

Transparent Europe - public draft 1

1. Why do we need transparency?

“Europe is disintegrating as a result of terrible decisions taken by the EU’s leaders under conditions of absolute opacity. The small step to allow Europeans a front seat in the meetings where their future is decided, will constitute an enormous leap toward democratising Europe and re-legitimising the EU in its citizens’ eyes.”

Yanis Varoufakis

It is all about TnT: Transparency and Transformation. In a democracy we propose our ideas for change, win others over to our transformative proposals such as the DIEM25 Green New Deal or the recommendations we make in this document, and approve or disapprove the ideas of others. For transformative participation in politics citizens need procedural knowledge and insights.

- It is important to end the widespread unawareness about the European Union: Most Europeans are kept unaware what is decided in Brussels and Strasbourg for them, often at the hands of their member states politicians. To make informed voting decisions you have to know what your politicians do.
- To express support or disagreement with a decision in the Parliament you have to be aware what is on the agenda. You need to know that a decision is being taken.

Transparency offers the potential to end opacity of the public. Better transparency allows a European Public to acquire information about what is going on and opens institutions up to public scrutiny. Political goals brought by transparency are democracy, access to information, justice and fairness, among others. The higher the transparency is, the more information becomes available and conscious decision is being made possible. Citizens become naturally more involved and develop freedom of thought and activities which brings about informed decision making. If all people have access to the same information it also promotes fairness towards all as opposed to privileged information accessible only for certain special interests.

DiEM25 puts together, from the grassroots upwards, a democratic Progressive Agenda for Europe addressing systematically the six systemic challenges facing the continent. One of these challenges is a Transparent Europe: Introducing transparent government across Europe. That means on the European and but also the member state levels. This document is a contribution to that end and puts forward tangible recommendations.

Recommendations:

- Step up the investigation how improvements of transparency may help the institutions to become more accessible and improve public participation.

2. Making EU institutions fully accountable

One of the basic principles of democratic control is that people have the right to know how and why their elected representatives and public officials take decisions, particularly on issues that affect them. Access to information on the work and the decision making processes of public bodies is at the heart of accountable governance. The most commonly used arguments against additional transparency revolve around the need for a “space to think” or to negotiate freely, potential threats to national security, additional administrative burdens and increasingly, business secrets. To a certain extent these concerns can be valid, in other cases they are meant to make decision makers’ lives easier to the detriment of their democratic control. Institutions and decision making bodies we want to look at are the EU Council, the Eurogroup, the European Commission, the European Stability Mechanism (ESM), the European Central Bank, the Troika, as well as Member States administrations as far as they are directly involved in EU decision making processes.

2.1 Casting light into Institutions

Even for close observers it is challenging to understand the roles and actual power distributions at institutions and between institutions. Many European institutions are embedded in a clout of technocratic complexity and secrecy that makes it more difficult to trace what is happening. Insiders understand the internal communications code of an institution and are able to fill in the missing contextual knowledge. Outsiders who are not familiar with the internal communications code are shut off.

Imagine a committee that takes a decision. Here we list a few dimensions that may be transparent or opaque:

- The existence, name and purpose of a group (Institution, body, committee, working group, task force, Advisory Council etc.)
- The role and competence of a group.
- The hierarchy and workflow (rules of procedure), working language modalities
- The composition or members of a group and rules for participation
- The chairman of a group or meeting
- The schedule of meetings
- The participation record of a meeting, active and inactive members
- The documents discussed at a meeting
- The conclusions of a meeting
- The voting results of a meetings
- The adopted documents of a meeting
- The protocols of a meeting
- The access of observers via participation in the room and online streaming simultaneous to the meeting.
- The permission to sent public messages e.g. via twitter while the meeting is on.
- The audio or audiovisual recordings of a meeting
- The correspondence of a group
- The budget of a group holding a meeting
- Committees that set the agenda of the group by assigning dossiers to them.

Some of these facts are implicit knowledge which means they are not formalised. Many of these facts are laid down in documents to be obtained by the Access to Documents requests, parliamentary inquiries, online databases, transparency rules of the institution, press reports, floor talk and so forth. We can learn from the example above that some levels of transparency are relevant or conditional for public scrutiny and do not concern the contents of deliberations. Meta-knowledge is easier to be disclosed than detailed operational knowledge and essential for the performance of meaningful public scrutiny.

For instance, to request a document of a working group you have to be aware that the working group and the document exist. Supervising Parliamentary committees cannot inquire an official about details of a program when the Members of Parliament are not aware of it.

