

The trade-off between transparency and efficiency in EU decision making is not as straightforward as some claim

 blogs.lse.ac.uk/europpblog/2019/03/04/the-trade-off-between-transparency-and-efficiency-in-eu-decision-making-is-not-as-straightforward-as-some-claim/

March 4, 2019

*The EU has taken several steps to make its decision making more transparent, but many key decisions are still taken behind closed doors. As **Stéphanie Novak** and **Maarten Hillebrandt** explain, one of the main reasons for this is the perception that increasing transparency could undermine the efficiency of decision making. Drawing from a new study, they argue that although transparency can have downsides in specific cases, much of this depends on context. Transparency does not necessarily threaten efficiency and can sometimes even increase it.*



Transparency has become a buzzword in today's politics and a requirement to which democratic governments and legislative institutions can hardly say 'no'. Since the 1990s, EU institutions have strived to increase the transparency of their decisional processes. In particular, [Regulation 1049/2001](#) aims to guarantee the public access to EU institutions' documents.

At the same time, the Regulation also explicitly alludes to the necessity to preserve the decisional efficiency of the institutions. It is indeed well imaginable that transparency has costs, for instance because it can induce the polarisation of decision makers' positions or grandstanding. Recent scholarship has attempted to analyse these costs but has paid little attention to the oft-invoked trade-off between transparency and efficiency. However, since the EU Council of Ministers regularly justifies its denial of access to documents requested by EU citizens by drawing on this so-called trade-off, its underlying assumptions deserve further discussion.

Even though striking and intuitive, the argument according to which transparency would jeopardise efficiency is actually not as clear as it might seem. This is partly because 'efficiency' as such is a vague concept. When the Council or member states argue that the release of a document would threaten their decisional efficiency, do they mean that it would slow down the process? That it would limit the actors' flexibility, a necessary tool to reach compromise? That it would jeopardise the member states' ability to implement a law that they contested during the negotiations? Or rather that it would lead the actors to avoid making written and formal statements – which would lead to a long-term loss of information?



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Both respondents from the Council and the Council's argumentation when it denies the access to a document mention effects on these different forms of efficiency, apart from those on the decisional speed (possibly because it is not deemed a legitimate argument for limiting transparency). More precisely, our analysis of Council replies to administrative appeals of citizens who requested access to undisclosed documents reveals that most commonly, the Council refuses access to a document on the basis that it would prevent the representatives from changing position in the course of negotiations, which would in turn prevent them from reaching compromise.

It also frequently justifies the non-release of a document by stating that it would compromise future negotiations, since it would induce the negotiators, being aware of the risk of publicity around their positions, to prefer oral exchanges and to avoid putting their positions in writing. The latter reaction would deprive the actors of an important tool for reaching decisions, and it would also jeopardise transparency itself. Member states' representatives also argue that too much publicity around their opposition would compromise their ability to implement the adopted directives or regulations which they opposed during the negotiations.

Reference to the concept of efficiency is therefore deeply ambiguous, and the apparently strong argument according to which transparency would threaten efficiency is shakier than it seems at first sight. Moreover, when one looks at the empirical evidence to understand how likely it is that transparency would reduce the different types of efficiency we identified above, one finds that the effects of transparency are rather context-dependent. We offer three examples to illustrate this point.

First, a common assumption underlying the so-called trade-off between transparency and efficiency is that the actors would be more sincere behind closed doors. By contrast, too much transparency in their proceedings would prevent them from talking frankly. However, as previous research suggests, member states' permanent representatives

bargain in order to find agreement on legislative proposals and bargaining entails practices, such as bluffing or establishing bilateral deals, that are at odds with this so-called sincerity. This means that behind-closed-doors meetings do not immediately imply that the actors will have sincere exchanges.

Secondly, when it comes to the argument according to which too much transparency on the debates and conflicts between member states could reduce their ability to implement highly debated EU directives and regulations, one should observe that in some cases, publicly voting against a proposal, or issuing a statement alongside the vote, can be used by member states as a signal addressed to their constituents. By publicly opposing or abstaining, a member state can communicate that it attempted to defend the national interest but that it was outvoted and that there is now no other solution than implementing the contested law.

Thirdly, publicity can increase decisional speed by deterring the actors from adopting unjustified obstructionist strategies – which they might not hesitate to follow behind closed doors. Endless nit-picking about definitions and the invocation of reservations are known strategies for kicking the can down the road and avoiding the scrutiny of a vote. By increasing transparency, the Council Presidency can in some cases activate what Jon Elster has described as the ‘civilising force of hypocrisy’, which means as much as applying the pressure of public scrutiny to force member states to drop self-regarding arguments. Although insincere, such behavioural adaptation affects decisional efficiency for the better.

These intervening factors notwithstanding, some forms of efficiency appear to be more likely to be negatively affected by transparency. Notably, the idea according to which too much transparency would prevent the actors from changing position, and therefore reduce the Council’s ability to reach compromise, relies on socio-psychological grounds that appear deeply rooted. James Madison already referred to such an effect when he observed that publicity would have prevented the members of the Philadelphia Convention from reaching a compromise on the American Constitution. The fact that too much transparency could threaten transparency itself because the actors would tend to informalise their exchanges is equally problematic. This effect has also been observed in decision-making settings beyond the Council.

Therefore, while the search for compromise and the circulation of information are certainly aspects that might be affected by transparency, our analysis demonstrates that transparency does not *necessarily* threaten efficiency and can sometimes even increase it. In practice, the widespread and apparently obvious trade-off argument between transparency and efficiency is underpinned by assumptions of such a context-specific nature that they stand in constant need of scrutiny.

For more information, see the authors’ accompanying article at the Journal of European Public Policy

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