

Practices of Transparency:

Implementation and challenges

Conclusion and Final Remarks

This book consists of a collection of studies regarding the implementation of transparency initiatives and the challenges these modes of transparency face. The chapters deal with the challenges in achieving real transparency, representative participation, increased trust in political institutions and the combat of corruption. By examining specific case studies, they all attempt to map the persisting challenges and pitfalls in establishing effective transparency. More specifically, three major themes appear: online participation mechanisms; accessibility and comprehensibility of disseminated legal and official information; and the detection and combat of corruption.

The first chapter of this volume critically examined the concept of openness of government. To do so it studied the pilot online platform for citizens in northern Germany, 'Liquid Friesland'. It concludes that a theoretical approach to openness of government with a focus on the vision dimension can rest either on a symmetrical or asymmetrical structure of visibility. The idea of transparency upwards and downwards illustrates this matter, and suggests that structures for both directions may complement each other for the sake of vertical transparency. From a more practical stance, online initiatives for openness of governments often resemble an asymmetric design, and seem to be concerned mostly with the establishment and maintenance of trust and confidence in politics. Liquid Friesland is an online government initiative, which bears the potential of complementing existing structures for downwards transparency with a valuable channel for citizens to be heard. Especially the design of the platform facilitates the creation of a dynamic and vivid picture of public opinion for politicians, while granting participants the opportunity to actively share their ideas and concerns and interact with the content of others. A major drawback of the pilot initiative remains to this date the small base of actual participants, which endangers the representativeness of actual outcomes. Ultimately, it seems as if Liquid Friesland has come at a time when citizens are yet to accept the vast array of new possibilities to take action. The platform, through its innovative and interactive design, bears the potential of opening up a smooth and valuable channel of communication – if it is to be grasped is up to the citizens.

The second chapter studied the quality and usage of e-services offered by the Interactive Policy Making (IPM) initiative with a specific focus on their effects on both transparency and democratic participation within the European Union. Its objectives were to identify the effectiveness of two consultations by analysing the level of both the government-public interactivity and transparency. However, despite the advantages of the IPM, such as online feedback and consultation mechanisms, 24/7 accessibility and the dissemination of vast amounts of information; traditional patterns of participation in EU consultations seem to prevail, particularly with regard to the dominance of older EU member states and the over-representation of associations relative to the population. Hence, despite the chance of equal access, the IPM is still far away from inclusiveness and equal representation. All in all, the IPM appears to be a supplemental tool to traditional methods of information and service provision, consultation, public participation and increased transparency. It is becoming a powerful means of transformation that has advantages the offline political sphere does not.

The third chapter investigated whether or not online petitioning is successful in shedding light on topics that are not covered by mainstream media. The Right to Water initiative still has to take several procedural burdens before the universal human right to water and sanitation eventually becomes effectively enshrined in EU legislation. Regardless of when or if this will happen, the Right to Water initiative already proved the potential of the European Citizens' Initiative (ECI): to bring European issues into the national public debate, thereby increasing what Heald (2006) calls 'effective transparency'. As this chapter illustrates, the success of an ECI is largely dependent on its organizational framework. A hierarchical structure led by a single organization willing to supply sufficient economic means allows the citizens' committee to organize the initiative more efficiently than ECIs with a more loose organizational hierarchy and less economic resources. Political experience is a necessary resource for organizing a successful ECI. A large interpersonal network – such as that of the EPSU – supplies a large amount of potential supporters. This potential is enhanced the larger the number of supporting organizations is. Moreover, the ECI is most likely to gather a large amount of signatures if members of these networks are directly concerned with the cause of the initiative. The 'Right to Water' initiative is the most successful example of how citizens and interest groups can participate in European politics up till now, because it unifies all these factors. The ECI is barely a tool to encourage communication between government and governed, or for the average citizen to raise his or her voice in the European public debate. For this, conventional petitioning systems like that of the European Parliament are applicable. It is rather a tool for existing interest groups to raise awareness for European issues and gather support for specific policy directions. If we value the ECI not as a tool for political participation, but rather for enhancing effective transparency, it becomes a voice that can lead to a vision.

The next chapter pointed towards the risk of creating a transparency illusion. Indeed, the fourth chapter dealt with the limitations of information sharing in creating transparency. Hamburg and Antwerp served as case studies in order to examine the means used by local government to realize transparency and to what extent these reach real transparency. This research set out six criteria for real transparency by which the approaches of the governments of Hamburg and Antwerp were tested. These criteria are the following: target audience based communication; accessibility; understandability (in terms of organization and clarity); context and purpose; careful selection (relevance); and accuracy and timeliness. Derived from transparency and communication theories, the criteria are indicators for real transparency, as opposed to nominal or illusionary transparency. The analysis showed the intensity with which the transparency is embedded in the mind-set of the local government under examination. Whereas both cities disclose information and original documents on the most valued classes of information, they considerably differ as to their focus. While Antwerp is primarily concerned with quality of communication, Hamburg seems to be focused on the quantity of information to disclose. Both cities seem to apply different approaches for meeting the criteria set out by this study. Antwerp seems to be doing well, but it might be too early in time to conclude on the score of Hamburg.

