

DEVELOPING A MODEL FOR **OPEN GOVERNMENT IN THE EU**



The
Democratic
Society

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CONTENTS

1	SUMMARY	2
2	INTRODUCTION	6
3	DEFINING OPEN GOVERNMENT	8
4	OPEN GOVERNMENT AND THE EU INSTITUTIONS	10
5	TRANSPARENCY	14
6	INTEGRITY AND ACCOUNTABILITY	30
7	PARTICIPATION AND CIVIL SOCIETY	40
8	EXPERIENCES OF THE OPEN GOVERNMENT PARTNERSHIP	56
9	OPTIONS FOR THE EUROPEAN UNION AND THE OPEN GOVERNMENT PARTNERSHIP	68
10	RECOMMENDATIONS	76
	ANNEX A – METHOD AND LIMITATIONS	81

SUMMARY

“Open minds, open societies, and increasingly open systems of government and governance. On the latter, the European Commission aims to lead the way”¹

– First Vice-President Timmermans

Governments cannot rely on public support – they must earn it. In an age of individualism, scepticism and growing nativist populism, they need to prove their legitimacy every day. The EU institutions lack the immediacy of local government, which can change things at the end of your street. They lack the deep social and historical roots of national governments. They therefore need to build legitimacy through their actions. In part this means effectiveness - being seen to take action that benefits citizens and communities. Equally important is openness - that the action taken is transparent, that institutions are accountable and people are and feel able to involve themselves in decisions that affect their lives.

This report is about openness. It looks at current open government initiatives at the EU level, at the international Open Government Partnership (OGP) and the experiences of three Member States. It makes recommendations on how the EU could better celebrate its current open government work, and go further by working with the OGP, and building a new support network for open government in Brussels and beyond.

¹ <https://www.opengovpartnership.org/trust/trust-times-of-intense-scrutiny>

Chapter 2 looks at the Open Government Partnership. Based on the three pillars of transparency, accountability and participation, the OGP is a voluntary international initiative that aims to secure concrete commitments relating to the three pillars from over 70 participating governments, including 21 EU Member States. Working in partnership with civil society within their country, every country that joins has to develop a 'National Action Plan' containing commitments to making government more open.

Chapter 3 considers open government in the EU context. As EU institutional responsibilities have expanded over time, the EU has taken on more attributes of a government. In parallel, as with other governments, calls for greater openness and transparency have increased. Periodic initiatives, such as the 2001 White Paper on governance and Plan D, have moved the conversation on openness forward without making a deep shift in organisational culture. Recent speeches and events suggest that there is potential for new initiatives, reflecting changing political and social attitudes. But we believe that rhetorical commitments, while welcome, must now become practice. To fail to do so after such public statements by EU leaders would further undermine the EU project.

Chapters 4-7 consider the EU's work in the three pillars of open government. The different institutions have all made commitments of varying strength to the ideals of open government. We identify a large number of projects and initiatives which further these aims – though they are often not gathered and presented as "open government". Often the EU is backward in presenting its strengths.

Initiatives we consider under the rubric of open EU governance include legislation to ensure the right to access documents used within the three main institutions, the use of online profiles for Members of the European Parliament showing their contributions in parliamentary sessions, codes of conduct for civil servants, MEPs and Commissioners, and legislative transparency and opportunities for citizens and other stakeholders to share their views on these earlier in their development.

We find many good initiatives, but also a high degree of disconnection, which reduces impact. Instances where work crosses institutional boundaries, such as the Transparency Register, are rare. The European Union Open Data portal, which contains just over 10,750 data sets, contains fewer than 100 published by an organisation other than the Commission. Whether because institutions do not embrace the work of others, or because they are simply not aware of it, this creates a duplication of effort. A good example is the multiple sites through which a citizen or individual might view legislative activity with EU institutions, including the Parliament's Legislative Train and Legislative Observatory websites, the Commissions 'Track Law Making' site, and EUR-Lex. These are good initiatives, but would be stronger if they existed within a single and recognisable place to see progress on law-making.

There is a need to move from a model of individual initiatives, where much of the work is carried out in siloes as single projects, to one supported by a clearer strategy, explained through a clear narrative and driven by leadership at the highest level. This would help ensure actions were better joined up between and within institutions, and encourage innovation by positioning open government as a clear institutional value.

While the EU has multiple initiatives on transparency and accountability, it has a mixed record on the third pillar, participation. Institutional actors will often claim that this is an area of progress, but that claim is rarely heard outside the institutions. This is for reasons of scale, complexity as well as institutional history. Recent high-level initiatives such as the Better Regulation Package and innovations such as Futurium and Doris have moved this agenda on. The institutions all have participative elements to their work. The Commission's work on stakeholder engagement, given a new focus through the better regulation initiative, is a positive development. We show that the EU institutions need to embed more and better engagement throughout the policy-making cycle, not just at a "consultation moment", and to go beyond traditional well-informed or well-connected participants into broader audiences within Brussels and beyond. Progress on this work will involve developing organizational cultures of engagement and openness, building networks that create broader routes to citizens, and putting policy structures and processes in place that involve public engagement from an early stage.

Chapter 7 looks at the experience of three Member States as members of the Open Government Partnership: the UK, Estonia and Romania. One of the most valuable attributes of the OGP is to act as a focus for open government activity both inside and outside government. Inside government it acts as a convening point for reformers in different departments and ministries, and helps to build networks that can share learning and expand the reach of ideas. Externally it is as a useful framework for civil society organisations to come together, exchange information and coordinate their policy and campaigning strategy.

Crucially, the OGP process helps to bring together these two groups of reformers, and helps to build relationships between civil society and government leading to greater levels of reciprocal trust – both civil society’s trust in government and government trust in civil society – as well as helping each to develop a deeper understanding about how the other operates. Against that, there is a risk that these relationships become too cosy, and that conversations on open government restrict themselves to technical issues being discussed among specialists, rather than making a real difference to politics and government as citizens experience them.

Chapter 8 considers the options for EU membership of the OGP. There have been a number of calls for the EU and OGP to develop a deeper relationship - including calls from some quarters for the EU to join the OGP. The EU is not technically eligible for membership of the OGP, as it does not have a Head of State, however there are existing models of partnership between the EU and OGP that could be adapted and extended to fit the EU’s unique situation.

Finally, we make a set of recommendations as to how existing good work could be celebrated and spread, and how the EU could go further in partnership with OGP. These recommendations are set out in detail below, but in summary they recommend the EU build a partnership with the OGP and with an informal network of stakeholders who commit to the ideal of open government in Brussels and beyond. OGP has effective models of how such a network would come together and itself remain open, transparent and accountable. Through our interviews we have found many people inside and outside the institutions who are committed to driving forward the open government agenda in Europe, working to ensure the EU institutions become more transparent and accountable, and making greater participation a reality. Institutions, organisations and individuals inside and outside Brussels share this commitment, and show that the partnership and network that can join committed civil society and stakeholders has a real chance of success.

1

INTRODUCTION

Governments and political institutions worldwide face several fundamental challenges in the decade ahead. Technological and social change, reinforcing each other, have empowered citizens to share information and opinions, and self-organise to a degree never before seen, while also enabling wrenching economic change, mass disinformation and populist protest. These are the forces which have driven Brexit in the United Kingdom, and brought Trump to power in the United States, even as they have increased global prosperity and reduced absolute poverty for billions of people.

The EU has been a driving force for openness and international trade, and is particularly exposed to their consequences. It is a supranational and intergovernmental organisation that challenges the notions of nation state sovereignty. It has no significant history compared to the national identities that underpin most European states. Its design and operations, though constantly evolving, are rooted in a model of institutional and international negotiation that creates complex compromises and opaque structures. It is easy for national politicians to blame 'Brussels' for unpopular decisions. Distance, complexity and continental scale exacerbate the gap between citizens and those who make legislation that affects their lives.

The world has shifted since the EU was first created. Network technologies are here to stay. Citizens' expectations about their relationship with political institutions and the state are changing. There are no easy solutions to these challenges that allow the status quo to continue. Alongside the economic and social roots of the crisis, the EU must also address the democratic roots, particularly the inability of current governance systems to meet the expectations of their citizens, and the rise of "illiberal democracy" in countries like Hungary.

This is acknowledged by the three main EU legislation-making institutions. The European Parliament, the European Commission, and the Council of Ministers have become more transparent, participative, and accountable over time, and that progress continues. All have made commitments to some degree of open government. Some of the initiatives that have been set up by these institutions are world-leading. In other ways, the EU institutions lag behind many other governments world-wide. The EU is also more than just these institutions, and wider institutions and bodies are doing interesting work, and represent a useful route for encouraging change.

This report considers how the EU, as a set of institutions and in the context of the democratic infrastructure of Europe, can strengthen and embed the process of reforming and becoming more open in its governance arrangements, and accelerate progress. We start by looking briefly at what open government is and explain the Open Government Partnership (OGP), which has become a primary vehicle for progressing open government.

We consider current initiatives and developments in and around the EU institutions that go in the direction of more open government, and we highlight those that show the potential for wider action.

We discuss the experiences of three diverse European countries - Estonia, Romania and the United Kingdom - in engaging with the OGP, and explore the feasibility and desirability of the EU joining this initiative.

Finally, we provide recommendations and outline a roadmap for action on open government within and around the institutions, building on existing good work and using a partnership model based on the successes of the Open Government Partnership. We draw out the actions, culture and attitude shifts, and network creation within and beyond Brussels that will be needed if the governance of the EU is to match the changing expectations of citizens.

An annex describes and reflects on the research method

2

DEFINING OPEN GOVERNMENT

The term ‘open government’ encompasses broad principles that are about changing the relationship between the state and wider society. While there is no exact consensus on a definition, the heart of the idea is that openness improves governance, enables civil servants to develop better policy and services that are more deeply rooted in the lives and experiences of citizens, and empowers citizens to hold governing institutions and decision-makers to account.

Open government at its heart is about more than digital technologies and e-government, although many people frame it in this way. While governments making their data accessible and reusable may increase transparency, and while digital platforms can enable more rapid and efficient communication between citizen and state, these tools are enablers of a deep transformation in the relationship between citizen and those that govern, not the end goals themselves.

Many governments, parliaments, and other institutions involved in public governance are exploring ways to change their relationships with citizens and civil society. Although not always labelled as ‘open government’, initiatives such as the participatory budgeting programme in Paris², the UK’s open data portal³ and the European Transparency Register⁴ all are part of an increasing global trend for governing institutions to be more ‘open’. While these, and other, individual initiatives can start to make a difference, a much more significant and systemic cultural shift will be needed to build governments that are truly transparent, where citizens are enabled and inclined to usefully contribute, and where the integrity and accountability of those in power is ensured.

2 See: budgetparticipatif.paris.fr/bp

3 See: data.gov.uk

4 See: ec.europa.eu/transparencyregister/public/homePage.do

OPEN GOVERNMENT AS DEFINED BY THE OPEN GOVERNMENT PARTNERSHIP

The international Open Government Partnership (OGP) defines open government according to four broad values.⁵

1. **Access to information and transparency** –proactively making information available and/or putting in place mechanisms to allow information to be requested reactively (for instance through Freedom of Information/Right to Information legislation). Information made available can include voting records of politicians, lobbying activity, data on the performance of public services, and the evidence-base that has informed policy decisions. Where possible, data published should be published in a machine-readable format, with a right to be re-used.
2. **Civic participation** – involving citizens and civil society in decision-making. Actions to achieve this include: making it easier to see and understand how decisions are made; opening-up new ways that citizens to input into the activities of, and collaborate with, government; and ensuring that media, citizens, and civil society can operate and associate freely.
3. **Integrity and accountability** - developing processes and regulations to ensure that governments and those who work within them maintain high ethical standards, and can be held to account for their actions. This can involve rules and codes of conduct (including requirements to declare conflicts of interest), establishing channels to raise concerns and ensuring these work effectively (via steps like ensuring protection for whistleblowers), and the establishment and support of bodies to investigate institutional wrong-doing.
4. **Technology and innovation for openness and accountability.** This helps enable the other three values to be realised.

5 Assessing OGP Values for Relevance. Accessed online August 2017 at: opengovpartnership.org/sites/default/files/attachments/OGPvaluesguidancenote.pdf

3

OPEN GOVERNMENT AND THE EU INSTITUTIONS

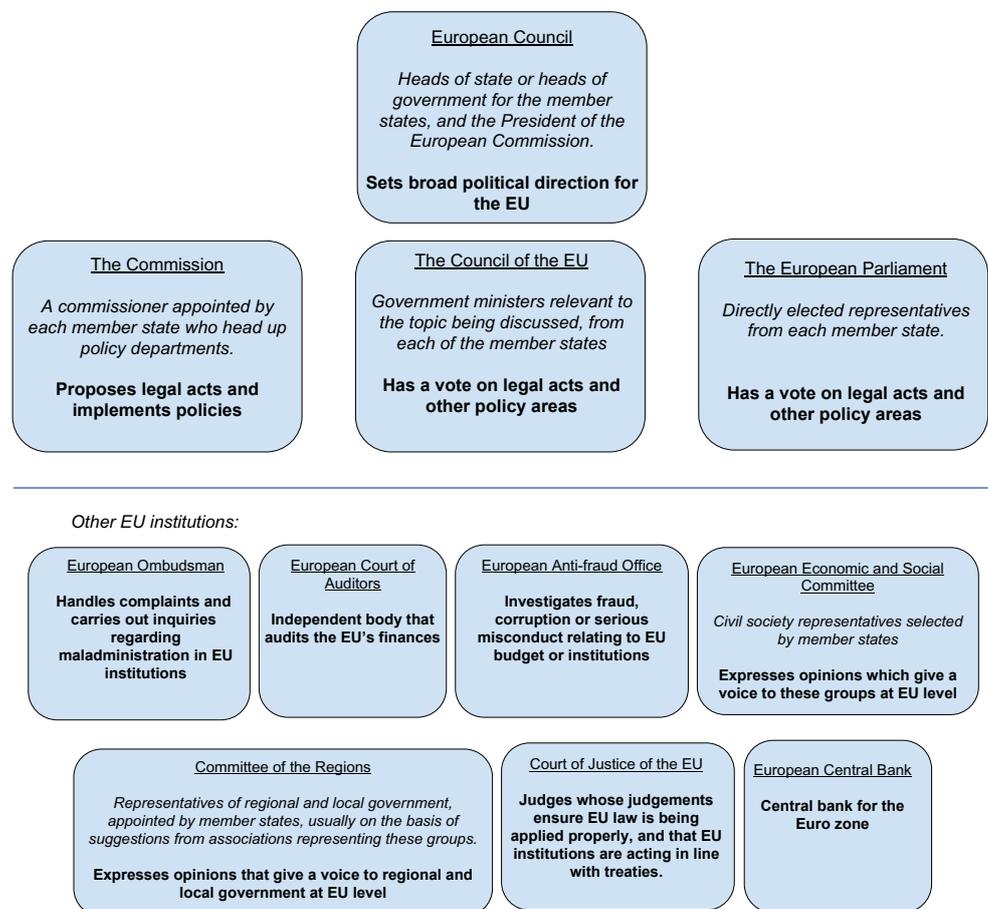


Figure 1 – Core European Union Institutions

Over the years, the role of the European institutions has changed substantially. When the first European institutions were created, they were designed as bureaucracies, with civil servants working on specialist matters of trade and its regulation, governed by a council of member state representatives. As the EU treaties have been revised, the range of areas in which the institutions can legislate has increased. Alongside this the number of institutions and bodies has grown, including the establishment of the Committee of the Regions in 1992, the European Ombudsman in 1995, and the European External Action Service in 2009.

The EU institutions and bodies have evolved from those first early institutions, responding to changes in their role, circumstances, and expectations. They have been established through a series of international negotiations and compromise, leading to a set of decision-making bodies that can be challenging to explain in a simple fashion, and confusing for those looking to engage with them. The culture and practices of the institutions have developed in a way that mirrors that of most governments worldwide, with a tendency towards becoming more open and transparent. Nonetheless, like all institutions, the EU's present is shaped by its past – and its heavily bureaucratic and diplomatic infancy still shape its current operations.

The EU's decisions affect over 500 million citizens, making its transparency, openness to public participation, and mechanisms for accountability hugely important. The Union's scale also brings the challenges of multiple languages and cultures, as well as political and physical distance. Different countries have differing attitudes towards open government, based on political culture, current circumstances and recent history. In this context, global movements such as the Open Government Partnership can bring frameworks and approaches that create common platforms for action, and respect the need to work from very different starting points. To understand how that can happen, we start by understanding the current actions of the institutions of the Union with respect to open government.

MAPPING OPENNESS IN THE EU INSTITUTIONS

As we cover in more detail below, the EU has made progress in recent years in ensuring more information about its operations is available to citizens and other stakeholders, making the development of legislation more transparent, and encouraging broader participation in the policy and legislation making processes.

Although frequently not referred to as 'open government', the initiatives that form the basis of the progress, such as the Transparency Register⁶, the establishment of an EU Ombudsman⁷, and the creation of the EU Policy Lab which explores new ways of collaborating with those outside the institutions⁸, recognisably fall into the OGP's categories of transparency, accountability, and participation. However, this work on open government is often piecemeal and project-based, there is little horizontal visibility, and links and connections between those working around different aspects of open government are often poor. Furthermore, there are still notable gaps, particularly around participation of citizens and stakeholders beyond large private sector organisations.

6 This records information about individuals and companies seeking to influence EU decision making, and is accessible at: ec.europa.eu/transparencyregister/public/homePage.do

7 See: ombudsman.europa.eu/home.faces

8 See: blogs.ec.europa.eu/eupolicylab/

EU staff we interviewed expressed a clear desire for a joined-up approach towards open government, and a preference for this to be based upon networked working, rather than through implementation of heavy new structures. Any programme of action on the EU's internal open government approaches needs to connect into the significant work being carried out by the EU in promoting open government, good governance, and democracy outside of its geographic boundaries, including DG DEVCO's work on international development, and DG NEAR's work in accession and neighbourhood countries⁹.

Work with the EU institutions continues to move forward. While this report was being written, we have seen positive developments on openness and transparency. President Juncker's 2017 State of the Union address included a call for 'a more united, stronger, and more democratic union'¹⁰, voicing support for strengthening electoral accountability by combining the Presidency of the Commission with that of the Council, and for establishing a European Minister of Economy and Finance¹¹.

He also outlined proposals for reforming the European Citizens' Initiative, including opening it to 16 and 17 year olds; reforms to party funding; voiced support for President Macron's idea of running citizen conventions on the future of Europe in 2018, and gave a promise to publish in full all negotiating mandates drafted by the Commission for international negotiations, saying:

"Citizens have the right to know what the Commission is proposing. Gone are the days of no transparency. Gone are the days of rumours, of incessantly questioning the Commission's motives."¹²

9 Countries which are official applicants for EU membership (accession) or are in the European neighbourhood (neighbourhood).

10 The full speech, and factsheets and press releases are accessible here: ec.europa.eu/commission/state-union-2017_en Accessed online September 2017.

11 Pierre Moscovici, Commissioner for Economic and Financial Affairs, Taxation and Customs has echoed such calls with his own words about the need to open-up the governance of the Eurozone, saying: 'We cannot go on having the main decision-making forum for the euro area detached from the most basic democratic standards, as enshrined in the community method.' Moscovici, Pierre (2017) 'My speech at the Ambrosetti forum: the future of the euro'. Accessed online September 2017 at: pierremoscovici.fr/2017/09/02/my-speech-at-the-ambrosetti-forum-the-future-of-the-euro/

12 Juncker, Jean-Claude (13 September 2017) 'President Jean-Claude Juncker's State of the Union Address 2017'. Accessed online September 2017 at: europa.eu/rapid/press-release_SPEECH-17-3165_en.htm

At a similar time, within Parliament, a report on Transparency, Accountability, and Integrity from the Constitutional Affairs Committee has been adopted, expressing support for a number of measures, including some steps to develop a 'legislative footprint' that would show the impact of outside influence on decisions reached¹³.

