

# Transparency in the EU system of governance: the successes and pitfalls of a new pre-requisite for democracy

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Transparency has become one of the European Union's watchwords and one of the main responses to very different threats to democracy (corruption, conflicts of interest, influence peddling, lobbying, poor public trust, abuse of fundamental rights...). How is it that transparency has become the only successful response to such a varied range of problems? How does the transparency solution, when reduced to just being the obligation to disclose and publish information, affect the way the EU functions? In the tradition of political sociology, the article examines the political and social forces that have given shape and form to transparency that is reduced to just making information publicly available. By focusing on the various uses of transparency, it sheds light on the paradoxical effects of transparency on access to information, the clarity of procedures and political participation. More generally, the article shows that disclosure of information is not enough and may lead to unintended consequences such as development of bureaucracy, exclusion of citizens, and promotion of lobbying.

## 1. Introduction

Transparency has become one of the European Union's watchwords. Former European Commission President Jean-Claude Juncker made it a key objective of his presidency in his first State of the Union speech<sup>1</sup>. The European Commission, which had already started providing information through its new Transparency Portal in 2012<sup>2</sup>, pursues its efforts by making a whole range of information available to the public. For its part, the European Parliament also calls for greater transparency by recommending that MEPs publish their agendas and meetings with interest representatives<sup>3</sup>. Even the Council of Ministers, often considered to be the least

transparent institution, offers the possibility to follow live public sessions and has committed itself to transparency by making many documents and sets of open data available on line<sup>4</sup>. Other EU institutions, such as the regulatory agencies, are also being urged to be more transparent by the European Ombudsman, which has pursued this issue at length in its enquiries and policy initiatives<sup>5</sup>.

46 The notion of transparency has therefore gained in importance, both in the discourse emanating from the European institutions and in the various different measures adopted, to the extent that any practice involving secrecy is denounced and sometimes condemned by the Court of Justice. However, although transparency is primarily defined as being in opposition to secrecy, it also encapsulates two other dimensions. The first of these is the need to make the functioning of the EU easier to understand, which would require more streamlined procedures, as reformers of the European system of governance have attempted to do with various «better regulation» programmes since the beginning of the 2000s. The second concerns the participation of citizens in the shaping and implementation of public policies, which has been encouraged in order to bring the European institutions closer to them. Nowadays theorists of democracy and analysts of institutional reforms<sup>6</sup> consider that these different dimensions go hand-in-hand and that they all help to strengthen democracy. However, they have their roots in very distinct lines of thought, which have only come together over time. Access to documents, which is perceived as a fundamental right of citizens, is only marginally linked to the codification of the way the EU functions, as advocated by European treaty architects and law specialists. Similarly, efforts to control financial flows seem to have little to do with citizen participation issues, particularly given that the latter necessitates more lobbying. And while the lifting of secrecy is a key issue in decision-making and deliberation processes<sup>7</sup>, the exact measures taken will differ depending on whether the purpose is to gain citizens' trust, to enforce ethical practices among decision-makers<sup>8</sup>, to improve efficiency<sup>9</sup> or to keep influences at play in check<sup>10</sup>. Transparency cannot therefore just be reduced to just the disclosure of information. Calls for transparency are made with different objectives in mind, which can even sometimes be contradictory, for example when the participation of citizens, promoted as part of open government, engenders and institutionalises lobbying. This is why certain authors tend to talk about the «complex dynamics of transparency»<sup>11</sup>, developed jointly with stakeholders. Some suggest that the specific variety of transparency should be clearly identified<sup>12</sup>,

and that participation should even be considered as something clearly separate from transparency<sup>13</sup>, while others see them as going together<sup>14</sup>. The notion of transparency is therefore heterogenous in nature, as are the policies it affects.

Although individual measures taken to promote transparency respond to distinct needs, they ultimately combine these different objectives. Having access to documents, knowing how decisions are taken, by whom and on which grounds, and being able to participate in policy-making is now achieved through the disclosure and publication of information and data. However, this transparency is not used for the same purposes and it does not respond to the same problems. In certain cases, it is necessary in order to throw light on the problematical relationships between those with public responsibilities and the representatives of private interests. In others, it helps to protect citizens in face of the power of government administration. And in yet other instances it ensures that elected officials can be held to account and keeps a check on the decisions they take. It is therefore astonishing that transparency is perceived as a single response to very different threats to democracy, namely corruption, conflicts of interest, influence peddling, lobbying, poor public trust, abuse of fundamental rights and so on.