The above mentioned meta facts could be uncovered through research of documents that seem of limited public relevance at first sight, like the room booking schedule of a building which states that „Group 404“ reserved room A.34 Tuesday 14-16h or the data of facility security systems that records when a person entered and left a public building and keeps track in a database which persons have legitimate access to a premise. For this reason it is important to release documents even if there is no evident public case.

Recommendations:

- Disclose all official and informal working groups at the Council, Commission, ECOFIN, Eurojust, Eurogroup, ESM, ECB, Troika, FRONTEx to the general public and provide better access to documents, in particular schedules of meetings.

2.2 Institutional naming

Even professionals and media experts often confuse non-EU institutions with EU institutions and they give them a hard time.

For instance the Councils:

- Council of Europe (CoE), a diplomatic institution with a focus on human rights in Strasbourg comprising 47 governments. The EU borrowed its flag from the CoE but it is no EU institution. The CoE also has a parliamentary assembly in Strasbourg.
- European Council, EU biannual summit of the „heads of member states“ for EU agenda setting
- Council of the European Union, informally: „Council of Ministers“ or just “the Council” where member states governments are in a powerful co-legislative role with the European Parliament. In the same Brussels building as the European Council.
- To add to the confusion we find private lobby groups as the European Council on Foreign Relations (ECFR).

And there are more examples:

- European Free Trade Agreement (EFTA), an organisation mostly for non-EU members that used to be in institutional competition with what became the EU. EFTA members get European Economic Area (EEA) membership by participation, which means they implement some EU rules without real say.
- The CoE institution European Court of Human Rights (ECHR), the Court of Justice of the European Union (CJEU) and its European Court of Justice (ECJ) are often

confused. The CoE European Declaration of Human Rights and the EU Human Rights Declaration.

Once Henry Kissinger famously complained there was no single phone number of the EU to call. This observation seems to be confirmed by the often ridiculed number of Presidents of the different EU institutions. We have a President but also the Presidency of the Council held by a member state for six months. The European Parliament has its official seat in Strasbourg, a working seat in Brussels and its administration in Luxembourg. MEPs regularly move from the Brussels seat to the Strasbourg seat and have offices in both cities and in their constituency.

Recommendations:

- Future EU Treaty reforms should provide European institutions with a more intelligible and protected naming scheme.
- The CoE should be renamed e.g. as “Paneuropean Council”

2.3 Specific Institutions

European Parliament

The European Parliament is the main legislating body with members elected from all member states. The buildings have security checks and offers temporary and permanent access to visitors and lobbyists at rules agreed with an inviting MEP office. Thus records exist who has access to the premises in Brussels and Strasbourg and who entered the Parliament building, possibly also including the reason. With this data also information could be derived about the nationality and affiliation of visitors and potential imbalances. More decisions should be made by the EU Parliament. It is more difficult to “influence” the majority of EU Parliament’s deputies than the majority of the non-elected representatives of smaller bodies (such as the European Council or the Eurogroup).

Recommendations:

- The EU Parliament proceedings always should be televised or web streamed
- The facility security shall present a comprehensive report about the composition of visitors’ (including permanent badge holders) physical access to the European Parliament with parameters such as origin, gender, representation.
- Committee and group hearings and expert panels shall be required to fully disclose the identity and affiliation of panelists and external visitors.

Political Parties

Party financing is often intransparent and gives plenty of opportunities for vested interests to financially influence politics. We assume that absolute transparency is a big step forward and therefore propose that all parties running for any kind of election should consider to publish their funding structure online and in a standardised and transparent way. They have to clarify how they spend their money and where it comes from. Specifically Parties may disclose more about:

- Membership fees: Total amount and structure of fees

- Public subsidies: What amount received from which funding source and spent for which activity
- Donations: The possibility to donate small amounts anonymously has to be protected. However, donations of more than e.g. an average monthly salary per year have to be published with full information about the donor.
- Loans: Have to be fully publicised with information about the loan provider and the relevant conditions.

In an optimal scenario party operations and election campaigns should be highly regulated, limiting the expenses of all parties to a level at which they can entirely operate on membership fees and public subsidies. This would allow to cap private and corporate donations and loans, and in this way minimise the influence of special interests.

Recommendations:

- Public subsidies for electoral campaigns and their effective and neutral monitoring, in order to detect unlawful campaign support.
- Develop a standardised format for party funding disclosure and reporting
- Support the development of apps to compare party positions (e.g. Wahl-o-mat)

Council

The Council of the European Union is the European institution that is most opaque to external observers including citizens and lobbyists. It would significantly add to transparency if Permanent Representatives of Member States in the EU would be designated by the National Parliaments. At present Council representatives are administrative officials from the national ministries and diplomats. The national parliament oversight of their delegations does not follow the same standards. It often depends on the balances in the national political system. The Danish model gives the Folketing, the Danish parliament, wide oversight rights to scrutinize Council policies. In this respect national parliaments need to be empowered to take an interest in keeping the Council under scrutiny.