Elsewhere First Vice President Timmermans has published an essay for the Open Government Partnership stating that the Commission aims to lead the way on having open systems of government and governance, citing work already done and saying that:

“Trust is an increasingly valuable commodity, which can only be earned by public institutions if they commit to transparency.”¹⁴

While the landscape of open government with the EU is changing – we provide a snapshot of the current state of play in the following chapters, looking at each of the themes of 'transparency', 'accountability and integrity', and 'participation and civil society', and explore what further action is needed to produce real impact.

13 The Procedure File, which includes the text adopted and other information about this report can be accessed at: [europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/2041\(INI\)&l=en](http://europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/2041(INI)&l=en) Accessed online September 2017.

14 Timmermans, Frans 'Trust in times of Intense Scrutiny' in: Hasan Munyema (ed.) (2017) *Trust: The Fight to Win It Back*. Accessed online September 2017 at: opengovpartnership.org/trust/trust-times-of-intense-scrutiny.

4

TRANSPARENCY

In many ways the EU practises a high level of transparency. Several interviewees compared it favourably to national and local governments, although this is arguably an unhelpful comparator for a system of governance that faces much greater challenges of legitimacy than national governments. Nonetheless this comparison reflects the fact that EU institutions try, albeit patchily, to make it clear how decisions are made, to show the status of legislative proposals, and to publish data and information.

For transparency to be meaningful, however, requires the outputs of transparency to be easy to understand and use, and promoted to citizens and organisations beyond those already deeply engaged with the operations of the EU. In this the EU struggles more, with information provided often being bureaucratic and complex, and often spread over multiple websites.

DEVELOPMENT OF LEGISLATION

The European Commission has often led on initiatives that make the initiation and development of legislative proposals, and recently much of this has been part of Better Regulation agenda.

Roadmaps and impact assessment documents are published online when all but minor new legislative proposals are being considered¹⁵, providing information on what the Commission is aiming to achieve with such a proposal, what policy options they think are available to achieve these aims, and the advantages

¹⁵ The 'Have your say' page shows the most recent roadmaps and impact assessment documents, and allows you to sign up for updates. It also links to a full, searchable list of initiatives. The Have Your Say page is at: ec.europa.eu/info/law/better-regulation/have-your-say_en

of acting at an EU level¹⁶. These documents also set out the methodology that will be used for stakeholder consultation during the development of the proposal, including a required 12-week consultation on the roadmaps and impact assessment documents themselves.

In accordance with the Better Regulation Guidelines,¹⁷ summaries of comments received through this consultation, as well as information about how the Commission will act in response, are published. When public consultation takes place on the final text of proposals, an explanatory memorandum is published, providing the reasoning behind the proposal, and what the Commission has heard from stakeholders to date.

Final impact assessment reports are accompanied by a two-page summary to improve their accessibility, and the adequacy of the impact assessment process overall is scrutinised by a Regulatory Scrutiny Board, made up of three Commissioners and three expert appointees.

The Commission previously voiced concern that impact assessments were not being adequately used by the Parliament and the Council, citing that between 2007-2014 the Parliament only published impact assessments for around 20 amendments and the Council none¹⁸. In 2016 an inter-institutional agreement was made on Better Law-Making, in which the following commitment was made:

“The European Parliament and the Council will, when they consider this to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments to the Commission’s proposal.”¹⁹

Despite this commitment, interviewees said the situation has not much improved.

16 Impact assessments are used for initiatives that are expected to have significant impacts and are therefore more substantial than roadmaps, including a summary of the likely impacts of the options being considered. Roadmaps and impact assessments are not just for legislative proposals, for instance impact assessments must also be conducted for financial programmes and recommendations for the negotiation of international agreements (19 May 2015) *Better Regulation Guidelines*. Accessed online August 2017 at: ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm; and European Commission, *Better Regulation “Toolbox”* Accessed online August 2017 at: ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm

17 For more information see: European Commission (19 May 2015) *Better Regulation Guidelines*. Accessed online August 2017 at ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

18 For comparison, in the same time frame, the Commission produced over 700 impact assessments. See: European Commission (19 May 2015) *Better regulation for better results – An EU agenda*. Accessed online August 2017 at: eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0215

19 (13 April 2016) *Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-making*. Point 15. Accessed online August 2017 at: eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.123.01.0001.01.ENG

Alongside these measures to improve the transparency of how ordinary legislation is developed, the Commission has also begun to make draft texts of delegated acts and 'important' implementing acts available online for comment during their development via the Commission's 'Have Your Say' webpage²⁰. A comitology register²¹ records details of the committees consulted for implementing acts including their agendas, rules of procedure, results of any votes held, and summary records of meetings²².

The European Parliament, despite the Commission's concern about their use of impact assessments, is in many ways more transparent in its deliberations on legislative proposals than the Commission. Plenary sessions and committee meetings are routinely streamed live online, videos of sessions are made available afterwards through the EuroparlTV website²³, and verbatim records of plenaries are also published online²⁴. These enable stakeholders and citizens to view debates regarding legislative proposals, though this will only be of interest to the most engaged.

The Parliament website contains information regarding the work being undertaken by Parliamentary committees²⁵, and while there is a search tool available, as with much related to the EU, this is not easy for the non-expert to use. The website also hosts online profiles for each Member of the European Parliament (MEP), where their contributions are listed, including in discussions on legislative proposals. One barrier to transparency, however, is a lack of a complete record of how individual MEPs vote. This information is not always

20 A delegated act is used when the Commission is empowered to fill in details with legislation without having to pass these via the Council and Parliament. An implementing act is used when the Commission is empowered to set out measures for how legislation must be implemented within Member States. The requirements for consultation on draft delegated and implementing acts are set out in: *Better Regulation for better results: an EU agenda*. Accessed online August 2017 at: eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0215

21 This is available at: ec.europa.eu/info/about-european-union/principles-and-values/transparency/comitology-register_en

22 These committees are made up of representatives from all EU countries, with different committees focusing on acts relating to different topics. All implementing acts, with some exceptions such as the allocation of small grants, have to be looked at by a committee. Comitology Register FAQ accessed online August 2017 at: ec.europa.eu/transparency/regcomitology/index.cfm?do=FAQ.FAQ

23 The EuroparlTV website also publish videos summarising key legislation being considered by Parliament to reach a wider audience. The website is: europarltv.europa.eu/home

24 These are available in 23 EU languages at: europarl.europa.eu/plenary/en/debates-video.html

25 Information about committees is available at: europarl.europa.eu/committees/en/work-in-progress.html

recorded in plenary sessions, even when voting on legislative proposals²⁶, although as of 2014, such information has been recorded for all final votes on resolutions and legislation in Committees²⁷.

The final main legislative institution, The Council of the EU is weaker in terms of transparency than either the Parliament or Commission. This is partly due to the fact that there are different facets to how it operates: sometimes acting as legislator, sometimes as strategic leader and sometimes as intergovernmental forum. The Council's more diplomacy-led, intergovernmental way of working creates a difficult environment for transparency.

The Council's publicly accessible policy on transparency outlines what the public can access and where to find it, including meeting agendas, minutes of meetings, and decisions reached²⁸. The results of votes held are made public if voting on a legislative proposal²⁹ and members of the Council can choose to add explanatory notes when votes are held. These notes are made public if a legislative proposal is adopted³⁰.

Not all Council meetings take place in public. Whenever it does meet in public, which includes whenever voting upon a legislative proposal³¹, meetings are streamed on the Council's website and made available there afterwards. While these public meetings include space for deliberation about the legislation in question, there are concerns about the transparency of processes leading up to votes. Transparency regarding the initial positions of Member States going

26 Voting is often done by a show of hands. Electronic verification is used when outcomes are unclear, but individual votes are not recorded in this instance. A roll call vote is used in some instances, and can be requested by MEPs on a limited number of occasions during a Parliamentary term. The Rules of Procedure of the European Parliament are accessible at: europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20170116+TOC+DOC+XML+VO//EN&language=EN Accessed online September 2017.

27 (26 February 2014) *To boost transparency, roll-call votes in committee to show how MEPs vote*. Accessed online August 2017 at: europarl.europa.eu/news/en/press-room/20140221IPR36643/to-boost-transparency-roll-call-votes-in-committee-to-show-how-meps-vote

28 Corporate policy on Transparency and access to documents accessed online August 2017 at: www.consilium.europa.eu/en/templates/content.aspx?id=2206

29 The current year's votes, for instance, can be seen at: http://www.consilium.europa.eu/register/en/content/out/?PUB_DOC=%3E0&RESULTSET=1&DOC_SUBJECT=VOTE&i=VT&ROWSPP=25&DOC_LANCD=EN&ORDERBY=DOC_DATE%20DESC&typ=SET&NRROWS=500&DOC_YEAR=2017 Accessed online August 2017.

30 Accessed online August 2017 at: consilium.europa.eu/en/council-eu/voting-system/.

31 'Council configurations' [web page] Accessed online August 2017 at: consilium.europa.eu/en/council-eu/configurations/. The Council can also choose to meet in public to debate policy matters it deems important. (2004) *Council Decision of 22 March 2004 adopting the Council's Rules of Procedure* pg. 27. Accessed online August 2017 at: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004D0338&from=EN

into legislative negotiations is the responsibility of Member States themselves, and during interviews we heard concerns that this can allow those present to say one thing during negotiations, while telling their constituents that they said quite another, allowing them to misleadingly suggest they were forced into decisions by other Member States.

The European Ombudsman opened an inquiry into the transparency of preparatory bodies in the Council, in March 2017, focusing on the lack of public access to documents used during this work³². At time of writing an outcome was not visible on the Ombudsman's site, but a draft reply from the Council is accessible through the Council's register of documents³³. This draft reply answers some factual questions, but does not make further commitments.

VOTING IN THE COUNCIL OF THE EU

Votes in the Council can appear complex. Unlike in the Parliament, where one seat means one vote, each voter in the Council casts a weighted vote, with more populous states having more voting power than smaller ones. Qualified Majority Voting, the most common procedure, requires that at least 55% of Member States are in support, and that the states in support represent at least 65% of the population of the Union. There is an app to help people understand whether a vote can pass, developed by the Publications Office of the EU, though more could be done to explain the rules that lie behind this for people coming across the app who are yet not familiar with these.

When the Council, Commission and Parliament have different positions on proposed legislation, representatives of these institutions may meet to negotiate about details and redraft the proposal through meetings known as Trilogues. Trilogues are perhaps the least transparent part of the legislative process, with no requirement to publish agendas, minutes, a list of those who attended the meeting, or original negotiation positions held by each institution. This lack of transparency is unfortunate given that the most difficult and controversial issues are often those that are resolved using trilogues, and there is significant scope for those present to change draft legislation. Furthermore, there is an increased use of trilogues, with over 1500 trilogues taking place during the term of the last Parliament and Commission³⁴; a marked increase from the 167 reported for

32 European Ombudsman (10 March 2017) *Letter opening strategic inquiry OI/2/2017/AB on access to documents relating to council preparatory bodies when discussing draft EU legislative acts*. Accessed online August 2017 at: ombudsman.europa.eu/cases/correspondence.faces/en/76929/html.bookmark

33 Council of the EU (14 July 2017) *Draft reply to Ombudsman's own-initiative inquiry OI2/2017/AB*, Accessed online August 2017 at: data.consilium.europa.eu/doc/document/ST-8808-2017-REV.1/fi/pdf

34 European Ombudsman (July 2016) *Ombudsman calls for more trilogues transparency*. Accessed online August 2017 at: ombudsman.europa.eu/en/press/release.faces/en/69214/html.bookmark

a single year in 2010³⁵. This has contributed to around 85% of EU laws being agreed at first reading during the term of the last Parliament and Commission; an increase from 29% two terms earlier³⁶. While enabling laws to be being passed at first reading is time-efficient, it significantly reduces the potential for internal and external scrutiny and challenge.

There has been debate about how private trilogue meetings and the related negotiation process should be. While recognising that they are an improvement on past, more informal and less transparent, negotiations; and that some privacy might be worth it to achieve results, the Ombudsman has highlighted her concerns about the lack of transparency currently involved in trilogues. These concerns include the fact that the use of them is not systematically reported in one place, and she suggested that a calendar of trilogues be set up and the use of trilogues be recorded in legislative records. She has also called for specific documents to be published, including initial negotiating positions, agendas, people present, and for details of how legislative texts have evolved to be published as soon as possible after the end of negotiations³⁷.

A large number of sites are used to provide information about the development of legislation (more details about this are in the box below). It is undoubtedly positive that there are many different attempts to explain the current state of legislative proposals. Nonetheless the proliferation of sites, and duplication of information, can make it hard to get an overall understanding.

EU institutions and citizens alike would benefit if sites providing information regarding the development of legislation were displaying this information in a more straightforward way that was easier to understand for those who do not already understand how the EU institutions work, and driven less by procedure and institution. A complete holistic picture of the legislative process could be developed, building upon the existing information and filling in notable gaps including how MEPs vote on proposals, information regarding any trilogues used, and the arguments and positions advanced by Member States in preparatory discussions leading up to votes in the Council. Making clear how lobbyists have influenced the development of proposals might also be shown within this, and Transparency International have previously called for a 'legislative footprint' to show this.³⁸

35 Šefčovič, Maroš (5 November 2013) '20 years of co-decision'. Accessed online August 2017 at: europa.eu/rapid/press-release_SPEECH-13-875_en.htm

36 European Ombudsman (July 2016) *Ombudsman calls for more trilogues transparency*. Accessed online August 2017 at: ombudsman.europa.eu/en/press/release.faces/en/69214/html.bookmark

37 European Ombudsman (12 July 2016) *Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/8/2015/JAS concerning the transparency of Trilogues* Accessed online August 2017 at: ombudsman.europa.eu/cases/decision.faces/en/69206/html.bookmark

38 Transparency International (2015) *EU Legislative Footprint: What's the real influence of lobbying?* Accessed online September 2017: transparencyinternational.eu.s3-website-eu-west-1.amazonaws.com/wp-content/uploads/2015/03/The-EU-Legislative-Footprint.pdf

FOLLOWING THE DEVELOPMENT OF EU LEGISLATION

There are a number of attempts to share information about legislative activity within the EU, and in part this reflects the number of different institutions and bodies involved in the legislative process:

- Broad legislative plans are laid out in Juncker's 10 priorities for his term as President³⁹. More detailed actions planned are shown within the Commission's yearly work programme⁴⁰. Documents outlining individual legislative initiatives planned by the Commission, and the reasoning behind these, are shown on their website, including through a 'Have Your Say' page (described above). Information is often heavily structured around procedures rather than presented in a more public-friendly way.
- The Legislative Train website⁴¹ run by the European Parliament uses a train metaphor to visually represent the progress made, and next stages, for each of Juncker's priorities, and a handful of other key areas. While the use of visuals has potential to make information about legislation more accessible, more could be done to provide explanation of these.
- 'EU legislation in progress' pages⁴² provide briefings targeted at MEPs communicating key information about a proposal. This resource is tucked away on the Parliament's website, when it could usefully be incorporated into a more public-facing source.
- Agreed legislation is published in the EUR-Lex database in all official EU languages⁴³. This database also provides accessible summaries and 'preparatory acts' used in developing legislation⁴⁴, through which it is possible to explore how a proposal has become final legislation, including how various institutions and bodies have been involved, and how decisions have been reached.
- The Commission has created a 'Track Law-making' page⁴⁵ which links to a number of other sources including the 'Have Your Say' page and the EUR-LEX database. This page feels like the start of bringing together the different sources into something more accessible for citizens and stakeholders, but the exciting potential here hasn't yet been fully realised, and it remains very procedurally led.
- Parliament runs a database of legislative activity, which focuses on the activities of Parliament, including committee reports and recommendations. This 'Legislative Observatory',⁴⁶ also shows the history of how legislation develops, including the original proposal from the Commission, and positions taken by the Council.

As explained in the text, more could be done to ensure this information is accessible, by ensuring complete information is shared in fewer locations, and that language used is more focused on non-expert users.

39 Available online at: ec.europa.eu/commission/priorities_en

40 Available online at: ec.europa.eu/commission/work-programme-2017_en

41 Available online at: europarl.europa.eu/legislative-train/

42 Available online at: epthinktank.eu/eu-legislation-in-progress/

43 Available at: eur-lex.europa.eu/homepage.html

44 Available online through: eur-lex.europa.eu/collection/eu-law/pre-acts.html

45 Available at: ec.europa.eu/info/law/track-law-making_en

46 This is available at: europarl.europa.eu/oeil/search/search.do?searchTab=y

FINANCIAL TRANSPARENCY

The EU provides some high-level information about how it spends its funds, such as explanations of how the yearly budget is agreed, how funds are raised, and which broad areas these are spent in⁴⁷. The draft Commission budget is published in all EU languages prior to passing through Parliament and Council⁴⁸. Nonetheless these documents do not convey key points as straightforwardly as they might.

More detailed information about EU expenditure is made available in a number of ways, for instance through the financial transparency system⁴⁹. This provides searchable information on beneficiaries of funds under direct management by the Commission,⁵⁰ as well as beneficiaries of the European Development Fund. This data is made available to download, allowing scope for people (with the requisite technological skills) to process the data. However, this facility is somewhat tucked away in a 'Help' section, and there is not a prominent statement of whether the data is licensed for reuse.

However, the financial transparency system does not provide detailed information about the lion's share of the EU budget as it does not provide information about funds implemented in shared management with Member States, or those in indirect management by other international organisations or non-EU countries.

Some information about the recipients of funds under shared and indirect management is made available through other sources, including information published by individual Directorates General. The DG for Agriculture, for instance, has introduced national registers of Common Agricultural Policy recipients, and the European Structural Investment Funds Open Data Portal⁵¹ pulls together information about programming from across different DGs for the five funds that make up the Structural and Investment Funds. The Commission departments for humanitarian aid (ECHO), development (DEVCO), and neighbourhood and enlargement negotiations (NEAR) have all been rated "Good" in the most recent 'Aid Transparency Index' published by the NGO Publish What You Fund. This is because they publish their aid data in an open format that allows for reuse⁵².

47 This information is available at: ec.europa.eu/budget/index.cfm

48 The draft budget is available at: ec.europa.eu/budget/biblio/documents/2017/2017_en.cfm

49 This information is available at: ec.europa.eu/budget/fts/index_en.htm

50 Direct management here means that these are controlled through Commission headquarters or through EU delegations to non-EU countries. 'Financial transparency system'. Accessed online August 2017 at: ec.europa.eu/budget/fts/index_en.htm

51 Available at: cohesiondata.ec.europa.eu/

52 Publish What You Fund (2016) *Aid transparency index* Accessed online August 2017 at: ati.publishwhatyoufund.org/wp-content/uploads/2016/02/ATI-2016_Report_Proof_DIGITAL.pdf

This lack of a single location for more granular spending data makes EU finances less transparent than they might otherwise be: those who wish to see a complete picture of EU finances would need to visit multiple sites, and capture data that is often not standardised, or able to be cross-referenced. This makes it very challenging to track how money is spent across the EU, and there are also concerns held by some civil society groups that insufficiently granular data is published at all⁵³.

ACCESS TO DOCUMENTS AND DATA

The Commission, Parliament, and Council each hold an online register of documents⁵⁴ in order to facilitate the public exercising their right to request, and receive access to, documents under Regulation 1049/2001⁵⁵. This covers content in any medium ‘concerning a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility’; though there are exceptions that may be used to restrict access, for instance when revealing documents intended for internal use that would undermine decision-making processes. These registers do not always provide the full text of documents, with the argument made that uploading all documents would cost a lot in person-hours. The European Ombudsman, despite not being compelled to, has mirrored this by creating an online register of documents they hold, operating a searchable database of their cases and a document filing plan setting out where information is held⁵⁶.

