Does transparency strengthen legitimacy?

A critical analysis of European Union policy documents

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Abstract. Does enhanced transparency, through the Internet, boost the legitimacy of the EU? In this paper we present a critical perspective on the assumptions underlying the relation between transparency and legitimacy. We reconstruct three assumptions from EU policy documents – transparency strengthens input legitimacy, output legitimacy and social legitimacy – and then highlight several weaknesses. We conclude that transparency is a key element of democratic institutions but naïve assumptions about the relation between transparency and legitimacy can and should be avoided. We warn against a simplified trust in the benefits of the Internet: enhancing legitimacy is much more complicated than creating fancy websites.

1. Introduction

The European Union has indicated in its policy documents that the Internet is to be used to increase its transparency by providing more information to citizens. The EU's main portal is the 'European Union On-Line' or 'Gateway to the European Union' (europa.eu.int). This website is allegedly "the largest website in the world",[1] contains 6 million pages and receives 50 million consultations per month.[2] This portal provides access to a wide variety of information and documents of the various EU institutions and other actors. Less than a decade ago citizens had no easy means of obtaining information about the EU, now European citizens can obtain a great deal of information and download a huge variety of documents irrespective of where they are based or the time of day. Most significant has been the access given by previously very secretive legislative and executive actors to their documents in a number of on-line 'registers' of documents. The Council of Ministers recently reported that its access to information register listed nearly 600,000 documents (all languages taken together) of which 61.6% were public documents (i.e. either available in downloadable format or on request).[3]

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[1]European Commission, White Paper on a European Communication Policy, COM (2006) 35 final (1 February 2006). http://europa.eu.int/comm/communication_white_paper/doc/white_paper_en.pdf.

[2]Communication to the Commission from the President, Ms. Walstrom, Mr.Kallas, Ms Hubner and Ms. Fischer Boel proposing the launch of a European Transparency Initiative, http://europa.eu.int/comm/commission_barroso/kallas/doc/etik-communication_en.pdf.

[3]Council of the European Union, Council Annual report on access to documents, 2004 (May, 2005), p. 9, http://ue.eu.int/uedocs/cmsUpload/new08896.en05INT.pdf.

The aim of achieving more transparency in the functioning of public EU institutions is lauded by the European institutions themselves, the politicians and bureaucrats, the members of parliament, the judiciary and civil society. All these actors expect beneficial effects from greater EU transparency. In the short time frame of its emergence as a fundamental guiding principle of the political system of the EU, transparency has been presented, as a type of holistic medicine designed to remedy many of the ailments the body of the EU is perceived to have. A central ailment is its limited legitimacy and greater transparency has been propagated as a means to boost the legitimacy of the European Union.

Does enhanced transparency indeed boost the legitimacy of the EU? In this paper we will present a critical perspective on the assumptions underlying the relation between transparency and legitimacy. The paper deals with the following question: What are weaknesses in assumptions in EU policy papers concerning the relations between transparency and legitimacy? We will not systematically explore transparency practices but analyse the discourse on transparency. What are the assumptions in policy documents? And to what extent are these assumptions correct?

The critical appraisals we present are of a rather general nature and indeed do not necessarily only apply to the EU. Research into national policy documents could show whether the same assumptions regarding the relation between transparency and legitimacy underlie those policies. Specific characteristics of the European Union include the extreme low turn-out at elections, the legitimacy deficit that became apparent in the recent referenda in the Netherlands and France on the Constitution and the fact that decision-making is considered to be distant from citizen's experiences. Furthermore, the EU is going through processes of rapid change and is actively seeking to construct new forms of democratic governance. These characteristics make the EU as an interesting case for our analysis of the discourse on transparency and legitimacy.

In this paper we will reconstruct assumptions from EU policy documents and then criticize these assumptions. The reconstruction of the assumptions is mainly based on our study of EU policy documents. We focus in particular on the White Paper on Governance and on subsequent policy documents dealing with themes presented in the White Paper.[4] Additionally, we conduct a literature review to gather information about European transparency and legitimacy. We also study the literature and present a historical overview of transparency in the EU.