Recommendations:

- Completely disclose all formal and informal working groups at the Council using a standardised reporting format.
- Make institutional transparency a professional task of the next Council President

Revolving doors at the Commission

Sanctions for former EU officials with personal links with institutions who could benefit from privileged information should exist. E.g. former Commission President Barroso moved to Goldman Sachs. Commission official Detlef Eckert moved over to Microsoft and afterwards back into the Commission. Besides being impeded to participate in meetings with the EU, it could be legislated that it is illegal for former high officials of EU bodies to work for large financial groups or lobbyists within a predefined period (e.g. 5 years). Consequences of misconduct would comprise heavy sanctions to be allocated to working on conflicting interests as an institutional insider.

Recommendations:

- Stronger rules and obligations for Commission staff concerning “revolving door” career moves to the private sector.
- Tighter rules and obligations for retired high rank officials such as Commissioners

including a transition period of five years and a monitoring and disclosure mechanism. The European Parliament should be entitled to annul career moves when they appear to compromise the integrity of former officials.

- Expanding the scope of the staff complaint competences with the anti-fraud office OLAF
- Electronic meeting calendars of Commissioners and their staff shall be made public by default, also booking schedules of the rooms and premises.

European Stability Mechanism

Decisions under the European stability mechanism severely restrain the options of national democracies. Banks in need of recapitalisation from the EU's 'bailout' fund (the European Stability Mechanism–ESM) can be turned over to the ESM directly–instead of having the national government borrow on the bank's behalf. The ESM, and not the national government, would then restructure, recapitalise and resolve the failing banks.

Recommendations:

- All financial transactions under the ESM should be made transparent.

European Central Bank

The European Central Bank has an important governing role for the Euro currency zone. Decisions of the European Central Bank are also quite sensitive and communication must be guided as to not fuel speculation. Yet, more openness should be waged as to close the democratic deficit.

Recommendations:

- Invite a broad and open scientific dialogue with economists and critics with a view to mainstream and debate the weaknesses and shortcomings of the ECB system.

Troika

The Troika comprises the controversial group of institutions that guard the compliance of national democracies with the budgetary agreements. They deeply intervene with the financial policy of a member state which is at the heart of national democratic sovereignty. The Troika includes both EU and non-EU institutions. In such a case it is a common principle to blame the lack of transparency on the interests of external players. However, as the European Commission is involved all transparency obligations and principles of the European Treaties apply to their work.

Recommendations:

- Enact full transparency in line with the EU best practices under Article 14 TFEU
- Make the Troika accountable to the European Parliament members by enabling members to pose written questions to all the Troika members.

Member States

Member state are the functional democracies in the European Union but often do not provide the same level of transparency as the EU level or even veto disclosure when they are

involved. In particular when elected ministers and officials of the executive branch participate in European affairs in the Council.

Recommendations:

- Member states should provide an equivalent level of political transparency by adopting national access to documents and/or freedom of information laws.
- Member states should unblock the stalled reform of document access rules on the European Level (2008/90(COD))
- Member states shall ensure that adequate participation of national stakeholders takes place concerning ongoing legislative dossiers on the European level.
- Member states shall ensure that their delegates at the Council do not block disclosure

2.4 General Issues

Public officials

Most institutions, bodies and agencies are well aware of transparency obligations. However, as no formality exists whom to approach of an institution, the quality of answers to requests may differ whether you communicate with the transparency specialists or not. Awareness raising of staff about the rights of citizens and the obligations to conduct the work as openly as possible is essential.

Recommendations

- Public officials should be fully aware of the access to document rights of citizens and should be taken accountable for failing to granting access to documents when required by law.

EU press coverage

The coverage of European Affairs by independent and pluralist journalism has to be safeguarded so that the European public gets a full and comprehensible picture. Any reporting by media is poised to develop a simplified narrative to tell a story. Even public bodies communicate their own stories to the media, otherwise called propaganda or public relations. But we, the public, are supposed to govern us democratically and public bodies are mere means to this end. Transparency helps technocracies to leave their institutional bubble, their codes of communications and get other plain perspectives that are not supposed to be spoken about internally. Transparency opens institutions up to diverse and balanced views. The role of media is to diversify the views and confront institutions with dissenting perspectives.

Recommendations

- The European Press Conference needs to be driven by professional journalistic curiosity and independence. Press releases shall always link to the original dossiers rather than to bury the “meat” under an avalanche of explanatory memorandums.
- The EC should truthfully answer media requests on leaks unless there is an actual legal base for denying requests.