The fifth chapter addressed transparency from a legal point of view, assessing methods of drafting legal instruments in a way which makes their contents and legal implications transparent to all readers. The traditional approach, that of plain language drafting, suffers from limitations related to the detrimental effect of the use of ordinary language and the elimination of technical terms on the legal quality of instruments, whilst not necessarily making them truly transparent to a broad enough section of their audience, and is unable to solve problems caused by the audience lacking contextual knowledge of other elements of law which is necessary for the document to be understood. In light of this, the Creative Commons copyright licences were examined. Creative Commons pioneered an approach under which their licences have three layers: a traditional legal code, a 'human-readable' deed and metadata used by search engines. Although officially the deed serves only as an explanation of the code with no legal effect, Larry Lessig, one of the founders of Creative Commons, advocates an approach in which the deed and code both form integral parts of the licence, with both having legal effect, and neither being complete if read alone. An analysis of this multi-layered drafting approach revealed that it effectively resolves some of the problems associated with plain language; a notable exception is the problem of contextual knowledge, which can only be addressed to a limited degree by multi-layered drafting. Multi-layered drafting is even able to cautiously

approach universal comprehensibility by the cautious creation of multiple deeds. Despite not being a perfect solution, multi-layered drafting has great potential, at the level of individual instruments, to improve legal transparency. This potential can be realised most easily when applied to instruments which are more substantively self-contained, which rely less on legally uncertain concepts, and which are more often used by readers wishing to ascertain their substantive rights and obligations than readers wishing to litigate.

In the sixth chapter the impact of the existence of the European Anti-Fraud Office was assessed. When analysing the development of OLAF's work since its establishment in 1999, the chapter argues that compared to OLAF's legal mandate there is still a discrepancy between the legal provision and its operational capacity. Nevertheless, major improvements have been made. This is in contradiction to Sampson's assumption that Anti-Corruption Agencies (ACA) have been rather ineffective in combating fraud on a global level. The chapter argues that, even though OLAF in the past has had many difficulties in carrying out its mandate properly, over time it has gained experience and developed into a relatively well-functioning ACA. Furthermore, it was argued that OLAF's ability to expose and prevent fraud in a European context, has contributed to more transparency in the EU policy-making. Despite the fact that the Office has some reservations, OLAF can be considered to be an efficient watchdog agency which due to its existence makes corruption among public officials more risky, as assumed by Wiig and Koldstad (2009).

Therefore, it is affirmed that OLAF's existence leads to more transparency in the EU. The implementation of transparency can be facilitated and triggers desirable effects once corruption is combated. Thus, the last chapter reviews anti-corruption methods and corruption research. Rankings and comparisons between countries do not have a tangible impact in fighting corruption, therefore research into corruption should be directly aimed at finding solutions and bringing recommendations for practical improvements. The study finds that the corruption research at stake does not lead to accurate results as social and cultural components have been disregarded. Therefore, it establishes a new model explaining that social constructivist elements should be included in corruption research. The new model allows a more culturally sensitive approach to the phenomenon. This leads to more effectiveness in implementing transparency.

To conclude, e-government and ICTS are seen as tools to improve information dissemination, participation, and - by extension - trust and participation in public institutions and their decision-making processes. Tools for civic online participation could be deployed in order to transform the passive voter into an active citizen-as-stakeholder, mutually benefiting the citizen and the political authorities. Various specific tools, be they

developed by the European Commission, local governments, or activists, have served as case-studies throughout this volume. The format of these constructions, their promotion and the persisting digital divide could, however, contain threats of in-transparency and unequal representation.

The initiatives might be successful in bringing European issues into the public debate and to raise awareness and involvement, but at the end of the day the factual representation remains biased and lobby- and interest groups continue to dominate the “voice of the citizen”. The key to an effective online participation mechanism may well be its organizational framework; nevertheless, the difficulty of reaching representative participation also reflects the currently persisting passiveness of the civic society itself. Online information, diffusion and feedback opportunities illustrate both promising advancements and remaining obstacles (chapters one to three).

Transparency can only be effective when the receptors are able to process and digest the provided information. Therefore the question arises how one can find the balance between extensive, detailed, and inclusive ways for citizens to be actively informed, and invited to participate on the one hand, and avoiding an overload of information while opting for a more targeted approach on the other. Key to increasing transparency and participation is the surpassing of the transparency illusion. This could be achieved by having particular regard for the practical hurdles initiatives may face, and the consequences they will have for the population’s knowledge, participation and trust. This challenge does not only affect political but also legal transparency. The difficulty lies in providing understandable information without threatening its quality. Following the proposed model at the legal level could constitute a first step in tackling subsequent hurdles in reaching transparency at the administrative and political level. The authors of this volume, therefore, advocate the integration of plain language in legal instruments and political communication (chapters four and five).

Another obstacle standing between citizens and increased trust in political institutions are political scandals and corruption. Both the systems for detection and for combat of corruption face important difficulties. Even though ACAs do not always show concrete results, their existence alone serves as an incentive for more transparency and accountability in the political processes. Full independence of ACAs, such as OLAF, has in practice not yet been achieved. Nevertheless, the organization managed to increase transparency in the EU and to continuously address its own shortcomings. It remains the case that the current measuring approach of corruption leaves one wanting, as it does not acknowledge cultural and social elements. Therefore, a more manifold and social constructivist assessment is proposed. The human factor in the assessment is an

inevitable challenge but innovation of the system could render the detection of and the fight against corruption considerably more efficient. Such improvements would at their turn have a positive effect on transparency, and thus on the citizen's trust and participation (chapters six and seven).

The will to create more transparency and increased participation is clearly present. This volume studied diverging promising tools and initiatives to reach these goals. The different cases, however, also show that the current initiatives still face considerable challenges. After critically assessing the situation at hand, the authors make recommendations and provide ideas for improvement. This volume does not claim to provide unlimited solutions to the various and complex obstacles in achieving real transparency. However, the indicators and models proposed point out the current pitfalls and provide guidelines for more effective implementation of existing and future tools aiming at furthering transparency.