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This article will not therefore provide yet another review of transparency theories and issues, similar to those already provided by certain handbooks<sup>15</sup>. Neither will it offer a new history of this notion<sup>16</sup>, and nor will it seek to discuss the supposed benefits of transparency measures proposed by European organisations (OECD, Council of Europe, European Union) with a view to improving democracy, public trust or to promoting accountability, integrity and legitimacy. This has already been covered thoroughly, even though most studies focus on specific areas such as lobbying, finance, administrative transparency, citizen participation and so on. Hence, to complement these studies and offer a new perspective, this article adopts an original approach using political sociology<sup>17</sup> to analyse transparency based on the different purposes for which it is used. It will examine both the organisations who agitate for greater transparency and the people within European institutions whose working practices are having to evolve as a result of the requirement to disclose information. In light of this notion of the plurality and heterogeneity of definitions of transparency, two main questions will thus be addressed. Firstly, how is it that transparency has become the only successful response to such a varied range of problems? Secondly, how does the transparency solution, when reduced to just being the obligation to disclose and publish information, affect the way the EU functions?

To answer these questions, this article will focus on and examine the political and social forces that have given shape and form to transparency in making it a key element of European democracy. In the tradition of political sociology, Part 1 will refrain from giving a fixed initial definition of transparency, and instead use the range of definitions that co-exist with one another and compete in determining reforms. Part 2 will explore beyond the theoretical definitions and examine the way in which political and social actors have seized upon transparency and used it to pursue their political demands. By focusing on the historical conditions, it will show how the diffusion of transparency has occurred in European circles over time. Part 3 will explain how the disclosure and publication of information has become a central dimension of transparency. It will then shed light on the paradoxical effects this effort has on access to information, the clarity of procedures and political participation. More generally, the article will show that «transparency first» tends to promote general oversight before anything else, relegating elections and collective debate to the background.

## **2. The plurality of issues covered by the watchword «transparency»**

It is difficult to say precisely when the European institutions became concerned with the issue of transparency. On the one hand, this is because use of the term is not concurrent with specific practices. Sometimes it has heralded them and sometimes it has just been empty rhetoric. On the other hand, the term has variable meanings depending on when it is used and which institution is using it. So, rather than using as a starting point the texts that include the term «transparency» in their title, this part will attempt to shed light on and distinguish between the different meanings of the word transparency and different issues involved.

Of the various transparency-related topics, access to documents was made a priority at the Maastricht Summit in 1991 and the Birmingham and Edinburgh Summits in 1992. The notion of access to documents refers explicitly to the fight against secrecy. The authorities not only provide information to the press and to citizens, but they also accept that information provided should be verified by means of documents that make it possible to follow discussions and to set out the data used to make specific decisions. Following various communications from the European Commission and the Council<sup>18</sup>, the communicability of documents

has gradually been established as a standard of «good administration» with which the European Ombudsman will try to ensure compliance. At around the same time, and in a complementary manner, access to documents became a right guaranteed by Article 42 of the Charter of Fundamental Rights in December 2000. Thus Regulation 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents is rightly identified as representing an important step forward. The procedure for requesting access has now become well established and is increasingly known to the public, including journalists, activists and researchers. Thanks to the development of information technology and data systems, accessibility has been hugely enhanced. Information is increasingly accessible directly from online databases. The provision of information firstly concerns public decision-makers, who must publish their CVs, calendars and any gifts and invitations. But it also concerns the various actors involved in the decision-making process: lobbyists must appear on the public transparency register, contributions sent in response to public consultations are published, the beneficiaries of calls for tender and European funds are known, the members of expert groups are listed in the relevant register, and the lists of experts used by the agencies are published together with their declarations of interest.