- Grants and fellowships for journalists which are granted by the party foundations across the aisle and accounted for by the European institutions.
- Open Streaming: Audiovisual streaming of meetings should be further expanded and technical barriers be lifted. DiEM25 previously made a suggestion to expand the scope of streaming.

Better lawmaking - expiration of harmonising acts

European laws should be made in a transparent and accessible way. When legal proposals are made they should be accompanied with an impact assessment. When they aim for harmonisation it should be made clear what the status quo within the member states is. The affected stakeholders on the member states level should be heard before a change is made. Any adopted European harmonisation act should set a date in order to have mandatory evaluation and possible adjustment or cancellation, e.g. after 10 years. When laws are changed by a new act there should be a swift consolidation or even a use of the recast procedure. Review would ensure that a public corpus of law is created by an obligation to regularly reconsider harmonising acts. Every law in the Acquis Communautaire, the corpus of European laws, should aim at reducing the number of laws by combining two or more on federal, national or EU international level to achieve harmonization and standardization on topics of strategic interest.

Recommendations:

- The European Commission's legal harmonisation proposals should always be accompanied by an impact assessment and a legal synopsis of existing national laws and regulations and broad consultations and outreach on the member states level in addition to the EU level.

2.5 Webservices

Transparency tools

Online platforms are very helpful to make transparency happen. They are essential enabling tools for citizens. Improvements on the mere technology side could be as effective as legal improvements to provide for actual transparency. A list of web portals but also online databases, collections of press releases and other document sources is found in the annex.

Recommendations:

- Seek to expand and harmonise the number of data bases open for the public
- Improve the usability and fitness for purpose of online services
- Support independent hackathons and open government data initiatives

Reuse of web technologies

Many of the transparency websites are generic in their mission. Displaying parliament questions from Greece is not too different from displaying parliament questions from the EU level. Thus public administrations could promote reuse of these transparency services on the

national and regional level and vice versa by offering the platforms under an open source license. This way the best implementations would support public administrations in their efforts in the transparency challenge and raise the goal post for quality. Standards for public sector documents could be mutually exchanged and jointly developed. In the same way transparency of information services needs to get further developed with intelligent proposals to enact the working principle of the European Union to “act as openly as possible”.

Recommendations

- Open Databases: Database schemes in the public sector shall be laid open by default.
- Open Source: All software commissioned by the European Union institutions should be made publicly available as open source under the European Union Public License or a compatible license to facilitate re-use and inspection of the algorithms.
- Open Data: The institutions shall open their data and support re-use of data by civic tech applications, for instance in the field of budgetary transparency.
- Open Formats: Data is made available in open, interoperable and machine-readable formats.

Technical accessibility and barriers

Scrutiny of politics is increasingly enabled by digital online services while nifty technical aspects of the data provision become more and more the stumbling block in the transparency challenge. DiEM25 raised tangible “technical” demands in its first transparency petition: “Live Stream of events (access must be guaranteed independently which system software is used by the user, like Linux, Mac, Microsoft)”. Experienced political observers regularly discover common shortcomings with public information services online:

Restrictions of data formats:

- Documents are unsuitable to get printed (unprintable pdf)
- It is impossible or cumbersome to cut the raw text from a pdf file
- no machine-readable data
- only availability in vendor-specific data formats
- broken typeface and formatting on some devices

Ad hoc restrictions on use and sharing

- Developers of public websites invent their own ad hoc rules for using the data without any legal grounds for such restrictions. For instance they require attribution of the source with a copyright sign or prohibit fair use of the works without prior permission.

No WWW Readiness

- Documents are provided by temporary links, so you cannot share the link to the document via social media.
- Links are very difficult to write down or memorize
- Documents remain hidden in an internal data base and thus not found by a web search (Google, Bing,...)
- Web services are barely usable on new touch devices as they do not support “responsive design”.

- You cannot hide your identity from the institution when you read their documents online or even corporations get handed over that sensitive data (use of Google Analytics etc.) or technical blocking of anonymous access services as TOR

Technological discrimination by audiovisual streams

- You are required to install Microsoft Silverlight, Java and other proprietary plugins that may not be available for your browser or device
- Plugins make your browser crash arbitrarily
- It is impossible to save a video or audio stream as a local file
- Recordings offered for download are in the wrong language or poor quality
- Accessibility standards are not met (barrier-free services).

To these technical issues we could add numerous cases of accessibility barriers and grounds for confusion, for instance:

- Bloated accompanying text
- Unexplained acronyms
- Unclear state: draft or final text? At what stage? Is a legal text (still) in force?
- No consolidated version is made available when a document amends another one.
- Commission proposals includes provisions overtaken from international laws without an explanatory reference.
- No contact: Whom to reach out to when you spot an editorial mistake?