The EU also has a strong focus on open data⁵⁷. Starting with Directive 2003/98/EC (otherwise known as the ‘PSI Directive’), the Commission has long been pushing Member States to enable re-use of public sector information, including data relating to budgets, elections, or that considered of ‘high commercial

53 For instance, Access Info Europe have run a campaign calling for the publishing of Commissioner’s travel expenses, which has recently been successful. ‘Access Info Europe EU (14 September 2017) Commissioners’ travel expenses to be published proactively every two months’. Accessed online September 2017 at: access-info.org/article/29470.

54 The Commission’s register is at: ec.europa.eu/transparency/regdoc/; The Council’s at: consilium.europa.eu/register/en/content/int/?typ=ADV; and Parliament’s at: europarl.europa.eu/RegistreWeb/home/welcome.htm?language=EN.

55 *Regulation 1049/2001 of the European Parliament and of the Council of 20 May 2001 regarding public access to European Parliament, Council and Commission documents* Accessed online August 2017 at: europarl.europa.eu/RegData/PDF/r1049_en.pdf.

56 This information is published through: ombudsman.europa.eu/en/resources/publicregister.faces.

57 Open data is data which can be freely used, modified and shared by anyone for any purpose, and is commonly denoted by the use of an open data license. For more information see: opendefinition.org/ Accessed online August 2017

value⁵⁸. The European Data Portal, created with funding from the Commission and released in February 2016, was developed to help make this data easier to find and reuse, capturing metadata from Member State public sector portals⁵⁹.

The European Union institutions and bodies publish open data relating to themselves on the European Union Open Data Portal⁶⁰. It has been in operation since 2012, and is managed by the Publications Office of the European Union. At the time of writing, 10,762 data sets are currently published on this portal. The vast bulk are from the Commission, 53 of these data sets are published by Parliament, and the Council have published three data sets here: votes on legislative acts; metadata of the Council's public register; and requests for public access to documents. It is clear the EU Open Data portal is not being taken seriously as a route to provide transparency by the Council as none of these three data sets have been updated in 2017, and the data set relating to votes taken in the Council has not been updated since 2015. We heard during interviews that the Council is starting negotiations on adopting an open data policy for their secretariat aiming to make information published more reusable, but there is clearly some way to go.

While there are many data sets being published openly by the Commission, and systems exist for obtaining access to documents relating to the work of the main institutions, there are ways in which fuller transparency can be enabled. Requirements to create registers of documents do not exist for all institutions and bodies – even when those institutions may significantly influence the development of legislation – and the registers that do exist for the Council, Parliament, and Commission, are kept separately for each institution. Bringing these together in a single location would make it easier for citizens and other stakeholders to search activity on topics across institutions.

It is concerning that in many instances interviews and desk research revealed open data framed as a tool for financial growth and innovation, rather than as an enabler of governance transparency and accountability, and also concerning that a number of staff we spoke to felt open data to be a technical subject 'for experts only', rather than considering what they could make available. Other barriers to using data to hold the EU institutions to account include publishing data without an obvious licence, as is the case for the financial transparency system, as it makes reuse much more risky, and publishing data in multiple locations, such as that regarding Commissioners' external meetings which is

58 Directive 2003/98/EC was revised by 2013/37/EU, which encourages Member States to make as much information available for re-use as possible. It addresses material held by public sector bodies at national, regional and local levels, as well as organisations funded for the most part by or under the control of public authorities. The Directive itself focusses more on the economic aspects of re-use of information rather than on the access of citizens to information. For more information see: ec.europa.eu/digital-single-market/en/european-legislation-reuse-public-sector-information

59 Available at: europeandataportal.eu/

60 Available at: data.europa.eu/euodp/en/about

described below, or without common standards, both of which makes capturing the full picture much harder.

WORKING IN THE OPEN

Recent reforms that the European Ombudsman has led in relation to the European Network of Ombudsmen provides a positive example of the kind of small changes to ways of working that can make a difference to transparency⁶¹. The Network switched from meeting through a series of informal meetings to having a single annual meeting in Brussels, making speeches, videos, and presentations available online immediately following the event. The intranet of the network has also been changed with an events section now made public, with plans to also make public a news section using RSS feeds from individual ombudsmen which people can subscribe to content regarding policy or geographic areas that are useful to them.

TRANSPARENCY ABOUT OUTSIDE INFLUENCE

The transparency register is a register of organisations and individuals seeking to influence EU decisions⁶². When signing up they declare key information; including the topics they try to influence, the number of people they have working on this (in the case of organisations), and the amount of money they are spending on it, and this registrant data is published on the EU Open Data portal. The register is operated by the Joint Transparency Register Secretariat, consisting of staff from the Commission and Parliament, and at the time of writing there were over 11,000 registrants⁶³. While signing up to the register is voluntary, individuals and organisations have to register in order to access Parliament's building, to meet with senior staff from the Commission⁶⁴, or to join an expert group (described below).

There are some concerns that its voluntary basis creates a loophole meaning lawyers can avoid the need to sign up⁶⁵; and that organisations and individuals do not have to be on the register in order to meet junior civil servants or to meet with decision-makers in the Council of the EU. In September 2016, the Commission launched a proposal to make the transparency register mandatory

61 For information about this see: ombudsman.europa.eu/en/activities/reforming-the-network.faces

62 Available at: ec.europa.eu/transparencyregister/public/homePage.do

63 'Transparency Register'. Accessed online August 2017 at: ec.europa.eu/transparencyregister/public/homePage.do

64 Defined as Commissioners, their Cabinets, and the Directors-General of Commission departments.

65 This is because they can cite a need to protect clients when not compelled to do otherwise. Panchini, James and Ariés, Quentin (27th April 2015) 'Beat the Berlaymont: Five easy ways to skirt the EU lobbying rules' *Politico* Accessed online August 2017 at: politico.eu/article/know-your-eu-lobbying-loopholes/

for EU lobbyists and to include the Council of the EU within its remit⁶⁶, and negotiations for a new inter-institutional agreement regarding a mandatory transparency register were given the go-ahead in June 2017⁶⁷. It is not clear whether a transparency register including the Council would just relate to lobbying in Brussels, or if it would also stretch to include lobbying of ministers within Member States prior to Council meetings.

The groups of external experts that assist the Commission on an ongoing basis with preparing legislative proposals, delegated acts, and implementing acts, and with implementing legislation are recorded in a Register of Expert Groups.⁶⁸ It records the DG running the group, its mission and tasks, the group's members, and relevant documents that are produced and discussed by them. The register also lists similar bodies set up by other institutions but managed by the Commission.

Since 2014 Commissioners, their Cabinets, and the Directors-General of Commission departments have been required to publish details of their meetings with outside organisations or self-employed individuals. Within two weeks of taking place, details of meetings have to be published online, including dates, locations, the names of those met with, and the topics discussed⁶⁹. These details are published on separate pages for individual staff, making it hard to understand the complete picture, however Transparency International has captured this data and made it available through their own site⁷⁰. There have been calls to extend the requirement to publish meeting details to cover MEPs, and some have already started publishing this⁷¹.

Commissioners and key Commission staff have profile pages on the Commission's website, and here publish their CVs, a declaration of interests, calendars of upcoming activities, and details of who they have met (as described above). MEPs also publish declarations of interest on their profile pages, alongside records of their parliamentary activities.

66 European Commission (28th September 2016) *Delivering on transparency: Commission proposes mandatory Transparency Register for all EU institutions*. Accessed August 2017 at: europa.eu/rapid/press-release_IP-16-3182_en.htm

67 (15th June 2017) *More lobby transparency to foster public trust in EU institutions*. Accessed online August 2017 at: europarl.europa.eu/news/en/press-room/20170615IPR77523/more-lobby-transparency-to-foster-public-trust-in-eu-institutions

68 Available online at: ec.europa.eu/transparency/regexpert/

69 European Commission (25th November 2014) *Opening the windows: Commission commits to enhanced transparency*. Accessed online August 2017 at: europa.eu/rapid/press-release_IP-14-2131_en.htm ; ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-9004-EN-F1-1.Pdf

70 'Commission meetings'. Accessed online August 2017 at: integritywatch.eu/ec.html

71 Freund, Daniel (4 February 2016) 'Who is your MEP meeting with?'. Accessed online September 2017 at: transparency.eu/who-is-your-mep-meeting-with/

While there are a number of initiatives increasing the transparency of outside influence, standards vary between the different institutions. There are clear opportunities to build on the existing work and ensure consistent high standards across the main institutions. Other bodies and institutions of the EU, while having less impact upon the legislative process, might also think about the introduction of standards which have been shown to have value elsewhere.

TRANSPARENCY OF NEGOTIATIONS

International negotiations are an important area of the EU's work and one where transparency has much improved. After public concerns the European Ombudsman launched a strategic inquiry into the transparency of negotiations around the Transatlantic Trade and Investment Partnership (TTIP)⁷². This led to many documents about negotiating positions being released. Lately the Ombudsman proactively asked about the transparency of Brexit negotiations⁷³, and information on EU negotiating positions has been made public from the start of negotiations⁷⁴.

These actions may offer a model to help increase the transparency of the European Council, where heads of government from each Member State negotiate and work together to set political directions for the EU. These meetings are not public, although some information is published subsequently, including any conclusions reached, issues of concern, and goals the EU should aim for⁷⁵. While it could be argued that improvements in transparency of the European Council negotiations need to come from Member States themselves making their intentions clearer prior to discussions, it is also true that this may continue the status quo in which some national governments operate with greater transparency regarding the EU than others.

72 For information about this see: (7th January 2015) *Ombudsman: Further steps needed to increase TTIP transparency necessary*. Accessed online August 2017: ombudsman.europa.eu/en/press/release.faces/en/58669/html.bookmark

73 (2nd March 2017) *Ombudsman urges appropriate Brexit transparency*. Accessed online August 2017 at: ombudsman.europa.eu/en/press/release.faces/en/76558/html.bookmark

74 These are available at: ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom_en

75 These are available at: consilium.europa.eu/en/european-council/conclusions/

COMMUNICATIONS

In order for transparency to be meaningful, information released has to actually reach people. The use of social and news media are significant parts of how the EU institutions and bodies seek to disseminate information.

The European Parliament is an example of good practice. They are active on a wide range of social media including Facebook, Twitter, Instagram and Snapchat; monitoring conversations and looking to see where they can add value in a tone that is appropriate for each platform⁷⁶. Content is produced centrally and then distributed to Parliamentary Information Offices in Member States to translate into their languages, and target to local audiences. Information Offices almost invariably work alongside Commission Representations in Member States and both work to keep up relations with national press.

Institutions often try to ensure video content is available for sharing, which has potential reuse for journalistic purposes. The Court of Auditors, for instance, has a section on its site where it makes stock and new video content freely available for reuse⁷⁷, and the Council makes clear how snippets can be sampled from its videos.

Alongside such work, there are also channels where citizens can actively seek out answers to questions: Europe Direct is a free service in all EU languages run by the Commission to answer questions, and Parliament runs a Citizens Enquiry Service with answers published online on a dedicated webpage.

Through interviews, concerns were expressed that communications currently focuses strongly on broadcasting information, and more could be done to build this into a conversation with citizens. At times it seems much communication about the EU is promotional, difficult to understand, or contains jargon, rather than spelling out more clearly what has happened and what this means in reality. This arguably fosters a sense of the EU as an un-transparent organisation even at the same time that many of its initiatives on transparency are actually very good. Luc Van Den Brande has been employed as an advisor on outreach by President Juncker, and has a report on this topic due soon.

76 A list of platforms the Parliament is on is available at: europarl.europa.eu/atyourservice/en/20150201PVL00030/Social-media

77 This is available at: eca.europa.eu/en/Pages/AudiovisualLibrary.aspx

THE EGOVERNMENT ACTION PLAN

Running alongside efforts to improve the transparency of the EU there are also efforts to improve the accessibility of government services online. A key part of this is the eGovernment Action Plan: published in April 2016 this plan sets out actions for the Commission to complete in the period up to 2020⁷⁸.

Much of this is about seeking improvements within Member States, but there are also proposed actions at the EU level. For instance, the Commission has committed to operating procurement through digital channels⁷⁹, and to transform its web presence into a more topic-based approach⁸⁰. There is also an intention to draw up a 'Digital Government for Citizens Charter'⁸¹, co-created with citizens, to set out what standards citizens can expect from online public administration in the EU.

REFLECTIONS

In many ways, the EU is quite transparent, with many initiatives focused on ensuring the release of data and information. President Juncker's focus on improving transparency and on 'Better Regulation' has taken the Commission forward in recent years. Despite this, notable gaps remain, especially in other institutions, and these include a lack of complete MEP voting records, the operation of trilogues, and preparatory work in the Council leading up to votes.

The information released by all institutions could be more accessible for users. It appears the way the information released is structured, and the language used in doing so, is based upon the processes and operations of the EU, rather than the needs of individuals and organisations not familiar with how the EU works. An example of this is the lack of a single canonical reference point for information and data. While institutional boundaries are one contributor, even within a single institution, such as the Commission, information can be spread across and at times duplicated between multiple locations. While there are some attempts to overcome this, it seems more could be done to find better

78 For more information see: European eGovernment Action Plan 2016-2020. Accessed online September 2017 at: ec.europa.eu/digital-single-market/en/european-egovernment-action-plan-2016-2020

79 'Pillar 1–6. Actions for the Commission for its own digital development'. Accessed online September 2017 at: ec.europa.eu/futurium/en/content/pillar-1-6-actions-commission-its-own-digital-transformation

80 'Pillar 3–20. Transform the Commission (Europa) websites'. Accessed online September 2017 at: ec.europa.eu/futurium/en/content/pillar-3-20-transform-commission-europa-websites

81 'Action 24: Digital Government for Citizens Charter'. Accessed online September 2017 at: ec.europa.eu/futurium/en/content/action-24-digital-government-citizens-charter-new-may-2017

ways for non-experts to follow data and information across institutional and departmental boundaries. Ensuring information is accessible and understandable for a non-expert user is vital to ensure the EU's efforts at transparency are meaningful.

A clearer statement of the benefits of open data as an enabler of public scrutiny and accountability, rather than merely a tool to provide financial growth, would likely encourage the Commission and other EU institutions to release more data about themselves and their actions. It would shift considerations about what data is appropriate and proportionate to release, and making data sets available pertaining to transparency and accountability would indicate that the EU is serious about being open to public scrutiny.

A key challenge is now to ensure that the highest standards and practices are embedded consistently across the EU - not just within the three main institutions, but also in the many other institutions and bodies which make up the EU. This will require close working and the sharing of best practice between the institutions and departments, helping to join-up initiatives currently taking place, and to share learning from the many EU bodies currently experimenting with increasing transparency.

5

INTEGRITY AND ACCOUNTABILITY

Integrity and accountability are perhaps challenging issues to work on at the EU level. Decisions made by the EU are often implemented through work on the ground by Member States themselves, or through local bodies within them. Furthermore the phrase ‘made by the EU’ obscures the fact that individuals accountable either to a national government, or to a local constituency within a Member State, are involved in making decisions at this level.

As such, there is quite a complex landscape of activity carried out and of responsibilities held. DG HOME have in the past expressed concern that while many international and EU level agreements on anti-corruption are in place, there are not always properly transposed into Member State’s law, impacting the effectiveness of these⁸². Political reporting, often not focused at a European level, also creates a challenge for citizens to effectively learn about the actions of EU decisions-makers, and subsequently hold these individuals to account.

ELECTORAL ACCOUNTABILITY

The most obvious aspect of accountability in the EU’s operations is the ability of citizens to elect representatives, Members of the European Parliament (MEPs), to the European Parliament. These elections take place once every five years on the basis of proportional representation.

The introduction of the *spitzenkandidaten* system at the last Parliamentary elections⁸³ was an attempt to enable these elections to influence the makeup of the executive. The party groups⁸⁴ entered the last elections with named candidates for President of the Commission, and the intention was that the

82 ‘Corruption’. Accessed online August 2017 at: ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption_en

83 ‘Spitzenkandidaten: the story of what made last year’s European elections different’. Accessed online August 2017: europarl.europa.eu/news/en/headlines/eu-affairs/20150526STO594.09/spitzenkandidaten-the-story-of-what-made-last-year-s-ep-elections-different

84 Parties from Member States come together in groupings at an EU level, such as the European People’s Party and Progressive Alliance of Socialists and Democrats, rather than forming EU-wide parties.

party group receiving the most support across the whole of the EU would have their candidate nominated for the Presidency⁸⁵. While this process did allow for some media attention to be focused on candidates for President, including through broadcast debates, it is not certain that the *spitzenkandidaten* approach will be used in future elections. It has not proved universally popular and the European People's Party's structural electoral advantage (caused in part by the weakness of the Party of European Socialists in central and eastern Europe) makes it very likely that under this system their candidate becomes President of the Commission⁸⁶.

The elected MEPs have other routes through which to influence the make-up of the executive, and Parliament votes upon the nomination of the College of Commissioners at the beginning of a Commission and when new Commissioners are appointed to fill vacancies⁸⁷. Each proposed Commissioner has to take part in a hearing in the parliamentary committee relevant to their portfolio, provide written replies to five questions from the committee's MEPs, and an evaluation report is drawn up prior to the vote⁸⁸. The purpose of this process is to assess the competence of candidates, and the publicity of this process opens up scope for public scrutiny of those entering the Commission, as well as (at least in principle) allowing Member States to be held to account for the quality of their appointments⁸⁹.

There are well-known shortcomings in how well electoral accountability is working. Participation at European Parliament elections has fallen over many years, and 2019 will be an important test, as the first European Parliament election since the end of the financial crisis, and with reform on the horizon (for the Eurozone at very least). To help support the next election, DG JUST is planning to promote democratic participation, and considering the creation of an app to communicate the platforms upon which MEP candidates are standing. New approaches to improve the transparency of decision-making at the

85 After an election the candidate of the largest party is put forwards by the Council as President, and then has to be approved by a vote in Parliament. 'How are the Commission President and Commissioners appointed?'. Accessed online September 2017 at: europarl.europa.eu/news/en/press-room/faq/3/how-are-the-commission-president-and-commissioners-appointed

86 Whyte, Nicolas (11th July 2017) 'Replacing Juncker: A centre-left struggle' *Euractiv* Accessed online September 2017 at: euractiv.com/section/elections/opinion/how-to-succeed-juncker/

87 Rules covering this are laid out in: 'Annex VI: Approval of the Commission and monitoring of commitments made during the hearings' in: *Rules of Procedure of the European Parliament, 8th parliamentary term – January 2017*. Accessed online August 2017 at: europarl.europa.eu/sides/getDoc.do?pubRef=-://EP//TEXT+RULES-EP+20170116+ANN-06+DOC+XML+VO//EN

88 These hearings are streamed online. Further details available at: europarl.europa.eu/hearings

89 These powers have been used to reject candidates, as happened in 2014, when one of President Juncker's proposed vice-presidents was rejected. Keating, Dave (8th October 2014) 'MEPs reject Bratušek and force Juncker rethink' *Politico* Accessed online September 2017 at: politico.eu/article/meps-reject-bratusek-and-force-juncker-rethink/

Parliamentary level, and to involve citizens more could build routes for better connections between Parliament and citizens – helping to build legitimacy and show value in engaging with representative democracy. We discuss this in more detail in the chapter below on participation.

CODES AND REGULATIONS ON BEHAVIOUR.

EU civil servants, Commissioners, and MEPs all have codes of conduct setting out how they should behave, including rules covering acceptance of gifts and declarations of interests⁹⁰. As discussed above Commissioners, their Cabinets, and the Directors-General of Commission departments are required to record details online of all meetings they have had with outside individuals and organisations, while MEPs are only required to record meetings for which expenses have been paid⁹¹.

Any citizens feeling an EU official has breached these rules and standards can file a complaint with the Secretariat-General of the Commission. These will be passed to the relevant Head of Department, and a reply will be sent within 2 months. Alleged breaches of proper conduct for MEPs are heard by an Advisory Committee at the request of the President of the Parliament who judge if there has been a breach and advise the President on possible action to take. The committee is made up of five MEPs appointed by the President in respect of experience and political balance and have to publish an annual report of their work.