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The proliferation of information, which has been encouraged by public policies aimed at opening up data<sup>19</sup>, is linked to another, much older and less spontaneously mentioned transparency issue, which is the need to streamline decision-making processes. The first texts that mention transparency respond to this need. It is not just a matter of having information on who everyone is, who sits on which committee, who receives subsidies and how much money they receive. It is also important to understand the respective competences each actor has, how each one participates in decisions, according to which prerogatives, and governed by which provisions. Here, transparency means streamlining procedures so that decision-making can be overseen and arbitrary decisions thus avoided. This objective also entails providing information about the process, so that greater visibility can keep a check on any infringements and enhance accountability. This issue of clarity and the need to streamline procedures is sometimes dealt with from a constitutional point of view, as in the 1990s and in the early 2000s during the work of the Convention on the Future of Europe, which finished drafting the Treaty establishing a European Constitution in 2004<sup>20</sup>. At other times it is dealt with from the point of view of the reform of European governance, as with the publication of the White Paper of 2001<sup>21</sup>,

and the reforms of regulatory policy (Better Regulation in 2002, Smart Regulation in 2010 and the REFIT Regulatory Fitness and Performance programme in 2014). The purpose of this series of reforms, which was part of an international trend initiated by certain EU member states and the OECD<sup>22</sup>, was to cut and simplify existing regulations. To this end, a regular review of existing provisions and a prior assessment of proposed regulations now have to be carried out. The objectives of streamlining and promoting simplification are thus reflected in the development of increasingly detailed procedures to rationalise decision-making and to oversee administrative and political practices.

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Lastly, alongside wider debates about «open government», transparency increasingly goes hand in hand with the notion of participation<sup>23</sup>. In order to take citizens more fully into account, the 2001 White Paper established «civil society participation» as a principle of good governance. This led to a «participatory turn»<sup>24</sup> with the institutionalisation of consultation practices. To widen the circle of participation, calls for consultations are published and the periods during which contributions can be submitted are specified<sup>25</sup>. To generate responses and to encourage reactions, if not debate, contributions are published unless their authors formally object. Online consultations thus enable directorates-general of the European Commission to gather opinions on various documents (green papers, white papers, initiatives, roadmaps, etc.), on legislative proposals and even on evaluations. Sometimes consultations are integral to the stakeholder assessment process. Public consultations are sometimes organised in addition to and even in place of the «structured dialogue with interest groups» established by the European Commission in 1992<sup>26</sup>. Aside from seeking to involve civil society organisations and encouraging them to express themselves, they shed light on those who have participated and their respective points of view<sup>27</sup>. Consultations made public show whether and how the European Commission takes these opinions into account. Transparency in the sense of participation goes hand in hand with transparency in the sense of fighting secrecy and opacity.

Transparency can thus be said to have three distinct dimensions, which have evolved simultaneously, albeit separately. However, these are gradually converging in favour of the disclosure and publication of information, which is now the common thread around which the plurality of transparency issues can be articulated. How has this convergence been possible?

### **3. Convergence of interests around the need for disclosure**

To understand how the notion of European transparency has evolved, it is necessary to consider the social and political actors who have mobilised in favour of transparency and to analyse the uses they have made of it. Two series of political and social mobilisations marked the 1990s and 2000s. The first, in the mid-1990s, focused on citizenship, «civil society» and participation issues. The second, in keeping with the trends of the 2000s, pushed hard for information to be made publicly available. Although both sorts of mobilisation campaigned for a democratic Europe, they did not defend the same principles. Neither did they call for the same measures to achieve it. Nevertheless, both supported the objectives of those were advocating a «new European governance», which perceives streamlined procedures and the oversight of practices to be the key democratic challenge, rather than the election of decision-makers by citizens.

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#### *3.1 Access to documents and citizens' access*

In the 1990s, mobilisations in the European arena focused on civic issues. They were initiated by networks of NGOs and associations campaigning for civil liberties. The British NGO Statewatch, set up in 1991, was at the forefront of this movement, which sought to have the right of access to documents written into the treaties and their provisions as early as 1992. Its representative Tony Bunyan was well known to the Court of Justice, to which he regularly submitted appeals, as well as to the European Ombudsman, to whom he lodged thirteen complaints between 1993 and 2014<sup>28</sup>. Thanks to the support of a small number of EU administration officials, and the Swedish Presidency of the Council of the EU<sup>29</sup>, the coalition of associations he led succeeded in having Regulation 1049/2001 adopted. It was also very active in fighting the Commission's plan to revise the regulation in 2005, which was finally abandoned in 2012. The associations involved in this movement made extensive use of it and helped citizens to request documents. Access Info Europe, for example, set up its AsktheEU platform<sup>30</sup>, which helps citizens with their requests to European institutions for access to documents.