Recommendations:

- A systematic review of online services if they meet the European citizens needs of technological non-discrimination and platform neutrality, privacy protection, interoperability and accessibility.
- New legal requirements for public information services based on these principles and uniform minimum rules on streaming access to meetings
- Best practice guidelines and single points of contact to track issues and regular progress reports

3. Lobbying unmasked

Democracy is the art of finding good compromises between conflicting interests. Articulating one's interest and trying to influence decision making in one's own favour - whether in an individual or collective capacity - is therefore an integral part of the political process, so nothing "evil" per se. However, the problem arises if some interest groups get privileged access to decision makers and decision making processes - be it through the resources they can mobilise, through personal contacts or because they are in the position to offer personal and/or political favours - that is denied from others. Furthermore, while much political lobbying and campaigning is done in the public sphere, substantial parts of it remain hidden, so citizens often cannot even know how and why various interest groups might have influenced certain laws or administrative decisions.

Recommendations:

- Better mandatory lobby registers on the European, national and regional level
- Better transparency about regular visitors of institutions, official hearings and owners of lobby access batches to the official institutions

- Full disclosure of the panel composition at public hearings, in particular to provide more transparency about gender balance, member states origin, cultural backgrounds and queer and transgender people and minorities

Lobby register

The European Union institutions have lobby registers that include data on who professionally tries to influence European institutions. Lobby register are in the process to being revised to become more useful and this is a gradual improvement learning process with input from civil society. At the same time we have to ensure that no lobby privilege is created in the sense that the legitimate rights of citizens and small and medium enterprises to reach out to their representatives in matters of their concern are not compromised. Also member states also should introduce lobby registers themselves to interface with the European effort.

Recommendations:

- Collect best practices and resolve lacuna in the lobby register databases
- Ensure scientific analysis of lobbying practices and monitoring of undue activities

Expert groups

The European Union is assisted by various experts from the member states, that is external consultants. Their names are found in the register of expert groups. Many of them also work for other clients and it is important to trace potential conflicts of interests. Experts groups have to comprise a broad variety that reflects the diversity of Europe in terms of gender, working language, professional qualification and country of residence.

As we stated above in many cases it is not even known that an advisory board exist and in recent years more and more of the expert boards have been disclosed.

Recommendations:

- Define better guidelines for qualifications of experts and regarding impartiality and conflict of interest
- Ensure balanced and proportionate participation of experts from all member states and backgrounds by disclosing that data

Global lobbying watch

Lobbying and stakeholder representation on the global level is a grave concern. We have to ensure that acts of bribery of public officials in the global south are not assisted by our tax laws. In the same way we want to shield our democratic societies against undue intervention in our domestic election and policy making processes. We have to take safeguards against meddling of corporations and state actors in the elections or internal affairs of foreign countries. Against undue interference in European affairs we should explore sanction such as revoking Schengen visa for offending lobbyists and their clients. Registered corporations should make their lobbying activities transparent in their business reports.

Recommendations:

- Get a Foreign Lobby Transparency Act in Europe

- Provide more transparency of social media personal data uses for political campaigning as well as monitoring of fake news.
- One-Stop Shop complaint desk against undue lobbying.

4. Secret trade agreements

In the past years, the “next generation” trade agreements TTIP, CETA and TiSA have generated lots of resistance across Europe. Beyond the content of these deals that privileges large multinational corporations over citizens, consumers and smaller local businesses, the negotiation process accounted for much of the criticism. Due to maximum secrecy, the general public is not able to discuss these deals and members of parliaments are not able to exercise their democratic control rights, whereas lobbyists are invited generously to have their say. When the negotiations end, governments and parliaments are presented with the simple choice of “take it or leave it” - an open, democratic deliberation about the content is not desired. No wonder that calls to drop these agreements also include the demand to entirely rethink the way we conclude international trade agreements. This includes not just those that clearly affect European citizens negatively, but also those that the EU concludes – also without public notice – on unequal footing with developing countries (BITs, FTAs, association agreements).

Secret negotiations should not exist and the agreements should be made available to the public – members states should have free access to everything related to the aforementioned. It is urgent to rethink the trade agreement secrecy since it can be a dangerous and harming for the EU as well as its citizens. We have to rethink the mandate of such far-reaching trade and decide whether it should be made public in parts or entirely - and at what point? We have to determine the kind of access members of national and regional parliaments and governments and Members of the European Parliament ought to have to documents of such ongoing trade deal negotiations. We have to decide what documents should be made accessible to the public and at what point. We have to determine how the democratic debate preceding the adoption of such agreements look like.