PROTECTING AGAINST A REVOLVING DOOR BETWEEN LOBBYISTS AND THE EU

All EU civil servants must seek authorisation from the Commission for any new jobs started within two years of leaving the civil service. If this activity is related to work carried out in their last three years of service and might conflict with the interests of the EU, they may be forbidden from taking the role⁹². Former senior officials are additionally prohibited from lobbying their former institution on matters for which they were responsible during their last three years of services. The Commission, Parliament and Council are required to publish such cases they have considered.⁹³

90 Information on these can be accessed for civil servants and Commissioners at: ec.europa.eu/info/about-european-union/principles-and-values/ethics-and-integrity_en and for MEPs at: europarl.europa.eu/atyourservice/en/20150201PVL00050/Ethics-and-transparency

91 'Ethics and transparency'. Accessed online September 2017 at: europarl.europa.eu/atyourservice/en/20150201PVL00050/Ethics-and-transparency

92 'Code of conduct for EU staff'. Accessed online September 2017 at: ec.europa.eu/info/about-european-union/principles-and-values/ethics-and-integrity/code-conduct-eu-staff_en

93 *Regulation No. 31 (EEC), 11 (EAEC) laying down Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community* Accessed online September 2017 at: eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A01962R0031-20160101

Commissioners also have to request approval of new occupations after leaving the Commission, although only for the first 18 months⁹⁴. Decisions on this are reached by the Ad Hoc Ethical Committee, who subsequently publish the minute of their meetings online. Concerns have been expressed about the adequacy of this process. In 2016 the committee was asked for an advisory opinion on former Commission President Barroso's intention to take up employment with Goldman Sachs⁹⁵. For some, the handling of this matter did not adequately respond to public concerns, or the concerns raised by the Ombudsman.⁹⁶ There are discussions currently underway about extending this 'cooling-off' period, with Transparency International suggesting it should be extended to three years, and President Juncker himself proposing that it should be extended to two⁹⁷.

The only limitation on the lobbying activities of former MEPs is that they have to declare any future lobbying connected with the EU, and throughout the period they engage in those activities they cannot benefit from facilities typically granted to former MEPs. Serving MEPs are not prohibited from having a second job, although since January 2017 there have been restrictions on the nature of any outside employment (for example, they cannot act as lobbyists while serving), however these are rules of procedure rather than formal EU laws, and according to Alberto Alemanno are "narrow and difficult to define"⁹⁸. There is ongoing debate regarding outside employment, with several groups in the Parliament expressing interest in formal legislation banning most remunerated outside employment while others claim MEPs should have a right to do other forms of work⁹⁹.

BODIES THAT HOLD THE EU TO ACCOUNT

There are number of institutions and bodies that operate to ensure integrity within EU governance: The European Ombudsman and The Court of Auditors are independent entities, while the Internal Audit Service and European Anti-Fraud Service are internal service departments of the Commission.

94 'Rules for Commissioners regarding ethics and integrity.' Accessed online September 2017 at: ec.europa.eu/info/about-european-union/principles-and-values/ethics-and-integrity/ethics-and-integrity-eu-commissioners_en

95 *Ad Hoc Ethical Committee: Request for an opinion concerning the appointment of former president Barroso at Goldman Sachs.* Accessed online August 2017 at: ec.europa.eu/info/sites/info/files/opinion-comite-adhoc-2016-10-26_en.pdf

96 (31st October 2016) *Ombudsman reacts to opinion of Ethical Committee on Barroso.* Accessed online September 2017 at: ombudsman.europa.eu/press/release.faces/en/72566/html.bookmark

97 European Commission (23rd November 2016) *President Juncker proposes to tighten the Code of Conduct for Commissioners.* Accessed online September 2017 at: europa.eu/rapid/press-release_IP-16-3929_en.htm

98 Alemanno, Alberto (12th December 2016) 'Should MEPs be Lobbyists at the Same Time?' Accessed online September 2017 at: albertoalemanno.eu/blog-homepage/mepslobbyists/

99 Nielsen, Nikolaj (8th November 2016) 'MEPs propose partial ban on second jobs' *EU Observer* Accessed online September 2017 at: euobserver.com/institutional/135827

The European Ombudsman is elected by Parliament, and heads an independent body of about 80 people that exists to investigate complaints about maladministration in EU institutions and bodies. As well as responding to complaints they are able to carry out 'strategic inquiries' on their own initiative.

The current ombudsman, Emily O'Reilly, is an ex-journalist and currently seems to be using the high profile of the role to draw attention to ways in which the EU can improve, including the transparency of negotiations, Trilogues and the work of preparatory bodies in the Council (mentioned above). Ms. O'Reilly has stated support for the aims of open government¹⁰⁰, and recognised the role that Ombudsman can play in this area of activity given their work in investigating maladministration. Interviewees said that while a substantial portion of complaints received by the Ombudsman are, understandably, from organisations with a deep understanding of the EU, individual citizens do also use this mechanism. Ms. O'Reilly has changed the tone by which the Ombudsman works by creating an award for good administration¹⁰¹, and through interviews we heard the Ombudsman has recently worked with the Open Government Unit of the OECD looking at the awareness that national ombudsman across the globe have of open government, and what work they are already doing on this.

The European Ombudsman is a member of the European Network of Ombudsmen¹⁰², as is the Committee on Petitions of the European Parliament. This network brings together national and regional ombudsmen (and bodies that perform a similar function) within Member States, countries within the European Economic Area, and accession countries, and covers over 95 offices in 36 countries. It enables those involved to share learning and best practice, as well as facilitating cooperation through joint investigations. The way the network works has recently been reformed to make it more transparent and more visible (discussed in the chapter on Transparency above).

The European Anti-Fraud Office (OLAF) is a service department of the Commission that exists to detect, investigate and stop fraud relating to EU funds. Anyone who suspects fraud or corruption can get in touch online or in writing. The public can do this anonymously, and the office pledges to do what it can to respect this anonymity. There are policies to give special protection to whistle-blowers passing on information about issues in a department in which they work.

The European Court of Auditors is an independent external auditor, and their role is to check that the budget of the EU has been implemented correctly, that

100 You can see information about the Ombudsman and Open Government on this page about reforming the European Network of Ombudsman: ombudsman.europa.eu/en/activities/reforming-the-network.faces Accessed online August 2017.

101 'European Ombudsman Award for Good Administration'. Accessed online September 2017 at: ombudsman.europa.eu/en/activities/award-for-good-administration.faces

102 Introductory information about the network is available at: ombudsman.europa.eu/en/atyourservice/en/introduction.faces Accessed online August 2017.

funds have been raised and spent legally and in line with principles of sound management¹⁰³. Their activities include carrying out checks on those handling EU funds, including spot checks on EU institutions and countries, and external countries receiving EU aid, and they report any suspected fraud to OLAF. In addition to this, The Court of Auditors publish around 10 opinions per year on legislative proposals that they feel have an impact on EU financial management, as well as ad hoc publications on EU public finance issues and broad themes that are important for public accountability and EU financial management. Members of the Court of Auditors are appointed by the Council, and the appointment of these positions takes place after the Council consults with the Parliament on nominations submitted by Member States.

The Internal Audit Service¹⁰⁴ is a service department of the Commission whose mission charter forbids other parts of the EU interfering in their work, or asking them to change their audits. They carry out audits on the different DGs of the Commission and make recommendations on how they can improve their management, as well as auditing European agencies and bodies in receipt of funding from the EU budget.

While each of these four bodies have their own roles, more could be done to link up the communication about, and promotion of, the important work they carry out: showing what protections are already in place to foster integrity and accountability in the work of the EU, and making it easier for citizens and stakeholders to access and use these mechanisms. The current Ombudsman is very active and visible in promoting transparency and accountability, and is likely to be a key player in pushing for greater actions on open government from the EU institutions.

WHISTLEBLOWING

The EU supports staff who blow the whistle on wrongdoing, and the Commission sets out guidelines and staff regulations related to whistleblowing¹⁰⁵: staff have an obligation to blow the whistle, there are various routes available to do this, and support is pledged for whistleblowers who want to change role afterwards. However, more could be done to improve protection for such people. In 2015 the European Ombudsman reported on the lack of progress in bringing in guidelines on protections for whistleblowers by all institutions except the Commission and the Court of Auditors¹⁰⁶, and highlighted

103 Introductory information about the Court of Auditors is available at : eca.europa.eu/en/Pages/MissionAndRole.aspx Accessed online August 2017.

104 Information about the Internal Audit Service is available at: ec.europa.eu/info/departments/internal-audit-service_en Accessed online August 2017

105 *Commission issues new guidelines to remind staff of whistleblowing obligations* [press release] Accessed online August 2017 at : europa.eu/rapid/press-release_IP-12-1326_en.htm

106 'Only two EU institutions have adopted the required rules on whistleblowing.' Accessed online October 2017 at: ombudsman.europa.eu/cases/summary.faces/en/59134/html.bookmark

their own internal guidelines as an example of how this should be done¹⁰⁷. In March 2017 the Commission began to consult on a proposal for EU action, including possible legislation, on whistleblower protection, after this was called for by the Parliament¹⁰⁸.

BLACKLISTING CORRUPT COMPANIES OR INDIVIDUALS

Blacklisting is the kind of punishment that can give teeth to rules for tackling corruption. The Commission has such powers, with the ability to prevent companies or individuals from gaining access to EU funds on the basis of previous wrong-doing including convictions for fraud, corruption, or money laundering; or on the basis of a lower standard such as good evidence that corruption has occurred, or where there is grave professional misconduct.

Despite having these powers, a 2014 Transparency International report pointed out that these powers had only been used six times in response to convictions, and just once on the basis of the lower standard, and that in comparison the World Bank blacklisted 150 companies during the first seven months of 2013¹⁰⁹. To improve on this situation they argued for a centralised and well-resourced system within the Commission, making use of blacklisting databases in Member States, coupled with written guidelines for staff involved.

IMPROVING INTEGRITY AND TACKLING CORRUPTION BEYOND THE EU INSTITUTIONS

While the focus of this report is on how openly the EU itself works, the EU is an important actor in encouraging change within both Member States, and non-Member States. As well as improving the actions of public administrations themselves, the EU can also try to improve the behavior of enterprises who, in various ways, fall within the reach of its authority.

Through the Action Plan on Crime Statistics 2011-2015¹¹⁰ the Commission worked with Member States and external experts to establish a set of indicators for official statistics on levels of corruption, and in 2014 DG HOME

107 Information about their internal rules is available at: 'Decision of the European Ombudsman concerning disclosure in the public interest ('whistleblowing'). Accessed online October 2017 at: ombudsman.europa.eu/cases/correspondence.faces/en/59102/html.bookmark

108 Vincenti, Daniela (3rd March 2017) 'Commission calls for input on whistleblower protection' *Euractiv* Accessed online October 2017 at: euractiv.com/section/politics/news/commission-calls-for-input-on-whistleblowers-protection/; The page for this consultation (now closed) is accessible at: ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54254

109 transparency.org/news/feature/blacklisting_the_corrupt_why_the_eu_debarment_system_does_not_work

110 'Statistics'. Accessed online August 2017 at: ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/statistics

published an anti-corruption report looking at what measures are in place within each Member State, what is working well, and what needs improvement¹¹¹.

At the time, a follow-up anti-corruption report was promised, due to be published in 2016. However in 2017 First Vice President Timmermans wrote to the chair of the European Parliament's Civil Liberties Commission saying that this report would not be produced. The reasoning given was that while the previous report "was useful in providing an analytical overview and creating a basis for further work, this does not necessarily mean that a continued succession of similar reports in the future would be the best way to proceed"¹¹². This has caused frustration among those transparency-focused civil society organisations who feel that developments across the EU since 2014, including the Romanian government threatening to weaken anti-corruption law, shows there is still need for continued pressure on Member States¹¹³.

SOLVIT

Accountability is not just about abstract rights, but having accessible routes by which citizens are likely to enact these. Through the SOLVIT mechanism citizens can challenge mistreatment by Member States for free and without having to take court action. EU citizens or businesses can raise a complaint with a local EU office if their rights are breached by public authorities in a country other than the one in which they reside, rather than taking a case to court. If it falls within their remit, they will contact the SOLVIT centre in the country that the issue relates to, and try to find a solution with the authorities responsible. Their target deadline for resolving cases is 10 weeks from when they accept your case. In 2016 SOLVIT dealt with 2414 cases, resolving 89%.

There are some key pieces of legislation through which the EU uses its legislative powers to promote accountability and transparency within European society, including for companies operating or based within the EU.

Directive 2013/34/EU, known as the 'Accounting Directive', is one example, setting out standards for financial statements for limited liability companies within the EU, aiming to harmonise this across the Union¹¹⁴. This directive was amended by the Non-Financial Reporting Directive, Directive 2014/95/EU, creating the requirement that from 2018, public-interest companies with more

111 'Anti-corruption report'. Accessed August 2017 at: ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en

112 Timmermans, Frans (25th January 2017) Letter to Chairman of the Committee on Civil Liberties, Justice and Home Affairs. Accessed online September 2017 at: transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf

113 Nielsen, Nikolaj (2nd February) 'EU commission drops anti-corruption report' *EUObserver* Accessed online September 2017 at: euobserver.com/institutional/136775

114 'Financial reporting'. Accessed online September 2017 at: ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/financial-reporting_en

than 500 employees must include in their annual reports statements on policies they have implemented relating to issues including diversity on company boards, anti-corruption and bribery¹¹⁵. While this Directive had a transposition deadline of 6 December 2017, at the time of writing, only 21 Member States had yet transposed this legislation¹¹⁶. It remains to be seen what impact this directive has, and what information companies will reveal in their annual reports.

The Transparency Directive, Directive 2013/50/EU, is another example of the EU promoting transparency within and improving integrity of companies. This requires the issuers of securities traded on regulated markets within the EU to regularly publish information (including inside information) which could affect the price of securities, and information about major changes to voting rights¹¹⁷.

Rules contained within the accounting and transparency directives require that listed and large non-listed companies active in extractive industries or logging sectors report details of any payments over 100,000 euros made to governments in the form of taxes, bonuses, license fees, or payments for infrastructure improvements¹¹⁸. This is reported on a country-by-country, and project-by-project, basis; and there are rules to protect against splitting payments up to avoid the threshold¹¹⁹. These rules act to ensure European extractive and logging companies show the payments they give to governments around the world, ensuring such deals are open to scrutiny.

Another significant initiative to improve transparency and tackle corruption is the 2015 Anti-Money Laundering Directive¹²⁰, which includes requirements to record on a central register details of who has beneficial ownership stakes in companies incorporated within the EU. Committees within Parliament have since called for everyone to be given a right to access these registers, rather than the current arrangements where this right is restricted to those with a 'legitimate interest'¹²¹.

115 'Non-financial reporting'. Accessed online September 2017 at: ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

116 'Non-financial reporting directive – transposition status'. Accessed online September 2017 at: ec.europa.eu/info/publications/non-financial-reporting-directive-transposition-status_en

117 'Transparency requirements for listed companies'. Accessed online September 2017 at: https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/transparency-requirements-listed-companies_en

118 'Public country-by-country reporting'. Accessed online September 2017 at: ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/public-country-country-reporting_en#requirements-for-extractive-and-logging-industries

119 *Oil, gas, mineral and logging firms obliged to disclose payments to governments*. Accessed online September 2017 at: europarl.europa.eu/news/en/press-room/20130607IPR11387/oil-gas-mineral-and-logging-firms-obliged-to-disclose-payments-to-governments

120 European Commission (20th May 2015) *European Parliament backs stronger rules to combat money laundering and terrorism financing*. Accessed online September 2017 at: europa.eu/rapid/press-release_IP-15-5001_en.htm

121 *Citizens should get access to data on firm owners to fight money laundering*. Accessed online September 2017 at: europarl.europa.eu/news/en/press-room/20170227IPRG64164/citizens-should-get-access-to-data-on-firm-owners-to-fight-money-laundering

REFLECTIONS

There are some significant ways in which the EU builds integrity and accountability into its ways of working. Important measures are already in place, including codes of conduct for civil servants and elected representatives and measures to protect against a revolving door between lobbyists and institutions, and there are routes through which anyone can raise concerns if they feel those standards have not been met, and bodies responsible for monitoring activities carried out by the EU and those receiving EU funds.

The EU is also to be applauded for ensuring it is not just governments facing requirements for accountability and integrity, but also companies in certain circumstances. A common critique of open government initiatives is that they too often change the relationship between state and citizen in ways that benefit companies more than citizens. Treating companies who are using public money or exercising public functions in a similar way to government institutions is logical, and better suited to a world of outsourcing and service platforms. A number of these directives are only just coming into force now, and as such we must wait to see what their outcomes will be.

Work on integrity and anti-corruption is continuing, with ongoing negotiations on greater whistleblower protections, and positive statements made around extending cooling-off periods for Commissioners. Nonetheless, there is clearly scope for much further work if the EU institutions are to claim they are truly accountable. Often this relates to ensuring more stringent enforcement of existing powers: such as greater use of blacklisting powers, and ensuring that protections against a revolving door between Commissioners and lobbyists are functioning effectively. There is also scope for the EU bodies working on integrity and accountability to communicate more clearly, in a joined-up way, the different activities taking place, and different ways in which the EU institutions may be held to account.

There is also a need to ensure that electoral accountability is being effectively realised. Partly this relates to ensuring sufficiently informed engagement with European elections can take place, but it is also important that authorities within Member States are held to account for how well they perform roles as part of EU decision-making. Actions within the Council of the EU and European Council, how effective Member State appointments to EU institutions are, and how well Member States transpose and implement EU legislation are all areas in which Member State governments should be held to account. This requires a media that reports on the activities of the EU, at a Member State level, but there may be ways the EU institutions could help enable this by ensuring greater transparency about the work of Member States within the EU's operation.

6

PARTICIPATION AND CIVIL SOCIETY

When those interested in open government talk about civic participation they are not just talking about voting in elections. This is taken as a starting point. In contexts in which regular and legal elections take place, civic participation focuses on the ways beyond this in which citizens can take part in decisions that affect them within this representative democracy, and the steps taken to ensure the health of civil society organisations whose activities will play a vital role in creating a citizenry that are aware of what their elected governments are doing, and able to play an effective role in influencing this. This ‘going beyond elections’ is the focus of this chapter.

Many local and national governments across Europe are trying to build opportunities for greater citizen involvement in public decision-making. There is a broad recognition that the voices that are often heard are from existing opportunities to engage are those of well-resourced private sector companies, or well-organised campaign groups. There is also an understanding that the involvement of citizens can help build trust, legitimacy for decisions reached, as well as enabling policy makers to hear from, and be informed by, a wider range of expertise.

Some of this work regarding citizen participation in decision-making is supported by European funding, for instance through programmes such as Europe for Citizens¹²², however a similar scale of activity is not currently matched at an EU-wide level. Initiatives are being undertaken, but work carried out on participation clearly lags behind the work being carried out by EU institutions on transparency and accountability.

Public participation implies a two-way interchange of information. Communicating alone, either an institution or citizen, is not participation, nor is surveying or opinion polling. ‘Eurobarometer’, the public opinion polling service run by DG COMM, provides the EU with information on the views of the public about key issues, and its sampling reaches far beyond those who would respond to a consultation. However, this approach does nothing to empower citizens and stakeholders to be a part of decision-making, so is not true participation.

122 eacea.ec.europa.eu/europe-for-citizens_en

Likewise, although the use of data captured through the use of sensors within smart cities can help inform policy and legislative developments, it also is not true participation as it does not directly empower citizens. This is especially true when the decisions to use sensors, their locations and purpose are agreed without the involvement of the citizens they will capture data about.

