

**TRANSPARENCY IN THE EUROPEAN UNION:
A CRUCIAL LINK IN SHAPING THE NEW SOCIAL CONTRACT
BETWEEN THE CITIZEN AND THE EU**

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1. Introduction

Without a doubt, the European Union is one of the most fascinating constitutional projects in the world today. Through the European Union, we can daily face the most fundamental questions of governance, of the ordering of society, and of the relationship between public authority and the citizen in a way that is quite different from what most of us are used to in the familiar context of the national states. The recent expansion of the European Union has only heightened this awareness and is challenging us with basic questions regarding the functioning of a polity and the foundations on which it is constructed.

The developments in the EU are interesting not only from a theoretical point of view: They also have profound practical relevance. The ambitions of the EU itself as formulated in the Lisbon strategy, the expectations of the outside world in regard to the EU, and the demands of its citizens set high performance standards. These are so high, and manifest themselves in such a variety of different areas, that they are not only hard to meet but may even seem hard to reconcile as the tensions between the requirements of expansion and deepening of the EU show. Added to that, the EU, like national states, needs to respond to general societal transformations and the changing role of law in society, often sparked by technological advances and the process of globalisation. As the EU cannot rely on age-old traditions, these transformations sometimes confront the EU more pertinently than they do national states.

All these developments are making demands on processes of decision-making, including the way they relate to the citizen. On the one hand, law and policy processes within the European Union seem to be cumbersome and are perceived to take an inordinate amount of time. On the other hand, the dynamics of European integration and constitutionalisation are beyond our wildest dreams, especially seen from a distance. The period between the adoption of the Single European Act in 1986 and the establishment of the Convention for the Future of Europe covers not much more than fifteen years. This is an almost paradoxical experience that

most of us working in the EU or otherwise involved with developments in the EU will certainly recognize.

Apart from real or perceived difficulties in consensus building, the dynamics of treaty reform and constitutionalisation have yielded a remarkable result. Unsystematic, unexpected, and even unorthodox provisions have been introduced in the (quasi-)legal system of the EU which do not have counterparts in national legal systems. Consider, for instance, the Declaration to the Final Act of the Maastricht Treaty concerning a “right to information”, urging the Commission to submit a report “on measures designed to improve public access to the information available to institutions”, or a Declaration on sports added to the Final Act of the Amsterdam Treaty. More than once such novelties have been sparked off by seemingly coincidental political pressures or have been the result of haphazard negotiations.

On closer inspection, these and similar provisions may be preludes to innovations which enable the EU to take a constitutional leap forward in a way that even national states would find hard to do or are not even ready to do. Thus, the EU is in a position to make a positive contribution to constitutional renewal that may even have significance for its Member-States. In other words, the EU can make us sensitive to the constitutional demands of the future.

This is also true with respect to the sudden emergence and success of the notion of transparency. The debate on openness in the EU, initially focused on access to information, has certainly played a key role in the promotion of “transparency”. But what should we make of this new “principle” of transparency? Where did it come from? And what function does it fulfil? What does the principle of transparency, in turn, tell us about the state of European law on access to information? These are the issues that will be addressed in this essay.

2. Access to Information and the European Ombudsman: Mutually Reinforcing Elements in the Promotion of “Transparency”

In the Declaration to the Final Act of the Treaty of Maastricht (Declaration nr. 17), the recommended steps to improve public access to information were already connected to “transparency of the decision-making process”. At the time, improvements in this area were specifically seen as a means of strengthening “the democratic nature of the institutions and the public’s confidence in the administration”. Despite the fact that the recommendation was fairly “soft” and that it was merely laid down in a Declaration, the very fact of its adoption was significant. This became especially clear in the aftermath of the conclusion of the Maastricht Treaty. National processes of ratification, especially those that involved popular

referenda, made it clear that forging and maintaining the support of the citizenry for the European project had become truly pressing. The European Council meetings in both Birmingham and Edinburgh, held in 1992, concerned themselves with this issue. These Council meetings resulted in a Declaration entitled “A Community Close to its Citizens” and a set of concrete measures relating to the Council. The Council and the Commission agreed on a code of conduct, and the Council altered its rules of procedure.