A democratic debate preceding the adoption of such agreements should involve individuals informed in a wide spectrum of relevant fields, professionals, analytics, academics, non-governmental sector, politicians, etc. These debates should be public and live-streamed.

Recommendations:

- Fully enact Article 15 TFEU in Trade policy: the European Commission lacks competence to conclude executive confidentiality agreements with third nations that contradict her obligations to act “as openly as possible” unless the European Commission is authorised by a negotiating mandate or a regulation of the Parliament and the Council.
- Reform the European Sunshine Law to bring more trade transparency: Citizens need to reap the benefits of their new rights under the Lisbon Treaty. The European Commission shall present a renewed proposal in the procedure 2008/0090(COD)¹ in order to fully adapt the legacy European Access to Document rules (EC/1049/2001)

to the Lisbon Treaty and resolve the transparency gap in trade (ACTA, CETA, TTIP, TiSA, ...).

- The member states shall revive the 2008/0090 (COD) dossier and present ambitious amendments in the Council for a second reading in the European Parliament. Amendments which show that they are serious to end the lack of transparency in trade.

6. Transparency put into practice

Last but not least, we should not just talk about the rules of achieving more transparency, but also how to make it work in practice. That includes developing tools, ideas and proposals to make information on public decision making and budgets easier to access, process and analyse, to harness people with the knowledge to understand such information, to support the work of journalists and researchers who dig up the information on corruption and abuse of power, and to protect those who alert the public about corrupt practices.

Company Transparency

Private companies should also be subject to transparency on certain aspects. It should be established by law that private companies need to reveal information relevant to public good, human rights and development. This would regard for example the fair/unfair supply chains as well, and obligatory items included could be: origin of products, who made them, in which countries, under what kind of work conditions, what kind of wages are paid to workers etc. It does not need to be written in detailed and long reports but the raw data should be made available. There could be a body/agency/association for transparency protection in the EU which would verify this and constantly work on surveys regarding conformity, environmental impact etc. Through the results of these certain brands and companies would be placed on a blacklist regarding, for example, lack of environmental concerns, underemployment, child labour, social inequality or others.

Recommendations:

- Better disclosure and traceability obligations for origins of raw materials in production, in particular concerning social dumping, child labour, war zones and environmental effects

Tax evasion - Follow the money

It is not just decisions on behalf of the public and the road to them that is being kept hidden from the public's eyes. Public money - or money that belongs in part to the public through taxation - is also frequently hidden, usually through various offshore channels. Often enough, such money comes itself as reward for corrupt behaviour. Therefore when speaking about transparency in the interest of common good, we also have to address tax evasion, money laundering and other forms of cheating the public interest.

Recommendations:

- Create the position of a Tax Evasion watchdog/ombudsman
- Get an annual report to raise awareness about tax evasion tactics.
- Apply reasonable canon boat policies to tax shelters and offshore paradises.
- Support investigative journalists and special funds for data whistleblowers

Budget Transparency

Besides the income side of public budgets, there is also a big need for more transparency on the expenses side, to enable the public to see clearly who the benefactors of public money actually are. This will then also enhance our ability to hold those who decide about public budgets accountable and to participate in decision making about spending public money in a well-informed way.

In order every European citizen to be able to evaluate the priority, the benefits/drawbacks and the cost of public funded project. Relevant data would be the following:

1. The country and the municipality where the project takes place.
2. The purpose and beneficiaries of the project.
3. The expected results/benefits after the completion of the project.
4. A short description of the project.
5. Details of the tender process.
6. The contract of the project.
7. Details of the funding of the project.
8. Details of the delivery procedure of the project from the contractor to the public sector.

Recommendations

- A central European Budget transparency web service where data of public work projects under all relevant programmes will be displayed.
- The data could be entered to the platform by the accountable for the project and be reviewed by an independent authority.

Public Procurement

Public procurement is the field where the risk of corruption and administrative conflicts of interests is highest. Therefore transparency needs to be substantially improved. Public money gets spend on external goods and services which are supposed to serve the needs and interests of public authorities and we could also speak of a public interest. Transparency in tendering needs to be closely matched with budget transparency. There are some rules for tendering for instance provided by the WTO Agreement on government procurement and the criteria for EU wide tendering processes. In some fields a company needs to specialise on tendering procedures rather than their actual business to win public contracts.

