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Democracy in Europe Movement 2025

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DSC Berlin Taskforce for Transparency Policies

A pro-active concept of political and democratic TRANSPARENCY for Europe

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About the Author

DSC Berlin provides external expertise for developing a transparent and democratic European Union. Furthermore it deals with normative questions according a fundamental understanding of what it means to govern transparent. The proposal is therefore independent from time and seeks widespread solutions.

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Recommendations

- **European Sunshine Law**: Citizens need to reap the benefits of their new rights under the Lisbon Treaty. The European Commission shall present a renewed proposal in 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 policy (ACTA, CETA, TTIP, TiSA, …) once and for all. 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.
- The **European Press Conference** needs to be driven by professional journalistic curiosity and independence.The EU should provide financial and technical assistance for European quality reporting websites like voxeurop.eu. 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.
- **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 transparency.
- **Open Data:** The institutions shall open their data and support reuse of data by civic tech applications, in particular in the field of budgetary transparency.
- **Open Formats:** Review all technical discrimination by its EU information services and make data available in open, interoperable and machine-readable forms.
- **Open Calendar**: Electronic meeting calendars of Commissioners and staff shall be made public by default, also booking schedules of the rooms and premises.
- The facility security shall present a comprehensive report about the composition of visitors' (including permanent badge lobbyists) **physical access** to the European institutions with parameters such as origin, gender, representation. EU Institutions shall be required to fully disclose the identity and affiliation of panelists at hearings.
- **Open Groups**: All official and informal working groups at the Council, Commission, ECOFIN, Eurojust, Eurogroup, ESM, ECB, Troika, FRONTEX, etc. shall be disclosed to the general public and access to documents provided.
- **Open Streaming**: Audiovisual streaming of meetings should be further expanded and technical barriers be lifted. DiEM25 made a suggestion to expand the scope of streaming.
- 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.
- **Whistleblower Protection**: The European Commission shall present a legislative proposal to harmonize whistleblower protection across based on the boilerplate provisions[2] from the Council of Europe (CoE).

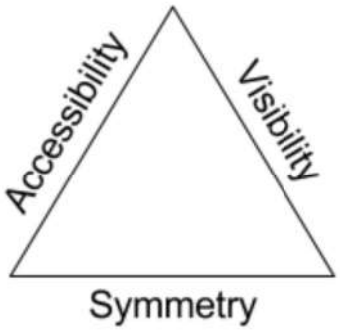
1 http://parltrack.euwiki.org/dossier/2008/0090(COD)

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

Contents

1. Triangle of Transparency - Visibility, Symmetry and Accessibility

While typing at personal computers is instantly visible to us on the "desktop", there are myriads of processes running in the background. These processes themselves are opaque, hence, only a few people notice them as long as their computer works and is easy to use. One could apply this metaphor to a nation state, to supranational institutions, for economic companies as well as for societal procedures. When they aren't working anymore, it is time to take a closer look at the background processes.



The media as a gatekeeper for what is publicly visible, struggles with its role in contemporary societies. It is undeniable reached a parting of the ways. Whether we reclaim our rights, or we follow the dynamic in its own abyss. Campaigning on active transparency, we, DiEM25, demand the traceability of the opaque processes, we demand a strengthening of the civil rights and we demand a stop of the data-driven discrimination. The time has come, to stop favoring economic rights over civil liberties. Therefore, we argue for symmetry, visibility, and accessibility.

Visibility

As a metaphor in politics and administration "transparency" relates to visibility, due process and translucence of governmental decision taking. In simple terms, it could be described as a public right to watch, to understand and scrutinize political decisions and as an enabler of the public right to contest policymakers in democratic elections.

Symmetry

The current scientific research on the benefits of political transparency is fairly underdeveloped. In political science, we often rely on an "imperialism of economic theory" on information. In economics more information is suspected to improve the efficiency of markets, cause or cure information asymmetry, and perfect decision making. Transparency is a means to obtain that missing information while obscurity is a means to hide that information.

Accessibility

Still, if we were to scientifically demonstrate the benefits of transparency we would need to obtain empirical data, thus need transparency on our scientific subject matter transparency under consideration. The scientific method itself relies on the availability of data and lays open how it reached its results. As theoretical physicist Richard Feynmann famously put it in his minority opinion to the Rogers Commission report on the Challenger space shuttle explosion: "reality must take precedence over public relations, for nature cannot be fooled". Access to better and more data may lead to political decisions that are more prone to the test of reality and may help to tear down convenient delusions. As a popular saying puts it: "Exposition to the public kills the king."

The citizen as a watchperson and potential observer

> „The Panopticon is a type of institutional building designed by the English philosopher and social theorist Jeremy Bentham in the late 18th century. The concept of the design is to allow all (pan-) inmates of an institution to be observed (-opticon) by a single watchman without the inmates being able to tell whether or not they are being watched. Although it is physically impossible for the single watchman to observe all cells at once, the fact that the inmates cannot know when they are being watched means that all inmates must act as though they are watched at all times, effectively controlling their own behaviour constantly."

Transparency alone refers to the potential for the public to watch. It is a precondition to public scrutiny. The theory of the Panopticon by Bentham illustrates a behavioral effect of transparency. Just as the single watchman may not watch an inmate at all, there is no way for the watched person to tell if it gets observed. Institutions that make it possible to get watched operate under altered conditions that are presumably closer to the public. This disciplinary effect binds the institutions to the constituency and avoids bad decisions, corruption and unaccountable, arbitrary policy making. Transparency thus promotes the rule of law and good governance by the potential of active scrutiny. However, transparency may also make it easier for special interest groups or external parties to compromise public interest objectives.