The issue of openness was lifted to the constitutional level at the first following occasion. Article 1 EU as adopted in the Treaty of Amsterdam in 1997 stated that decisions must be taken “as openly as possible” in all three so-called pillars of the EU. Furthermore, a provision on access to information was adopted on that occasion (Article 255 EC). Even if not a directly applicable provision, its new status was a major recognition of its importance. It is not surprising that the commitment to openness and access to information have found a place in the Constitutional Treaty for the EU. The latter is even guaranteed as a fundamental right and complemented with a general and new right to “good administration”.

For our present purpose, it is not necessary to enter into a detailed critical assessment of these provisions – as one could; it will suffice to note the rapid constitutionalisation of “openness” and “public access to information” and their importance as a way to increase “transparency” in the EU and thus bring the EU closer to its citizens.

The 1992 Treaty of Maastricht was important to the development of the notion of “transparency” in the EU in another way as well. It established a European Ombudsman. Ombudsmen, well-known instruments at the national level, are independently functioning mechanisms of public scrutiny or low-threshold mechanisms to deal with the complaints of individual citizens, most a combination of both. They have a parliamentary connection (ombudsmen are appointed by, and must report to, Parliament) and their concern is to counter maladministration. They can conduct an inquiry regarding the complaint of an individual or on their own initiative, as can the European Ombudsman. Such an inquiry may result in a settlement or a recommendation. The Treaty of Maastricht linked the establishment of the European Ombudsman to the introduction of “European citizenship”. The function of a low-threshold mechanism to deal with complaints carries extra weight in the EU, as direct access to the Court of Justice for private parties is strictly limited. It was not explicitly established to increase transparency, but contributing to openness is, to a certain degree, inherent in its function.

One benefit of the establishment of the Office of the European Ombudsman is that it has helped to give direction to standard-setting with regard to access to information and has contributed to increasing administrative transparency. The European Ombudsman has concretised the requirements of “openness” in decision-making processes. Like the courts, it has played a role in the interpretation of the Council and Commission Decisions mentioned above. It has conducted inquiries into the practice of bodies other than the Council, the Commission, and Parliament (with the exception of the Courts).

Without going into the details of the activities and results of the European Ombudsman in this field, it is clear that the institution of the Ombudsman, as well as its functioning, have played an important role in the debate on openness in the European Union and the promotion of “transparency”. However central these two tendencies have been to the (initial) promotion of transparency, the idea of transparency has evolved further and has outgrown the two initial driving forces.

3. Transparency in the EU: A Developing Debate

The moves towards realising access to information and the establishment of the European Ombudsman can be explained in the context of the times. It was already clear in the run-up to the Maastricht Treaty that the activities of the EC were expanding rapidly. This expansion was accommodated and taken further by the Treaty. It was generally agreed that the attribution of powers to the EU should be accompanied by similar guarantees that liberal democracies provide their citizens. The increasing significance of the EU should not be allowed to erode the constitutional achievements of the Member-States.

Thus, inter-institutional relationships were revised in favour of increased parliamentary involvement. The introduction of European citizenship fit into this picture, as did the establishment of a European Ombudsman and the – still hesitant – reference to access to information. As it was clear that full openness of the legislative process (notably the meetings of the Council) was not yet to be expected, the openness that could realistically be realised could at least function as compensation.

We can extend the comparison even further. The move towards open decision-making and access to information in the EU may be seen as a logical follow-up to the call in the 1970s for open government in Western European states. The call for open government at the national level at the time coincided with developments in the welfare state, a period characterised by an ever-expanding state and the accompanying unquestioned belief in the state. From this

perspective, the drive towards realising these ideas in the EU can be explained in terms of its expansion of competences and its transformation to a structure that more than ever before acquired state-like features.