Recommendations:

- Create a portal for European public procurement grants with end-to-end monitoring
- Enable for opportunities for citizen to have a say and small business to participate in calls

Transparent cities and budgets

Municipalities and local communities are a good starting point for reform in transparency because best practices in one city could be replicated elsewhere all over the country. In this limited context in particular special focus should be given to the information needs of the users as the main beneficiaries, the citizens in a town. An example for the benefits of civic technology and open data is the service fixmystreet from MySociety where citizens could publicly report broken streets.

Recommendations:

- Assign appropriate budget, research and scientific resources to Open Transparent City pilot projects
- Develop dedicated open government tools for Open Transparent Cities.

Whistleblower protection and arbitrary leaks

Many facts of European governance only became known to the public through leaked documents and administrative whistleblowers. For instance disclosures by whistleblower Paul van Buitenen from the European Commission about undue practices led to the demise of the Santer Commission. The current availability of large arbitrary leaks leads to a new culture of openness while at the same time it lowered the public pressure for legal acts improving lawful transparency and openness. Leaks have shown that more lawful transparency is desirable and benefits the public interest. Lawful access is less harmful to the affected institution because it offers only limited opportunity to scandalise the findings compared to leaks of classified information under a veil of secrecy.

The European Commission often, with reference to an informal policy, refuses to comment on „leaks“ in its press conferences. The practises here are very much dynamic as the Commission and Media increasingly act upon leaks. Given the increasing importance of whistleblowing we see a lacuna in European law for whistleblower protection.

Recommendations:

- The Council of Europe (CoE) presented boilerplate law proposals for the protection of whistleblowers (Recommendation [CM/Rec\(2014\)7](#)) from which the European and national legislatures may draw inspiration from.
- The European Commission shall present a legislative proposal to harmonize whistleblower protection across the Union based on the boilerplate provisions² from the Council of Europe (CoE).
- Define a press policy that mandates the institutions to answer questions from the media on leaks, such as confirmation of document authenticity.

Educating for transparency

Transparency is an empty right when the knowledge how to use the public right to transparency from the treaties is not mainstreamed and citizens remain unaware of their rights and the data that is provided for them.

Recommendations

- Develop course material to be used in political education of minor to playfully explore EU transparency

Annex A: Existing Transparency Web Services

Document registers

- European Commission
 - register of documents <http://ec.europa.eu/transparency/regdoc/?fuseaction=search>
 - cabinet meetings <http://ec.europa.eu/transparency/regdoc/?fuseaction=gridyear>
- European Council register of documents
<http://www.consilium.europa.eu/en/documents-publications/public-register/>
- European Parliament
 - register of documents
<http://www.europarl.europa.eu/RegistreWeb/search/simpleSearchHome.htm?language=EN>
 - Parliament questions
<http://www.europarl.europa.eu/plenary/en/parliamentary-questions.html?tabType=wq>
 - Questions to the ECB
<http://www.europarl.europa.eu/committees/en/econ/questions-ecb.html>
- European Economic and Social Committee register of document
<https://dm.eesc.europa.eu/EESCDocumentSearch/Pages/redsearch.aspx?i=portal.en.register-of-documents>
- EU staff register Whoiswho
<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeid=1>
- Court of Justice case law
<http://curia.europa.eu/juris/recherche.jsf?language=en>
- European Committee of the Regions access to documents
<http://cor.europa.eu/en/documentation/Pages/transparency-and-access-to-documents.aspx>
- European Ombudsman
 - Decisions
<https://www.ombudsman.europa.eu/en/cases/decisions.faces>
 - Recommendations
<https://www.ombudsman.europa.eu/en/cases/recommendations.faces>
- European Central Bank
 - Stability Review
<http://www.ecb.europa.eu/pub/fsr/html/index.en.html>

Complaint and Inquiries

- European Ombudsman <https://www.ombudsman.europa.eu/>
According to an EU ombudsman press release “Around 10 percent of Ombudsman inquiries concern refusals or delays by EU institutions in releasing documents requested under the EU’s transparency regulation.”
 - Complaint Form
<https://www.ombudsman.europa.eu/atyourservice/interactiveguide.faces>
- Complaint form: breach of EU law: https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/index.html
- OLAF European Anti-Fraud Office
https://ec.europa.eu/anti-fraud/home_en

Private and non-profit information services

- Parltrack
<http://parltrack.euwiki.org/>
- Offenesparlament.de
<https://offenesparlament.de/>
- Theyworkforyou.com - the unofficial website of the UK Parliament provided by Mysociety.org provides a best practice
<https://www.theyworkforyou.com/>

Open Data

- EU Open Data portal
<https://data.europa.eu/euodp/data/>
- European Data Portal
<https://www.europeandataportal.eu/>
- Open Source Observatory
 - <https://joinup.ec.europa.eu/collection/open-source-observatory-osor>
<https://opensourceprojects.eu/p/>
- Europeana Collections
<https://www.europeana.eu/portal/en>

Annexed B. Proposed Fixes for the EU Access to Document rules EC/1049/2001

The European Union has very promising principles for transparency enshrined in the European Treaties and very advanced Access to Document rules from 2001 (Regulation EC/1049/2001), added by more permissive case law from the European Court, and interinstitutional agreements. However, the adaption (2008/0090(COD) of the 2001 Access to Document rules to the Lisbon Treaty is stalled at the Council. Thus the existing Access to Document rights of citizens do not reflect the scope of transparency provided by the current Treaties. This reform process needs to be revitalised. In particular the current rules and the

stalled reform positions do not reflect yet the required changes in transparency of trade negotiations and Troika transparency. The public interest and the public requests for more transparency in Trade Policy could be easily resolved by reforming the legal base.

The heart of EC/1049/2001 lies in the Article 4 that explains the exceptions:

Article 4 Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:
 - (a) the public interest as regards:
 - public security,
 - defence and military matters,
 - international relations,
 - the financial, monetary or economic policy of the Community or a Member State;
 - (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.
2. The institutions shall refuse access to a document where disclosure would undermine the protection of:
 - commercial interests of a natural or legal person, including intellectual property,
 - court proceedings and legal advice,
 - the purpose of inspections, investigations and audits,unless there is an overriding public interest in disclosure.
3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.
4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.
5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.
6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.
7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary,

continue to apply after this period.

Proposed new version (based on Parliament 1st reading):

Article 4 Exceptions

1. The institutions, bodies, offices and agencies shall refuse access to a document where disclosure would seriously undermine the protection of the public interest of the Union or a Member State as regards:

- (a) public security
- (b) defence and military matters;
- (c) international relations;
- (d) the financial, monetary or economic policy;
- (e) the environment, such as breeding sites of rare species.

2. The institutions, bodies, offices and agencies shall refuse access to a document where disclosure would undermine the protection of:

- (a) commercial interests of a natural or legal person;
- (b) intellectual property rights;
- (c) court proceedings and legal advice;
- (d) the purpose of inspections, investigations and audits;
- (e) the objectivity and impartiality of public procurement procedures until a decision has been taken by the contracting institution, body, office or agency concerned,
- (f) the proceedings of a selection board leading to the recruitment of staff until a decision has been taken by the appointing authority

3. Access to documents drawn up by an institution, body, office or agency for internal use or received by it relating to a matter where it has not yet taken a decision shall be refused only if their disclosure would, due to their content and the objective circumstances of the situation, manifestly and seriously undermine the decision-making process.

4. When balancing the public interest in disclosure under paragraphs (1) to (3), an overriding public interest in disclosure shall be deemed to exist where the information document requested relates to the protection of fundamental rights and the rule of law, acts necessary in a democratic society, the sound management of public funds, or the right to live in a healthy environment, including in terms of emissions into the environment. An institution, body, office or agency invoking one of the exceptions must make an objective and individual assessment and show that the risk to the interest protected is foreseeable and not purely hypothetical, and define how access to the document in question would specifically and effectively undermine the interest protected.

4a. Documents the disclosure of which would pose a risk to environmental protection, such as those relating to the breeding sites of rare species, shall only be disclosed in conformity with Regulation (EC) No 1367/2006.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in this Article shall not apply to documents transmitted within the framework of procedures leading to a legislative act or delegated or implementing act of general application. Nor shall the exceptions apply to documents provided to institutions, bodies, offices and agencies for the purpose of influencing policy-making by lobbyists and other interested parties shall only apply for as long as is justified by the content of the document and in any event for a maximum period of 30 years.

7a. An institution, body, office or agency may grant privileged access to the documents covered by paragraphs (1) to (3) for the purpose of research. If privileged access is granted, the information shall only be released subject to appropriate restrictions regarding its use.

8. The exceptions in this article are without prejudice to the prerogatives of Members of the European Parliament.

(New) Administrative agreements or customary arrangements on the confidentiality of deliberations with third nations or international bodies shall be documented and disclosed including the position of the European institutions, bodies, offices or agencies in the negotiations of such agreements or customary arrangements. They shall be specific, proportionate and fully in line with the Treaty obligation to act as openly as possible.

1 [http://parltrack.euwiki.org/dossier/2008/0090\(COD\)](http://parltrack.euwiki.org/dossier/2008/0090(COD))

2 Protection of whistleblowers, recommendation CM/Rec(2014)7
<http://www.coe.int/t/DGHL/STANDARDSETTING/CDCj/CDCJ%20Recommendations/CMRec%282014%297E.pdf>