Fundamentally, European legislators need participation on strategic and policy questions – just as national legislators do. While citizen participation at the European scale presents a number of specific challenges resulting from the scale and multilingual nature of the Union, these should not be exaggerated. A number of Member States themselves are multilingual or have large populations, and yet are seeking means to engage citizens. A policy conversation between 50 million French voters or 80 million Germans would present the same kinds of problems of accessibility, scale and representativeness as would a policy conversation across the whole Union.

Simply creating opportunities for citizen input is not the whole picture. The opportunities to engage need to be effective, and while the EU institutions can provide opportunities, they need civil society in Brussels and farther afield to work alongside them to drive motivation and capacity of citizens and smaller stakeholders to engage. In this, the EU institutions may need to build broader networks of civil society organisations. While the EU already makes considerable use of civil society to try to reach out to citizens, and is a core funder of some organisations, many of these organisations focus on a single issue and ‘face upwards’, towards the policy making machinery in Brussels, rather than involving a wide range of citizens and other voices.

CONSULTATION ON SPECIFIC PROPOSALS

Consultation is far from the be all and end all of participation and while ideally shouldn't be considered in isolation from the wider ways in which legislators hear from those outside government, it is an important area of work.

Primarily public consultation happens within the Commission as proposals are developed. As part of the Better Regulation Agenda steps have been taken to improve Commission consultations¹²³, and as discussed above there are now requirements for consultations to be run on significant new initiatives, including delegated and implementing acts, the final text of legislative proposals, and upon evaluation of existing legislation¹²⁴. Open consultations are found on

123 See: ‘Better regulation: why and how’. Accessed online August 2017 at: ec.europa.eu/info/law/law-making-process/better-regulation-why-and-how_en; and *Better regulation for better results – an EU agenda* Accessed online August 2017 at: eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0215

124 *The Better Regulation Guidelines and Better Regulation Toolbox* contain information about rules for when these are required. Accessed at: ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en *Better Regulation for Better Results: An EU agenda* also sets out changes made to these as part of the Better Regulation Agenda: eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0215

a purpose-built consultation page¹²⁵, and in some instances they may also be found in other places, including the 'Have your say' page¹²⁶. When these consultations are published, they are rarely published with a non-expert friendly title and summary paragraph, and it is not always clear what they are about or who they are aimed at. This is a significant barrier to hearing from wider audiences, or showing that the institution is listening.

Other EU institutions also use consultation: The European Ombudsman use consultations to inform their strategic inquiries and Parliamentary Committees call for evidence to inform their investigations and scrutiny of legislative proposals. This latter process is not well communicated and is not, for example, listed on the Parliament's webpage as a way in which citizens can get involved¹²⁷. While the Council does not conduct consultations, with its intergovernmental way of working meaning these activities would be expected through Member States, more could perhaps be done to share results of country level consultations on issues the Council is discussing.

Opportunities to comment on EU proposals are present, and increasing. However it is important to ensure that the quality of consultations is measured, not just merely the number carried out. Opportunities to engage have to be meaningful for citizens and stakeholders, and they have to feel like they have been heard – even where their views are not taken on board. Furthermore, too many consultations on the same, or similar topics, will likely lead to consultation fatigue – where those with fewer resources will feel swamped by opportunities and not feel able to decide where to best spend their energy.

Now that the early work required to ensure consultation can take place has happened, the next stage is to ensure these opportunities are promoted sufficiently and are accessible enough for a wide range of citizens and stakeholders. The language needs to become less procedural and process driven; and instead become easier to understand for those not deeply embedded in the processes of the EU.

EARLIER INPUT INTO PRIORITIES AND PLANS

Ensuring citizens and other stakeholders have opportunity to feed into early strategic questions, development of priorities, and agreement of broad approaches provides significant benefit to legislators. It is also more accessible and engaging for citizens and stakeholders than commenting on specific proposals in procedure-driven ways through consultations.

125 Available at : ec.europa.eu/info/consultations_en

126 Available at: ec.europa.eu/info/law/better-regulation/have-your-say_en

127 Parliament's 'Be heard' page is at: europarl.europa.eu/atyourservice/en/20150201PVL00036/Be-heard

Individual departments do seek views on longer-term approaches and priorities, and there are attempts at finding more innovative ways of working. DG AGRI, for instance, used participatory methods to co-write the Cork 2.0 Declaration which identifies ten key points to inform agricultural policy, while at a conference with 300 policy-makers and stakeholders¹²⁸. While Commissioner Hogan made a closing statement at the end of the conference stating that he accepted the Declaration “and will give it most serious consideration”, it is not clear that there has yet been any outcomes or follow up from this. This may impact upon willingness for both civil servants and stakeholders to engage in such a fashion in future.

There are some innovative examples of how people outside EU institutions are being brought into the development of EU work in a more collaborative way. One of these is the Futurium online platform and Policy Making 3.0 approach developed by DG CONNECT¹²⁹, and used on their Digital Futures Project¹³⁰. This approach enables people to work together through collaboratively edited online pages, identifying long-term trends and map out possible, and desirable, visions for the future. They can then vote on the likelihood and desirability of different scenarios and explore policy responses connected with these. Finally large-scale role-playing games are used to simulate possible responses by those that may be affected by policies. They hope to incorporate further features into this approach, for instance carrying out sentiment analysis and tools to help identify associations and analyse the meaning of information shared.

The EU Policy Lab¹³¹ is exploring new ways of involving stakeholders in solving complex policy issues. They primarily work with the Commission, and help DGs create new ways to work with people affected by a policy topic, and recently helped DG CONNECT to create a citizen charter for digital public services by running workshops in six different European countries¹³². The EU Policy Lab has established links with policy labs at different geographical levels within Member States¹³³, and often uses these contacts in its work, including using their more local networks to try and reach out to wider communities.

128 (2016) *Cork 2.0 declaration 'A better life in rural areas'* Accessed online September 2017 at: enrd.ec.europa.eu/sites/enrd/files/cork-declaration_en.pdf

129 You can read about Futurium and the Policy-making 3.0 approach at: Accordino, Franco (May 2013) 'The Futurium – a Foresight Platform for Evidence-Based Participatory Policymaking' *Philosophy and Technology* 26:3 pg321-322 Accessed online September 2017 at: link.springer.com/article/10.1007/s13347-013-0108-9

130 The Digital Futures site, using Futurium is available at: ec.europa.eu/futurium/en

131 Their webpage is available at: blogs.ec.europa.eu/eupolicylab/

132 'A citizen charter for digital public services'. Accessed online September 2017 at: <http://blogs.ec.europa.eu/eupolicylab/a-citizen-charter-for-digital-public-services/>

133 'Lab Connections'. Accessed online September 2017 at: blogs.ec.europa.eu/eupolicylab/lab-connections/

ENABLING CITIZENS TO RAISE ISSUES

The EU has taken steps to ensure that citizens can proactively raise issues not currently on the EU agenda.

One of the most high-profile of these mechanisms is the European Citizens Initiative (ECI) which allows citizens to call the Commission to introduce legislative proposals¹³⁴. In practice this has had limited impact to date: initiatives have to be proposed by citizens from at least seven Member States, and must attract a million registrations of support to receive a response from the Commission. To date, only three ECIs have reached these thresholds, and with quite ambitious asks none have led to action from the Commission¹³⁵.

Initiatives that receive the threshold level of support have the opportunity for a public hearing with the Parliament, and organisers of the initiative will meet with Commission representatives to provide more detail about the issues they have raised. The Commission will formally respond to the initiative, identifying any action it proposes in response, and the reasons for doing, or not doing this. There is practical support available for ECI initiations, including in-person or online training provided by the Commission, and the European Economic and Social Committee translating ECIs into EU languages, and running their own helpline alongside that of the Commission.

The Commission have previously highlighted a number of concerns with ECIs, including the high number received that fall outside EU competencies and thus are not eligible and that the requirements for proposers from seven Member States and a million supporters are perhaps excessively high¹³⁶. With many ECIs falling outside EU competency, this perhaps reflects that many citizens, unsurprisingly, do not have a deep understanding of the powers held by the EU. Additionally, as with many EU initiatives, it is likely that many citizens are not aware of this opportunity, and in 2017 for the first time, the Commission has a dedicated budget for the ECI with a portion of this intended for communications to try and improve awareness.

After recently launching a consultation exploring how the ECI could be improved, proposals for change were announced recently as part of Juncker's 2017 State of the Union address, responding to a number of issues identified and proposing to extend the right to support ECIs to 16 and 17 year olds¹³⁷. These proposals will now have to pass through Parliament and the Council.

134 The European Citizens Initiative website can be accessed at: ec.europa.eu/citizens-initiative/public/welcome

135 'Successful initiatives'. Accessed online August 2017 at: ec.europa.eu/citizens-initiative/public/initiatives/successful

136 European Commission (31st March 2015) *Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative* pg 14-15 Accessed online September 2017 at: ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-145-EN-F1-1.PDF

137 European Commission, (13 September 2017) *Proposal for a Regulation of the European Parliament and of the Council on the European Citizens Initiative* Accessed online September 2017 via: ec.europa.eu/info/law/better-regulation/initiatives/com-2017-482_en

THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE EUROPEAN CITIZENS INITIATIVE

The EESC help support the ECI in a number of ways – beyond helping to translate all ECIs into all EU languages, except Gaelic, and running a helpline.

They help link new ECI initiators with people who've launched ECIs in the past, enabling the sharing of networks who may be useful for gathering support. The EESC also links new ECI initiators up with civil society groups with expertise on the ECI who provide further advice. Where an ECI is of interest to an EESC topic group, EESC will invite the initiator to a discussion with this group. This can help give initiators practice and confidence, prior to the public hearings allowed when an ECI reaches the required support thresholds.

The EESC also are keen to think about how to improve the ECI process. They have a group that considers how to improve the ECI process, and every time this group meets they invite someone who has launched an initiative to talk either how the ECI could be improved, or the topic of their initiative. The EESC also run an ECI Day where civil society discuss how the ECI can be improved¹³⁸.

Another route by which EU citizens and residents can proactively raise concerns or make a request is to submit a petition on any issue that comes within the EU's field of activity¹³⁹. Where petitions are admissible, the Parliament's Petition Committee may ask the Commission to investigate and respond, may transfer the matter to another committee, or may produce a report on the issue¹⁴⁰. With 1,431 petitions being received in 2015, as with many other aspects of the EU, it appears the process of petitions is not made as clear and high-profile as it might otherwise be.

138 'ECI day 2017: I participate!'. Accessed online August 2017 at: eesc.europa.eu/?i=portal.en.events-and-activities-eci-day-2017

139 For more information on the right of petition see the petitions web portal at: petiport.secure.europarl.europa.eu/petitions/en/home

140 Information about actions that can be taken is recorded on section ii of a FAQ page accessed online August 2017 at: petiport.secure.europarl.europa.eu/petitions/en/faq#Toc457490142

PETITIONS

Petitions are submitted to the European Parliament, via the Parliament's petitions portal or by post, and the Petitions Committee decides whether those received are on a relevant topic and admissible¹⁴¹. Where petitions are admissible, a number of actions may be taken, including the Committee asking the Commission to investigate and respond, transferring the issue raised to a more relevant committee, or producing their own report on the issue¹⁴². Petitions do not need to attract any minimum level of support in order to be looked into, and all petitions, including those that are closed¹⁴³, or inadmissible, are listed on a searchable online petitions portal¹⁴⁴.

Some attempts are made to communicate the outcomes of petition with minutes of committee meetings at which a particular petition was discussed being recorded on the pages of individual petitions. However, outcomes are not always clear and while petitioners are informed about the outcome, this information may not always be recorded online.

Alongside petitions there are other ways of raising issues through Parliament. Citizens or stakeholders can ask MEPs to raise a question in Parliament, and additionally MEPs have some scope to start the process of Parliament asking the Commission for legislative action¹⁴⁵. Nonetheless there are some concerns about how effective such channels are actually being used, with concerns being expressed about a proliferation of potentially less significant and burdensome parliamentary questions¹⁴⁶.

The 'Lighten the Load' platform¹⁴⁷ enables anyone to publicly share their concerns about existing EU legislation, at any time, and request that that this is revised or repealed. Suggestions are considered during regular meetings of the

141 Information about admissibility is recorded in points 3 and 4 of a FAQ page accessed online August 2017 at: petiport.secure.europarl.europa.eu/petitions/en/faq#_Toc457490142

142 Information about actions that can be taken is recorded on section ii of a FAQ page accessed online August 2017 at: petiport.secure.europarl.europa.eu/petitions/en/faq#_Toc457490142

143 There are a number of reasons a petition may be closed. See point 12 of FAQ section accessed online August 2017 at: petiport.secure.europarl.europa.eu/petitions/en/home

144 Accessible at: petiport.secure.europarl.europa.eu/petitions/en/home

145 'Legislative powers' [webpage] Accessed online August 2017 at: <http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00004/Powers-and-procedures>

146 De La Baume, Maïa (9th August 2015) 'Do MEPs ask too many questions? Do they?' *Politico* Accessed online August 2017 at: politico.eu/article/meps-ask-too-many-questions-parliament-brussels-eu/

147 Available online at: ec.europa.eu/info/law/better-regulation/lighten-load_en

REFIT Platform¹⁴⁸, a group made up of Member State representatives and other experts who meet regularly to discuss how EU legislation can be improved. They may incorporate suggestions received via the Lighten Your Load platform, into the recommendations they make to the Commission. Where they do not carry forwards suggestions, they will communicate why not to the person making the original comment. It does not, however, seem straightforward to find out information about outcomes online and it's not clear if recommendations made by the REFIT Platform were published anywhere other than in PDF file notes of meeting notes.

Associated with the Better Regulation Agenda, this work is framed around reducing the burden of regulation, which has been controversial, with some viewing deregulation as intrinsically bad. Despite this, the 'Lighten the Load' and REFIT platforms are an innovative and experimental approach that moves towards encouraging greater dialogue between the EU and those working and residing within its boundaries. While in this instance it is limited to comments on existing laws and initiatives, and some would argue with a greater focus on businesses than citizens, similar approaches could be explored in enabling more dialogue based approaches for citizens.

This is important as while mechanisms are in place to allow citizens and other stakeholders to proactively raise issues, the mechanisms are at present very limited: often restricted to one way communication, or with need for citizens to pass difficult barriers. These barriers should be reduced as mechanisms through which citizens can proactively raise concerns or request action should be designed so as not to be too onerous or bureaucratic for those looking to engage. Furthermore it should also be noted that the numbers of those engaging with the existing mechanisms is very limited compared to the scale of the EU. To enable these mechanisms to be truly effective, much more should be done to raise awareness of these opportunities and of how to engage in them in the most effective and productive ways.

CONVERSATIONS WITH CITIZENS

The EU has also explored more conversational ways of communicating with citizens, and Citizen Dialogues are one example of this. These are public meetings carried out at which the public are free to ask questions of Commissioners on broad topics, or on the Commissioner's area of expertise. MEPs, and national, regional, or local politicians also often take part, and these have been carried out across Member States since 2012, with 51 carried out

148 For more information see: 'REFIT Platform' [webpage] accessed online August 2017 at: https://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-platform_en

between 2012 and 2014¹⁴⁹. While this is a welcome attempt to engage at a more grassroots level, with senior figures opening themselves to public questions outside of the Brussels bubble, those who chose to attend these events are likely to be a small already engaged subset of a community, and a relatively few small scale events could only ever directly reach only limited numbers. Citizens Dialogues have also been run online using Facebook Live and Twitter, with Commissioners responding to questions submitted during the session¹⁵⁰, and this use of technology enables significantly greater reach – although also risks excluding other audiences.

Others within EU Institutions have also tried using Facebook Live: for example Timmermans has used this format on a number of occasions beyond Citizens Dialogues events¹⁵¹, and Sylvie Guillaume and Jean Arthui used it in 2016 to discuss the refugee crisis¹⁵².

These activities do not stretch as far as actively involving people in decision-making. Nonetheless they do mark a shift towards a dialogue from a broadcast mode of communication, as well as opening up new ways that people can start to raise issues outside of more formalised and potentially less appealing and accessible channels. As with many participation exercises, the use of mixed methods such as offline and online meetings will help reach different audiences.

HELPING CITIZENS REALISE THEIR RIGHTS

Interviewees stated that citizens are often enthusiastic about what democratic rights they have as EU citizens when they know about them, but often lack awareness of these rights. This is therefore a very important area of action.

DG JUST are carrying out work to increase the awareness of the rights of EU citizens, including the right to vote and the right to complain to the European Ombudsman, as well as helping those residing in Member States outside their country of origin to help access democratic rights. To help achieve these aims they published a '10 EU rights at a glance' booklet in 2014¹⁵³, and provide

149 51 dialogues were carried out between 2012 and 2014. 'Debate on the Future of Europe'. Accessed online August 2017 at: ec.europa.eu/archives/debate-future-europe/index_en.htm. The site for this ongoing scheme can be accessed at: ec.europa.eu/citizens-dialogues/.

150 European Commission (16th March 2017) *Daily news 16/03/2017*. Accessed online August 2017 at: europa.eu/rapid/press-release_MEX-17-647_en.htm

151 European Commission (23rd May) 'Facebook Live: Speaking with our citizens about ideas for the future of Europe' *Medium*. Accessed online August 2017 at: medium.com/future-of-europe/facebook-live-listening-to-our-citizens-ideas-for-the-future-of-europe-e7d8d5d8cfd

152 'Facebook Live chat with MEPs on the refugee crisis'. Accessed online August 2017 at: europartv.europa.eu/programme/security/facebook-live-chat-with-meps-on-the-refugee-crisis

153 This booklet is available online here: <http://bookshop.europa.eu/en/did-you-know--pbNAO414127/>

training to people helping new arrivals get set up in a new Member State so as to minimise the risk of inaccurate information being spread. They also regularly create an EU Citizen's' Report which provides an assessment of how well EU citizens are realising their rights. They are also in the early stages of organising a series of events, and a network, to look at improving democratic participation ahead of the next Parliamentary elections.

Commission Representations and Parliamentary Information Offices are also active within Member States in trying to promote understanding of how citizens can engage at an EU level through educative activities for young people, events focused at civil society, and proactive communication with the media and topic-specific stakeholders.

TRAINING AND SUPPORT

Achieving improved participation in EU decision-making is not just about opening up new channels, but also changing the outlook and skills of people within EU institutions and bodies to ensure that effective forms of engagement are realised.

One way in which this is happening at present is the Participatory Leadership programme¹⁵⁴. This programme has been running since 2008, is offered in departments across the Commission and other EU bodies, and helps teach staff techniques for working productively in a collaborative way. These techniques can be used both internally and working externally with citizens and stakeholders. There are longer-term outshoots of this training, including an ongoing mailing list on this theme, and some community of practice events where people can talk about their experiences and share insight. Some interviewees felt there were some limits to what this was able to achieve, as people did not always feel empowered enough to make changes following this training. There was a view that a change of values was needed as well as just methods, and that commitment from leadership will be vital to making these changes happen.

154 For more information see: artofhosting.org/for-public-sector/ (Accessed August 2017) and 'Story of AoPL in the European Commission' Accessed online August 2017 at: artofhosting.org/wp-content/uploads/2013/02/Story-of-AoPL-in-the-European-Commission.pdf

ENGAGING YOUNG PEOPLE

Encouraging young people to engage with institutions can help develop a long-term habit of engagement. By encouraging engagement with EU institutions, valuable opportunities are created for young people to become more aware of the work of the EU and of EU-level debates. The Commission Representations and Parliament Information Offices in Member States work to inform young people about the EU, running events and making information available for use in schools.

There are opportunities for young people to engage with EU-level issues run through the European Parliament: The European Youth Event¹⁵⁵ is run every two years, and will next be run 2018. At the 2016 event over 7,000 young people from different Member States gathered in Strasbourg to meet and debate¹⁵⁶. Fifty of their most innovative ideas were presented to MEPs, and young people were given an opportunity to debate those ideas in several parliamentary committees over the following months, although there has been no mechanism to feed any ideas formally into the EU process. While the event is free, attendees have to cover their own costs.