The notion of transparency and its original focal points of Ombudsman and access to information in part fulfil a constitutional function similar to their counterparts at the national level. The notion of transparency within the EU first developed in areas relating to classic decision-making, that is, open government in the decision-making process, inter-institutional relations, and, more specifically, access to information by the citizen. It is not surprising that access to information and open government initially focused on the Council of Ministers and the Commission. Transparency was also linked to other areas, notably the emerging issue of ‘comitology’, the delegation of implementation measures by the Council of Ministers to the Commission with the use of intermediary committees.

However, that perspective alone is too restricted. The initiatives have become part of a far more far-reaching transformation. The notion of transparency with which these initiatives were initially so strongly identified reaches far beyond its initial concern. Innumerable references to transparency can be found in the Official Journal of the EU, not only in policy documents but also in the legislation of the EC itself. The Court of Justice has also taken to using the concept of transparency. The notion features in a wide variety of different contexts.

4. Transparency: An Ongoing Concern. The Laeken Declaration and the Constitution for Europe

The notion of transparency has become a key concept in Europe. It also features prominently in the Laeken Declaration and is one of its overriding concerns. It is clear that transparency is seen as a central requirement of legitimate governance in the EU. It is not surprising that the Constitution for Europe in many ways reflects this call for transparency.

Transparency is an essential part of the Laeken Declaration’s fabric. “Openness” and “transparency” are brought in connection with various different elements and statements. With its almost magic appeal, it functions more or less on the basis of intuitive consensus.

Under the heading: “The democratic challenge facing Europe”, the Declaration states that the Union must be “brought closer to its citizens”. The openness of European Institutions is regarded crucial to that aim. Under the heading: “The expectation of Europe’s citizens”, it is stated that the citizens are calling for, among other things, an “open” Community approach.

Where the Laeken Declaration moves towards formulating the “Challenges and reforms in a renewed Union”, the need for transparency in the Union features prominently. This is again reflected in the various areas of concern that are outlined with a view to the establishment of the Convention for the Future of Europe. The Laeken Declaration points out four of these areas. The first is a “better division of competence” in the EU. The second is “simplification of the Union’s instruments”, and although the word transparency is not explicitly mentioned, the whole section and its explanatory text express the need for transparency.

The third area, headed “More democracy, transparency and efficiency in the European Union” again makes transparency a central point. As a concrete example of how transparency could be enhanced in the institutions, it suggests the consideration that meetings of the Council “at least in its legislative capacity” be public. It also raises the question of improving access to Council documents.

We can easily conclude that transparency is a central notion in the Laeken Declaration and that the project of drafting a Constitution for Europe itself is an exercise in transparency. The very fact that a Constitution – whatever complexities it in turn introduces in its effort to reform the Union – is an achievement in terms of transparency. The Convention for the Future of Europe, too, and its method of operation was exemplary in its transparency, as was the preceding Convention for the fundamental rights of the European Union.

The draft Constitution presented by the Convention more than lived up to the wishes of the Laeken Declaration. In the areas mentioned by the Declaration, it also fulfilled the aim of creating a more transparent structure.

There are more ways in which the Constitution is innovative beyond what has been achieved or is likely to be achieved at short notice at the national level. The provisions in the title on the “Democratic Life of the Union” are a marked example of this. The “dialogues” that are foreseen with civil society organisations, for instance, are worthwhile mentioning.

Transparency can most assuredly enhance legitimacy and create goodwill; but can we go beyond that? Can we go one step further?