At the same time, demands related to European citizenship increased, driven by federalist movements promoting a «Europe for citizens». Beyond securing a legal definition of citizenship, which conferred new rights (to vote, stand for election and lodge complaints to the Ombudsman, etc.), there were demands for more concrete efforts to take citizens, their

aspirations and actions into consideration. Several associations joined forces within the EU Civil Society Platform, seeking to forge a new collective body<sup>31</sup>. They argued that the EU needed to be closer to citizens and that civil society should be able to play a role in its workings. The governance experts in the taskforce responsible for preparing the White Paper on European Governance gave them a sympathetic hearing<sup>32</sup>. They were eager to promote forms of consultation based on the model of social dialogue involving employees' and employers' representatives. They considered civil society associations as intermediaries who would be capable of forging links between institutions and citizens. However, efforts to promote «civil society participation» risked ending up being just empty talk unless specific participation mechanisms were adopted<sup>33</sup>. The desire to set up a «civil dialogue» met with resistance from representatives of the European Economic and Social Committee<sup>34</sup> as well as MEPs. Nevertheless, no sooner had the work on the new system of governance been completed than the associations were getting involved in the Convention for the Future of Europe to lobby for Article 11 on «participatory democracy». This would allow one million citizens to launch a «citizens' initiative»<sup>35</sup>.

At the time, these different mobilisations for access to documents and for civil society participation had little to do with the reform projects that legal specialists were working on to make the EU more transparent by streamlining decision-making processes and procedures. But they were not far removed from them. On the one hand certain actors were calling for a procedure to access information in the name of the right to know. On the other hand actors interested in political participation were demanding mechanisms to allow them to contribute to the decision-making process.

### *3.2 Visibility of data and publicity of procedures*

It was not however until the mid-2000s that these different mobilisations converged. The European Transparency Initiative (ETI), launched in 2006 by Commissioner Siim Kallas, not only brought them together, it also brought them into contact with projects aimed at reforming European governance<sup>36</sup>. The ETI had three main objectives: the disclosure of information on the beneficiaries of European funds to permit their identification and the monitoring of financial flows; the review of consultation procedures to ensure they are carried out according to minimum standards and with respect for pluralism; and to regulate lobbying by listing all interest representatives on a public register, including consult-



ants, lawyers, NGO activists, trade unionists or managers of business associations. For these three objectives, publication is the preferred solution. Publishing information on line would make it possible to give the public access to information that had previously been reserved for administration officials, who used the directory of interest groups to find out who to consult and how to contact them<sup>37</sup>, who had access to contributions from «civil society» and who distributed grants after examining the responses to calls for projects. Publication of information also made it possible to monitor a whole range of European governance actors and to regulate their practices (consultations, meetings, interventions, etc.). This made it possible to verify these actors' intentions to ensure they behave in accordance with expectations, as they would have to list themselves on the transparency register, publish the dates of their meetings, make their contributions public and so on. This would show they were acting honestly and had nothing to hide. The actors concerned supported these different transparency objectives.

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However, by the 2000s, the organisations and activists occupying centre stage had changed. Federalist associations that had campaigned for the participation of civil society in the 1990s lost some of their importance. They gave way to new organisations, which had also emerged from the drive to promote a Europe for citizens. The civil society representatives of the 1990s, who had been broadly supportive of European integration, were replaced by more critical groups that did not hesitate to point out the EUs failures<sup>38</sup>. Both types of organisation called for transparency. However, while the first type focused on participation as a means of achieving a compromise between representative democracy and citizens' rights, the second type focused on the need for disclosure, to strengthen the procedural dimension of democracy, which was the key objective of EU reformers. This has been the case for the Dutch NGO Corporate Europe Observatory (CEO), which was set up in 1996. It condemns the «dangerous links» between European institutions and industry<sup>39</sup>. Another example is ALTER-EU, the Alliance for Lobbying Transparency and Ethics Regulation, which was set up in 2005 by 150 organisations close to the anti-globalisation movement. These organisations are less concerned with promoting citizen participation than they are with questioning the hidden relationships between institutions and economic actors. By demanding that light should be shed on lobbying in order to know who does what and how, and by demanding information on expert groups, to a certain extent they pursue the same cause as those who defend the right to know and access to documents. However, their demands are also on a

par with reformers' desire to regulate practices (lobbying, expertise and consultation) and to rationalise decision-making processes in order to limit political and social contestation<sup>40</sup>. The latter group are particularly satisfied with this convergence of interests as they see these NGOs as a valuable ally in monitoring and controlling the different actors.