The Euroscola project¹⁵⁷ is an opportunity for students aged 16-18 to debate EU policy issues in Strasbourg, and there are approximately 20 sessions a year. Students require knowledge of a second EU language to take part and subsidies are available to cover some costs. However, there are no mechanisms to take any outputs and feed this into wider EU debates, decreasing its value as a direct means of engagement.

As with any youth engagement programme, care needs to be given to ensure that these opportunities are widely available, and don't just reach the most engaged.

BUILDING NETWORKS OF NETWORKS, AND THE ROLE OF CIVIL SOCIETY

There are a number of means by which EU institutions and bodies engage specifically with civil society beyond the expert groups and Commission and Parliamentary consultations (mentioned above). The European Economic and Social Committee is a key part of this landscape, existing to feed opinions from its 350 civil society members into EU decision-making, with a stated aim of

155 You can see more on European Youth Event homepage at: europarl.europa.eu/european-youth-event/en/home/home.html (Accessed online August 2017)

156 'European Youth Event: Previous editions' [webpage] Accessed online August 2017 at: europarl.europa.eu/european-youth-event/en/home/previous-editions.html

157 You can see more on the Euroscola homepage at : europarl.europa.eu/euroscola/en/home.html (Accessed online August 2017)

improving participation at the EU level¹⁵⁸. In response to concerns that civic space is shrinking within EU countries¹⁵⁹, the Fundamental Rights agency has set up the Fundamental Rights Platform¹⁶⁰, which aims to capacity build to help develop civic space, as well as providing opportunities for civil society groups to take part in consultations.

However, these opportunities are somewhat restricted and don't proactively encourage engagement from the breadth and depth of CSOs across the EU. CSOs are not cut from a single mould: they range from single person organisations, focused on a single issue, through to multi-national, multiple people organisations like Greenpeace. The term covers trade unions, religious organisations, sports clubs, and activist groups, and as such resource, motivation and capability to engage with the EU varies significantly. With this in mind, opportunities for engagement need to be designed that take into account this wide range of structures, purposes, and resources.

Given the scale at which the EU operates, working with civil society organisations on the ground in Member States has potential to be a very significant opportunity for the EU to amplify its reach and the opportunities through which citizens and others can participate in decision-making. There were some interviewees who felt CSOs could help translate the mass of complex information from EU institutions to be more meaningful and relevant to citizens, but this has to be balanced with the fact that many CSOs are unlikely to have resources for significant work in this way.

There are a number of ways the EU institutions, bodies, and departments could better join up to more effectively promote each others work to a wider range of CSOs and citizens, and to find ways to use each others networks. While finding ways to join up the piecemeal and project-based work on open government may incur a slight overhead cost to the EU institutions, and finding ways to go beyond institutional and departmental boundaries, in the medium term, this would be less burdensome to both those within the institutions and civil society. It would also enable better sharing of information and learning across these boundaries, and help realise synergies between different initiatives such as with the Transparency Register and requirements for any organisations or individuals involved in expert groups to be signed up to the Transparency Register.

There are some instances in which this cross-institutional approach to reach networks is already happening: for instance an interviewee mentioned a DG using the Committee of the Regions as a way of reaching citizens and

158 Members who are chosen by Member States as representatives of key civil society organisations within each member state, consist of workers' groups, employers' groups and other interest groups. 'Members & Groups'. Accessed online September 2017 at: eesc.europa.eu/en/members-groups

159 'Towards a stronger civil society in Europe'. Accessed online September 2017 at: fra.europa.eu/en/news/2017/towards-stronger-civil-society-europe

160 'About the FRP'. Accessed online August 2017 at: fra.europa.eu/en/cooperation/civil-society/about-frp

stakeholders in the Member States. Yet these measures could become more embedded in ways of working. Representatives in the Committee of the Regions have the potential to leverage their networks, based in small localities in Member States, Commission Representations and Parliamentary Information Offices are active in Member States, running events and building networks, and the European Network of Ombudsmen has potential to help provide access into networks within Member States. Finding ways to better leverage these members of these networks, and their networks into local CSOs and grass-roots communities would help bring EU decision-making processes closer to citizens and small organisations.

JOINING UP INITIATIVES

The Commission requires that in order to join an expert group, an organisation or individual must be signed up to the Transparency Register. This is great example of the potential synergies that there can be between different strands of work to ensure openness, as it acts to simultaneously increase the transparency of expert groups and increase the impetus behind the Transparency Register itself.

While interviewees expressed a strong interest in networking and sharing ideas and initiatives within the institutions, there was also a feeling that the EU would benefit from working more closely with other non-EU organisations working on open government issues: The OECD is working on Open Government¹⁶¹, and operates a Public Sector Innovation Observatory¹⁶² which is already in some cases working with EU bodies and institutions. The Open Government Partnership, discussed below, is also a key actor, with its support unit acting as a valuable resource for sharing learning about open government from across the globe. In addition to this, there are many other small organisations working on these issues, and many forums and networks for sharing good practice and enabling learning from different settings such as Eurocities which links up city governments within the EU¹⁶³. Mirroring the networking that can be built within the EU institutions, much more could be done to use these networks, and bring these various organisations and networks together to work together on EU related open governance.

161 For more information see the OECD's Open Government homepage at: [oecd.org/gov/open-government.htm](https://www.oecd.org/gov/open-government.htm).

162 The homepage for the Public Sector Innovation Observatory is at: <https://www.oecd.org/governance/observatory-public-sector-innovation/>

163 For more information see Euro Cities website, and its 'about us' page at: http://www.eurocities.eu/eurocities/about_us

REFLECTIONS

All policy-making institutions face a challenge in building public participation in technical and strategic issues, as these issues may not appear to have immediate impact on citizens everyday lives. The scale of the European Union and the abstraction of some of the issues that it deals with give the EU institutions a particular challenge in this respect. Yet this work is crucial to ensure that voices other than well resourced private sector bodies and campaign groups are heard, and to ensure that policy makers can be informed by a wide range of insight and knowledge.

The institutions all have participative elements to their work. The Commission's work on stakeholder engagement, given a new focus through the better regulation initiative, is a positive development. Now, the EU institutions need to embed engagement throughout the policy-making cycle, not just at a "consultation moment", and to go beyond traditional stakeholders and consultees into broader audiences within Brussels and beyond.

There are three practical elements to this work:

The first is "more and better" - building greater awareness of the opportunities that already exist, communicating and informing citizens and stakeholders, supporting them as participants, and extending the networks through which the institutions work, so as to increase those who can discover and participate in existing opportunities.

The second is "before the beginning" - building on the good work of the EU Policy Lab and similar initiatives to encourage citizen and stakeholder involvement in the formulation of high-level priorities and strategies before detailed policies are into consideration. Tools such as Futurium are an example of what can be done here.

The third is "after the end" - closing the loop and continuing the conversation by showing the results of peoples participation, ensuring they feel heard even when their suggestions have not been taken on board, and ensuring that they are encouraged to stay involved. This would increase the pool of citizens and stakeholders participating in EU policy conversations, and build greater trust between people and the EU institutions.

This work cannot be done only within the Brussels ring-road. The implementation of many policies is the remit of Member States, and the negotiation on legislative proposals involves Member States and in some cases Member State parliaments setting negotiation mandates. A thorough approach to participation must work on involving local and national networks in the conversation in Brussels, and take messages from Brussels to local and national networks. This also sets policy-making in the context of the broader democratic process particularly in the European Parliament but also in other institutions such as the Committee of Regions and EESC which exist to support broader policy conversations.

Making progress on this work will involve developing organizational cultures of engagement and openness, building networks that create broader routes to citizens, and putting policy structures and processes in place that involve public engagement from an early stage. The work needs to be done alongside civil society both in Brussels and beyond, in ways that appeal beyond traditional stakeholders.

The DORIS tool for analysing consultation responses is an instance of these kind of technologies being explored.¹⁶⁴

164 DORIS is an online tool linked to EU Survey that performs statistical and language analysis on consultation responses to allow large numbers of responses to be analysed easily. It is at the moment restricted to internal use, but would be an excellent contribution to understanding if the results (suitably anonymised) were also available outside the institutions. There is no public front-end but it is referred to in this 'Stakeholder consultation analytics, business case' Accessed online August 2017 at: joinup.ec.europa.eu/sites/default/files/d03.01_business_case_stakeholder_consultation_analysis_v1.00.pdf

7

EXPERIENCES OF THE OPEN GOVERNMENT PARTNERSHIP

This section looks at the Open Government Partnership and the experiences of three countries within the EU who have taken part in it. This allows an assessment of what the impacts of involvement have been, and an understanding of whether engaging with the OGP might be a means by which the EU can embed and accelerate the processes of democratic reform and becoming more open in its governance arrangements. The research within this chapter is based upon documentary evidence, interviews with participants and the outputs of the Independent Reporting Mechanism (IRM) in each country¹⁶⁵.

THE OPEN GOVERNMENT PARTNERSHIP

The Open Government Partnership (OGP) is a voluntary international initiative that aims to secure concrete and ambitious commitments relating to transparency, accountability, and civic participation from the governments of participating countries. It was launched with eight founding states at the edges of the United Nations General Assembly in September 2011¹⁶⁶.

Governments must apply to join and in applying must agree to the core principles in the Open Government Declaration¹⁶⁷. To be eligible to join the OGP, governments must meet a minimum level of commitment to open government principles regarding financial transparency, access to information, asset disclosures and citizen engagement¹⁶⁸.

165 The IRM reports for can be accessed online at: opengovpartnership.org/country/estonia/irm; opengovpartnership.org/country/romania/irm; opengovpartnership.org/country/united-kingdom/irm;

166 The eight founding members of the OGP were: Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom, and the United States. *What is the Open Government Partnership?* Accessed online August 2017 at: opengovpartnership.org/about

167 The Open Government Partnership (2011) *Open Government Declaration*. Accessed online August 2017 at: opengovpartnership.org/open-government-declaration.

168 For more information on OGP eligibility criteria, see: opengovpartnership.org/how-join ; A list of countries eligible to participate in the OGP are updated on rolling basis, and this list may be accessed online at: opengovpartnership.org/how-it-works/eligibility-criteria

THE CORE PRINCIPLES OF THE OPEN GOVERNMENT DECLARATION

- *Increasing the availability of information about governmental activities.*
- *Supporting civic participation.*
- *Implementing the highest standards of professional integrity throughout administrations.*
- *Increase access to new technologies for openness and accountability.*

The OGP is expressly a partnership with civil society, and every country that seeks to join must work with CSOs to develop a 'National Action Plan' (NAP) containing specific commitments to making their government more open. This requirement for partnership working is at the heart of the OGP, and of how the OGP can be used to push for progress on promoting transparency, empowering citizens, fighting corruption and harnessing new technologies to strengthen governance.¹⁶⁹

By the fifth anniversary in 2016, the number of government participating in the OGP stood at over 70, including 21 EU Member States¹⁷⁰. The OGP has informal relationships with eight multilateral organisations including The World Bank, the Organisation for Economic Cooperation and Development (OECD) and the United Nations Development Programme (UNDP). While not full members, as they are not themselves countries, they have all agreed to support OGP member countries, to promote open government, and to increase the reach of the OGP¹⁷¹.

OPEN GOVERNMENT IN ESTONIA, ROMANIA AND THE UK

To understand how, and whether, the OGP has had an impact at a national level in a European context, and to look at what lessons can be drawn about this way of working, research has been conducted on the experiences of Estonia, Romania and the UK.

All three countries are EU Member States and are geographically and culturally diverse. Despite these differences Estonia, Romania and the UK all joined the OGP within a year of each other: the UK as one of the eight founding members in September 2011, Romania in November 2011 and Estonia in 2012. The time that has elapsed since these countries joined the OGP means the model and process has had time to mature and develop within each of these countries, allowing for a useful comparison and exploration of lessons learned.

169 The Open Government Partnership (2015) *Open government partnership: articles of governance*. Accessed online August 2017 at: opengovpartnership.org/Articles

170 The full list is available online at: opengovpartnership.org/participants

171 *Multilateral organisations*. Accessed online August 2017 at: opengovpartnership.org/multilateral-organizations

KEY LESSONS FOR THE PROGRESS OF OGP IN ESTONIA, ROMANIA, AND THE UK.

1. OGP membership correlates with increased progress for open government initiatives
2. OGP acts as a focus point inside government
3. OGP acts as a framework for CSOs to come together
4. OGP builds relationships between CSOs and government
5. The focus of commitments can broaden over time
6. Action plans become more co-created as the process matures
7. High level political buy in is needed
8. Resource limitations hamper CSOs ability to engage
9. OGP often fails to reach out beyond a small number of core organisations

LESSON 1 - OGP MEMBERSHIP CORRELATES WITH INCREASED PROGRESS FOR OPEN GOVERNMENT INITIATIVES

It is hard to establish definitively the extent to which OGP participation has directly caused an increase in open government initiatives. Developments in technology and the emergence of an open government movement during this time would have likely driven change, regardless of OGP membership. However, there is a clear correlation of OGP membership with increased activity, and it is likely that the development of a broader interest in open government within each country has been driven by the existence of, and membership of, OGP.

There is conflicting evidence from Estonia, Romania, and the UK about the extent to which initiatives were likely to happen without the framework of the OGP. There is evidence from the UK interviews that many OGP initiatives would have happened regardless, but that the framework provided by OGP played an important role in helping achieve these initiatives more quickly, such as in creation a public register of beneficial ownership. In Estonia, some felt that many of the reforms implemented were either initiated separately at first, or would have been enacted anyway. However, it is felt that through the Romanian OGP process initiatives emerged that otherwise would not have done, including a commitment to open contracting data standards and open educational resources.

Interviewees in the UK and Romania felt that being a member of the OGP helped keep transparency, accountability, and civic participation on the government agenda. Some of the mechanisms for this were the development of a media cycle around high-level OGP summits, enabling focused civil society pressure and an element of international comparison.

LESSON 2 - OGP ACTS AS A FOCUS POINT INSIDE GOVERNMENT

Estonia, Romania, and UK interviews all show that the OGP acts as a valuable convening point for reformers in different ministries, departments, and agencies within government. The OGP process helps build connections between individuals working on similar problems, and provides a way of linking up innovation within departments in a coherent way, helping to extend the reach of ideas otherwise inherently limited by bureaucratic structures and departmental siloes. These networks also increase the opportunity to share learning internally.

It was believed that while more could be done to build these networks, significant progress had been made above and beyond that which would have happened without the OGP. Having a central convening team, such as the UK's Policy and Governance Team in the Cabinet Office was considered strongly beneficial, as they provided a single point of contact, and a strong driving force. In Romania, some concerns were voiced about the shared co-ordination role (currently held by the Ministry for Public Consultation and Civic Dialogue and the Chancellery of the Prime Minister). It was felt that overall coherence decreased, even while the visibility of some themes, in particular access to information, increased.

Where the focusing role of OGP extended beyond the executive, such as in Estonia, evidence suggests this supported more effective dissemination. Here the coordinating assembly making decisions about proposals for the NAP consisted of chancellors or vice-chancellors of ministries, representatives from civil society, parliament, local government and the private sector. The UK has had some difficulty including parliamentary commitments in the third action plan because of a lack of clarity for the process of involving a public institution outside of government.

LESSON 3 - OGP ACTS AS A FRAMEWORK FOR CSOS TO COME TOGETHER

OGP is seen as a useful framework around which CSOs with similar aims of increasing accountability, transparency and participation can meet, exchange information, and work together. While in the UK there are existing networks around aspects of open government such as the Bond Anti-Corruption Group, the OGP has built on this in connecting diverse organisations that focus on different aspects of open government. The clear focus of the OGP was often described as an important benefit of this way of coming together.

Estonia, Romania and the UK have all developed a network of CSOs who function as partners for the government on drafting the NAPs as well as monitoring their implementation. The diversity of organisations involved can be of a concern, and although in Romania academics are involved, this involvement is not regular. In the case of Estonia and the UK, these networks are relatively

formalised, with funded coordinators¹⁷². The UK network, called the Open Government Network, also has a steering committee and terms of reference that were adopted in 2015¹⁷³. The Romanian civil society network is less formalised, with The Center for Public Innovation¹⁷⁴ acting as a contact point but not operating in a decision-making role. There are plans to create a more formal Steering Committee in Romania, mirroring the international OGP committee.

This coming together also allows CSOs to coordinate their policy and campaigning strategy, as well as helping to generate a strong call for open government, from a relatively co-ordinated group. Not all CSOs quite feel able to coordinate in this way however. Some campaign organisations felt uncomfortable with a way of working that they felt “helped government fail on [our] agenda”, and therefore chose to disengage from the OGP process. In the UK, at least, it was felt that it wasn’t yet clear how, or if, the network would ever walk away from the partnership with government, and that this limited the effectiveness of any challenges the network might make. There were also concerns that within the UK context, the civil society network had perhaps suffered from too much centralisation, although the importance of the network being proactively coordinated by a neutral organisation, rather than one with a campaign focus, was expressed strongly.

LESSON 4 - OGP BUILDS RELATIONSHIPS BETWEEN CSOS AND GOVERNMENT

The OGP has acted as a useful framework around which civil society and government can build new relationships, or deepen those already existing. This may be through formal OGP processes, such as the quarterly meetings that the Estonian Civil Society Roundtable (the Estonian civil society network) hold with relevant ministries to discuss implementation of the NAP. They may also be the result of less formal OGP processes, such as in Romania where the OGP governmental team has introduced an “OGP Club”. This holds public monthly meetings on themes derived from the on-going action plan.

Relationships can be established through the OGP process that then translate outside of this. Interviews with participants in the UK indicated a strong feeling that the OGP is fostering a more collaborative way of government working with external parties, and there is evidence that government officials and CSOs feel

172 Since 2014, The Estonian ‘OGP Civil Society Roundtable’ has been coordinated by, and internally funded by, Open Estonia Foundation. OEF are one of the researchers for this project.

173 These also set out requirements for the steering groups, such as at least a 2:1 gender split, and the requirement to have a representative from each of the devolved nations in the UK. (2015) *Terms of reference of the UK Open Government Network* Accessed online August 2017 at: opengovernment.org.uk/resource/terms-of-reference-of-the-uk-open-government-network

174 The Center for Public Innovation are one of the researchers for this project. They are found online here: inovarepublica.ro/center-public-innovation/

able to trust each other more as a result of their work together in OGP. It has also helped some from civil society to learn more about government processes, which can enable them to work for change more effectively.

There are fears from some organisations that this building of relationships between CSOs and government officials was not necessarily positive, and that organisations could be compromised by working in such a fashion with governments. This was a minority view however. It should also be noted that in the UK, there were historical issues noted around the accuracy of government statements on the extent of progress made and concerns expressed that commitments were released too late for civil society engagement.

LESSON 5 - THE FOCUS OF COMMITMENTS CAN BROADEN OVER TIME

Early NAPs in Romania, Estonia and the UK focussed heavily on freedom of information, open data, and how digital technologies could enhance this, but the type of commitments made has broadened in later plans. This history shows that the scope of OGP work in a country can expand from narrow beginnings; and acts as a reminder not to judge the scope of OGP from early work. At the same time, there is evidence that the initial narrow and technical focus of OGP work within countries has presented difficulties for trying to later broaden the focus of this programme.

Early Romanian commitments focussed heavily on open data. Subsequently, this has shifted to broader topics, and ones that focussed at a less technical level, such as the idea of 'Citizen Budgets' and open education¹⁷⁵. The UK's first NAP was largely informed by an open data consultation¹⁷⁶, not through wider civil society engagement, and commitments within it centred heavily on open data. Over time other commitments have emerged that go beyond this rather narrow idea of open government, including the development of the Sciencewise programme for engaging the public in debates around science and technology¹⁷⁷, publishing draft legislation online, improving transparency around 'beneficial ownership' of UK companies, and exploring how online consultation processes can be improved.