5. Transparency: Its Role in New Processes of Law and Policy Making

The cry for transparency seems a natural reaction to opaqueness, to complexity, and procedural variety. The initial focal points for increased transparency – which continue to be important – were in areas in which the European Union still had to achieve what was

generally achieved at the national level. It was clear, in that respect, that transparency could bring the Union “up to the mark” constitutionally. But this alone cannot explain its success. To understand the (constitutional) role transparency fulfils as a parameter of modern decision-making, we must assess modern law and policy making against classic decision-making in the context of a national state. As a starting-point, it is necessary to note that the mechanisms of liberal democracies are based on the presumption that public decision-making takes place in the context of the national state.

Three factors have changed the presumption that the national state is the ultimate centre of public decision-making. First, the position of the national state as the centre of public decision-making has eroded in favour of internationalisation of public decision-making. Second, the awareness of the limits of steering power of the state and the limits of the possibility to shape society through law has led to a massive transfer of tasks to agencies and other public institutions, as well as to hybrid structures, and even to the private sector. The activities concerned are still conceived as being of “public” interest, but they fall outside of the scope of classic constitutional structures. Third, even though legislation, administration, and court rulings take place as they used to, the reality behind these phenomena has become a completely different one than classic constitutional law suggests. As a result, the guarantees of classic constitutionalism – that is, the mechanisms of democracy and the rule of law – fall short when it comes to dealing with these new realities.

As regards the EU, these trends are significant as well. First, the national mechanisms cannot simply be transplanted to the reality of the EU. Separation of powers, for example, formulated with regard to the traditional *Trias Politica*, cannot have an identical expression at the level of the EU. Second, the phenomena of the creation of agencies and other institutions and the shift of “public tasks” towards the private sector are clearly visible in the EU. Stronger even, the EU has played a decisive role in processes of liberalisation and privatisation. Third, new ways of governance are experimented with in the EU. This means that new expressions are necessary to give substance to the values of democracy and the rule of law.

As the first and second trends are self-understanding, let us have a closer look at the third. It is striking that many of the experiments in the realm of European governance are both meant to increase the legitimacy of the EU and, at the same time, raise questions concerning the legitimacy of the EU. In order to find a more solid basis for its policies, the EU has made an issue of closer involvement of national parliaments in its work. It is also searching for ways to have more direct involvement with regions with respect to policies that have a strong regional impact. In doing so, the EU is exploring methods of “multi-level governance” that do not

completely conform to more traditional models of federalism. In its relationship to the outside world, including the relationship to other international institutions, the EU is becoming more and more a factor in its own right; in shaping its own policies, informal processes such as the “method of open co-ordination” are being advanced, which do not embody the usual constitutional guarantees.

The reality of law and policy making within the EU is also moving away from classic constitutional understandings in other ways. We may think of the participation of civil society (NGOs), the role of experts, and the involvement of private parties in the ultimate implementation of EU policies. In its White Paper on Governance (COM (2001) 428 final) the Commission gives a clear insight in the emerging new realities of European governance. It is clear that these developments may strengthen the legitimacy of EU governance. At the same time, they require adequate procedural mechanisms in order to be legitimate themselves.

Of course, public decision-making still takes place in classic ways, according to the classic parameters of constitutional law. But it is in all these novel areas, that our traditional expressions of the liberal democracy are no longer adequate to secure the basic values of our constitutional systems. These traditional expressions, therefore, need to be newly defined. It is especially in these fields that transparency comes in. Analysis shows that transparency not only fulfils a crucial role in these fields, but also actually features as a standard against which the legitimacy of the creation of actions, policies, and law needs to be measured. Either explicitly or implicitly, and whether in primary or secondary law, we often find references to transparency. The notion also features in rulings of the Court of Justice and the Court of First Instance.

The White Paper on European Governance mentions “openness” as one of the principles of “good governance”, in line with, among other things, participation, and effectiveness. In doing so, the White Paper has certainly struck an important chord. But where does this “principle of transparency” come from? How can we relate it to our classic constitutional values?