This convergence between activists who are critical of the EU and reformers of European governance has contributed to the success of transparency. Nevertheless, there is a special twist to this success, because the disclosure and publication of information has become both the objective and the means of transparency policies.

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#### **4. Transparency in the making: the practices at issue**

The act of disclosure at the heart of transparency measures has thus enabled progress to be made in providing information, making data available and opening up the decision-making process. However, although positive, these achievements eclipse a number of other transformations that reflect a particular approach to the governance and functioning of the EU. These transformations may well limit the potential improvements transparency can make in terms of democracy and trust.

The vital need to ensure transparency, which concerns all actors involved in the workings of the EU, eclipses the matter of the legitimacy of those who conduct public affairs. This is deemed to have less importance than the monitoring of their practices. Whether they be elected or appointed, members of the administration or private consultancy firms, appointed experts or invited interest representatives, all are put on the same level and invited to prove in the same way that they comply with ethical standards, as if their status or their professional obligations were not enough. It is precisely because they have different profiles that their practices must be constantly monitored. Granting numerous appointments to a lobbyist who has filled in their identity details in the transparency register does not seem to pose a problem. Taking into account the opinions of different interest groups participating in a consultation is even welcomed as it is deemed to have been public and open to all. Entrusting the drafting of an impact study to a consultancy firm seems normal and even desirable as long as the service provider publishes its contract and respects the specifications using the requested methodology. Transparency thus appears to have the virtue of dissipating the risk of decisions being manipulated and decision-makers corrupted. Nevertheless, it diverts from the need to

question the legitimacy of those who participate in the decision-making process. By making the various data on which a decision is based central to the merits of public policies, according to an evidence-based policy approach, it limits discussion and removes consideration of major policy alternatives from the debate. The emphasis placed on the role of impact assessment is characteristic of this drive to rationalise public action. This is why some MEPs, and even more so members of the Council, have opposed the use of impact assessment to justify amendments or to support their proposals. They point out that politics and diplomacy cannot (and should not) be reduced to such criteria. Organising more consultations on impact assessment will not help us to move on from this narrow conception of democracy, which Vivien Schmidt has described using the notion of «throughput legitimacy»<sup>41</sup>. This is firstly because more consultation risks leading to more lobbying and secondly because the value of decisions and public policies is not measured by the transparency of the decision-making process but rather by broad objectives such as the achievement of a just society, harmonious growth or a healthy environment. Political parties and their elected representatives promote such objectives and this gives rise to collective discussions. While transparency offers a means of guaranteeing the quality of political and administrative work and can limit any challenges to decisions taken, it cannot be reduced to just being about making data and public policy actors more visible.

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Transparency has hugely increased the amount of information and data available<sup>42</sup>, and this should not be forgotten. How then can we identify the information that is useful and avoid being overwhelmed by this abundance of data? In the long run, the proliferation of data risks making the functioning of the EU even more impenetrable, contrary to the initial aim of making things clearer. It also risks encouraging the emergence of a more informal decision-making process whereas the initial purpose of transparency was to govern practices within a framework of rules<sup>43</sup>. With public declarations of interest, it is now easy to verify links and prevent conflicts of interest. With the publication of calendars on line, it is easy to count the number of meetings held with particular lobbyists and to compare this with others. The publication of contributions submitted in the framework of consultations makes it possible to identify those that have been taken into account in the Commission's legislative proposals. The lists of funding beneficiaries make it easier to monitor spending and determine what is actually done with EU funds.

However, not everyone knows where to find this information, not everyone has the means to process it and, most importantly, not everyone

knows how to analyse it. At present, most of the organisations collecting and processing this data are NGOs committed to greater transparency. Their work proves that access to this information is useful and can provide arguments to support mobilisations. For example, LobbyWatch has succeeded in using the data to ensure that lobbying is perceived as a problem and to demonstrate that the self-regulation of lobbying actors is far from satisfactory<sup>44</sup>. Similarly, by monitoring the careers of certain elected representatives and administration officials, Corporate Europe Observatory has campaigned on the phenomenon of the revolving door<sup>45</sup>. It has urged the European Commission to limit the number of officials moving between the private and public sectors and to ensure that this is supervised more closely. Other watchdog organisations are doing similar work in areas such as finance (Finance Watch, Bankwatch), medicines (Eurosfordoc)<sup>46</sup> and corruption (Transparency International). However, they have a tricky task because the scandals they uncover may well generate even more criticism and condemnations of the EU, despite the fact that their work enables them to hold the public authorities to account. Access to information and data is therefore not enough on its own, and intermediaries are needed to collect and process them. However, the work of objectifying and analysing the functioning of the EU should not just be the preserve of a few organisations. Otherwise there is a risk that the benefits of transparency will end up being used solely for monitoring purposes, which would be tantamount to putting these NGOs on the same level as rating agencies and management controllers.

