸ For example, this is set out in the provisions of Spanish Law 19/2013, of December 9, on transparency, access to public information and good governance (article 10) or Italian Legislative Decree no. 33 of March 14, 2013 (article 9).

⁴⁹ Villamil observes that «data on economic activity and transactions, especially adjacent to the public domain, are becoming increasingly well-organized and available» (I. VILLAMIL, J. KERTÉSZ, J. WACHS, *Computational Approaches to the Study of Corruption*, in «arXiv preprint arXiv:2201.11880», n. 2022).

⁵⁰ HAUTE AUTORITÉ POUR LA TRANSPARENCE DE LA VIE PUBLIQUE, *Open data & intégrité publique. Les technologies numériques au service d'une démocratie exemplaire*, 2016.

⁵¹ Article 3.

⁵² Article 2.

⁵³ Article 2.

⁵⁴ M. MENDES, M. FAZEKAS, *DIGIWHIST Recommendations for the Implementation of Open Public Procurement Data An Implementer's Guide*, 2018 has observed that the current situation in Europe regarding the re-usability of information is problematic.

⁵⁵ In Spain, the Council for Transparency and Good Governance is responsible for guaranteeing compliance with transparency obligations and obligations related to the right of access to public information. In France, the Commission d'accès aux documents administratifs is also assigned functions regarding the re-use of public information.

⁵⁶ See in this regard the provisions of Directive (EU) 2019/1937 of the European Parliament and of the Council, of October 23, 2019, regarding the protection of persons who report violations of European Union laws.

⁵⁷ H. PARK, J. BLENKINSOPP, *The roles of transparency and trust in the relationship between corruption and citizen satisfaction*, in «International

Review of Administrative Sciences», 2011, vol. 77, pp. 254-274; <https://doi.org/10.1177/0020852311399230>; see also A. PERSSON, B. ROTHSTEIN, J. TEORELL, *The Failure of Anti-Corruption Policies: A Theoretical Mischaracterization of the Problem*, in «Quality of Government Working Paper» University of Gothenburg, Gothenburg 2010, n. 19.

⁵⁸ I. BRUSCA, F. MANES ROSSI, N. AVERSANO, *Accountability and Transparency to Fight against Corruption: An International Comparative Analysis*, in «Journal of Comparative Policy Analysis: Research and Practice», 2018, vol. 20, pp. 486-504, DOI: 10.1080/13876988.2017.1393951