6. Transparency: The New Counterpart of the Principle of Legality

The preceding analysis enables us to understand the magic of the principle of transparency. Although it is promoted as a standard of “good governance”, it is still important to see why it has suddenly acquired this status and from what it derives this status.

Transparency largely promotes the same and similar values as the principle of legality, that is, the requirement of a legal basis for government action. In its underlying values, transparency is closely related to legality; therefore, it can fulfil a crucial role in law and policy making processes, where the principle of legality is out of reach and does not make sense. This is notably the case, in new, unorthodox ways of decision-making that often characterise themselves through a high degree of informality. In other words, transparency is becoming the new counterpart of the classic principle of legality. Moreover, transparency naturally fits in with the *Zeitgeist* of the information age and the birth of the Internet.

This is not to say that the classic principle of legality needs to be discarded. It is still one of the cornerstones of our legal systems and certainly will continue to be. However, the principle of transparency fulfils the same or similar functions that are crucial to uphold, also in cases the principle of legality cannot help us. To mirror transparency as a principle of good governance against the classic principles of liberal democracies is important: When we realise its constitutional significance, we can better understand *why* it fulfils such a crucial role in the relation between public authorities and citizens.

The core of the principle of a legal basis for government action is that intervention in the freedom and property of the citizens is allowed only on the basis of a rule, generally formulated, and equally applicable to every individual, and established with the cooperation of representatives of the people. Even if not enshrined explicitly in national constitutions, it is strongly embodied in these constitutions and in constitutional thinking. The principle of legality is a primordial achievement in legitimate governance in the classic *Rechtsstaat*.

The principle of legality implies generality of a norm, and the formulation of the norm in advance of administrative action taken. It bans retroactivity and implies a certain degree of precision.

The functions of the principle of legality are to counter arbitrariness and make public authority action predictable. “Legal security” is a key dimension of legality. Legality encompasses, at least implicitly, a reference to the idea of equality. Likewise, it is related to democracy and fundamental rights. Through legality, rules are recognisable; they are known in advance.

Within the EU, the classic requirement of a legal basis for action is of prime importance. The system of attribution of power is as crucial to the EU as it is to any international organisation. Only in so far as the EU is attributed competences does it have a legal power to act. The requirement of a legal basis, therefore, functions in the relationship between the EU and its Member-States in the demarcation of powers. Obviously, it also plays a role in inter-

institutional balances, that is, in the relationship between the institutions among each other. Where different decision-making procedures exist, notably with different degrees of involvement of the European Parliament, the choice of a legal basis for the exercise of a particular power is crucial. And, the principle of legality functions in relations between the institutions and its citizens, embodying all the above-mentioned guarantees.

As we know, escape hatches exist: the principle of legality does not prevent the existence of a broad discretion to act or not to act. Furthermore, the Court of Justice has acknowledged the existence of so-called implicit competences. And, finally, Article 308 EC enables, to a certain degree, the extension of powers beyond the strict system of enumeration of powers. And, as is the case at the national level, the myth that all legal action is a derivative of the higher, democratically established law is questionable at the European level; the excessive but unavoidable use of delegated legislation is a case in point. However, the fact that legality is not watertight at the European level (as it is neither at the national level) does not detract from its importance.

The principle of transparency picks up where the principle of legality falls short. With respect to the new realities of public decision-making, it can fulfil a similar crucial role as the principle of legality. Its appeal as a new principle of good governance is strong, because it also picks up on basic values that underpin our legal systems in a vast array of different areas of law. To illustrate this: It has counterparts in the classic constitutional law in that parliamentary debates are open; minutes are available and published, a law must be published in order to come into force. It resonates with established obligations of information provision in administrative law (the right to be heard, the obligation to provide motives for decisions, for instance). It is even in many ways entrenched in legal relationships in private law.