Requests for the disclosure and publication of information made to various actors are part of the process of transforming the rules of the EU game. But this is not necessarily leading to greater inclusion and openness. On the contrary, new transparency rules are making access to the «field of Eurocracy»<sup>47</sup> more difficult and selective. Didier Georgakakis defined this field as a political and administrative space where EU actors are positioned according to their capacity to play by these rules. This capacity is determined by the resources of the different actors as well as their position relative to other actors in the field. However, some of them lack the knowledge and know-how necessary to enter and evolve within it. «Bureaucratic capital», that is, the resources available to actors in this field, is not equally distributed among them. Those who understand the procedures best, such as the «professionals of Europe»<sup>48</sup> who are familiar with the rules and practices of the EU, will be more advantaged by new procedures<sup>49</sup> than weakened by transparency obligations. Lobbyists and those representing large companies have sufficient staff and corporate

compliance support to enable them to comply with the administration's requests. This is not the case for many citizens' associations, which are still relatively unprofessional and have limited resources when it comes to complying with transparency requirements and the administration's demands for expertise and participation. Who is able to respond to public consultations? Who is able to give a relevant opinion on a particular aspect of comitology? Participation in the decision-making process requires a good knowledge of administrative language, the ability to formulate a proposal in the expected form and a good command of the intricacies of the decision-making process. To be able to present an opinion «well», it is essential to have been socialised in the ways of the EU and to have taken on board its «modes of perception». As with the obligation for transparency, the opening of the decision-making process ultimately risks excluding actors such as citizens and the associations that represent them, unless they are able to benefit from protection for their efforts to make revelations, as happens for whistleblowers<sup>50</sup>. They also need to be able to access channels to shape public opinion, through collaboration with actors such as the International Consortium of Investigative Journalists (ICIJ)<sup>51</sup>. The expected benefits of transparency are strongly conditioned by the uses to which they are put.

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It is not certain that the latest Better Regulation initiative launched by the Junker Commission and its Vice-President Frans Timmermans<sup>52</sup> will make it possible to avoid these pitfalls as far as transparency is concerned. In fact, by constantly asking the administration to do more to ensure transparency, there is a risk of creating some resistance. Even if they are in favour of it, officials responsible for gathering information and putting it on line do not necessarily have the human resources available to do so. How many officials are there across the various DGs and within the Secretariat-General to respond to the 6,200 applications for access to documents, of which 250 to 340 are confirmatory<sup>53</sup>? To administer the Transparency Register and keep a check on the 13,300 organisations registered, the administrative team of three Commission and three Parliament officials is insufficient, even with the three extra people seconded from the Council since 2021. As for making contributions made further to consultations available on line, this can entail the processing and reading of thousands of pages in order to draw up a summary document. The resources available for doing this differ across DGs. Administrative officials unfortunately receive little help when it comes to implementing the transparency policy and they will no doubt be criticised for the time it takes them to do so, their supposed lack of enthusiasm and the mistakes

they make because they do not have the capacity to manage the publication of such a huge mass of data. However, the biggest problem is the fact that EU officials have no control over a significant amount of data.

58 This is the case for tax information held by national administrations, information on lobbyists' clients which they do not wish to divulge, and more generally all of the information companies have at their disposal in their respective sectors, which gives them considerable power, for example concerning the composition of food products or data on financial products. For all of this information, EU officials can only make recommendations, prepare the most user-friendly declaration forms possible and help private actors to fill them in. However, they are still dependent on their cooperation and it is they who will be criticised for not having achieved the transparency objective.

The achievement of transparency is still broadly dependent upon the purposes which it will serve as well as those who have to implement it, both within the administration, and among those who call for and use the results of transparency, such as NGOs, consultancy firms, companies and, to a lesser extent, citizens. Paradoxically transparency is also dependent upon the very same actors, because they are the ones who demand it and can comply with it, but at the same time they are also the ones who make its implementation problematical.