The structure of our paper is as follows. We first look at the manner in which the concept of transparency has been interpreted and defined in the context of the EU and place it within the broader framework of legitimacy (Section 2). We then describe in rather impressionistic terms the manner in which the thinking on the concept of transparency has evolved in the EU placing particular emphasis on the shift from a more legal perspective to that of a more political perspective (Section 3). In Section 4 we distil, from the statements made by the EU political actors themselves, assumptions of EU transparency in terms of what it will achieve. Finally we draw some conclusions and place the subject of EU transparency, shorn of some of the rhetoric within the framework of a broader approach to politics and decision taking at the EU level (Section 5).

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[4]The following additional policy documents were studied: European Commission [12], Working Group 1B [38], Working Group 2A [39], Working Group 2B [40], Working Group 4B [41] and Working Group 5 [42]. We also looked at a preparatory study: OPTEM [28].

2. Core concepts: transparency and legitimacy

2.1. The transparency discourse

In 1998, the European Ombudsman, Jacob Söderman defined the term transparency in a rather narrow fashion as mandating that: "the process through which public authorities make decisions should be understandable and open; the decisions themselves should be reasoned; as far as possible, the information on which the decisions are based should be available to the public." [31]. The accent in this definition clearly lies on the legal dimension in the sense of the formal manner in which decisions are reasoned as well as on the issue of public access to information [8] [34, p. 903]. According to Lord Nolan [19, p. 14] transparency is said to require that 'holders of public office should be as open as possible about all decisions and actions they take'. They should, in his view, give reasons for their decisions and restrict information only when the wider public interest clearly so demands. It can be argued however that transparency not only incorporates the rather passive right of every citizen to have access to information (if they activate that formal legal right) but also the much broader and more pro-active duty of the administration itself to ensure that information about its policy and actions is provided in an accessible fashion.

According to Moon, Welch and Wong [26] who have studied the effects of government websites on transparency, transparency refers to the availability of information for navigating a large-scale social system. Transparency is about the magnitude of online information available on official government websites. Web-based transparency is measured using different elements to interactivity. Transparency can be regarded as a sort of layman's basic map of an organization and reveals the depth of access it allows, the depths of knowledge about processes it is willing to reveal, and the level of attention to citizen response it provides [36]. In a sense one can say the more transparent an organization is (via its web site or otherwise), the more it is willing to allow citizens to monitor it performance and to participate in its policy processes.

Right from the start, literature on informatization has indicated that the use of ICTs increases transparency [2,16,27]. Using the work of Davenport, Meijer [22] stresses that the use of ICTs especially strengthens the informational transparency of government – i.e. more data are registered – and the analytical transparency – i.e. ICTs offer more opportunities to analyse data. This impact of ICTs on government result in what he calls 'transparent government'. Welch and Wong [37] emphasize the same effects but also indicate that many organizations are reluctant to use the Internet to increase transparency and therefore practices differ from what organizations express in their policy documents.

Understanding the evolution of transparency as norms about (quasi-) voluntary disclosure of information by (political) actors involves issues of power and persuasion in an inherently political context. Although not always up-front, it seems that transparency in the sense of (voluntary) disclosure of information by public actors is generally closely connected to legitimacy. It is often argued that transparency will enhance public acceptance of institutional structures. According to political theory, giving citizens the possibility of monitoring policymaking and scrutinizing its results will enhance the legitimacy of the institutional structures. The Internet is argued to play an important role in increasing the transparency of government and, consequently, strengthens its legitimacy. The Internet thus plays an important role in our discourse analysis.

2.2. The legitimacy discourse

Within contemporary debates, legitimacy is more often invoked than described and it is more often described than defined. Legitimacy can in very general terms be said to represent an umbrella evaluation

Table 1
Assumptions linking types of transparency to types of legitimacy

	Transparency	Legitimacy
Assumption 1	Transparency	Input legitimacy
Assumption 2	Transparency	Output legitimacy
Assumption 3	Transparency	Social legitimacy

that, to some extent, transcends specific adverse acts or occurrences; thus legitimacy is resilient to particular events, yet it is dependent on a history of events [33, p. 574]. Over the years social scientists have offered a number of definitions of legitimacy, with varying degrees of specificity. First of all purely *formal* (*legal*) *legitimacy* in the sense of the manner in which a particular structure of authority was constituted and acts according to accepted legal rules and procedures. Although many political scientists and lawyers focus on formal legitimacy, some stress the primordial importance of what is termed *social* (*empirical*) *legitimacy*. Social legitimacy refers to the affective loyalty of those who are bound by it, on the basis of deep common interest and/or strong sense of shared identity.

When these concepts of legitimacy are applied to the EU, the theory is that when citizens know – or can find out – what the EU does, and even deliberate and participate in that process, their sense of being a European citizen may be strengthened. It is precisely with regard to social legitimacy that the EU has a long-standing problem [35]. However democratically legitimate the Member States may be in their own jurisdictions, a sense of social legitimacy will not be created simply by the attribution of rule making competences to common institutions – although the welfare gains through integration which should be made possible by the creation of those institutions can be expected to facilitate it. Social legitimacy will usually have to be created over time simply by the practice, and habit, of doing things together, and there is only so much that can be done to accelerate this process by symbol-building campaigns and communications strategies. In terms of the contribution transparency can make the idea is that it can facilitate the process of strengthening public confidence in the EU, thereby enhancing in the long run its social legitimacy.

A second way of looking at the legitimacy challenge is through the lens of *input legitimacy* versus *output legitimacy*. Output legitimacy means that people agree that a particular structure should exist, and even participate in rule making, because of the benefits it brings. Social acceptance is thus instrumental and conditional, as well as independent of an affective relation. Input legitimacy, on the other hand, means that social acceptance of the structure in question derives from a belief that citizens have a fair chance (however understood) to influence decision-making and scrutinise the results. The ability to influence and hold accountable can be realised either through forms of representation which are held to be legitimate, through direct participation which is held to be meaningful – or some combination of the two. On the whole the legitimacy of the EU and its decisions has tended to be focussed on the output side of the equation (see, in particular [21,30]) rather than on the input side.

In this paper we will present three assumptions in section four, all of which concern the relation between transparency and legitimacy but put an emphasis on different aspects and interact in different ways. An overview of the assumptions is presented in Table 1.

Prior to describing the evolution of the assumptions in the EU context and presenting our critical perspective on this discourse, we first locate the broader parameters of the debate on transparency in the EU and in particularly we emphasise the fact that it is possible to divide the manner in which it has evolved across two relatively distinct periods in terms of time and in terms of overall approach.

3. The Evolution of transparency in the EU

3.1. The first period: dominated by the law, lawyers and bureaucrats

The first period of thinking on 'transparency' was dominated by a legal understanding of what transparency could be said to mean and in particular the focus on the principle of access to information. This built on existing legal case law on the right to be heard, the right to have reasoned decisions and to have access to a file (see [4,29,34]). It gave further substance to the already quite developed legal accountability mechanisms within the framework of the EU. It is based on the specific responsibilities of three institutions (Commission, Council and European Parliament) that have now been laid down in increasingly "hard" legal instruments and the interpretation by the European courts of legal standards laid down in such measures.

The focus in this first time period was on gradually constructing a right of access by the public to certain categories of documents held by the Council of Ministers, the Commission and the European Parliament. In this first period the European courts played a crucial role. They effectively built in a short period of time a body of case law which on the whole kept pressure on the institutions to behave fairly and to devise adequate systems of scrutiny. They tended to interpret rather generously the scope of the legal provisions so that for example specific institutional arrangements did not operate to reduce the reach of the access provisions. Thus in the very first case to reach the European courts the Guardian journalist, John Carvel, successfully challenged the Councils refusal to grant him the agendas and minutes of various Council meetings including those relating to the new and sensitive area of justice and home affairs policy making. Later the Swedish Union of Journalists challenged the refusal of the Council to reveal documents relating to the establishment of Europol, using the more generous Swedish Freedom of Information Law to highlight the unnecessary degree of secrecy that prevailed at the European level.

The legal phase culminated with the adoption of a new and binding legal instrument, Regulation 1049/2001 that entered into force on 3 December 2001. This Regulation introduced more transparency into the work of the EU institutions [13]. In conclusion the legal-constitutional approach can, some ten years after its commencement, be considered solidly anchored in legal texts, including at the most fundamental level of the Constitutional Treaty. The provisions on public access to documents clearly have caused changes by giving citizens a tool to obtain the documents they wish to obtain, albeit with a considerable and significant time lag.

The Internet played a limited role in this period since the EU did not actively create transparency. Documents were only provided to citizens when they specifically asked for them. It was only the implementation in practice of the obligation to make available and maintain a register of documents on each of the three main decision-making (legislative) institutions that has however enabled the "public" to know what sorts of documents they might want to have access to as well as to actually seek access. In providing such a register the Internet plays an important role, backed up by the most recent figures. For example, with regard to the Council of the EU, the number of documents appearing in the register has increased very steadily both in terms of absolute numbers and in terms of the number directly accessible via the register.[5] Moreover, there has been a concomitant increase in the number of users logging on to the Council's public document register. The latest figures available, for 2004, represent a 62.7% increase in the number of users in that one-year alone (295,002 different users in 2004). Moreover

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[5]The Council in its Annual Report for 2004, *supra.* note 2, points to an increase of nearly 42% on the number of documents directly accessible to the public via the register (249,935 in 2003 against 354 054 at the beginning of 2005).

the total number of visits to the Council register increased by 19.2% compared with 2003 (919 584 in 2004 against 768 725 in 2003), representing more than 2,500 visits per day.[6] These visits represent approximately half of all the visits made to the access to documents site on the Europa server (an average of 5 250 visits per day in 2004, a threefold increase with 2003).[7]

3.2. *The second period: dominated by politics, bureaucrats and politicians*

In the second and more overtly political phase of the development of transparency in the EU, transparency is perceived not only as a goal in itself but also as a tool for a more democratic way of working and reaching decisions. The Commission has unquestionably taken the lead, in particular in its White Paper on Governance in presenting the goal of greater openness as a means of achieving more democracy [11]. The manner in which the Commission has devised new data bases which make available on the Internet previously confidential information such as for example who actually sits on committees, how many there are, when their meetings take place, the agendas of meetings etc. is a measure of how much more "open" the interstices of decision-taking within the EU has become.[8] Steps have been taken to make more transparent the workings of the many advisory groups currently contributing to the Commission's policymaking (for example: both the composition of the groups and the advice they deliver are made publicly available on the Internet).[9]

The Commission has not been the only one to take another stance towards transparency. The Council too has already for some years maintained an extensive and on the whole accessible Register on the Internet. For those with the expertise, time and courage to wade through the masses of documents placed on the Internet it is possible to engage in a process of some scrutiny and deliberation on the multifarious activities of the Council in its diverse configurations. The Council has however been less forthcoming in ordering its information in a user-friendly fashion, perhaps because it has more difficulty in being terribly up-front about the scope of its expanded executive-type tasks in recent years (see further [7]).

The Commission argues that: "providing more information and more effective communication are a pre-condition for generating a sense of belonging to Europe" [11, p. 11]. Moreover, it is claimed that "transparency can 'clear the fog' and quash the myths that may exist and reduce the distance between the public and the administration at its service."[10] This is basically an argument that transparency will enhance public acceptance of the institutional structures of the EU. Although not always up-front, it seems that transparency in the sense of disclosure of information by public actors is generally closely connected to legitimacy. The political theory is that when citizens have the possibility to monitor policymaking and scrutinize its results, the legitimacy of institutional structures is enhanced.

In this period the Internet plays a very important role and is the main medium for the EU to guarantee transparency to the widely dispersed population of Europe. European websites grant access to an enormous amount of information on European policymaking and policy-execution. Internet is, in the word of several Commissioners, "the best channel for communicating complex and complete information

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[6]See further, Council Annual Report for 2004, *supra.* note 2.

[7]European Commission report on the application in 2004 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents, COM (2005) 348 final, http://europa.eu.int/comm/secretariat_general/sgc/acc_doc/docs/rapport_2004/COM(2005)348-EN.pdf.

[8]For example, the register of comitology of the European Commission, http://europa.eu.int/comm/secretariat_general/regcomito/registre.cfm?CL=en.

[9]The CONECCS data base, http://europa.eu.int/comm/civil_society/coneccs/organe_consultatif/liste_index_cb.cfm? CL=en.

[10]Communication to the Commission,*supra.* note 2.

Table 2
Two periods of transparency in the EU

	Years (roughly)	Dominant discourse	Advocates	Passive/ active	Objective	Role of the Internet
Period 1: Thin Transparency	1993 – present	Legal	Outside EU (journalists, lawyers, academics)	Passive	Controlling abuse of power and understanding the process of decision-making	Limited: Mainly registers of documents
Period 2: Thick Transparency	2000 – present	Political	Inside EU (bureaucrats, politicians)	Active	Enhancing democracy and legitimacy	Ample: Availability of documents

on our area of work".[11] The increased development of Internet use and growing transparency of the EU are indeed concurrent developments. More recently, there is recognition of the need to shift the emphasis from provision of information towards "communication, to facilitate navigation, to strive to ensure that Europa pages are fully multilingual at the appropriate level and to operate with state of the art technology, including a powerful search engine".[12]

The second period in particular takes transparency as a means to enhance legitimacy. The relation between transparency and legitimacy is based on various assumptions concerning the use citizens will make of the information available to them and the effects this use will have on their acceptance of EU institutions. In the next section we will reconstruct these assumptions and present a critical perspective on them.

4. Assumptions

4.1. Assumption 1: Transparency strengthens input legitimacy

The first assumption concerns the relationship between transparency and input legitimacy. What happens when information about European processes of policymaking is made available (through websites) to the general public? Input legitimacy of the EU is often considered as structurally very limited at the EU level due to the fact that citizens only directly participate in voting at the European level at elections for the European Parliament. The problem is that such elections are considered on the whole as "second-rate" elections with consistently low turnout among the citizens in the various Member States. It is further well recognised that even when citizens vote at the EP level they are generally voting on national issues and in relation to the national political arena. When the same citizen's vote at national elections in their own countries there is of course only an indirect link between national elections and European policymaking carried out by autonomous actors (see generally [20]). The thinking is that if citizens were to obtain more information about the policy-making processes at the European level this could form an important additional and direct manner of enhancing the overall input legitimacy of the European Union. The assumption is that the input legitimacy – the social acceptance of policymaking – strengthens this type of transparency (see Fig. 1).

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[11]Communication to the Commission, supra. note 2.

[12]European Commission, Action Plan to improve communicating Europe by the Commission, http://europa.eu. int/comm/dgs/communication/pdf/communication_com_en.pdf. See too, the White paper on a European Communication Policy, supra. note 1.

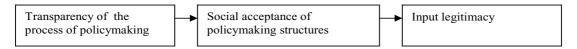| Transparency of the process of policymaking	→	Social acceptance of policymaking structures	→	Input legitimacy

Fig. 1. Transparency and Input Legitimacy.

This assumption clearly underlies arguments in EU policy documents. The Commission stresses that consultation processes run by the Commission must be transparent: "It must be clear what issues are being developed, what mechanisms are being used to consult, who is being consulted and why and what has influenced decisions in the formulation of policy. Openness and accountability are important principles for the conduct of organisations when they are seeking to contribute to EU policy development. It must be apparent which interests they represent and how inclusive that representation is. The Commission encourages interest groups to establish their own mechanisms for monitoring the process, so that they can see what they can learn from it and check that they are making an effective contribution to a transparent, open and accountable system" [2, pp. 17–18].

The Commission has explicitly stated that this transparency is meant to increase the acceptability of Commission proposals as far as the general public is concerned [39, pp. 3–8]. In the Constitutional Treaty a title was included with the name 'The democratic life of the EU'. The final article of this title (Article I-50) declares: 'In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible'. In its White paper on government, the Commission indicates that decisions are more likely to be accepted and supported if people can understand the basis on which they are taken [11, p. 8].

The Commission's positive view on the relationship between transparency and input legitimacy can be questioned. It must be recognized that the relationship between transparency of processes of policymaking and the input legitimacy of the European Union is not a simple one. Research shows that political participation has the form of a pyramid: a lot of people participate little and few people participate a lot. Only a limited number of citizens actually access the information about policymaking on EU websites. [13] As a matter of practice only those citizens with (expert) knowledge of the policy subject make use of the possibility to read information about policy, the process and the policy actors [5]. Most people are missing knowledge to use the transparency for participating in the policymaking process. If only a small minority of citizens uses the information, is it really possible to speak about legitimacy?

Another critical remark concerning the relation between transparency and legitimacy concerns the reality of the information overload [2, pp. 139–140]. This refers to the fact that it is impossible for a normal citizen to understand all information on policymaking processes both because of the quantity of the information available or received as well as the specific terms and explanations used. The information overload has increased immensely since the EU started publishing information about policymaking processes on websites. Even experts have a hard time in dealing with the incredible amount of information. In this situations one can question whether more information indeed leads to more legitimacy.

One can further argue that the available information will generally be used by civil society organizations and not by individual citizens. These organizations can represent citizens in a manner different to that of

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[13]It can be argued that since the Council and the Commission have been obliged to provide a list of all their documents in a Register on the Internet online access is 400 times that of non-virtual access. In 2003, 181,317 different users paid approx. 760,000 visits-some 800 a day- and accessed almost 6 million electronic documents. These figures are certainly impressive but they still tell a story of participation by the few rather than the many.

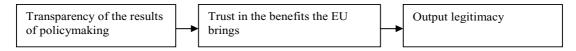| Transparency of the results of policymaking	→	Trust in the benefits the EU brings	→	Output legitimacy

Fig. 2. Transparency and Output Legitimacy.

official representative bodies (parliaments etc). In this sense the input legitimacy of the European Union could be strengthened if citizens know the participation of civil society groups and if citizens perceive this input to be legitimate. But there are problems in representation here too since the democratic nature of many NGO's is increasingly questioned. Interest group can misuse the information to pursue specific interests. The increased transparency is of crucial importance to NGOs wanting to influence policymaking processes – or to get issues out in the open s they can be debated in public, also in other more traditional media- but one may ask whether NGO involvement has a positive effect on legitimacy.

4.2. Assumption 2: Transparency strengthens output legitimacy

The second assumption concerns the relationship between the transparency of the results of policymaking and output legitimacy. What happens when the results of European policies are widely published? This assumption has some similarities with the previous assumption but it is important to underline the difference between the two assumptions. The first assumption says something about input legitimacy that is supposed to increase when citizens have access to information about processes of policymaking. The second assumption says something about output legitimacy, the trust in the benefits the EU brings. The idea behind this assumption is that the perceived effectiveness and efficiency of the EU can be enhanced by increased transparency in the results of policymaking (see Fig. 2).

Although not as clearly present as the first assumption, this assumption also underlies EU policies. It is assumed that when people can obtain information about the results of a policy, politicians are supposed to account for the outputs and the outcomes of policies. Accountability is one of the principles of good governance that the Commission formulated in its White Paper on Governance [11, p. 8,10]. The Commission takes the view that more information and openness are important for the accountability for all citizens and stakeholders that are involved in policymaking. When referring to accountability in this context the Commission is referring to the fact that citizens (and their representatives) have the possibility to control the work of the Commission in particular by means of information made pro-actively available by the institutions.

The EU specifically mentions the need to evaluate its policy instruments and make the results of these evaluations available to citizens. How are EU policies is implemented and what are the results of these policies? An interesting example is the European Environment Agency (www.eea.eu.int), which provides briefings, reports, technical reports, indicators, data sets and country reports. The institutions deliver this information through the Internet or through other channels. "In the context of governance, evaluation and transparency are not an option, but a necessity" [40, p. 4]. The basic idea is that the European Commission achieves good results and by showing these results its legitimacy can be enhanced.

The Commission's positive view on the relationship between transparency and legitimacy can be questioned. The critical remarks concerning the limited number of citizens that access the information and the information overload also apply to this assumption. When it comes to information about the results of policymaking, interest of citizens is even lower since they cannot directly use this information to influence policymaking processes (see also [23]). One could simply ask the question: why would citizens be interested in the results of European policies? If citizens do not access the information, this will not influence their perceptions of the effectiveness and efficiency of EU policies.

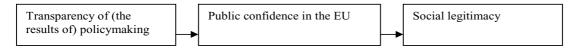| Transparency of (the results of) policymaking	→	Public confidence in the EU	→	Social legitimacy

Fig. 3. Transparency and Social Legitimacy.

The most likely actor to use information about policy results is the media that is generally more interested in failures than in successes. Transparency does not guarantee a favourable press: each imperfection, each transgression of rules and regulations, however unimportant they may be, each dispute about a decision, can be ruthlessly exposed as a sign of irrationality or deviance. Media can misuse the information for their commercial interests: failures sell better than successes. After every affair and fiasco, but even in routine situations, journalists can always find procedures and rules that have not been followed by the book. At the end of the day increased transparency of policy results may have a negative influence on output legitimacy (see also [3, p. 14]).

Other critical remarks concern the perverse effects of transparency on the results of policymaking [3, p. 13]. Too rigorous democratic control may squeeze the entrepreneurship out of public managers and may turn agencies into rule-obsessed bureaucracies. Too much emphasis on integrity and corruption control may lead to a proceduralism that seriously hampers the efficiency and effectiveness of public organizations [1]. Too much emphasis on accountability and transparency can lead to sub optimal and inefficient decisions instead of improved performance. In other words the dysfunction of democratic control can be considered to be rule-obsession and the dysfunction of integrity to be proceduralism. This would mean that transparency can make policies less efficient and effective and, in the end, transparency could even undermine the EU's legitimacy.

4.3. Assumption 3: Transparency strengthens social legitimacy

The previous assumptions focused on input and output legitimacy and the direct link between (the results of) European policymaking and policy results and legitimacy. This third assumption focuses on more general social legitimacy, the affective loyalty to the EU of European citizens. When citizens know – or can find out – what the EU does, their sense of being a European citizen may be strengthened. In contemporary debates it is often emphasised how alienated many EU citizens feel from the Union's work. Opening the doors could eliminate some of the alienation citizen's experience today. Improved access to information is thus seen as a means of bringing the public closer to the EU and as a way of stimulating a more informed and involved debate on EU policy. As a general effect, transparency of policymaking and the results of policies are supposed to strengthen public confidence in the EU and thus enhance its social legitimacy (see Fig. 3).

This assumption, again, clearly underlies EU policies and more information is assumed to enhance a feeling of belonging. In a study conducted for the Commission this assumption is worded in the following manner: "The lack of knowledge about the institutions and the institutional system is startling. It can be seen that there is a need for information, which is strongly and spontaneously expressed by many citizens in the candidate countries, and that the citizens of the Member States have unequally expectations. As far as the content of the information is concerned, it is expected to inform and give a sense of how Community activities concern the country and the individual in his or her daily life. It is also expected to furnish people with a better general knowledge of EU affairs" [28, p. 10,20].

The European Commission [11, p. 11] indicates that providing more information is a pre-condition for generating a sense of belonging to Europe. One of the goals of transparency is to disseminate information from the European level down to the local level, so that citizens are aware of developments, can feel part

of the construction of Europe and can see the relevance of it to their own situation (see also [8, p. 109]). Openness will, in this view, put a spot-light on those areas of the European Union's political life which are deficient in terms of democracy and the stronger the democratic institutions become, the more they will demand, as a prerequisite, more comprehensive openness and transparency. The Commission indeed seems to assume that if the public has greater access to more relevant and more attractively presented information about the EU and its policies, disaffection, scepticism and hostility will decline.

A former member of the European Commission explained in 1995 that transparency leads to the confidence of citizens: "If we want the participation of the citizens, if we want to make Europe the business of every citizen – then we must, on the one hand, seek their involvement, listen to and welcome new ideas and, on the other hand, make our work and visions understood. In brief: transparency and democracy must be practised together" [10, p. 8]. These quotes clearly indicate that the Commission expects that providing more information to citizens will strengthen their sense of belonging to the EU and thus boost social legitimacy.

A critical analysis of this assumption again points to the limited number of citizens that access the information and the information overload. One can also raise more fundamental points of criticism. According to Lodge [19, p. 261] the basic assumption of the European Union could be wrong: filling an alleged information deficit will not necessarily restore confidence among people who mistrust political processes, for whatever reason. As Eurobarometer indicates, some feel that the information deficit has been ineffectively confronted by information overload. In 1993, a Gullup poll in the United Kingdom found that over 80 percent of respondents had never wanted to seek information about the European Union and therefore it is not true that more openness leads automatically to more confidence of citizens in the Union.

If one looks further at the figures on who is seeking access to documents in the EU then it has been calculated that if the access request numbers are used in relation to the population of the EU then one in thirty-three thousand citizens has exercised that right to date, which has led one commentator to describe the exercise of formal access to documents as "practically anecdotal" [15]. Increasing transparency of processes and results is not going to necessarily increase the perception of the social legitimacy of the EU of those who never seek information.

As we have already indicated in our critical appraisal of the previous assumption, transparency does not guarantee a favourable press. Journalists can misuse transparency to finds interesting material for 'sensational articles' that will help them to sell newspapers. According to Harlow [17, p. 189] transparency has been taken to extreme lengths, and has become a weapon with which media presses incursions into private life, howling for punitive action and seeking exaggerated redress for the simplest of errors. This kind of transparency is not likely to have a positive effect on the social legitimacy of the EU.

The conclusion is that transparency may not deliver the expected results and may even have negative effects on social legitimacy. Many citizens show no interest in information on the EU and, therefore, their social legitimacy will not be influenced by increased transparency. Worse, media and those wishing to damage the reputation of the EU may exploit the transparency. This may even result in negative effects of transparency on social legitimacy. Citizens may not want to belong to an institution when they hear only about all the mistakes and the affairs that take place in Brussels.

5. Avoiding naïve assumptions

We started with the question: what are weaknesses in assumptions made in EU policy papers concerning the relations between transparency and legitimacy? In our discussion of the three assumptions we have

highlighted several weaknesses. We indicated that few citizens access the information and that even those who do are confronted with an information overload. We stressed that the information may be used by NGOs but this may only trigger new debates about representing citizens. Journalists may also use transparency but they are generally mostly interested in highlighting policy failures. Putting more information on websites could result in more negative stories in the press and undermine legitimacy. Transparency may even have adverse – or perverse – effects since policymakers may stick to strict procedures and avoid innovative solutions. Finally, we stressed that transparency cannot bring legitimacy when citizens do not trust the EU and question its existence.

Where does this critical appraisal of assumptions bring us in the final analysis? It is in any event clear that transparency is not a panacea for the legitimacy problems of the European Union and can only be a starting point in building public understanding, participation and involvement [8, p. 109]. The proclamation of transparency and public access has been interpreted as an attempt to legitimise the European Union that lacks real democratic legitimisation. It is highly doubtful that legitimacy will be significantly increased as a result. Legitimacy mirrors public perceptions as to 'the rightness of authority'. Sceptical publics will not necessarily be any the more confident in and convinced of the rightness of authority once the Commission has put information about its decision-making processes on the Internet and the results of policymaking [18, p. 365].

In this paper we have portrayed the assumptions as rational statements and appraised them accordingly. One could pose the question whether politicians are really so naïve that they believe in simple relations between transparency and legitimacy. A more sophisticated perspective on policymaking would stress that these assumptions have a symbolic character and are meant to gather support for institutional changes [9,32]. A critical appraisal of these assumptions could then be considered as a rather naive exercise since these assumptions were never meant to be rational, fact-based statements.

From a cultural perspective, the assumptions should be regarded as 'myths'. Myths are defined as stories embedded with meaning. They anchor values, guide the behaviour of social actors, tell them what is important and how to act. Modell [25, p. 40] describes myths as more or less institutionalised or taken-for-granted images that serve as sense-making devices around which organizational members may rally and create a shared identity. Myths express common values, norms and experiences and enable people to coordinate and integrate their behaviour in a sensible way. Meyer and Rowan [24] show us the importance of 'myths' that legitimise the transformation of organizations to meet changing environmental conditions in order secure success, survival and resources. From that perspective, increased transparency adds to the legitimacy of the European Union towards its environment. Myths can thus be useful in guiding the EU into the future.

We acknowledge that rhetoric enables policy makers and politicians to mobilize people and organizations for their ideas. Myths can be seen as beacons, which show us the way to a desirable future, to a new and better European Union. The rhetoric about transparency in the European Union is important for mobilizing people and getting changes going. This strategy for mobilizing, however, also has a dangerous side to it. If we confront these rhetorical claims with the body of knowledge concerning the effects of transparency on legitimacy of public administration, we need to be careful not to raise our hopes too high. In addition we wish to highlight the fact that myths may also have dysfunctional effects. In certain cases, transparency will not strengthen the effectiveness and legitimacy of the EU but rather weaken them. Myths may mobilize the European Union into an unwanted situation. By critically appraising the assumptions stated concerning the relation between transparency and legitimacy, we hope to help preventing perverse effects and to avoid the canonization of the myths of transparency by the EU.

Does it follow from our critical appraisal that the EU should not continue to strive for more transparency? Should its websites not be used to make all kinds of information available to the public? On

the contrary, in spite of all our criticisms and attempts to show the warts of transparency, it remains both conceptually and methodologically pivotal in our further thinking on the evolution of the EU as a political system. Transparency is a key element of democratic institutions but naïve assumptions about the relation between transparency and legitimacy can and should be avoided.

We did not limit our analysis to the information published on the Internet and to the opportunities the Internet provides for interaction but have discussed transparency as a general phenomenon. Nevertheless, we did show that the Internet plays a key role in enabling transparency. Without the Internet transparency would be impossible, or at least much more expensive. The Internet is an important enabler of transparency and, therefore, an important driver of the discourse on transparency and legitimacy. One could even wonder whether this discourse would have become so strong without the technology available to make transparency possible. We want to warn against a simplified trust in the benefits of technology: enhancing legitimacy is much more complicated than creating fancy websites.

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