It is also interesting to see the way the European Court of Human Rights has interpreted the requirement that limitations to fundamental rights guaranteed in the European Convention must *inter alia* be based on “law”. In the eyes of the European Court, this means that limitations must be “accessible” and “foreseeable”. Thus, the Court has accepted that professional codes and policy regulations, which are both not based on a formal power to issue binding rules, can be limitations based on the “law”. In doing so, it has not only accommodated the common law tradition, which does not so heavily rely on written legislation as the continental traditions traditionally do. It has also opened up to such new legal phenomena as highlighted above. This development shows the natural and close connection between transparency and legality.

Seeing the principle of transparency as the new functional counterpart of the principle of legality can motivate us to develop it further. It can also help us visualise ways in which it can be implemented. In other words, we can now position the transparency debate in a constitutional perspective. We can see it in the light of modern requirements of legitimate governance and assess its functioning against this changing background.

7. Transparency in focus

We can now define the principle of transparency:

“The principle of transparency requires clarity with regard to decision-making, actions, and policies at both the national and international level, in public, mixed, and private institutional settings as to:

- their position(ing) in the overall context of institutional decision-making;
- the organisational context in which they are set;
- the allocation of powers within that structure;
the actual process of their establishment, including the parameters according to which it takes place, and
- their content, including their status.” (The Empty Throne, p.62)

This definition reflects the fact that there is no longer one single centre, one focal point for public decision-making. There are many centres, places, and ways in which public decision-making takes place. The definition also reflects the fact that public decision-making is not one strictly outlined period of time, defined by formal decision-making criteria, but that it is a continuous process in which all sorts of relevant steps, both formal and informal, are taken. Finally, it shows that the borderlines between private and public decision-making are shifting and that it is often not even easy to tell the difference between the two.

This means that the mechanisms and ways through which and along which the principle of transparency can be shaped will differ from one area to the other. For example, transparency within the context of the decision-making within the Convention for the Future of Europe (which was transparent) is different than that of ordinary decision-making processes of a Council directive; it is different again in the context of processes of informal consultation of experts or NGOs, or, generally, processes to which the Council regulation on access to documents applies.

This makes it all somewhat complex. This cannot be avoided (as yet). The various ways in which policy-making processes take place necessitate tailor-made solutions to give shape to the requirements of transparency. A clear awareness of its constitutional significance and function makes it possible to consider the appropriate design. Exceptions and nuances, obviously, may have to be accepted. Sound criteria are necessary to strike a justified balance between competing interests.

8. Access to Information and other Areas: How to move forward?

Progress has been made in various respects regarding the dossier on access to information. From the non-binding Declaration, the issue has acquired constitutional status and even the status of a fundamental right. From a regime relating to the Commission and the Council, it has been extended to other institutions and bodies. Developments have taken place with respect to the policy areas to which the standards are applicable. Developments have been made with respect to the standards and the exceptions allowed. But the debate has not ended. How can we move forward? What is the ultimate horizon for access to information? How does that ultimately relate to other principles such as data protection? How does it relate to openness with regard to Member-State documents and applicable national regimes? Answers to these questions are obviously not self-evident.

However, in conducting the debate and trying to formulate answers, it is important to see these questions (also) in the broader light of the principle of transparency, a principle that is not just synonymous with access to information, nor a mere empty fashionable term. It is a principle of modern governance that takes up the age-old values underlying the principle of legality and incorporates them in new realities of modern governance. Seeing transparency in this light enables us to realise the crucial role it plays in achieving real, perceptible legitimacy in the eyes of the citizen.

Without taking a point of view in the debate on access to information at this moment: The initial debates on and achievements in the law on access to information as well as the establishment and functioning of the European Ombudsman have given leverage to the notion of transparency. Outlining the constitutional significance of transparency in the broader context of changing processes of law and policy making is enabling us to look from this new perspective to the legal regime concerning access to documents.

A few other observations must be made. Transparency, we must realise, is not simply concerned with providing (massive) information, but also with presenting it in a coherent and understandable fashion. This may even be relevant with respect to legislation. Transparency is not simply concerned with information, but with useful information and a sensible ordering of the information. Meeting these requirements obviously places great responsibilities upon the authorities involved; but it is necessary to do so, and it is worth it. Quality of information and timely availability are important.