## 5. Conclusion

Transparency is nowadays proffered as a solution to the various ills from which the EU is said to suffer and which contribute to its poor image. Naturally, shedding light on the places where decisions are taken out of sight and therefore beyond democratic control represents an attempt to regain control of a process that eludes citizens. With this in mind, we must welcome the various initiatives aimed at revealing secrets and, more broadly, the trend to make information and data publicly available, just as we must be concerned about the rival effort to protect secrets and resist those who reveal them. However, it must be borne in mind that the disclosure and publication of information is not enough and may lead to unintended consequences<sup>54</sup>. It is a means to an end, not an end in itself. If transparency is reduced to just making information publicly available, it risks excluding citizens who have neither the means to process this information nor the capacity to monitor decision-making processes. It will benefit those actors with the greatest capacity to pro-

duce data and process information and with the most means to comply with transparency requirements. On the other hand, if transparency is treated as a means that can be used by actors acting in the interests of citizens, it can contribute to a form of democratisation of the EU. But citizens must not be reduced to the role of overseers. They must be able to access information in order to discuss it collectively and then elect representatives to defend their choices. This implies that transparency, whose parameters and objectives need to be redefined depending on the purposes for which it is used<sup>55</sup>, cannot be monopolised by activist organisations who fight the administration, by administrative officials who seek to gain an advantage over elected representatives, or by lobbyists who aim to substitute themselves for civil servants. The achievements of transparency will depend on the way in which actors use it to insist upon the need for legitimacy, collective discussion and shared choices based on public interests. Otherwise, transparency risks becoming just a stopgap solution for democracy, focusing solely on its procedural dimension, and all that is left when elections, public debate and shared decision-making have disappeared.

## Note

<sup>1</sup> [https://ec.europa.eu/info/priorities/state-union-speeches/state-union-2015\\_en](https://ec.europa.eu/info/priorities/state-union-speeches/state-union-2015_en).

<sup>2</sup> European Commission, Press Release, 07 June 2012 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_12\\_574](https://ec.europa.eu/commission/presscorner/detail/en/ip_12_574).

<sup>3</sup> See European Parliament, Rules of Procedure, Rule 11 [https://www.europarl.europa.eu/doceo/document/RULES-9-2021-09-13-RULE-011\\_EN.html](https://www.europarl.europa.eu/doceo/document/RULES-9-2021-09-13-RULE-011_EN.html).

<sup>4</sup> <https://www.consilium.europa.eu/en/general-secretariat/corporate-policies/transparency/open-data/>

<sup>5</sup> H. MICHEL, *Le Médiateur européen héraut de la transparence. Redéfinition d'une institution et investissements politiques d'une norme de 'bon'gouvernement (The European Ombudsman, Champion of Transparency. Shaping of an Institution and Political Investments of a Standard of 'Good' Governance)*, in «Politique européenne», 61, 3 (2018), pp. 114-141.

<sup>6</sup> CH. HOOD, D. HEALD (ed.), *Transparency: The Key to Better Governance?*, Oxford University Press, Oxford 2006.

<sup>7</sup> D. NAURIN, *Deliberation Behind Closed Doors: Transparency and Lobbying in the European Union*, ECPR Press, Colchester 2008.

<sup>8</sup> M. CINI, *From Integration to Integrity: Administrative Ethics and Reform in the European Commission*, Manchester University Press, Manchester 2007.

<sup>9</sup> S. NOVAK, M. HILLEBRANDT, *Analysing the trade-off between transparency and efficiency in the Council of the European Union*, in «Journal of European Public Policy», 27, n. 1, 2020, pp. 141-59.

<sup>10</sup> A. BUNEA, *Legitimacy through targeted transparency? Regulatory effectiveness and sustainability of lobbying regulation in the European Union*, in «European Journal of Political Research», 57, n. 2, 2018, pp. 378-403.

<sup>11</sup> A. MEIJER, *Understanding the complex dynamics of transparency*, in «Public Administration Review», 73, n. 3, 2013, pp. 429-439.

<sup>12</sup> D. HEALD, *Varieties of transparency*, in C. HOOD, D. HEALD (eds.), *Transparency: The key to better governance?*, Oxford University Press, New York 2006, p. 25-43.

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