In times where parts of the electorate become suspicious of governmental elites and feel detached from technocratic institutions, greater transparency may contribute to close the *democratic deficit*. This is even more important as economic crisis induced by bad decisions affect all citizens. To reach the triangle of transparency, the logic of societal, political and economical transparency requires the installation of new approaches which connect the civil society with the decision-makers within institutions. Our aim is to fill in the blank of the triangle. Transparency in a democratic society may ultimately lead to better decisions and empower citizens.

2. Access to Documents

The European Treaties, Article 15 TFEU (Lisbon, ex-255 TEC) stipulates that:

> 1. In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies **shall conduct their work as openly as possible**.
>
> 2. The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.
>
> 3. **Any citizen** of the Union, and any natural or legal person residing or having its registered office in a Member State, **shall have a right of access to documents of the Union's institutions**, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.
>
> General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.
>
> Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.
>
> The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

> The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph.

This right of all European citizens and residents to access documents under Article 15(3) is implemented by regulation EC/1049/2001.

As envisaged by EC/1049/2001 the European Commission presents an annual report on transparency to which the Parliament usually reacts with an own-initiative report. Such initiative reports are like annual wish lists on the improvements our members of parliament would like to see and they are a great opportunity to raise specific transparency reform proposals via the democratic process.

The reform of EU Access to Documents is stalled at the Council (2008/0090(COD)[1]). Thus the current rules EC/1049/2001 are not adapted to the Lisbon treaty yet.

Practically digital information services are key to facilitate such document access without a specific request under EC/1049/2001. For example these web services:

- EUR-LEX[2]is an internet database which provide free access to
  i. "EU law (EU treaties, directives, regulations, decisions, consolidated legislation, etc.),
  ii. preparatory acts (legislative proposals, reports, green and white papers, etc.),
  iii. EU case-law (judgements, orders, etc.),
  iv. international agreements,
  v. EFTA documents,
  vi. summaries of EU legislation, which put legal acts into a policy context, explained in plain language and
  vii. other public documents."
- OEIL[3] tracks all pending legislative dossiers
- Comitology Register[4] (Comitology refers to a set of procedures through which EU countries control how the European Commission implements EU law.)
- EU staff directory[5]

Numerous more databases contain and publish proactively documents, some of them are rarely consulted such as the record of the Commission cabinet meeting.

Not only the mere availability of data but their mode of presentation and meta-analysis determines the usefulness. For instance, we may get all data about the panel composition of Commission hearings, citing individual names, but we do not get the distribution of nationalities and gender and we do not get them in single file. As a consequence, we may have to manually examine the data made available to answer our research question such as "How many policy-makers from Greece have met with EU operatives?". Nevertheless, where electronic records exist, default publication of documents is preferred over specific freedom of information requests.

Appointment diaries of the officials may not exist when but the secretariats use all the same MS Outlook software for schedule planning, electronic documents are available and should be made available. As the example shows the format of data is quite important. Reading Outlook calendar files may require buying an MS Outlook license while open formats are available to all without discrimination.

1 http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?id=563203
2 http://www.eur-lex.europa.eu/
3 http://www.europarl.europa.eu/oeil/home/home.do
4 http://ec.europa.eu/transparency/regcomitology/index.cfm?do=Search.Search&NewSearch=1
5 http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=10&lang=en

3. Transparency in the trade process

Traditionally European Union trade negotiations with third countries are exempted from transparency requirements, see 1049/2001/EC Article 4, as they used to involve deliberations on tariffs, quota and market access that could compromise parallel trade negotiations with other states, and transparency in these cases is said to undermine the negotiating powers of trade negotiators.

Recent international trade negotiations increasingly touch upon regulatory affairs with the framing as *technical barriers to trade* and thus interfere with the regulatory prerogatives of Parliament. In the aftermath of the GATT TRIPs precedent Trade agreements increasingly become a tool to bypass the legislative process in a way that privileges policies driven by mutual export interests over the broader democratic process. As the trade funnel is misappropriated in fast-track competition to international treaties and conventions (which are negotiated in public) for establishing international law, directly tied to other trade interests, conflict lines around transparency and democratic sovereignty aggravate.

The recurring transparency discussions around CETA, TTIP, TiSA, ACTA serve as examples because the right to see is a precondition for any debates on substance within the window of negotiations. Parliaments can only petition these negotiations, have no means other than to trust negotiators that their red lines get met, and are poised to approve the final results in a process rigged to adoption and ratification.

- In trade policy the default access to document rules prohibit the publication of the negotiating mandate of the Member States, a document drafted by the European Commission and approved by the Member States in the Council of Ministers by which they empower the European Commission to negotiate with third countries on their behalf. The negotiating mandate lays down the scope of the negotiations.

- Aspects of an envisaged European trade treaty that affect the sole competence of the member states are negotiated by the Member States themselves. The Member States here means ministerial staff. It is not made public which special working groups in the Council of Ministers are dealing with these negotiations and which member states were represented in the negotiations with the third country, nor is the scope of their participation and the topics discussed. We also do not know in which way ministerial staff correctly informs the Minister and national parliaments.

- It is merely obscure which aspects fall within the competence of the Commission (within the Acquis[6]) and which do not fall within the competence of the Commission (go beyond the Acquis). As a results only the Council of Ministers can control if the trade negotiators at the European Commission abide by their competences (to the mandate and to the Commission‘s competences under the treaties). The EC trade negotiators sometimes blur the waters by an insistence that they „abide to the acquis“ while in fact they would have no competence to negotiate otherwise. A resulting trade agrement may still require changes to the Acquis (=changes to European law) and there is no way to determine if these aspects were actually negotiated by the European Commission or the Member States.

- The European Commission DG Trade may sign an administrative agreement with third country negotiators on the confidentiality of talks which overwrites the public right of

6 Aquis Communautaire (de: Gemeinsamer Besitzstand) means the complete body of European law, all rules and regulations harmonized and regulated on the European level under the Treaties.

access to documents. Covered communications from the third party including joint texts with positions from the other side cannot be made available to the public. Politically it may be possible to pressure for a release of Commission proposals but the institution would insist they „do not own the position from the other side“. A legal base for administrative confidentiality agreements is customary, neither found in the negotiating mandate nor in the European treaties, where Article 15 TFEU obliges the institutions to carry out their work „as openly as possible“.

Transparency in trade negotiations increasingly relies on leaked documents, not lawful access to these documents. For instance Greenpeace, Statewatch and the Whistleblowing intermediator Wikileaks have made classified trade document public. Nevertheless, we need more lawful transparency in trade affairs and the straightforward fix is to adapt Article 4 of EC/1049/2001.

4. Transparency in the Troika

An inability to refinance a member state in the currency zone via the bond market let to cross-financing by other member states which put out these funds on the condition of so-called structural reforms, privatization and other neoliberal policies supervised by the Troika institutions. The approach raises issues of sovereignty and national democracy in all participating states. Furthermore, the affected states get fewer funds than their economies would need to grow out of recessions, the so-called austerity policies, but not by deliberate choice, but imposed by conditions.

Transparency may improve both the review and the scrutiny of these policies. In targeted countries, populists may otherwise invoke the strategy of creditor blaming and frame the crisis in nationalistic terms and also in creditor countries simplistic populist analysis and chauvinism are on the rise. While participants, including DiEM 25, embrace different analysis of the root causes and propose entirely opposed solutions to the currency crisis, a transparency of the measures and decisions and availability of data is a prerequisite for open deliberations. Therefore DiEM25 proposed in its petition:

- the live-streaming of the entire European Council, Eurogroup, ESM Board of Governors and Ecofin meetings, and the subsequent publication of official transcripts for all such meetings
- a full set of minutes for each ECB Governing Council meeting to be published three weeks after the conclusion of each regular meeting, and complete transcripts of these meetings to be published within two years

5. Transparency dimensions of a meeting

In public institutions, we find different levels of transparency and confidentiality. To cast light on the levels and dimensions involved let us consider the example of meetings:

- ❑ The existence and name of a group (Institution, Body, Committee, Working Group, Taskforce, 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 under discussion 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 (and an possibility to sent message participants in the room for them to raise a point)
- The ability or prohibition to communicate public messages e.g. via twitter while the meeting is on.
- The audio or audiovisual recordings of a meeting or phone conference
- The correspondence of a group
- The budget of a group holding meeting

All these facts may be laid down in documents that could be requested by the Access to Documents provisions, parliamentary inquiries, online databases, transparency rules of the institution, press reports, floor talk and so forth. We can learn and derive from the example above that some levels of transparency depend on others, and some dimensions of transparency required for public scrutiny do hardly concern the contents of deliberations.

For instance, you can not request a document of a working group if you do not know that the working group and the document exist. Supervising Parliamentarian committees cannot ask the head of the secret service about details about an intelligence program or practice when the members of parliament are not aware that it exists. While the public may be fully aware that the army has tanks and guns and operates under certain guidelines, the battlefield details of military operations are generally kept confidential for some time. Generally meta- knowledge is more acceptable to be disclosed than detailed operational knowledge and it is crucial for the performance of public scrutiny.

The above mentioned meta facts could well be uncovered through the availability of documents that seem of little 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 recorded when a person entered and left a public building and keeps track in a database which persons have legitimate access to a public building. This is why it is important that documents are made available even if there is no clear public case.

6. Fallacies of transparency

The list of dimensions above demonstrates that there may well be legitimate concerns to shield specific dimensions, for instance, the name of the public servant or diplomat representing Germany who does not act in a private capacity but as a mere delegate of his national ministry.

By casting more light at a specific institution one sets a focus that darkens other institutions. The natural phenomenon of light pollution is the reason why we do not see the moon and the stars at daylight. Transparency efforts may cast more light at institutions that are already well visible and shift the focus away from institutions that are underexposed but hold significant power in a process.

Transparency efforts may harm the balance between institutions, at the expense of institutions that are in the light. For instance, while we may get more insights into control bodies like Parliament we weaken their ability to perform their control tasks directed at other institutions or harm the independence of Parliament representatives. Some tools that improve the visibility of the individual voting patterns may also be a means to enforce group discipline or ultimately professionally compromise the re-election of deviant MPs, and in the case of overboard public polarization lower the ability of politicians to find democratic compromises rather instead of obstructive "taking a stand".

While the public is focussed on conflicts of interest of public figures we do hardly get any insights in the persons in the second row, and forget that there are other decision makers at the executive branch such as ministers, deputy ministers (Staatssekretäre), advisors, public servants and other staff. If an MP has a time budget for interaction with the public, peers and the bodies to be controlled, more transparency of Parliament may increase the time allocated for interaction with the public and MP colleagues, at the expense of its own exercise of control functions.

Thus, we have to consider the **actual balance of power** between institutions. For instance, the European Parliament is highly exposed but dominated in the interinstitutional balance at the EU by other institutions as the Council of Ministers and the European Commission that operate by far more clandestine.

Institutions may set „honey pots" or "red herrings" for public interaction that are completely detached from actual decision making. As an example consider the high public attention to the low-hanging, low funded program INDECT, a university research alliance for surveillance technology funded by a grant under a multi-billion research framework program of the European institutions of just 30 Million EUR. Activists and media took the bragging of the INDECT administrators seriously. If activists combine their efforts and strike down the project nothing is lost for the institutions working on surveillance policies while activists lost time and resources.

7. Dystopian point - Constitutional state privileges information rather than humans

Our right to see as a citizen implies that public business is also our private business. We have to take the institutional arguments for limited transparency seriously. It all boils down to the fundamental question of *cui bono*, who benefits. There is a private and a public aspect to transparency. This straight leads to another asymmetrical development: the glassy citizen.
One of the most recent fundamental rights is the one of informational self-determination.The German freedom of information act especially its second article needs to be more differentiated. This claim follows the guideline relating to the "know-how-protection" of the EU from 2016. This arrangement seeks to protect "whistleblowers" as well as investigative journalists. Unfortunately the definitions of the terms used in the guidelines are vague. The vague definitions enable companies to construct the terms "trade secrets" and "business secrets" in favor for their own interpretations and interests. What follows is a disadvantage for employees and journalists. Nevertheless the guideline shows the eu-fostered standardization of personal and informational self-determination and trade- or business secrets.

Generally we suspect government institutions to aim for surveillance of citizens, to obtain information about them, and store it in large databases. We defend our right to personal self-determination against suspicion. Unfortunately, the modern national security and defense logic

suspects every human with a personal computer as a potential threat to national security. Governmental institutions strengthen their cyber instruments as a reaction to the perils of terrorist attacks. The basic essence of this trend is an extensive record of personal data in the hand of security agencies.

Even though e.g. the government proclaims the safety of citizens' data and their protection by law, one does not know who gets extralegal access. As a speaker of the Art. 29-EU-group for data protection puts it, data protection "does actually not exist". At times, information is protected, but humans are not - there must be a broad discussion about what we value more in a digital world.

Characteristic for a surveillance scenario is an asymmetry of information. The state actor gets insights the citizens do not have access to about themselves nor do their fellow citizens have them. Privacy once meant to shield one's private matter from the public, other people around you. More potentially dangerous may be state actors. Despite state actors it is internet corporations and advertisers that gather information about you in an unprecedented scale. The DiEM25 movement needs to comprehend how this digital global development fosters a disrespect of human and fundamental rights.

8. Understanding the roles and context

For professionals and the general public alike it is difficult to understand the roles and actual power distributions at institutions and between institutions. At times it is challenging to trace what is happened when an institution is embedded in a clout of technocratic complexity and secrecy. Insiders understand the internal communications code of an institution and are able to fill in the missing contextual knowledge. Any reporting by media is poised to develop a simplified narrative to tell a story. Insiders generally mistrust outsiders who are not familiar with the internal communications code and lack the precision. Transparency helps technocracies to leave their institutional bubble and get other plain perspectives that are not supposed to be spoken about internally. Public discourse challenges the institutional self-depictions and its "Chinese".

When in 1989 the head of the Eastern German inner surveillance agency STASI, Erich Mielke, for the first time spoke at the Volkskammer[7], he mentioned that his spy institution was in intense contacts with all the working people. Many delegates took this for a joke. Irritated by the laughter he addressed the comrades only to be lectured that there were also non-comrades in the room, to which he even more irritatedly answered that was just a formality, he was not ashamed to speak freely, without a prepared statement, and would "love all people" and regarded it as his mission to serve them. This phrase, put out of context, ultimately made him a public laughing stock and was a pretext to his removal from office.

When the member states presented Herman van Rompuy as the new President of the Council the anti-EU right populist MEP Nigel Farage confronted him in Plenary in an insulting way that broke the rules of communication to visiting officials in European Parliament and he was later reprimanded. Incidentally quite some Brussels professionals and correspondents while they rejected his boldness shared these views as esprit d'escalier. Today this is the most widely shared plenary statements made in the European Parliament and helped the "rude boy" to pursue UKIP's destructive mission towards Brexit. Still, sometimes it is quite refreshing for institutions when the communication code gets breached and we get a new perspective on the emperor's clothes. More transparency and critical openness in institutions may lead to less bold moves and also prepare the institutions for undue attacks.

7 https://www.youtube.com/watch?v=80qJPlvlUI0

Transparency does not just mean making information available but also extracting meaningful information and education about the inner workings of an institution.

The more complex, technocratic and secret institutions are being operated, and the lesser known the inner workings are among professional gatekeepers as journalists, able to credibly confirm or deny rumors, the less an activity of an institution gets generally understood and falsehoods and rumors strive. As an example consider the past operations attributed to a secret service such as the US CIA. It is very difficult without inside knowledge and internal documents to reconstruct a chain of command, whether attributed action was official or rogue, how persons where exactly involved with the secret service. This applies even more so when an institution, here a secret service, has a policy of credible denial. This is why secret bodies generally attract a cloud of conspiracy theories of which only a small percentage turns out to be factual.

In the same way actions of „the EU“ may be obscure to the general public. Any time we read “the EU” in the press the phrase possibly shortens a more complex institutional setting. Like “the European Commission proposed a directive” or “the European Parliament adopted a legislative dossier in Trilog” etc.

In Germany for instance we heard that former Bavarian prime minister Edmund Stoiber got a job at the European Union for tackling red tape, while in fact he just chaired a panel for a consultancy company which delivered a report with suggestions, that was commissioned by the European Commission. Another Bavarian politician, Karl-Theodor Freiherr von und zu Guttenberg was said to be put in charge of internet matters at the EU. In fact he just got an unpaid honorary role with a travel budget by the European Commissioner for Information Society Neelie Kroes. Neelie Kroes also set up a program with Digital Envoys in each member state, in the case of Germany Prof. Geesche Jost. All these are roles without any actual decision powers that serve the mere purpose of interaction with the constituency, giving some credit and exposure for the selected persons.

Media reported a liberal politician, MEP Koch-Mehrin, after being stripped of her doctorate by her university, was granted an office in the research committee „of the EU“, in fact she just orderly assumed a member role in ITRE, the industry (and research) committee of the European Parliament.

A lot of negative news about European institutions from tabloid media and quality media alike is grounded in a misunderstanding of the institutional framework. For this to improve we need to

1. mainstream knowledge and insights of professional gatekeepers such as journalists
2. ensure the branding of institutions and roles is clear.
3. improve political education

Transparency alone is not enough, we need to be able to better understand the institution. At the same time our lack of knowledge is not our fault and it is the duty of the institution to be intelligible. We shall not shy away to confront institutions with a discourse alien to its internal communications code.

9. Intelligible branding

Even professionals confuse non-EU institutions with EU institutions like the Council of Europe (CoE) with the European Council („heads of states“ biannual summit) and the Council of the European Union („Council of Ministers“). To add to the confusion there are private bodies as the European Council on Foreign Relations (ECFR), a non-governmental organisation in the field of foreign policy. The competing Strasbourg 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 non-EU European Patent Office often gets mixed up with EU level patent policies.

When general policies get adopted in the European Council (of Ministers) at the „Fishery Meeting“ citizens wrongfully suspect insincere deals while insider know it is a standard procedure for formal approval and the Fishery council is just the most frequent regular meeting.

For the European Commission its different roles are not properly separated: executive policy decisions, legislative proposals, antitrust proceedings, court actions, trade negotiations, hearings, executive tasks and thus often boil down to activities „by the EU“ or „by the Commission“. From a technocratic perspective this is a misunderstanding of journalists who reduce the complexity into catchy headlines and articles but in reality the institutions take the responsibility do more to make their roles and responsibilities easier to communicate and understand.

The Commissioner for Competition takes responsibility for shaping antitrust policies, taking a seat at the Commission‘s cabinets table, and enacting proceedings against a company at the complaint of a competitor (or its sock puppets) and eventually taking the case to the European Court. What starts as an IBM complaint against Microsoft on the base of law may later be communicated like a personal fight between the respective Commissioner and Microsoft, assisted by disrespectful communication of the company concerned that puts herself on the same footing as the institution. In the area of penal law we have a public prosecutor, a plaintiff and a criminal court. The role of the European Commissioner as an antitrust prosecutor could be clarified by wearing a robe when acting as a prosecutor and by a specific title that distincts him or her from the other Commissioners.

Henry Kissinger‘s famous dictum of the missing phone number of the EU is reflected in the often ridiculed amount of Presidents of the EU institutions. Though a fallacy in Kissinger‘s remarks is that it cannot be the vital interest of the EU to be more easily accessible for competing powers. In a democratic order the primary focus is access of the people, the citizens, the electorate. Confusion and obfuscation shields the institutions from the people and undermines democracy at work.

10. Space to think

Just as privacy protects the deliberations of the individual, institutions insist on a „space to think“ without exposure, for their internal deliberations. The line of argument for such a space is similar to the argument for individual privacy.

At times such space to think may also be provided by external third parties, in the form of conferences under Chatham House Rule.

> When a meeting, or part thereof, is held under the **Chatham House Rule**, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.[8]

The most controversial is the Bilderberg Conference series (that attracted high interest from right wing anti-conspiration groups, media and Members of Parliament) in which high ranking political figures participate in a private capacity, and it has been subject to allegations of being a kingmaker's group. Here degrees of transparency are reached with regards to the fact that participants lists are published by the organisers and general topics are made available, while the deliberations are kept confidential. One could make participation of EU officials and staff in third party meetings subject to ethical guidelines ensuring obligations under Article 15 TFEU are met.

In Parliament the deliberations of the competing Political Groups are generally not put under the same amount of public exposure as the official meetings. Some meetings are only open to members and staff. Neither are meetings of an MEP with his constituency or peers in his or her office recorded (while some MEPs voluntarily publish the list of lobbyists that approached them). Hearings of MEP groups are mostly open to all registered visitors, at times with audiovisual recording and streaming.

The European Parliament has security checks and offers temporary and permanent access to visitors and lobbyists at rules agreed with an inviting MEP office. Thus records exists who has access to the premises in Brussels and Strasbourg and who entered the Parliament building, possibly also including the reason. Similar security records exist at other institutions of the EU. With this data also information could be derived about the nationality and affiliation of visitors and potential imbalances.

11. Technical barriers

In a world where political scrutiny increasingly is assisted by electronic tools, the technical aspects of the data provision become key in the transparency discourse. Especially as the social impact of technical aspects is often disregarded improvements have a better leverage than one might presume. Just consider the common shortcomings with public information services online:

Data formats of the data made available have **restrictions**:

- unprintable pdf or not suitable to get printed
- You cannot cut & paste the raw text from a pdf file properly
- no machine-readable data
- no availability in open vendor-independent formats

Legal constraints on publication and sharing of data

- Creators of public websites make up their own boilerplate rules for using the data that have no legal base whatsoever, for instance attribution of the source with a copyright sign.

8 „The world-famous Chatham House Rule may be invoked at meetings **to encourage openness and the sharing of information**.“ - this remark shows the ambiguity of transparency and openness within institutions. In fact the assumption is that Chatham House relieves a participant of scrutiny within his or her office and thus promotes openness by lesser transparency.

WWW readiness:

- Documents are not (permanently) linkable online
- Documents are not search engine indexed and thus not found by a standard search
- No good meta data

Audiovisual streams are often not **technology neutral**. They set certain exclusionary requirements.

- you cannot watch a stream without installing Microsoft Silverlight, Java, other proprietary plugins that may or may not be available for your operating system
- You cannot save a stream
- You can download recordings but they are not in the desired language
- The quality of recordings is bad and the plugins make your browser crash arbitrarily
- Accessibility concerns are not met (barrier-free services).
- Difficulty to hide your identity from the institution when you read their documents online, technical blocking of anonymous access services.

Other technical factors

- Bad typeface and formatting
- Too much accompanying text

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

- Is the document just a draft or a final text? A final text of what stage in a process? Is a legal text in force?
- Does the document amend another document while no consolidated version is provided? (This is addressed by the better lawmaking initiative).
- Does the document include provisions that were overtaken from existing laws?
- How to contact the author or editor of the file when you spot a mistake?

DiEM25 mentioned very "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)"

In other words, DiEM25 demanded

a right of electronic access for observers to meetings and raised a principled point of **technological non-discrimination** and **platform neutrality**.

12. Whistleblower Protection and arbitrary transparency via leaks

Recent years many facts of European governance only became known to the public through leaked documents. The availability of (arbitrary) leaks lead to a new culture of openness while at the same time it lowered the public pressure for legal acts improving lawful transparency and openness. Still leaks demonstrate that more lawful transparency is desirable. Such access is less harmful to the affected institution because lawful transparency 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. It should be inspected if refusing to answer questions from the

press or media on these grounds is legit. The practises here are very much under flexible development as the Commission and Media increasingly act upon leaks.

Given that a European Commission whistleblower Paul van Buitenen once led to a demise of the Santer Commission and the increasing importance of whistleblowing we see a lacuna in European law for whistleblower protection.

One might also review if the current investigative powers of the European anti-fraud office OLAF against fraud and institutional misconduct are sufficient.

The Council of Europe (CoE) created boilerplate law proposals for the protection of whistleblowers (Recommendation CM/Rec(2014)7) from which the European and national legislatures may draw inspiration from.

13. Public sector information, open and reusable?

When goods and documents are funded by the public sector we always find a strong argument to make the license of them free for all and free to re-use. In the United States for instance all space images from NASA or the software of the Berkeley Software Distribution (BSD) Unix are in the public domain. Per default also Patents are open and uncopyrighted. Standard documents are generally accessible but sold for a nominal fee by which the standards bodies finance themselves. Some software developed by the public sector is made available under a free and open license, such as the European Union Public License.

For licensing conditions of Public Sector Information (PSI) in the EU three frameworks are key:

1. A decision of the Commission on the re-use of its data
2. The PSI Directive ("Open Data law") implemented by the member states
3. Open Data initiatives by the public sector

Laws and verdicts have no copyright, but accessibility is still difficult. At times there are legacy arrangements with publishing companies, or standard nationwide/Europe-wide database of verdicts run by specialised law firms defining their officious index.

14. Trade Secrets - protecting withhold information

Trade secrets relate to "know-how", "manufacturing-secrets", "business information", technical information", "confidential information" and "classified information". Trade secrets protection is afforded under EU law, international law, criminal law, civil law, meaning, there is no uniform instrument. The EU-directorate general for internal policies defines trade secrets as follows:
"Is not generally known to the public (secret); Confers some sort of economic benefit on its holder where the benefit derives specifically from its not being publicly known, not just from the value of the information itself (it has commercial value precisely because it is secret); is the subject of reasonable efforts to maintain its secrecy."

In fact, this leads to a definition of trade secrets which is not tangible. Patents, utility models or copyrights for example are actual legal rights, protected as IP rights. Trade secrets are sometimes framed as "informal intellectual property", with the example of the recipe of Coca Cola. Trade secrets are not hold, they are kept. They could comprehend government information (cabinet discussions), details of security services or personal information (telephone conversations). Protection of trade secrets doesn't need to be formally recorded in public registers and is more easy to establish. Trade secrets don't need to be new as well as there is not a limited period of protection. Finally, Trade Secrets don't need to be registered or applied for to gain protection.

One example of international law which affords protecting trade secrets is the WTO TRIPs agreement from 1994. In Art. 39 of TRIPS undisclosed information is protected in some form.

Though national legislation varies. As the EU-directorate-general for internal policies states: "The only Member State with specific legislation on trade secrets is Sweden (since 1990). Italy and Portugal have specific provisions on the protection of trade secrets in their respective Codes on Industrial Property. France has a specific provision dedicated to manufacturing secrets in its Intellectual Property Code. Austria, Germany, Poland and Spain rely on unfair competition provisions to protect trade secrets. Others have general provisions included in their labour laws or civil codes to prevent employees disclosing their employer's confidential information during their employment relationship. The Netherlands and Luxembourg mainly rely on tort law to protect trade secrets (damage claims). In the UK and Ireland, which also have no specific legislation, trade secrets are protected by the common law of confidence and by contracts.

What trade secrets might comprise in a practical sense, it is helpful to look at the US "Economic Espionage Act" from 1996 definition. In §1839 (3) it is says "all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if - (a) the owner thereof has taken reasonable measures to keep such information secret; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public [...]

It all comes down to what is defined as secret by or through a natural or legal person. In 2016 a new directive of the EU-Commission dealing with "Know-how-protection" and "trade secrets" was voted. The Directive is therefore the blueprint with which DiEM has do deal with in member states.

Again, quoting the EU policy department, "trade secrets can be looked at from three different angles: from the point of view of "unfair competition", from the contractual side (commercial contracts, labour contracts) or from the perspective of **transparency (freedom of speech, whistleblowing)**. Sanctions for breaches of confidence may be contractual (based on a breach of contract) or criminal (based on a criminal offence). Sanctions can be applied in each of the three areas individually or across all three collectively [...] Measures and remedies provided for should not restrict freedom of expression and information or whistleblowing activity, which, pursuant to articles 10 and 11 of the European Convention on Human Rights (ECHR), encompasses media freedom and pluralism."

There are quite some cases in which disclosure of trade secrets serves the public interest, in so far as relevant misconduct or wrongdoing is revealed, like participation in cartels, bribery, infringement of

environmental law. Further Art. 8 and 10 of the European Convention on Human Rights have a bearing on how trade secrets are dealt with.

15. Lobbying transparency

In 2010 EU-Parliament and EU-Commission have decided to create a common register for lobbyists which is named "Transparency register"[9]. Prior to that, the registers of the two institutions have been separated. Being registered as a lobbyists in this list is required to gain full and continuous access to EU-institutions. In July 2014 the head of European Commission, Jean-Claude Juncker, announced to reform the transparency register. Currently the EU is debating this reform, which seeks to install a common transparency register for all EU-institutions. E.g. the European Council is not sharing this register. All entries in the register needs to be actualised once a year.

Europe's campaign for lobbying transparency, Alter-EU, criticizes that 27 % of companies running a bureau in Brussels are not registered. 24 % of lobby-consulting-companies as well as a certain amount of NGOs are also not registered. Transparency International estimates that half of the entries in the register are „inakkurat, unvollständig oder bedeutungslos". **In short, this means the data of the register are partly worthless**. LobbyControl and Transparency are constantly complaining about the data. E.g. in 2014 Goldman Sachs joined the register with a proclaimed amount of 50.000 €, after they made a complaint, the company raised the amount to a total of almost 800.000 €. Further there is a intransparent protection of certain clients.

"Citizens can, and indeed should, expect the EU decision-making process to be as transparent and open as possible. The more open the process is, the easier it is to ensure balanced representation and avoid undue pressure and illegitimate or privileged access to information or to decision-makers. Transparency is also a key part of encouraging European citizens to participate more actively in the democratic life of the EU."

The register classifies registered parties into the following categories:

I - Professional consultancies/law firms/self-employed consultants 1,210
II - In-house lobbyists and trade/business/professional associations 5,335
III - Non-governmental organisations 2,653
IV - Think tanks, research and academic institutions 751
V - Organisations representing churches and religious communities 46
VI - Organisations representing local, regional and municipal authorities, other public or mixed entities, etc.

Member States roles

The European Union as a supranational institution "sui generis" is substantially intergovernmental. This means, even if there is international law, when it comes down to hard political topics, it's all about power of the nation states and their specific interests. How are these interests articulated and democratically controlled by the national Parliaments?

9 http://ec.europa.eu/transparencyregister/public/homePage.do

Undue international intervention

The recent US Presidential elections brought back the issue of foreign interference into the affairs of a nation. It is interesting in how far one can permit third nations to influence EU policy making or elections. In any case such undue interference needs extra attention and monitoring.

Expert groups register

Following the link[10], this register is accessible. On the homepage it is said, that from the beginning of 2017 there will be a new register with more current and more reliable data.

Revolving doors means change of politicians/representatives/EU operatives to the private sector of economy, Lobby groups or other political institutions (EU/Non-EU) after their office in EU.
Conflict of interest means a setting that may appear like corruption but does not suggest intent, activities that appear inappropriate to the duties of a public servant or official.

For cases of administrative misconduct, corruption, nepotism the European Union created the **OLAF antifraud office** where you can complain anonymously or in person and report misconduct. In the future it would be possible to further expand the mission of OLAF for all kind of fraternising actions. We believe the codification of a strong principles of **non-fraternisation** of staff with stakeholders is needed.

16. Financial Transparency

This section is based on and inspired by Stiglitz/Pieth (2016): Overcoming the shadow economy published by Friedrich-Ebert-Stiftung.[11]

The so-called secrecy-havens pose a global problem insofar they facilitate money laundering and tax avoidance and evasion, contributing to crime and unacceptably high levels of global wealth inequality. Europe has an obligation to force financial centers to comply with global transparency. Otherwise those who benefit from secrecy will continue acting in the dark. In a globalized world, if there is any pocket of secrecy, funds will flow through that pocket. That is why the system of transparency has to be global. For this reason we demand for a proactive evolution of standards as following:

1. **Intensifying the "flagship conventions"** in the area of economic and organized crime: Vienna Convention on Illicit Trafficking in Drugs of 1988; United Nations Convention on Transnational Organized Crime of 2000 including its additional protocol on human trafficking; OECD Convention on Bribery of Foreign Public Officials of 1997; the United Nations Convention on Anti-Corruption 2003, and several more specific agreements on corruption, money laundering, and the financing of terrorism.

2. **Principles**: Secrecy has to be attacked globally, offshore and onshore. The collection and exchange of information related to taxation, ownership, and illicit activities is a common global responsibility. While the gatekeepers of this information are financial institutions, addressing secrecy effectively will mean tackling the entire industry that facilitates secrecy, including the legal

10 http://ec.europa.eu/transparency/regexpert/index.cfm?Lang=DE
11 http://library.fes.de/pdf-files/iez/12922.pdf

firms that have played a pivotal role in the creation of the web of corporations. Knowledge of beneficial ownership of companies and bank accounts is fundamental, both to ensure taxation and also to prevent and prosecute crime. Tax preferences are a privilege and not a right. Tax free zones provide opportunities for money laundering, and those operating in such zones should be held to a high standard.

Corporations, trusts, and foundations are creations under a jurisdiction—and as such, they have no inalienable rights. They are created on the premise to facilitate societal welfare, and to ensure that they need to be globally regulated—regulated in ways which ensure full knowledge of beneficial ownership and full compliance with all applicable tax laws. Complexity contributes to lack of transparency. Those seeking secrecy understand this, and create complex webs of corporations and trusts, to make it more difficult for enforcement agencies to trace flows of illicit funds and to identify the true beneficiaries of illicit activities.

This has two implications: (a) The international community should do what it can to impede the creation and maintenance of these complex webs; and (b) to effectively fight for transparency—to detect true beneficial ownership—requires resources beyond those available to enforcement agencies. Every country must maintain publicly searchable registries of the beneficial owners of each corporation, trust, foundation, or other entity. Financial centers (both onshore and offshore) are creations of globalization—and should not be allowed to engage in regulatory and tax arbitrage. Doing so undermines the positive effects of globalization. If secrecy-havens serve as centers for tax avoidance and evasion or in any way facilitate corruption or illicit activities, they are acting as parasites, and should be cut off from the global financial community. The pressure is asymmetric: though societal benefits from transparency may be huge, **there is no natural lobby group for transparency, and especially no lobby group with the resources of those lobbying for lax enforcement.**

The **Panama Papers** illustrated that if we are to address the problems posed by secrecy-havens, we have to do something about the underlying institutional arrangements that facilitate a lack of transparency, as well as the complex web of corporate structures. Governments are being held accountable to adopt and enforce regulations that prevent opacity - enforce transparency. In a globalized world, countries whose governments fail to do so should face sanctions. While it is easy to state these fair arguments, e.g. the United Kingdom and the United States, and every government as well, enable “pockets of secrecy” within their own borders. Bringing light in those pockets needs a new form of publicity only possible through a vital citizenship and new institutionally installed interface management.

Our Agenda request statements of the following topics:

- ❏ Anti–Money Laundering (AML)
- ❏ Countering the Financing of Terrorism
- ❏ Anti-Corruption
- ❏ Tax Transparency
- ❏ Information Exchange on Tax Matters
- ❏ Country by Country Reporting

Recommendations by the Stiglitz/Pieth:

- ❏ Inclusive International Cooperation on Standard Setting and Implementation
- ❏ Identification of Beneficial Owners and Public Registries
- ❏ Automatic Exchange of Tax Information
- ❏ Information Gathering, Disclosure, and Verification
- ❏ Supervision of Intermediaries

- ❑ Real Estate Transactions
- ❑ Responsibilities of Corporate Fiduciaries
- ❑ Institutional Capacity, Implementation, and Enforcement
- ❑ Whistleblower Protection
- ❑ Freedom of Information Act
- ❑ Review Processes
- ❑ Tax Preferences

Budgetary transparency

- ❑ Investigating Blockchains as a digital tool on budgetary transactions
- ❑ Tendering: transparent announcement of public procurement
- ❑ Transparent city budgets, civictech tools and hackathons for budget transparency

Mandatory disclosure of finances for public limited companies and stock market listed corporations already exists but more needs to be done for offshore company webs and cross-border financial flows. Just as there are tax advisors for companies you need investigation in the financial flows for the public interest and combatting tax evasion.

17. Transparency of DIEM25

Though we want to promote transparency we do not need to become hypocrite. In our own group, the DiEM Berlin transparency taskforce we have no recordings of our meeting, no attendance lists, notes but no protocols nor would that be considered generally essential or worth the effort.

For achieving transparency we document the structure and the decision-making process, finances and financing and contact persons within DIEM (the respective DSCs, the headquarter) based on the actual information interest.

In 2004 software engineer Karl Fogel wrote in his rant in the SVN software tool manual[12]:

A bad Frequently Asked Questions (FAQ) sheet is one that is composed not of the questions people actually ask, but of the questions the FAQ's author *wishes* people would ask. Perhaps you've seen the type before:
Q: How can I use Glorbosoft XYZ to maximize team productivity?
A: Many of our customers want to know how they can maximize productivity through our patented office groupware innovations. The answer is simple. First, click on the File menu, scroll down to Increase Productivity, then…
The problem with such FAQs is that they are not, in a literal sense, FAQs at all. No one ever called the tech support line and asked, "How can we maximize productivity?" Rather, people asked highly specific questions, such as "How can we change the calendaring system to send reminders two days in advance instead of one?" and so on.

and he recommends:

Compiling a true FAQ sheet requires a sustained, organized effort: ...incoming questions must be

12 https://www.visualsvn.com/support/svnbook/foreword/

> tracked, responses monitored, and all gathered into a coherent, searchable whole that reflects the collective experience... It calls for the patient, observant attitude of a field naturalist. No grand hypothesizing, no visionary pronouncements here—open eyes and accurate note-taking are what's needed most.

In the same way true transparency requires listening to the questions citizens actually raise. For DiEM25 this means listening to our members and improving our information displays to serve their information needs, rather than discouraging our participants with reporting and disclosure obligations and invasions in their privacy such as mandatory audio recording of meetings.