It is also clear that transparency, interpreted as we have done, is not merely realised with passive provision of information, that is, provision of information only on demand. However important, the purport of transparency reaches much further. It also comprises active information policies. In only a few years time, information policies have indeed been devised and the provision of information through the Internet has increased tremendously, both in quantity and quality. Further reflection remains necessary.

It could be asserted that the notion of transparency itself, and the treaty provisions regarding access to information are too vague or not compelling enough to trigger further legal development. In dealing with such criticisms, we must be aware that the principle of legality is often not explicitly codified in national constitutions either, and if so, it was done after its recognition as a principle of constitutional law. The recognition of the principle of transparency and the correct assessment of its constitutional significance, however, make it possible for it to exert this driving force. The same is true with regard to the law on access to information. The developments so far already bear witness of this and show the potential of further progress.

9. Transparency in context

The previous shows that transparency is more than a fashionable expression that will not live to see the next year. The very notion of transparency resonates a deep understanding of the major transformations we are witnessing in the public domain at large. It is an answer to the urgent questions that arise in the relationship between government and citizen, and it is a key to a new understanding of legitimate governance.

However, the importance of the notion of transparency must not blind us to the fact that it is only one dimension of legitimate governance. It does not cover all dimensions of good

governance. Just making governance transparent is not sufficient. More elements play a role in the relation between government and citizen.

Transparency does not relate to participation of the citizen in government. It does not secure fair play or separation of powers. It does not secure accountability nor give us a clue to the mechanisms to be set in place. It does not relate to the outcome of the decision-making process; and therefore does not secure its content. For these demands, other principles are important. This is not surprising. In classic settings of liberal democracies, legality is an important principle of governance, but is not enough either. Ministerial responsibility, separation of powers, and parliamentary democracy play a role in this respect. It can be expected that these other classic principles are no longer adequate to cover the whole range of governance we are used to and that are mentioned in this essay. Therefore, these are undergoing a transformation as well. It is in this combined new setting that we redefine democracy and the rule of law.

Transparency is crucial; it is a precondition to many of the other principles. In order to assess the outcome, transparency is necessary. In order to be able to fully participate as a citizen or for the functioning of accountability mechanisms, transparency is crucial. Without transparency, the other principles fall short. In designing new mechanisms to secure good governance, all these elements must play a role.

10. The social contract renewed

In developing its processes of decision-making and the parameters within which these processes take place, the EU must move forward in a way that is both *solid* and *innovative*. The solidness can be derived from the age-old principles of governance that have crystallised in our current classic understanding of the liberal democracy. It must be innovative as the preconditions to which the mechanisms, which give expression to the classic liberal democracy are tailored, are no longer valid. New expressions and new mechanisms are necessary to shape the basic values underlying the very idea of liberal democracy. Transparency is an example of such an expression.

To convince the citizens of its legitimacy, the EU must have a clear view of its determining factors. Policies may change. Decision-making structures and procedures are subject to change too. Moreover, they are unavoidably and intrinsically complex. This makes it even more important to be clear on the pillars on which it all rests. Again, this is not a mere theoretical issue; it has practical urgency as well.

For the EU to be successful, it must be successful in the eyes of its citizens. Whatever perspective one takes - that of wise statesmanship or that of the rights of the people to democracy and the rule of law - the efforts so far and the importance of the EU require it to deal with this demand.

The Declaration of Laeken states: "Fifty years on, however, the Union stands at a crossroads, a defining moment in its existence." This is not true simply with respect to the expansion of the EU or the formal establishment of a Constitution. It also concerns the way the Union operates in day-to-day life and the understanding it is able to win with the citizens for whom it is all meant. Transparency plays a crucial role in this process.

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