These examples show that what has often started as a technical process, focussing on data access, can quickly mature and expand to encompass broader socio-cultural and policy aspects of good governance. They demonstrate that OGP can act as a catalyst for cultural and process change not just as a tool

175 *Romania National Action Plan 2016-2018* Accessed online August 2017 at: opengovpartnership.org/sites/default/files/Romania-NAP_2016-2018%20EN.pdf

176 *Independent Reporting Mechanism: United Kingdom Progress Report 2011-2013* Accessed online August 2017 at: opengovpartnership.org/sites/default/files/171165808-UK-IRM-Report.pdf

177 For more information see: sciencewise-erc.org.uk

for managing the digital aspects of government. At the same time, there was evidence that some people were put off the OGP by its initial technical focus, which was a challenge that CSOs and government involved in the OGP still have to think how to overcome.

LESSON 6 - ACTION PLANS BECOME MORE CO-CREATED AS THE PROCESS MATURES

As the OGP process has matured, the UK, Romania, and Estonia have all seen an increase in the level of co-creation in their actions, showing that it can be possible for this to build up over time, and the OGP shouldn't be judged too strongly on initial processes. Latest action plans in each country show examples of good practice for co-creation.

Romania's first action plan included a series of e-government projects proposed by various government agencies and a component related to open data, negotiated with civil society but decided on by government. For the third action plan the Romanian government released a timeline which deliberately coincided with civil society launching a crowd-sourcing process. The first stage of this collected ideas using an online open source tool, and surfaced 28 ideas from 152 participants, including the developing open educational resources and open access to academic research data, and the second phase distributed the ideas into 14 thematic clusters. Thirteen of the initial 28 ideas were included in Romania's third NAP. Some of these, such as commitments falling under open education or open culture, are commitments in which the text was taken entirely from the civil society proposal¹⁷⁸.

While the third Estonian action plan was marked by an open call for input, inviting government and civil society partners to propose broader themes and then fill the chosen themes with more concrete commitments, this outreach didn't exceed the circle of partners already active within the framework.

In the UK, the lack of CSO engagement in the development of the first action plan was strongly critiqued by an informal network of UK-based organisations¹⁷⁹, and the second and third action plan development processes have been marked by much more significant engagement. The second action plan was developed with meetings taking place on a weekly or fortnightly basis between a small group of CSOs in London (the initial members of the Open Government Network). It is felt by many that this was excellent in terms of co-creation, enabling a strong bond and understanding to be created between civil servants

178 'Romanian Civil Society takes co-creation very seriously' (2016) *OGP Blog*. Accessed online August 2017 at: opengovpartnership.org/blog/ovidiu-voicu/2016/03/09/romanian-civil-society-takes-co-creation-very-seriously

179 *Open letter to Francis Maude* (2012) Accessed online August 2017 at: opengovernment.org.uk/2012/04/14/open-letter-to-francis-maude; *UK Civil society Perspectives on National Action Plan* (2012) Accessed online August 2017 at: opengovernment.org.uk/2012/04/16/civil-society-perspectives-on-uk-national-action-plan

and CSOs. Equally however, there were also concerns that the process was too London centric and engagement limited to a handful of well resourced, often international, CSOs.

For the third action plan, commitments from civil society were publicly crowd-sourced through an online platform which allowed people to comment and upvote suggestions. Offline events were held around the country to engage a wider audience. Similar ideas were then merged, and implausible ones cut, at an Open Government Network event in London. The outcome was the Open Government Manifesto, published as the basis of the network's negotiation with government over the content of the final action plan. The UK government worked in parallel to find commitments from within government departments.

To finalise the action plan, both civil society and government commitments were assigned a named organisation from the civil society side and theme lead from government. For political reasons, government was often unwilling to share a full list of the government sourced proposals publicly, and so these commitments were shared only with those leading on developing commitments and with the OGN Steering Committee.

The final plan took shape through public discussion and negotiations with the Minister for the Cabinet Office and the Cabinet Office team. The wider network did not get to see government-side commitments prior to the final plan and the final plan had to be passed by Cabinet (the executive body at the heart of government). Civil society representatives believed that about half of the OGN manifesto made it into the final NAP in one way or another. There was some unhappiness with the final write-up, and with commitments being lost. People thought that more could have been done to clearly communicate upfront how the process would work. This highlights a trade-off between the in-depth but more closed conversations around the second NAP and a more open and distributed process used in the third and demonstrates that the OGP process is itself still evolving.

LESSON 7 - HIGH LEVEL POLITICAL BUY IN IS NEEDED

It was felt that strong support and political leadership from senior government ministers and senior officials is highly beneficial to the OGP process. The processes of transparency, accountability and participation can be intimidating for more junior officials who may be unsure about unintended consequences of transparency, or unsure about how to increase public participation if they feel policy decisions are already made.

A major boost to the Romanian OGP process came when open data commitments in the second action plan received support from the prime minister. By participating in several public meetings dedicated to open government, being present at the OGP Summit and repeatedly saying open government was a priority, he helped keep the issue on the agenda and motivated various agencies to implement their commitments. Similarly in the

UK there was high-level buy-in under a previous administration, with the prime minister launching action plans at international summits and speaking at an OGP Summit. Political support came from the Minister for Cabinet Office at the time of the OGP launch, which helped create the focus and resources needed.

The tacit backing of senior ministers has been important. Conversely, our interviews highlight concerns that many of the UK's newly appointed senior ministers remain unconvinced by the open government agenda, and that as such there is a risk that there may be a decrease in high impact commitments in future action plans.

LESSON 8 - RESOURCE LIMITATIONS HAMPER CSOS ABILITY TO ENGAGE

Many CSOs are operating under constrained funding, and this limits their capacity to engage with action plan development, and any involvement to support the implementation of commitments. Both Estonia and the UK have some highly active organisations involved, but their overall number is relatively small. In the UK, some of those organisations have taken a lesser role in developing the third action plan than they did in the second, and in both the UK and Estonia, CSOs are citing a lack of certainty about the impact of engaging. It seems likely that more CSOs would engage if they were convinced of impact, but it must be recognised that not all CSOs would be able to engage deeply, even in this situation.

Questions of who may fund civil society's participation in OGP remains problematic, yet it is vital that CSOs feel sufficiently able to devote time and resource to it if the process is to be effective and truly collaborative. The charity Involve¹⁸⁰ has taken a central role in coordinating the UK civil society network, and has been an important part of the success of the OGP in the UK. Some interviewees, however, suggested that a broader distribution of funds may enable other CSOs to better support their own involvement in the process.

How to best enable CSO engagement needs to be thought over by the whole range of actors involved in the OGP - government, network coordinators, and non-governmental funders.

LESSON 9 - FAILING TO REACH OUT BEYOND THE BUBBLE

The OGP process in none of the three countries studied here has managed to cross-over and reach beyond a small number of core organisations (often focussing on data, human rights and transparency). It is felt that there are some inherent barriers that prevent citizens and small CSOs engaging, beyond the resource point mentioned above. Concern was expressed in Estonia, Romania and the UK that initiatives and conversations are often too technical and specific,

¹⁸⁰ For more information see: involve.org.uk

focussing on points of legalities and technicalities, rather than on broader issues that may be of interest to a wider audience. There is a feeling that the strong focus on open data, especially in the origins of the OGP, can be off-putting, as open data itself has not yet made a significant move beyond a very technical audience. It is noted that the Scottish Pioneer Programme (a sub-national pilot within the UK OGP process) is starting to explore a broader OGP narrative based on the UN's Sustainable Development Goals (SDGs) with the express intent of overcoming this 'siloining' of open government.

There are also concerns that the OGP itself can look very complex, that there are lots of emails that get exchanged and that this flurry of information without context can be off-putting, bureaucratic and difficult to understand.

Finally, there is a geographic barrier. In all three countries, the civil society networks and development process for the action plan are focussed around the capital city. Events around the UK were introduced in developing the third action plan, with CSOs within the network contributing to this, but the core of the process is still London-centric. In Romania, online tools helped reduce the gap during the consultation for the third NAP but the geographic barrier is more visible during implementation. According to government officials, there are organizations and groups from outside Bucharest that expressed their interest in participating in the implementation but are unable to because of the distance. In Estonia, the CSO roundtable has only one organisation involved who does not have its headquarters in Tallinn, and while in the UK online conferencing and calls are used in network meetings, this does not provide quite the same opportunity to engage as being face-to-face.

There are numerous challenges in terms of widening the circle of people who engage in the OGP process. Scotland's exploration of how the OGP can relate to SDGs is a potential way to relate open government to a wider audience and CSOs could do more to engage and use their networks to educate, inform and engage beyond the core participants. The OGP is currently operating as a process that engages CSOs in all three countries, rather than citizens directly, but perhaps it could do both? Using more inclusive, less technical, language will be an important requirement for engaging a broader audience.

It would be easy to be cynical about the relatively limited reach of those engaging but it is important to focus on the numbers of people who, in a relatively short time frame, have come together who otherwise would not have collaborated. It should be a focus of open government processes that they aim to strengthen the range and reach of civil society involvement, particularly where there is a risk that the already engaged CSOs are seen as part of the 'system' and therefore risk lacking broader credibility or being seen as unrepresentative.

SUMMARY OF LESSONS LEARNED

There have been significant changes in all three countries during their participation in the OGP. The processes and methods have started to come of age.

There is a lack of evidence about whether the OGP has been responsible for an advance in open government initiatives, and there is evidence that many OGP initiatives would have happened without this framework. However, there was a strong feeling that OGP does help push this work forward. Having a team working on this within government, bringing diverse civil society groups and internal reformers together in a focused setting, creating a cycle of media and civil society attention, were all seen as important factors. Having a way in, and having stakeholders already in the room for progressing work were also considered key.

There was also a strong feeling that a main strength of the OGP is in terms of somewhat peripheral, or longer-term, effects from this way of working. This includes improving government-civil society relations, building civil society networks and helping organisations learn from each other, as well as sharing innovation internally within government. In time, there is also a suggestion that the OGP might provide an impetus for CSOs to get better at involving the wider public in their work beyond open government.

The OGP has proven, if not a catalyst for civil society engagement in open government, at least an effective focal point where a transformative culture of openness and transparency can take root. It appears to have supported the conditions where governments and their civil society partners can work together productively and where those who believe in open and transparent government can collaborate and feel supported.

The processes themselves are still emerging and maturing; OGP is far from ideal and there are criticisms with the process, including some who feel an additional edge of international comparison would be beneficial, and a failure to deliver on commitments. Some key challenges that remain include balancing the agility to respond to political events, with a continued respect for agreed inclusive processes of co-creation; expanding the reach of the OGP (and maintaining effectiveness within this); and balancing inclusive co-creation with realistic expectations of what a representative government will be able to take up.

8

OPTIONS FOR THE EUROPEAN UNION AND THE OPEN GOVERNMENT PARTNERSHIP

THE CONTEXT OF EU AND THE OGP

Twenty-one out of the twenty-eight Member States within the EU are members of the OGP. These countries have joined the OGP at different times since the OGP was set up and thus are at different stages of implementing their first, second or third action plans.

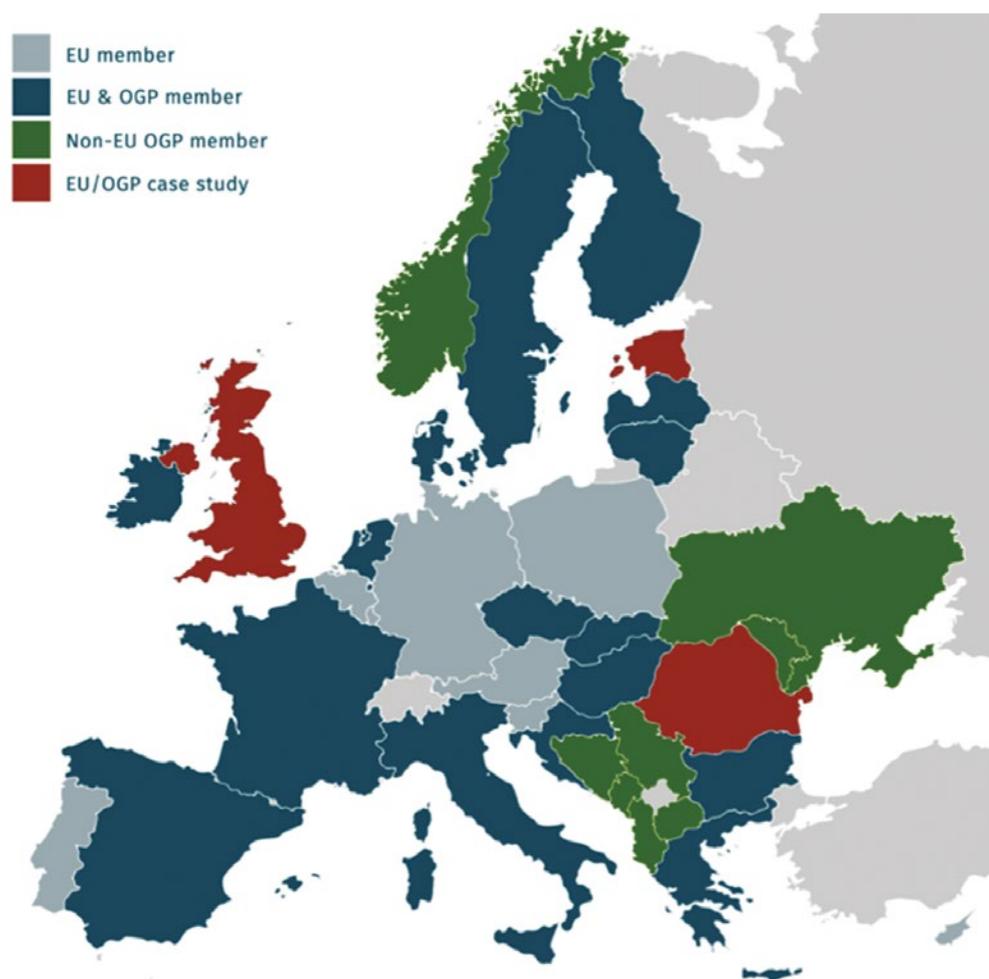


Figure 2 – A map of Europe, showing EU and OGP membership, as well as highlighting case study countries.

The EU itself is not a member of the OGP, although there have been a number of calls for it to join. In July 2014, a call was made by 70 civil society organisations¹⁸¹ for the EU's "close engagement with and eventual membership of the Open Government Partnership"¹⁸². In February 2015, the European Ombudsman wrote to First Vice-President Timmermans, stating that "there is the potential for the Commission, on behalf of the EU, to become a leading force for change within the OGP", and that the "EU level of governance" should be involved in the OGP¹⁸³. In July 2015, a letter to MEPs was co-written by OSEPI, Access Info Europe, and Publish What You Fund, co-signed by over 50 CSOs¹⁸⁴.

These calls received interest from individuals and some institutional actors – from the European Ombudsman to Members of the European Parliament – however they achieved little political traction, and the Commission rejected the Ombudsman's view that the Commission should join the OGP, pointing out that the EU was not a state, and hence not eligible for membership.

The question is still open, however. Robert Madelin, the former Senior Innovation Adviser to the European Commission and Director-General of DG CNECT recommended the Commission join in the OGP in a strategy note published in July 2016¹⁸⁵.

COULD THE EU JOIN THE OGP?

The Commission's response to the Ombudsman in 2015 cited the EU's ineligibility, concerns about the EU's power to develop commitments for an action plan, and concerns about the "financial and human resource implications"¹⁸⁶. Of these three possible barriers, we believe only one is significant.

On the issue of powers, there are some questions about how much competence the EU has to enhance directives and regulations in relation to open

181 The Democratic Society, authors of this report, and Open Estonia Foundation, one of the researchers for this report were both signatories to this call. The call itself was organised by Open Society European Policy Institute, the funders of this report.

182 *Open Institutions: the European Union and the Open Government Partnership*. Accessed online September 2017 at: hivos.org/sites/default/files/call_to_eu_to_join_open_government_partnership_july_2014.pdf.

183 O'Reilly, Emily (2015) *EU engagement with the Open Government Partnership - a leading role for the European Commission* Accessed online September 2017 at: ombudsman.europa.eu/activities/cooperation.faces/en/59078/html.bookmark

184 Letter to the European Parliament accessed online September 2017 at: access-info.org/wp-content/uploads/DraftletteronOGPforMEPs.pdf

185 Madelin, Robert (2016) *Opportunity Now: Europe's Mission to Innovate*. ESRC Strategic Note, Issue 15. Accessed online September 2017 at: ec.europa.eu/epsc/publications/strategic-notes/opportunity-now-europe%E2%80%99s-mission-innovate_en

186 Timmermans, Franz (2015) *Reply from the Commission First Vice-President to the Ombudsman's letter* Accessed online September 2017 at: ombudsman.europa.eu/activities/cooperation.faces/en/59483/html.bookmark

government, though it is not clear-cut. However, nothing prevents the EU from building upon its history of developing internal initiatives and building open government practice *within* the Commission or other institutions. The initiatives discussed above in ‘*How can the EU become more open?*’ aim at exactly the same goals that governments have set themselves through OGP National Action Plans, and use similar routes to get there.

On the issue of affordability, the direct resource requirements of joining the OGP are not extensive. As discussed above, the UK and many other countries have adopted a model in which a small central core team are responsible for the OGP project. This small team are responsible for liaising with other ministries, and for developing an action plan. In none of the countries studied for this report, has the executive branch allocated additional resource to ministries to carry out any commitments made in an action plan. Instead departments allocate small resources to the implementation of these initiatives, as part of a regular budget allocation process. It is difficult to capture a full picture in terms of cost of the engagement with the OGP, however given these factors, it is unlikely to require significant new resource.

The third barrier is more significant. As it is not a state, the EU, is technically not eligible for membership of the OGP. It is a requirement that the OGP application for membership receives formal approval from ‘the Head of State’¹⁸⁷; a position the EU does not offer. Throughout the discussion on eligibility for the OGP and the documentation provided for guidance on how to develop an action plan, the formal term ‘country’ is used. The basis for this definition is implicitly drawn from membership of the UN, and the EU does not meet the sovereignty criteria required for membership. Instead the EU holds “enhanced” observer status within the UN, though it is party to some 50 international UN agreements, and unlike other observers, has the right to speak in debates among representatives of major groups, to submit proposals and amendments, the right of reply, to raise points of order and to circulate documents¹⁸⁸.

While eligibility is currently a barrier to EU membership of the OGP, this does not mean that it always will be. The OGP may decide to amend the terminology used to describe membership eligibility in such a way that enables EU membership. This has precedence with the World Trade Organisation (WTO) which was originally only open to states. Following negotiation, it was agreed to vary that term to ‘governments and customs territories’ so that the EU could act as a single voice for its Member States. There are obvious differences: the EU could never replace its Member States in OGP processes like the way it stands for its Member States in trade negotiations. However, the WTO sets a precedent that an inter-governmental organisation can adopt flexible rules to enable EU membership.

187 *How to Join*. Accessed online September 2017 at: opengovpartnership.org/how-it-works/how-join

188 ‘European Union and the United Nations’. *Wikipedia*. Accessed online 22nd September 2017 at: https://en.wikipedia.org/wiki/European_Union_and_the_United_Nations

It is likely that the OGP will have to rethink their membership model and terminology soon, in any case. In April 2016 the OGP announced the 15 sub-national governments who would take part in a 'Pioneers Pilot' programme, which explores how the OGP model can work at a more local level¹⁸⁹. These sub-national governments, include Scotland and cities across the world, including Madrid and Paris. It is not yet clear how the OGP will continue to work with these subnational governments following the completion of the Pioneers Pilot, but any continued involvement will require some change of the existing OGP eligibility criteria.

For the EU to sign up to the OGP, there would theoretically be two options: firstly, the EU signing up as a legal construct, including its institutions and Member States, and secondly the three main institutions (Parliament, Commission, and Council of Ministers), reaching an inter-institutional¹⁹⁰, or common, agreement for the institutions themselves to sign up. As the OGP would likely fall outside the bounds of how the EU institutions are allowed to act in terms of enforcing their actions upon Member States, it is most likely that the EU signing up to the OGP would take the form of such an inter-institutional agreement.

DOES THE EU MEET OTHER OGP ELIGIBILITY CRITERIA?

Setting aside the question of whether the requirements relating to being a state excludes EU membership of the OGP, the other eligibility requirements should not prove a major hurdle to the EU joining the OGP. To be eligible to join the OGP, a country must meet a minimum set of criteria that are scored across the following areas:

- **Fiscal Transparency:** The timely publication of essential budget documents
- **Access to Information:** Access to information law that guarantees the public's right to information and access to government data.
- **Public Officials Asset Disclosure:** Rules that require public disclosure of income and assets for elected and senior public officials.
- **Citizen Engagement:** Openness to citizen participation and engagement in policymaking and governance, including basic protections for civil liberties.

As we have covered above, the EU already boasts a significant number of open government related initiatives, from the publication of draft budgets, codes of conduct and behaviour for Commissioners, MEPs, and civil servants, through to Regulation 1049/2001 which provides public access to Commission, Parliament, and Council documents. As such, the EU would meet the financial

189 *Subnational Government Pilot Program* Accessed online November 2016 at: opengovpartnership.org/how-it-works/subnational-government-pilot-program

190 A description of Inter-institutional agreements can be found at: 'Inter-institutional agreements'. Accessed online September 2017: en.euabc.com/word/576

transparency, access to information, and public officials asset disclosure criteria for joining the EU.

There are some doubts about whether the EU would currently meet the citizen engagement criterion, however expressing the intent to establish more significant means for this would be considered sufficient, and indeed the opportunity to develop and learn is a key part of the purpose and value of the OGP.

SHOULD THE EU JOIN THE OGP

While answering whether the EU could join the OGP is comparatively simple, it is much harder to answer the question of *should* the EU join the OGP. From the interviews carried out for this report, there is recognition of what the EU has already done in terms of transparency and accountability. There is also a keen interest for the EU to be showing greater commitment to the agenda of openness: especially relating to greater transparency of decision making, and enabling greater participation of citizens in the development of policy and legislation.

Some interviewees have expressed concerns that enabling the EU to sign up as a member would constitute mission drift for the OGP. There are fears that too close an affiliation with the EU may adversely affect an organisation who likes to think of themselves as an agile organisation that builds bridges between external reformers and institutions. Furthermore, there are some concerns heard about whether the OGP should be the main focus of energies related to improving the existing democratic system, with concerns raised about a lack of democratic engagement through elections, and the fact that initiatives proposed may be insufficiently game changing. There is also concern about the limited reach of the OGP beyond a small number of large and well-resourced CSOs.

Despite these concerns, there are several significant benefits of the EU being a member of the OGP. The EU has some significant initiatives that it can share with the broad global community, including the Transparency Register and the idea of public hearings for candidates being appointed to the Commission. Additionally, the EU can benefit from joining. The OGP is one of the key networks where reformers inside and outside of government come together. It provides a rich body of knowledge and experience from which the EU can learn and discover good practice. It is strongly felt by both civil servants and individuals who work for CSOs that one of the key benefits of the OGP process is the development of an action plan. This helps to join individuals together within government, breaking down the silos that exist within any bureaucratic organisation. The EU is no exception here, as discussed above, and would strongly benefit from ensuring better cross-institutional and departmental networks. Developing an action plan also provides a key point of contact between staff in EU institutions, and CSOs and potentially citizens. Due to the already existent OGP process in its Member States there are already twenty-one ready-made national civil society coalitions with which the EU can engage.

While it is naïve to think that merely joining OGP could directly increase public trust in the EU and its institutions, the net benefits to be obtained from developing and applying an ambitious and measurable open government action plan should contribute to this in the long term. There is a concomitant benefit to civil society and other OGP actors in Member States, providing increased support and legitimacy for transparent, accountable and open government processes, which in some states are under severe pressure from proponents of so-called “illiberal democracy”. There is also a symbolic value in the EU joining the OGP as it suggests that its institutions are willing to improve their own transparency, accountability and wanting to hear from the citizens who live within the Member States. Similarly, it would be a rare moment where the EU promotes and absorbs best practice of its Member States

We believe there is significant value in the EU becoming involved in the OGP. However, this does not necessarily require membership. There are other forms of relationship that could be pursued.

The OGP has formed formal multilateral agreements with organisations such as the World Bank and the OECD. A similar relationship between the EU and the OGP is conceivable, which would enable the EU to be present in OGP related conversations, to learn and share knowledge, but not committing to developing an action plan. This is similar to what is seen in other forums such as the G7, or G20, where the EU attends as a non-member, alongside some of its Member States.

At the most radical, the EU could require OGP participation of accession countries. The complementarity of the EU’s Copenhagen Criteria and open government are undeniable - in particular the requirement that the “candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”¹⁹¹. In practice, some candidate and countries with association agreements are using OGP to drive reforms in a way that is not dissimilar to EU accession requirements. Out of the current candidate countries, Albania and Macedonia are on their third action plans; Serbia and Montenegro their second (Turkey is listed as ‘inactive’). Ukraine, is implementing its second action plan. International complementarity could even go one step further as states explore how to implement Goal 16 of the SDGs of which effective, accountable and inclusive institutions is a significant part¹⁹².

191 The Copenhagen Criteria, originally established by the Copenhagen European Council in 1993, provide three criteria to which any country wishing to join the EU member must conform, More about this can be found at: ‘Ascension criteria’. Accessed online September 2017 at: eur-lex.europa.eu/summary/glossary/accesion_criteria_copenhagen.html

192 SDG 16 states the aim to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. It includes a number of targets that overlap with open government, including 16.6 (“Develop effective, accountable and transparent institutions at all levels” and 16.7: (“Ensure responsive, inclusive, participatory and representative decision-making at all levels”). See ‘Sustainable Development Goal 16’. Accessed online September 2017 at: sustainabledevelopment.un.org/sdg16

Even if no such relationship with OGP is pursued, the EU could, and should, still follow the OGP's agenda, learn from OGP initiatives in other countries, and follow the good practices embodied in this way of working. The EU and the OGP have overlapping objectives around transparency, participation, and accountability. Without significant cost or administrative overhead, much could be done to align the EU with OGP principles and actions.

The most important marker of success in open government initiatives is consistent support from the political level and within the administration. If the EU were to develop its existing commitments to open government and pair them with concrete action, and ensuring everyone in the organisation feels they have permission to try new ways of working, it could quickly show real leadership in open government. Good open government action without OGP membership is far preferable to OGP membership as a dead letter, with no accompanying action.

9

RECOMMENDATIONS

We believe that the time is right for the EU to make a strong commitment to practical action on its own approach to open government. This is in line with existing commitments such as the Commission President's priority on the Union of Democratic Change¹⁹³. It supports the ambitions of the 2017 State of the Union speech¹⁹⁴, First Vice-President Timmermans' recent essay on Trust in Times of Intense Scrutiny¹⁹⁵, and other recent political initiatives,¹⁹⁶ all of which aim to show citizens that, in the recent words of President Macron, "Brussels is us, always, at every moment".¹⁹⁷

Our recommendations are:

1. Champion and celebrate existing open government work

The EU is not short of commitments to open government (even if not always labelled as such). Some have roots as far back as the 2001 White Paper. Practical action, however, is disjointed and based on individual projects rather than consistent strategy. Creation of a clear narrative would provide impetus for further action.

To create this narrative, the institutions must see and celebrate what is already happening. At present, open government related work in the Commission takes place in several Directorates-General, and different teams within the same DG. Creating a single narrative that connects these different pieces of work will support the delivery of every initiative, by placing it in context and demonstrating that it is part of an organisation-wide move towards open government.

193 https://ec.europa.eu/commission/priorities/democratic-change_en

194 https://ec.europa.eu/commission/state-union-2017_en

195 <https://www.opengovpartnership.org/trust/trust-times-of-intense-scrutiny>

196 https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf

197 <http://www.elysee.fr/declarations/article/initiative-pour-l-europe-discours-d-emmanuel-macron-pour-une-europe-souveraine-unie-democratique/>

Based on the research in this report, and their own resources, the Commission should create a clear declaration of principles on open government that marshal its different commitments and work programmes on open government. It should increase public awareness of this work through a specific programme of celebration, such as internal or public openness awards.

2. Create a European open government network

The Open Government Partnership model at national level is based on a partnership between government and civil society. The EU level has a network of different independent institutions interacting with a large number of stakeholders at local, national and European level.

The OGP provides a well-tested model for convening and involving such a wide range of interested parties. It also echoes the EU's long tradition of working through forums and multi-stakeholder arrangements. Our research has shown strongly that a principal benefit of the OGP has been the opportunity for better connections with and between government institutions and civil society, and this should be the main goal of the network. A European open government network would provide a significant benefit to the EU. It would enable more effective transfer of knowledge and ideas, and a space to discuss initiatives and promote better open government.

An open government network for Europe needs to be broad and inclusive, bringing institutional actors and civil society organisations together with other stakeholders, whether organisations or individuals. The institutions need to make a commitment to engage. Civil society and funding organisations need to make the commitment of resources, time and attention that will create the network and make it a success.

Civil society organisations, the Institutions and other stakeholders should create an informal EU open government network, open to all. As with the examples at national level, this network should be facilitated by a core group, with membership from key organisations with a stated commitment to open government, and a track record, roots and connections beyond Brussels to ensure that this issue is understood from the perspective of Europe's citizens not just as a technical or policy issue. OGP prides itself in being apolitical, working with governments of all political stripes as long as they maintain a commitment to the standards for membership. As such it bridges the electoral cycle and is not a platform for political parties.

3. Work in partnership to create an action plan

The European Commission, and other interested institutions, should create a close partnership with the OGP, drawing on and extending the partnership model the OGP already uses with other international institutions. The partnership should have a double focus – both on internal actions and the institutions' work in the wider world.

In parallel with the establishment of this partnership, **the Commission and other interested institutions should work through the European open government network to create a two-year open government action plan** on the model of the national action plans drawn up under the OGP, that can start to be implemented during 2018.

The action plan should be founded on the basis of existing good work in the European institutions and elsewhere. In our own country research, research into the current state of open government, and through interviews, we have identified several initiatives that could be beneficial if taken to European level, and meet an apparent gap in current practice.

The action plan should be co-created with the European open government network, and seek suggestions from citizens and stakeholders. In some Member States, partnerships have generated open government ideas through an open participative process. If done well, this could draw attention to the importance of open government as a new agenda, and start to create the networks of participation and trust on which successful implementation of open government depends.

The action plan should be broad and ambitious, reflecting key declarations such as the Paris Declaration of the Open Government Partnership¹⁹⁸ and the recent Guidelines for Civil Participation in Political Decision Making, issued by the Council of Europe¹⁹⁹.

The action plan should acknowledge and reinforce the essential role of Europe in driving the technological, governmental and social reforms that support open government, and in championing openness, democracy and rule of the law in its region.

Institutional and non-institutional network members should work together to create a single action plan, or action plans for all interested institutions, and agree open shared governance arrangements for the plan that are in line with OGP good practice.

198 <https://www.opengovpartnership.org/paris-declaration>

199 https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807509dd

4. Connect to action beyond Brussels

The European open government network described above should have as one of its goals the linking of innovation and open government work at European, national and local level, through existing channels and by building new ones.

This connection should be broad and open, and allow organisations and individuals to participate to the extent and in the depth that they are able. Through this broader network, EU open government can reach beyond representative bodies and to citizens and organisations directly in their own media and political environments. The existence of these routes to citizens is important for work on transparency and accountability, and essential if participation in EU policies is to be broad enough to make a difference.

The initial steps to create this wider network can start quickly. Good practice examples exist through the OGP mechanisms in a number of Member States. It is important that the members of the network are permitted to co-create it and to allow its work and governance to evolve organically to adapt to the challenges of policy making and networking in a multilingual, multi-country community. In this way, the network can itself be a testing ground for some of the innovation it seeks in government.

5. Support and defend open government elsewhere

The EU legislates in many areas where transparency is important, and the Union is an essential support for good governance in member and aspirant Member States (and beyond). These recommendations relate to its legislation and external action.

Where legislation is pending on issues where transparency, accountability and participation are a significant element, for example anti-corruption or anti-money-laundering rules, **the EU should work with the OGP and relevant civil society networks to align legislation with the shared values, goals and commitments of the EU.** To this end, we recommend that **EU Member States who are members of the OGP should seek to include commitments in their NAPs about how they can promote the ideas and aims of openness and transparency at the EU level.** CSOs that operate in Member States should look to secure government commitments to support this legislation at the EU level.

The EU should continue to use its funding programmes to support initiatives around open government across the Member States, and should seek to link them into Member States' national action plans. Programmes such as Horizon 2020 and Next Generation Internet already have significant open government and open data elements, for example the project EUCROWD, funded through Europe for Citizens, looks at how technology platforms for crowdsourcing could be used in EU policy making. These initiatives would have more impact if they were better co-ordinated with national action plans and OGP networks in the Member States.

A partnership between OGP and the EU should be used to advance the EU's reform goals for candidate and neighbourhood countries. For such countries, National Action Plans can be an important means of seeking speedier reforms and public support for change. The EU supports these actions where they reinforce the EU's strategic goals on democracy, transparency and the rule of law. By working together, the OGP and EU can encourage more ambition and action by providing a prestigious international platform and positive incentives for change.

The EU should work with the OGP to support the creation and execution of open government plans in developing countries, particularly on core areas of EU priorities (e.g., open budgets, open contracts, open extractives). The EU's technical, political and financial support to these countries, including specific peer exchange and expertise around e-Government, should be aligned around open government plans.

ANNEX A

METHOD AND LIMITATIONS

This research was split into two parts: a study of the state of open government within the EU institutions and bodies; and research into experiences of the Open Government Partnership in Estonia, Romania, and the UK.

For both projects interviews played an important part of our research, and we are exceptionally grateful to the people who so generously shared their time and thoughts through these interviews.

THE EU AND OPEN GOVERNMENT

The aim, and the outcome, of this research is to create a starting point understanding of what is currently happening to open up the EU, and to identify areas in which this could go further. The report does not aim to give a more thorough evaluation of each project and initiative, and although we have touched on areas in which the EU works to promote open government in other countries and companies, this has not been the focus of this work.

Method

This study involved desk research and interviews. The bulk of those interviewed were people working as civil servants within the EU's institutions and bodies. We also spoke to a small number of experts on this topic working outside the EU. Civil society were not our focus during the research, but some insights from this area were obtained from the small number of civil society groups working on opening up the EU who took part in our roundtable.

Interviewees included existing contacts, as well as people uncovered through desk research, and some people suggested by those we interviewed at an early stage of the research. Identifying people through desk research involved a combination of looking into interesting work talked about online, and identifying people connected with, or who had relevant job titles, using the EU Directory²⁰⁰. We focussed on trying to speak to people from across key institutions, and from a range of departments and other bodies.

200 The directory is available at: europa.eu/whoiswho/public/

Desk research involved looking at what EU institutions and bodies were saying about their activities through their own websites, as well as exploring the reflections from others on the work of the EU and how it could go further.

We presented initial research at a roundtable in Brussels. Present were a small group of about 20 people from civil society groups working on opening up the EU, as well as key people working on this from within different institutions and bodies within the EU. After presenting our findings we discussed these with the participants and were able to hear their views on the topic, and on what we had said. The views expressed themselves were very useful and informed a number of revisions within the report.

This research has been undertaken from the position outside the institutions. Although we have talked to people working in the institutions, and we are grateful for the information they have provided, one of the clear conclusions is that there is little horizontal connection between different open government initiatives within the institutions, so it is very likely that there are initiatives underway that we have not uncovered.

Limitations

The study is very much a starting point for looking at what is happening, and identifying opportunities for taking this further. It does not claim to give a fuller analysis. If a fuller exploration were pursued this would benefit from working more with a wider range of organisations, and with citizens themselves, as a key limitation has been that we have not been able to delve deeper into how citizens themselves would wish to be engaged. We would also have wished to spend longer assessing the work of civil society and efforts happening in academia.

There are bound to be things we could have drawn attention to, but missed out. Looking at what is shared on EU webpages will have shaped the work we encountered. This is likely to mean that more targeted outreach is inadequately looked at (which is unfortunate given the importance of this approach). There may also be a bias towards information about how institutions are operating, rather than looking at initiatives of particular departments or committees. While we were aware of this risk, and tried to search out these kind of examples, there is only so much we could do.

This study did not look at any length at the activities of civil society working on open government at an EU level. This is an area that could be investigated further though we were able to make some observations here. Activities of individual MEPs or of party groups is also something of a black spot in this analysis. In some contexts work within the framework of the Open Government Partnership has not given as much emphasis to the legislative branch as it might have done. We hope that this exclusion does not suggest that such an omission is justified.

The Democratic Society exist to help involve citizens more in the decisions that affect them. This is undoubtedly likely to influence what we have identified through this study. We have tried to be aware of this and ensure that other aspects of open government were as adequately focussed on but our findings will of course be affected by which topics we are most sensitive to. To some extent we also not afraid of this bias - there seems historical evidence of a risk that open government efforts focus too much on more tangible achievements such as providing more information at the expense of riskier, and less tangible, areas like improving participation. We hope that our bias has helped counter this, without overstating this case.

LEARNING FROM EXPERIENCES OF THE OPEN GOVERNMENT PARTNERSHIP IN EU MEMBER STATES

The aim of this study was to look at the experiences of the Open Government Partnership in three EU Member States: Estonia, Romania, and the United Kingdom. These three countries were chosen to try and give a range of different contexts to look at.

Method

The Democratic Society was responsible for the UK study, The Open Estonia Foundation²⁰¹ for the Estonian and the Centre for Public Innovation²⁰² for the Romanian. The Democratic Society was responsible for pulling these into the final 'lessons learnt' shared in this report.

Studies were conducted through desk research and interviews with those involved in the Open Government Partnership process in these countries, from both the civil society and government sides. Desk research centred largely on reports done as part of the Independent Reporting Mechanism, which provided us with pre-existing information on progress made on open government in connection with the Open Government Partnership work that has happened in these countries.

Limitations

In this research we only spoke to those involved in Open Government Partnership processes, therefore we lacked the perspective of those who this partnership reached or who chose not to engage in it. Where possible academic literature is cited, however there is a lack of published research in this field.

To some extent it is hard to standardise and research approach working as three partners across different countries, and we weren't always able to speak to the same types of people. Nonetheless using a shared template we were able to capture similar information that could then inform the lessons we pulled out.

201 Their website is: oef.org.ee/en/

202 Their website is: inovarepublica.ro/center-public-innovation/

It was not always easy to assess to what extent the Open Government Partnership was key to achieving progress on particular initiatives. Our more useful findings are probably the mechanisms we were able to identify as to why this is a useful way of working, and the observations we were able to make about some of the pitfalls to be avoided.



The Democratic Society (Demsoc) works for more and better democracy, where people and institutions have the desire, opportunity and confidence to participate together. We work to create opportunities for people to become involved in the decisions that affect their lives and for them to have the skills to do this effectively. We support governments, parliaments and any organisation that wants to involve citizens in decision making to be transparent, open and welcoming of participation. We actively support spaces, places and processes to make this happen.

demsoc.org



The Open Society European Policy Institute (OSEPI) is the EU policy arm of the Open Society Foundations. We work to influence and inform EU policies, funding and external action to promote open societies. OSEPI enriches EU policy debates with evidence, argument and recommendations drawn from the work of the Open Society Foundations around the world and from its own research. The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable and open to the participation of all people.

opensocietyfoundations.org

This work, and in particular the full report that includes the national level examples, was produced in collaboration with:

