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Editor's Foreword

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This second English-language special issue of *Action publique. Recherche et pratiques* brings together a selection of papers from the last issue published in 2022 and from the first three issues published in 2023. It presents four articles exploring public policy themes as diverse as that of bureaucracy, continuing vocational training, meaning and new work organisations, and transparency. Through this special issue, the journal continues its desire to make the academic work devoted to the various fields of public management accessible to as many people as possible and to highlight concrete reforms undertaken by public actors. While interested in reforms implemented in France, this issue also places them in a comparative framework, wishing to resonate them with European and foreign practices, particularly from the public contexts of Switzerland, Denmark or the European Union.

Enjoy your reading!

Éditorial

Ce deuxième hors-série en version anglaise de la revue *Action publique. Recherche et pratiques* rassemble une sélection d'articles issus du dernier numéro publié en 2022 et des trois premiers numéros parus en 2023. Il présente quatre articles explorant des thèmes d'action publique aussi variés que celui de la bureaucratie, de la formation professionnelle continue, du sens et des nouvelles organisations du travail, et de la transparence. À travers ce hors-série, la revue poursuit sa volonté de rendre accessibles au plus grand nombre les travaux académiques consacrés aux différents champs de la gestion publique et de mettre en lumière des réformes concrètes engagées par les acteurs publics. Tout en s'intéressant à des réformes mises en œuvre en France, ce numéro les inscrit aussi dans un cadre comparatif, souhaitant les mettre en résonance avec des pratiques européennes et étrangères, notamment issues des contextes publics suisse, danois ou de l'Union européenne.

Excellente lecture !

Joint interview

The following "Joint interwiew" is taken from *APRP*'s No. 17 on the Senses and New Work Organisations. David Giauque, professor at the University of Lausanne, and Guillaume Aujaleu, deputy director of social policies and working conditions at the Ministry of Economy, Finance and Industrial and Digital Sovereignty, provide their analyses of contemporary developments in work, in connection with the new organisations of work and their impact on the sense of work.

Two other papers also compose the 17th issue's summary: one dealing with the interdependencies between individual and collective aspirations in the quest for meaning at work, the other studying the influence of piloting by numbers on the meaning of the work for public officials.

https://www.cairn.info/revue-action-publique-recherche-et-pratiques-2023-2.htm

"Joint interview" ("Regards croisés") is a section based on a moderated discussion between an academic and a public official on a topic of common interest. The interview is recorded and published on the IGPDE YouTube channel. A reworked transcript of the conversation is also published as an article in this journal.

Meaningful work in the civil service: an overview

David Giauque and Guillaume Aujaleu[1]

LE SENS DU TRAVAIL
DANS LA FONCTION PUBLIQUE :
SPÉCIFICITÉS, VALEURS ET PERSPECTIVES

Entretien entre David GIAUQUE et Guillaume AUJALEU

David Giauque is Professor of Human Resources Management and Public Management at the Swiss Graduate School of Public Administration (IDHEAP), University of Lausanne.

Guillaume Aujaleu is Head of the Social Policy and Working Conditions Division at the French Ministry for the Economy, Finance and Industrial and Digital Sovereignty.

Watch a video of this interview on the Action publique. Recherche et pratiques *website:*

https://www.economie.gouv.fr/igpde-editions-publications/regards-croises

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1 This interview was moderated by Edoardo Ferlazzo, Head of Department, Comparative Public Management, IGPDE Research Office. It was recorded on 7 June 2023.

How would you define the concept of "meaningful work"?

David Giauque: The notion that we all need to find meaning in our work is a common theme in both the academic literature and in society in general. This idea comes to the fore during socioeconomic crises and whenever people begin to question how organisations operate. Without wishing to go too far back in time, we can see echoes of this concept in the 1930s Human Relations School,[2] whose proponents argued that this quest for meaning, coupled with the need for recognition, is what allows employees to find purpose in the work they do. Later on, occupational and organisation sociologists stressed that meaning is a key factor in employee motivation, satisfaction and engagement. This was all too clear in the civil unrest that swept across France in May 1968, which was triggered by a crisis of meaning in work. People were of course protesting about working conditions, but also about this loss of a sense of purpose. In the 1980s, the sudden interest in organisational values created the ideal conditions for questions around meaning to take centre stage once again. Because, ultimately, meaning and values are closely intertwined. The organisational sociologists of the day showed how employees tended to perform better at organisations with purpose and meaning embedded into their culture than at those which made no effort to foster this kind of approach. More recently, new public management-style reforms in the public sector – with their emphasis on cost efficiency, metrics and productivity – have once again put the issue of meaning in the spotlight. The natural counterpoint to this change in focus is that employees will look for meaning in the work they do, especially in relation to public policy-making. No discussion on this topic would be complete without mentioning the recent COVID-19 crisis, which put the question of meaningful work in focus once again: the so-called "Great Resignation" has made headline news in the United States, but it is equally affecting organisations in France and most European countries. This brief historical overview shows that questions around the value and purpose of work are incredibly important.

Does the concept of "meaningful work" have a special significance in the civil service?

Guillaume Aujaleu: Organisational sociologists have shown that large, complex organisations are adopting increasingly similar organisational arrangements, routine working methods, recruitment processes, technologies and other practices. This observation applies to both the public and private sectors, so the idea that public-sector organisations are somehow a category apart – with distinctive, perhaps less efficient ways of working, and with their own, binding standards – no longer holds true. In fact, the opposite is true: the trend we are seeing today is one of standardisation. But this trend raises important questions about values, both organisational and individual. Should a public body operate in the same way as a private entity? In their work, are public officials guided by the same personal values as private-sector employees? Again, it seems as though these values are converging – albeit with a few notable differences. One of the most obvious values that applies specifically to the public sector is the so-called "public service ethos", which is one of the criteria used to evaluate public officials' performance. It is absolutely valid to ask what this concept actually means. While there is no hard-and-fast definition, it is generally taken to refer to the idea that public officials – individually and collectively – feel a sense of duty to serve the public interest as opposed to personal or private interests, and to serve the government, as the entity that operates and delivers public services. To my mind, this is a distinctive value that is shared by all public officials.

David Giauque: The academic community only really got to grips with this issue with the advent of the new public management movement – especially in the United States, where these reforms aimed to eliminate virtually all differences between public organisations and private companies. It was around this time that researchers looked again at the prevailing values in the public sector. The late 1980s and early 1990s saw the production of an entire body of literature on "public service

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2   The Human Relations School is the name given to an intellectual school of thought that aimed to understand organisations through the lens of work activities. It bore many similarities to Taylorism, except that, through their experiments, its proponents sought to take a fresh look at human relations, and to gain insight into the informal rules and personal interplays that underpinned the workings of productive organisations. Leading figures of this school of thought included Elton Mayo, Kurt Lewin and Abraham Maslow.

motivation", which showed that public officials are particularly wedded to the values of public service. They choose a career in the public sector precisely because they want to live these values, and to play their part in upholding them through their work. This is an extremely important factor that is borne out in the international scientific literature.

How has the concept of "meaningful work" become such an important factor in strategic workforce planning, and in human resources management more generally?

Guillaume Aujaleu: To take this idea of the public-service ethos a step further, I would argue that, in today's climate, public-sector human resources departments focus on two aspects. The first is the concept of "engagement". The somewhat idealistic model of the public official is of someone who devotes their life to public service and who gives freely of their labour without expecting or receiving much in return. Of course, they receive a salary in return for their effort, but money is not supposed to be a motivating factor. What we are seeing now, perhaps, is a loss of this sense of identity and engagement. As we will see, the new cohort of workers who are entering the labour force today are eager to find value and purpose in their work. The second aspect is employee loyalty. A job in the civil service is a job for life. Once public officials have completed their basic training, they pledge their entire career to public service – and, importantly, to a particular branch or department of the civil service. "Entering public service" is akin to joining a religion. But this long-established tradition is now threatened by heightened labour-market volatility and employee mobility – especially in the public sector, where officials are more likely to want to change roles or work for more than one organisation over the course of their career. This shift is problematic because the entire civil-service model was built on the twin pillars of engagement and loyalty. Turning to the question of whether the public-service ethos is consistent across the public sector, I would say that this is not the case – for the simple reason that the civil service is not a fixed, uniform whole. Public officials perform myriad different roles and, therefore, operate according

to vastly different values. There are, of course, some universal features. But, importantly, there are some notable differences. Officials working in some professions define themselves according to the difficulty of their job: their identity is shaped by the fact that their role involves an element of complexity and risk. These workers expect to be adequately compensated for their engagement, especially in monetary terms. For these officials, salary is a source of recognition. It is a core value and, more broadly, a cornerstone of their identity. For other officials, however, recognition is the most important value. These employees seek something more symbolic from their work. In some cases, this ties in closely with the idea of independence: some professions have a special place in the civil service because they are expected to perform their role independently. This independence is seen as a source of recognition – and a core value that these officials are keen to uphold and maintain. Another interesting example is the teaching profession. It was long assumed that two key values – academic ability and a vocation for the profession – were what allowed teachers to find meaning in their work. While academic ability remains an important factor, there are growing doubts around whether this focus on subject-matter competence actually equips teachers for the day-to-day demands of the role. The idea that teaching is a vocation is also being called into question. Do people see teaching as a life-long calling, or rather as a springboard to other things? Is teaching something that people go into as a second career, after working in another sector or industry? Ultimately, these questions apply to the public sector as a whole, although there are important nuances in terms of the core values held by individual officials.

David Giauque: I agree with a lot of what has just been said. First of all, the driving force behind this idea of "public service motivation" differs from one area of public policy to the next. We know, for instance, that people choose to work in the public sector for different reasons. Some do so because that want to get close to the action – to be involved in political decision-making. This can be an incredibly importance source of motivation. Others opt for a career in the public sector because they want to promote equal opportunities or do something to help a particular section of the population. These people devote their time to public service out of compassion. They are prepared to earn less than they would in the private sector, for instance, because they believe they can make a difference. Importantly, I think that we risk undermining this source of motivation when we introduce human resources

management processes, which are not always compatible with people's reasons for entering public service – i.e. their attachment to particular values. Performance-based compensation is a case in point. Scientific studies have clearly shown that the greater the focus on extrinsic rewards, the higher the risk of crowding out intrinsic motivations – with dramatic consequences. This phenomenon has been studied not by public-administration specialists, nor for that matter by communists or socialists, but by economists. It was Swiss economist Bruno Frey who shed light on this crowding-out effect. If we are to avoid the risk of killing off this intrinsic motivation, we have to think very carefully about what human resources management processes we introduce in public organisations.

Guillaume Aujaleu: I could not agree more. Innovative human resources management practices are becoming increasingly commonplace, especially in the public sector. The general idea is to break with conventional, collective workforce management methods and, for some processes at least, to place more emphasis on individual officials. This change is a response to a genuine need. In my view, officials are more interested in individual recognition than in the past. They are no longer content to be lost in the crowd. But this shift in focus – from the collective to the individual – carries the very real risk that some officials could be ostracised. This process of individualisation absolutely has to be inclusive.

To what extent was the COVID-19 crisis a watershed moment in the quest for meaning and purpose at work?

Guillaume Aujaleu: For me, the COVID-19 pandemic shook the very foundations of work and marked a tipping point in the functioning of government and public services in general. The crisis challenged orthodox models and practices on two fronts. The first challenge was to continuity. Although the government and public services continued to function during the crisis, many departments closed. Temporary social adaptations were brought in to keep services up and running despite the prevailing circumstances, albeit in so-called "degraded" mode. In many cases, these adaptations marked a departure from long-standing working practices based on colleagues

being together in the workplace. That was nothing short of a revolution. In the end, both public- and private-sector organisations managed to adapt well to the crisis. But they all came to realise that different ways of working were possible. The second challenge was to established systems and processes. The impact was felt most keenly in the service sector, where organisations began to question the need for staff to be physically present on site. This prompted wider thinking about the relationship between the exercise of power, public-service delivery and buildings – about those places that represent the State, where the flag flies, where public officials need to be to perform their duties. It transpires that, although this sense of place has not disappeared altogether, the relationship between public officials and the places where public services are provided is changing. Public buildings are still open to citizens, but the way they access them has evolved. Public officials still work together, in person and on site, but the orthodoxy is being challenged. For a long time, buildings and real estate were low on the list of public management priorities. It is interesting to see that this subject is returning to the fore as a key topic in discussions around work organisation, performance and efficiency. For instance, we have interministerial directives instructing departments to think long and hard about how work is organised in their buildings. Returning to the subject of continuity, we saw a reactionary effect where people questioned the permanence of the State. By and large, central government managed to adapt and protect itself. But the departments that steered the pandemic response are now wondering what further adaptations they can make to keep services running next time around. In a way, we could argue that the pandemic came as a shock to the system, and that the government is stepping up preparations for the next crisis as a way to put minds at ease. I would say that the pandemic served as a catalyst for change. And it raised questions that still remain unanswered.

David Giauque: I agree that the COVID-19 crisis was a catalyst for change in terms of values. Personally, I find the pandemic a fascinating episode to study, not least because it put the spotlight back on fundamental – and largely anthropological – questions about the value of different jobs. The crisis was something of a game-changer for public services, as people in long-overlooked roles were once again recognised as key workers. Overnight, we realised just what an important job teachers do, and how refuse collectors – whom we had previously tended to ignore – were essential to the functioning of our society. Crucially, the pandemic

refocused our attentions on roles that provide a valuable service to society. In a way, the values of public service returned to the fore once again. My concern, however, is that the "degraded" mode of working we saw during the crisis has persisted, at least in part, in today's post-pandemic world. In other words, public services have not returned to normal. This is true in hospitals, for example, where huge numbers of people are still working in degraded mode. And it applies equally across the public sector as a whole, especially in Switzerland, where departments have not returned to pre-pandemic ways of working because they realise they can do just as much – or in some cases, more – with less. On that basis, it makes no sense to roll back the clock. The problem is that teams and departments are under immense strain. Tensions are rising and resources are being stretched to their limits. In some areas, public officials are being worked to the bone. I also want to pick up on the fact that we will need to rethink many of our human resources management processes if we are going to keep up with new demands for flexibility in terms of location and working hours. I think that onboarding new entrants to the public sector will prove especially challenging. What kinds of induction programmes can we offer to new hires working remotely? How can we acclimatise them to the ethos and values of public service? I do not see an obvious answer. How do we evaluate remote employees who have had no opportunity to build informal relationships with colleagues at a specific workplace or over a sufficiently long period of time? How do we maintain a common culture, team spirit and a shared sense of organisational purpose? These questions are steadily emerging as major challenges for public organisations. We have some answers already, but effective, fully developed solutions are still a long way off.

Guillaume Aujaleu: The biggest change affecting the public sector, as with all organisations, has been the rise in teleworking. Personally, I am pleased to see that the public bodies have adapted to this shift and allowed staff to continue working remotely. Legally speaking, there is no reason why the public sector could not take a more traditional stance and force employees to return to the office. The initial impetus for this change stemmed not from collective employee demands, but rather from the government's willingness to embrace this new way of working and to yield to individual choices and preferences. The move towards more widespread teleworking subsequently gained union backing. But, and I should stress this again, the early momentum was driven not by collective ambitions but by an individual desire for a better

balance between different ways of working. The challenge now is to regulate this new working model – to introduce HR processes that allow for individual flexibility without compromising on public-service performance. Two clear trends are emerging from this ongoing regulatory process. On the one hand, employers are embracing new working methods and granting individual staff more organisational freedom. On the other hand, however, organisations are recognising that structure and teamwork are vital to maintaining continuity and uniformity in public-service delivery. In some cases, the public sector has yet to strike a stable balance between these competing imperatives.

To what extent do some of the values that appear frequently on the public-sector reform agenda, such as performance and accountability, affect the sense of meaning that public officials attribute to their work?

David Giauque: It is important to stress that these values, in and of themselves, are not alien concepts to the public sector. I think that public officials everywhere – in France, Switzerland, Europe, the United States, Canada and elsewhere – are interested in organisational performance and efficiency. However, the new public management-style reforms placed the focus firmly on using metrics to measure and improve productivity and efficiency. An obsessive fixation on largely quantitative metrics like these runs the risk of short-sightedness, because it overlooks the core purpose of the public sector, which is to develop and implement public policies. The real emphasis should be on ensuring that these public policies effectively address social issues identified as political priorities. The problem we saw in the 1990s and early 2000s was that this narrow focus on productivity and efficiency, and on quantitative metrics, eroded many of the differences between public and private organisations, leaving many officials questioning whether they wanted to stay in this kind of environment. In turn, this raised concerns about public-service continuity. These days, we very much underestimate the fact that the prospect of doing good work, without

impediment, is a strong motivator for people to join and continue working for public-sector organisations. If you focus solely on quantitative metrics, you run the obvious risk of stripping these organisations of the very thing that makes them appealing. When staff have to work in degraded mode, they lose the sense of pride that comes from working in the public sector. We have heard exactly this kind of feedback from people we have spoken to as part of our research. They tell us that if public bodies become too much like private companies, they can no longer see the benefit of working in the public sector.

What, specifically, can be done to help public officials find (or regain) a sense of meaning in their work?

Guillaume Aujaleu: I would say that, today, the shift to digital processes is affecting officials' ability to find meaning in their work more than any other factor. Technology has advanced in leaps and bounds these past few years, and continues to do so. Until recently, "digitalisation" was all about eliminating individual paper-based processes and replacing them with electronic alternatives. But now, we are starting to see artificial intelligence incorporated into work processes. This wave of technological change is undermining a core value: the focused expertise that civil servants bring to the table in the performance of their public duties. The competitive entry examination is a fundamental aspect of this value. While every prospective entrant goes through the same initial training, the competitive examination is the icing on the cake: it confers a special status on those who pass it, attesting to their specific knowledge and skills. The creep of machines, digital technologies and artificial intelligence into the public sector is rendering this hard-earned expertise all-but obsolete. Organisations are looking again at the viability of many clerical and administrative roles. This trend is not unique to the public sector, of course. But in the public sector, we are witnessing a root-and-branch rethink of many administrative and financial processes. What role do public officials play in this new environment? How do they fit into the bigger picture at a time when computers and algorithms now do much of the legwork? Admittedly, the advance of digital technologies is giving rise to new professions and changing the way people find

meaning in their work. But the process of replacing one set of skills with another is not something that happens overnight. In the meantime, this transitional effect is fundamentally altering the values of public service and making it much harder for public officials to find meaning in their work. What can be done to mitigate this impact? First and foremost, we need to double down on the idea of quality of work life. After all, work is about more than just efficient and effective processes. People take pride in doing a good job. But they also take pride in having good working conditions, in being rewarded for their efforts, and in feeling that their contribution is appreciated. This sense of pride is not merely an innate by-product of an organisation's structure. It is a collective mindset that has to be fostered. We are only just beginning to think seriously about quality of work life as an intrinsic characteristic of public-sector organisations. These organisations have not yet fully grasped the wide-ranging impacts of the changes we have discussed here – on officials' ability to find meaning in their work, on quality of work life and, in turn, on the effectiveness and efficiency of organisational processes and public-service delivery. Going forward, the challenge for public-sector human resources departments is to support officials through this transitional period and to foster this new mindset, both collectively and individually.

David Giauque: I absolutely agree. First of all, there can be no doubt that digitalisation will affect public-service professions. The problem is that we do not have a crystal ball: we do not know which roles will gradually disappear or which new ones will emerge. I think we need to use this shift as an opportunity to reconsider our approach to strategic workforce planning – to try to develop the skills we will need in the future. Secondly, we need to look again at those areas where the public sector has a competitive advantage over private companies. We have already touched on the question of quality of work life, and on work-life balance more generally – and rightly so. But I would say that the public sector has two other, equally important advantages. The first is in-service training: public-sector organisations always provide employees with more training than their private-sector counterparts. The importance of this extra training cannot be overstated, because it has a direct influence on skills development. Organisations that go the extra mile on training demonstrate care and appreciation for their employees. The second advantage is that the public sector offers immense career development opportunities, both horizontal and vertical. This

fact gives public-sector organisations a head start in terms of attracting and retaining talent – something they should do more to capitalise on in the future. If the public sector wants to maintain an engaged and motivated workforce in the coming years, it absolutely cannot afford to cut corners on this front. As for the changing nature of work, I think we are yet to fully understand how today's new, more flexible arrangements – in terms of location and working hours – are affecting team spirit and the public-service ethos we talked about earlier. The implications of this trend require much more serious consideration. Because there is a very real risk that these new ways of working – which reflect a process of individualisation – could undermine public policy-making and public-service delivery. While this shift is arguably good news for individual officials, its impact on teamwork and team spirit is a little more nuanced.

Has the public sector fully embraced teleworking as the new status quo?

Guillaume Aujaleu: Once again, I am surprised at how smooth this transition has been. Nobody is calling for teleworking to be rolled back. Senior executives, political leaders, middle managers, line managers and front-line staff are all on board with the idea. In other words, there has been no sense of a top-down, heavy-handed pushback against these new ways of working. Of course, not everyone has experienced this change in the same way. Some people have willingly signed up for teleworking. Others simply cannot work remotely because of the nature of their job. Others still have rejected the idea for personal reasons – because interacting with colleagues in person is inherent to their individual conception of work. There are also apparent differences between those in managerial and non-managerial roles. The impact of this shift to teleworking has been felt more keenly by managers – even those who are allowed to work remotely – because this new model fundamentally affects their ability to fulfil their core duty, i.e. managing their department. Remote team management has become the norm. And although it largely relies on tools that already existed, it requires – or may require – managers to develop new skills. Some feel that this new arrangement is much less efficient than the old way of working. The reality is that managers have a much heavier individual workload than in the past. As yet, we have no conclusive research as to whether or not this situation will persist. This reality

was very much the case during the pandemic, but for different reasons: the requisite tools and organisational arrangements were not always in place, and not all teams were at the same level. But now that workforces everywhere are fully trained and equipped to work remotely, can it really be the case that the system is less efficient? This is something we will need to look at in detail. No consensus has been reached on this point so far. In the early days, unions were not always sold on the idea of staff working remotely. But now, there is a general – albeit at times cautious – consensus among unions that teleworking is something that should remain in place. On a personal level, I was pleasantly surprised at how the French public sector supported and implemented this new system without too many problems. But the story is far from over. Teleworking may be here to stay, but I think we are only just beginning to take stock of its implications. What aspects of this system, if any, need to be fixed going forward? These kinds of considerations will occupy us for some time to come. As things stand, officials are incredibly supportive and accepting of the idea, which is why things are moving so quickly.

David Giauque: In my view, the public sector no longer has a choice. Teleworking and other alternative working arrangements must be part of the package if the sector has any hope of continuing to attract new talent. That seems pretty clear to me. During the COVID-19 crisis, almost everyone was working from home. I see no prospect of returning to the situation as it was before the pandemic. Having said that, it is important to stress that teleworking is also a source of inequality: some people will never be able to work from home quite simply because their job requires them to be physically present on site. This is an early implication that will need to be managed. Whenever inequalities occur, employee representatives will obviously want to stand up for the rights of those who are affected – in this case, colleagues who cannot do their jobs remotely. On top of this, research clearly shows generational differences in attitudes towards teleworking. Surprisingly, young people are eager to return to working on site, where they can socialise with others. In other words, younger employees – including in the public sector – are calling for the right to return to the office because they miss opportunities for face-to-face contact with colleagues. This demand is less prevalent among people in their thirties and those with children, since we know that teleworking allows for greater flexibility and a better work-life balance. Last but not least, research into the impact of teleworking

on gender equality shows that working remotely is beneficial for *some* women, but that it can also be harmful to their well-being. The blurring of the boundary between work and home life can impact women more than men because, in most cases, women continue to bear the burden of family responsibilities alongside their work-related duties. This fact further muddies the waters. As things stand, we have no conclusive findings to guide the future development of these new working arrangements, including in the public sector, so we will need to keep a close eye on how the situation plays out.

Is teleworking now a must-have for potential applicants for civil service roles?

Guillaume Aujaleu: The public and private sectors draw employees from the same labour market. There may be slightly different values that, at some point, steer people away from the private sector and towards public service. But the public sector does not have its own, separate talent pool to draw from. There is, of course, an element of social reproduction – children of public officials often follow in their parents' footsteps. But individual social aspirations are common to both the public and private sectors, and they require precisely this kind of flexibility and innovative thinking around new ways of working. Employers need to consider employees' aspirations in terms of their position within the organisation. Of course, public bodies – and many large private companies – are behemoths: vast, incredibly complex organisations where people often lack visibility and struggle to find meaning in their work. It is precisely this need for visibility that is being held up as a counterpoint to teleworking, which renders officials somewhat invisible. Some officials ask to be allowed to work remotely for precisely this reason – indeed, this practice has, to an extent, become the norm. But it is valid to question whether everyone will embrace teleworking in the same way, and at every stage of their lives and careers. Personally, I am not convinced. At the start of their careers, people often want to learn the ropes of their role through contact with others. They may want to devote more of their time to their job because they have relatively few activities and responsibilities outside of work. They will often seek to build visibility within the organisation as a way to progress in their careers. In these cases, working remotely can be counter-productive. So while the demand is there, the way employees embrace teleworking may well change gradually with the passage of time. Returning to the subject of buildings, public-sector employers are looking for ways to make more efficient use of the real estate at their disposal – to adapt their spaces to these unfamiliar organisational arrangements, with altered work patterns and fewer staff in the office at any one time. But at the same time, officials are calling for physical environments that meet a new need for socialisation – more open spaces where they can rub shoulders with colleagues and play their part in collective endeavours on the days they are in the office. At one time, these open-plan spaces were associated with surveillance and misery. It goes without saying that employees are not demanding a return to these unhappier times. Instead, they are asking for collective spaces where they do not have to spend their time alone in their office. The upshot is that we will need to think long and hard about how and where people work.

David Giauque: I absolutely agree that we are going to have to think creatively when it comes to the physical spaces where we work. Today, organisations are putting a lot of time and effort into creating different kinds of workspaces within the same building: from closed-off offices for individual work, to collective spaces for brainstorming, creative collaboration and so on. We have already touched on a number of other important determinants of employee motivation. The first of these is work-life balance. Teleworking will likely go some way towards addressing the aspirations of families in France, Switzerland and elsewhere in Europe on this front, and we should do all we can to harness the potential of this new way of working. But, in my view, recognition is an even more important determinant of motivation. Contemporary studies consistently show that people who are unhappy in their role – and who disengage and resign – feel very strongly that the work they do is not adequately recognised. This may not be the case in reality, but perceptions are extremely important in these and other matters. These people feel a lack of recognition from their superiors – in other words, their superiors fail to say "thank you", have stopped doing so, or can no longer do so because of the constraints of teleworking, for example. In some cases, they also consider themselves to be under-appreciated by increasingly unforgiving users, who feel a sense of entitlement to more and more services, For me, the issue of recognition is paramount. It comes up time and again in the scientific literature as a direct determinant of employee satisfaction and engagement. A lack of recognition is linked with unhappiness at work and resignation. On a

final note, there are several other factors that have been known since the 1970s: employees are more likely to be engaged when their duties are varied, when they have the chance to employ different skills, when they are able to find meaning in their work, and when they can see how they are contributing to the organisation's overall aims, which is not always obvious. All of these aspects – autonomy, independence and so on – have long been accepted in the scientific literature as key drivers of employee motivation.

Is allowing teleworking an effective way to retain public officials? What are some other options for increasing employee loyalty?

David Giauque: There is no doubt that competition between sectors has made it more difficult to retain employees. The Swiss public sector has a particular problem when it comes to attracting engineers and IT specialists. Publicly funded organisations simply cannot compete with the generous pay packets on offer in the private sector for employees with these skill sets. The only way to appeal to people with these kinds of backgrounds is to emphasise the added sense of satisfaction that comes from serving the public, to stress the fact that the public sector offers more flexible working arrangements than private companies and, perhaps, to plant the idea in their minds that the public policies they will be working on will make a genuine difference to people's lives.

Guillaume Aujaleu: While I agree with those points, I think it would be unwise to dismiss efforts to build more flexibility into public officials' pay. The French public sector, for instance, is hiring fewer career civil servants and more contract staff, who are recruited and managed in a way that allows them to negotiate their pay and working conditions. Things are changing and I think that, here too, the public sector needs to break down some taboos and try to find ways to boost its drawing power. The idea is not simply to adopt private-sector practices. After all, small businesses and large companies do things very differently. The public sector needs to chart its own path. But it needs to factor fair pay into its thinking. If it remains deaf to market demand and entrenched in its belief that the same pay scale should apply to all public officials – albeit a position often based on solid legal and egalitarian grounds – then it will singularly fail to attract the talent it needs in certain occupations. This is not a straightforward shift. And it will bring its fair share of problems, since pay inequality can lead to tensions within a workforce. In the end, equality is a simpler and more defensive stance to adopt. Staying on the subject of staff retention, I want to circle back to the question of management. In today's complex organisations – public bodies and large companies alike – workforces are often still arranged in relatively rigid, pyramid-shaped hierarchical structures. The official's position in these cumbersome structures has changed little since researchers began studying bureaucratic organisations in the 1970s and 1980s. If we look at the work of organisational sociologists, I would say that our public organisations remain much as they were back then in terms of both this pyramid-like structure and prevailing managerial practices. In my view, there is a lot of work to be done on issues around quality of work life, individual aspirations and the notion of "meaningful" work. Today's younger employees and new entrants to the workforce are less likely to accept collective recognition. That is not to say that they reject the idea of being part of a team: they yearn for a different kind of recognition. They want to understand their position and figure out how to make work an enjoyable experience. They want to know how to speak up for themselves as individuals rather than simply being lost in the crowd. And they need a clear picture of what their responsibilities are and how their performance will be recognised in a given organisation. Line managers – the people who manage front-line staff – need to be able to respond to these new demands. What I see today is that public-sector managers are subject-matter experts first and managers second. There is nothing unusual about this situation. Of course, some managers are equally comfortable wearing both hats, and that is just as well. But they are prized above all else for their technical knowledge, even though the people they manage are experts and specialists just like they are. The things that a manager should be able to do well – organise, motivate, coordinate and lead – are often still peripheral aspects of their job descriptions and skill sets. Building a managerial workforce with these essential skills will require a combination of support, training and effective hiring practices. To my mind, this should be a top priority.

David Giauque: I agree that there is a lot of work to do in terms of structural changes. Organisations must be capable of thinking a little

more horizontally. If we are to address issues like climate change and security, the public sector needs to break down the kinds of administrative silos that have long impeded cross-cutting public policy-making. These cumbersome, bureaucratic, pyramid-shaped structures are the crux of the problem. Having said that, it is interesting to note that, in Switzerland for example, the most bureaucratic organisations of all are found not in government but in the private sector. Banks, pharmaceutical firms and agri-food companies and the like are nothing short of bureaucratic behemoths. Admittedly, they are somewhat more agile than public-sector organisations because they have to respond swiftly to challenges and developments in their environment. Fascinatingly, however, research has shown that the organisations that demonstrated the most resilience to the COVID-19 crisis were those with heavily bureaucratic structures, such as police forces and prisons. These kinds of organisations are the very epitome of bureaucracy and pyramid-shaped power structures. Why did they prove to be so resilient? Because they transitioned from one leadership style to another as the crisis unfolded. Initially, they adopted a very directive, non-participatory style, which was the ideal way to bring people into line, enforce procedures and implement processes. Then, as time passed, they took stock of what was happening on the ground and switched to a much more participatory approach. Remember: these are public-sector organisations! We should look closely at what these organisations did well – because the public sector achieved many admirable things during the COVID-19 crisis – and identify the processes and approaches that could be applied in other organisations. In any event, I absolutely agree with what has been said about the importance of new leadership styles and the kinds of soft skills that public officials, and public-sector managers in particular, will need to develop in the years ahead.

The civil servant at the heart of bureaucracy?

Émilien Ruiz

The 15th issue of *APRP* was devoted to one of the major themes of public management: *bureaucracy*. This paper apprehends this topic in the light of the place and role of civil servants at the heart of the movements of administrative reconfigurations since the 18th century.

It was accompanied by a "Joint interview" devoted to the expectations and effects of digital technology on bureaucracy and by an article dealing with the historical and current interdependencies between state reform and administrative transformations.

The civil servant at the heart of bureaucracy?

Émilien Ruiz[1]

The terms "civil servant" and "bureaucracy" have fashioned representations of the civil service since the late 19th century. Yet, it was not until 1946 that the first civil service regulations were passed and enforced. They institutionalised the figure of the civil servant based on a specific professional position revolving around rights and responsibilities. This article looks back over the two-pronged evolution of this regulatory model and the organisation of public action itself. An examination of the slow process of public administration feminisation at the end of this article opens up new angles with respect to the figure of the civil servant and the regulatory approach.

The purpose of this article is to present three historical and contemporary issues with respect to the civil service (Ruiz, 2021a). We will first look at the "civil servant" and "bureaucracy" dyad. The two terms are used in ways that, when taken together, more clearly situate the representations of the civil service since the late 19th century between "ideal-type" and "stereotype". The second part focuses on the regulatory approach as the implementation of an ideal-type to propose a reading of the recent transformations through the lens of a shift from the regulatory model's "civil servant citizen" towards a kind of new ideal that appears to be taking root today, somewhere between a contractual model and public-private hybridisation. At a time when gender equality at work is back on the agenda (DGAFP 2022), this article concludes with a litmus test of the abovementioned changes by means of a study of the development of the place of women in a civil service that ultimately remains a sort of mirror of society as a whole.

The civil servant in bureaucracy: ideal-type or stereotype?

The notions of "civil servant" and "bureaucracy" have always oscillated between ideal-typical analyses and stereotypical statements. This somewhat complicates any discussion of government and public service transformations, but a serious examination of the representations thus associated with the civil service enhances our understanding of how it operates.

Power and bureaucratic rationalisation

The term "bureaucracy" originated in a distrust of civil servants. In France, the word first appeared in the second half of the 18th century coined by physiocrat Vincent de Gournay who saw it as the risk of a "configuration of desks into an autonomous power base" with the administration perceived as "likely to obstruct direct government by the general will" (Rosanvallon, 1990, 51). Yet the term really gained traction with the French Revolution and fear of the development of a sort of new "order" that would obstruct democracy. In 1793, Saint-Just gave a speech about the

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government on behalf of the Committee of Public Safety to warn the National Convention of a threat of confiscation of the nascent Republic by the bureaux, at the risk of anti-republicanism, evidenced in his view by the increase in the number of civil servants. He spoke of the "20,000 fools" who he believed were "corrupting the Republic".

"The officials chosen under the old ministry, supporters of the royalists, are the born accomplices of attacks against the nation. [...] the enemies of France could well fill your entire government with conspirators within three months. Where three were to enter the service, they would place six; and if, at this moment, we were to examine with severity the men who administer the State, of 30,000 who are employed, there are maybe very few to whom the people would give their vote." (Saint-Just, 2004, 642).

Although not entirely a stereotype, it could be considered here that we are looking at a sort of negative ideal-type: late 18th century observers saw bureaucracy as a potential development of the evolving administrative machinery, as a political risk of which the government needed to be mindful.

This immediately creates a first ambiguity for today's observers and analysts, because this initial meaning did not disappear in the first third of the 20th century, but co-exists with Weberian approaches to bureaucracy. Weber saw bureaucracy as the outcome of a public administrative rationalisation process based on a number of principles that could be summed up briefly as upholding three fundamental notions: competence, hierarchy, and regulation (Weber, 1978). From the point of view of civil servants, this implies a recruitment process based on merit rather than heritage or political loyalty, for example. It means that their activities are based on a necessary vertical division of labour wherein hierarchical obedience is fundamental. It also means that their work is governed by formal rules, a command of which is considered to be an essential skill. The emergence and development of a depatrimonialised administration are key for these principles to apply. Weber considered this to be a fundamental characteristic of the contemporary state. In his famous conferences on *Science as a Vocation* and *Politics as a Vocation*, Weber insisted on the fact that, in the contemporary state, "the 'separation' of the administrative staff, of the administrative officials, and of the workers from the material means of administrative organization is completed," (Weber, 2002, 133). So from this

descriptive and analytical point of view, the civil servant is definitely at the heart of bureaucracy. Both are inextricably linked. Yet this interpretation is not inconsistent with a much more stereotypical view of bureaucracy.

Laziness, red tape and incompetence

In France, the definition of bureaucracy evolved in the 19th century to take on a more pejorative meaning not unrelated to the Weberian interpretation: depatrimonialisation was considered to result in laziness; hierarchical obedience was seen as political subservience that stifled initiative; common rules and neutrality were associated with indifference and red tape, and so on.

In the *Grand Dictionnaire Universel du XIXᵉ* Siècle published by Pierre Larousse, bureaucracy therefore became "compulsive pen-pushing", a tendency to complicate matters by means of pointless "formalities and paperwork", but also a way of creating work for "an army of bureaucrats". Larousse defined a politician's skill as consisting of, "conducting reforms only as long as they require the creation of new bureaux" in order to "reward the devoted servants" (Larousse, 1867, 1,421). These definitions have left their mark to this day. Mention could be made of the "administrative administration" used as a slogan in the last presidential campaign (Ruiz, 2021b). Yet a very recent example could also be taken in the shape of the 11 October 2022 publication in *Le Monde* of an article on the poor drawing power of the *Prépa Talents* integrated preparatory courses for the French civil service. A director of one of these courses said, "A young man told me, 'If I go into the administration, I'll earn peanuts, have a absurd boss, little leeway...'" (Gourdon, 2022). Here again, civil servants are clearly at the heart of bureaucracy, although this time neither from a descriptive nor an analytical point of view, but framed more as distasteful.

The evolution of the meaning of the word "bureaucracy" therefore went hand in hand with the appearance of another concept, again in the last quarter of the 19th century: that of "officialdom". The term refers to both the overblown propensity of young people to want to become civil servants... and to what was regarded as excessive growth in their numbers. It is not within the scope of this article to develop the multitude of underlying political reasons for these contentions dating back one and a half centuries (Ruiz, 2017). Nevertheless, it can be said that, with respect to bureaucracy, these allegations were not

without their contradictions. In the mid-1880s, for example, criticism focused on the stereotype of bureaucracy, formalities and excessive red tape… but, at the same time, considered "officialdom" as a social scourge, as "parasitism" based on "nepotism" and "favouritism". What was being called for was ultimately more the ideal-type of bureaucracy; less favouritism and nepotism equates with more expertise, selection, neutrality, and so on.

Liberal economist Paul Leroy-Beaulieu's thinking is most interesting in this regard. In the 1891 English edition of *The Modern State in Relation to Society and the Individual*, he compared the state with limited joint stock companies, asserting that "in the hands of good directors", the bureaucracy of these large companies is, "a much more flexible and much more efficient one than that of the State." Bureaucracy is therefore not a problem "in and of itself". He also considered that bureaucracy was indispensable:

"It is easy to cry down a bureaucracy: none the less it is indispensable; and they are none the less foolish, however numerous they may be, who demand at one and the same time the extension of the State's prerogatives and suppression, or at any rate reduction, of the bureaucracy." (Leroy-Beaulieu, 1891, pp. 134–135)

Leroy-Beaulieu believed that the main problem was the inefficiency of the State machine due to two constants: staff instability and their method of recruitment, both associated with relations between the administration and the political sphere. One reason for this was that he considered that recruitment was essentially a product of political favouritism, but it was also because he was writing at the end of a century in which each regime change had given rise to waves of purges (Rosanvallon, 1990, 75-80). This led the economist to put forward that, to improve the efficiency of the State, "the functionary [should] be considered to have a proprietary tenure of his function."

The civil servant citizen and the mobile contract public employee

Yet, stereotype or ideal-type aside, the questions of recruitment method and administrative staff stability have been central to analyses and debates regarding bureaucracy since the late 19th century at least. This can be seen, in particular, from the slow gestation of the regulatory model in France.

A statute to keep staff "in line"

Discussion of civil service regulations in France, with the exception of expert studies, generally places the start of their history in 1946, and even sometimes in 1983. Yet their history goes back further than that: placing them in a long-term context puts the most recent transformations more clearly into perspective.

Here, it is useful to quote Article 65 of the Act of 22 April 1905 setting the revenue and expenditure budget for that financial year:

"All civil servants, military personnel, non-manual employees and manual workers in all public administrations have the right to personal and confidential access to all the notes, data sheets and all other documents in their file prior to any disciplinary measure taken against them, assignment to other duties, or delay in their promotion by seniority."

This was the first piece of legislation to apply to all state personnel. It was passed following a political scandal, "the Affair of Cards" (collection of information on anti-Republican opinions in the army), which intensified debates on the rights and responsibilities of civil servants and the question of their status. This article has long remained a fundamental guarantee of the civil service (Thuillier, 1975); it was more importantly the only guarantee of its kind prior to the 1940s.

Surprisingly, perhaps, public servants were themselves initially hostile to the idea of a statute. As Jeanne Siwek-Pouydesseau clearly put it: civil servants wanted to unionise and, in particular, join the French General Labour Confederation (CGT), a revolutionary union at the time, and benefit from the right to strike and the means to take on a State considered to be a boss like any other. However, the administrative hierarchy, politicians and the jurists involved in these debates saw regulations as a way of granting guarantees against arbitrary decisions precisely by avoiding giving public servants any union rights (Siwek-Pouydesseau, 1989, 233). Even for some of the analysts who supported civil servants the most – such as Georges Demartial, Léon Duguit, Maxime Leroy, but also Émile Durkheim – it was inconceivable that servants of the state should strike.

The tussles were such that no regulatory project could really be carried through… until the advent of the Vichy regime with a "statute before the

statute" whose history has been well documented by Marc Olivier Baruch (1997). Its creation was dual-purpose: first, codification of case-law, and second, to keep civil servants in line. Civil servants were in effect considered to be responsible for France's decadence which had inexorably led to defeat. As Maurice Duverger wrote in 1941, "The civil service system established by the Vichy regime should be regarded" as "a means of political action".

> *"The new political regime was first and foremost an authoritarian regime. Consequently, the first administrative reforms tended to restore the authority of the State over its civil servants,"* (Duverger, 1941, 278).

Resolving decades of heated debates between jurists, politicians and trade unions, the regime banned unions and the right to strike; differentiated between "employees" (to be considered as private sector staff) and "civil servants" (benefiting from career guarantees); and developed a remuneration system called "family pay" designed to put an end to the idea of "equal pay for equal work" by basing the level of pay on the number of children. Representative of the regime's obsessions, this statute was moreover exclusionary: primarily Jews, but also Freemasons, naturalised citizens, and so on. Nevertheless, with the notable exception of these exclusions of persons considered "undesirables" by the French State, the statute was never really enforced. It was repealed by the Ordinance on the Restoration of the Republican Rule of Law enacted by the Provisional Government of the French Republic in August 1944.

The "civil servant citizen"

The Liberation saw another form of taking back control. The administration's compromises with the occupying forces drove a strong political will for "reform". On this note, the description of the situation given by Paul Vienney, former member of the French Resistance and communist lawyer, is edifying:

> *"80% of diplomats aligned with Vichy France's collaboration, [...] 90% of prefects placed their staff at the disposal of the occupying forces, [...] all bar one of the judges pledged allegiance to the person of the "Head of State" and [...] eight in ten deportees were arrested by French police. [...] If the wheels of State seized up in this way, paralysed to the point of leading us to the catastrophe of 1940, if the major public administrations wallowed ingloriously in collaboration with the enemy, it is because this*

> *rampant failing found a breeding ground in the imperfections of the State apparatus. Therefore, it is not enough to change men. What needs changing are the methods and traditions. The institutions themselves need to reform and revise their structure and the way they are run."* (Vienney, 1946)

One of the cornerstones of this reform called for by the entire political spectrum, even though resources may have been a subject of debate, was the 1946 General Civil Service Regulations. The regulatory bill – which, contrary to persistent popular belief, was not on the National Resistance Council's manifesto – was drafted under the auspices of communist minister Maurice Thore and written in large part by CGT trade union official Jacques Pruja. It was extensively amended following demands made by Christian democrats in the Popular Republican Movement (MRP) and the French Confederation of Christian Workers (CFTC) alongside observations made by Roger Grégoire, the first Director of the Civil Service. And it was an MRP deputy, Yves Fagon, who was behind the unanimous passing of the bill that was to become the Act of 19 October 1946 on the General Civil Service Regulations (Siwek-Pouydesseau, 1995; Chevallier, 1996).

This list of names of people and organisations with different political and union views underscores the extent to which the 1946 statute was the outcome of a broad compromise, which I believe explains its relative longevity. As noted by Gerard Aschieri and Anicet Le Pors, it represented a real break with previous decades. The authoritarian approach was dropped to make the civil servant not a "subject", but a "citizen responsible for the provision of public service," (Aschieri and Le Pors, 2015). This means that, contrary to high-handed criticism (such as in Pochard, 2021), the General Civil Service Regulations do not amount to a "lifetime employment guarantee", but represent a subtle balance of rights and obligations.

Obviously, it has always been tempting to tip the scales one way or another. This can be clearly seen from the 1959 and 1983 reforms of the general regulations, but in actual fact, the balance has always been maintained. On one side, there are the union rights, protection from assault and legal assistance, and a prohibition on stating civil servants' political, philosophical or religious opinions in their files... all featured in the 1946 regulations and still in the regulations today. On the other side, there is the proscription against holding more than one job, the obligations of discretion and hierarchical obedience, responsibility for

the smooth running of the public services... all obligations that still exist today.

This notion of balance is especially striking when considering two key provisions of the regulations. Article 12 of the Act of 13 July 1983 stipulates that "rank is distinct from job." It is this separation of rank and job that gives staff career guarantees and their employers real flexibility of staff assignment. "Rank is the title that entitles its holder to hold one of the corresponding jobs. [...] In the event of job displacement, the civil servant is assigned to a new job on the terms stipulated by the statutory provisions governing the civil service to which that civil servant belongs." This provision makes perfect sense when compared with Article 28 of the Act of 13 July 1983, which stipulates that although "public servants shall comply with the instructions given by their hierarchical superior," there is an exception in "the event that the order given is evidently illegal and liable to seriously compromise a public interest."

Civil servants, with tenure once they have been recruited by competitive examination, therefore have the right to a career even if their job is axed and even if they do not share their superior's point of view or their ministers' ideology. The purpose of this is to ensure the continuity of public administration and public services. The guarantee of employment therefore also serves the public: it makes for public servants whose loyalty ultimately has to lie with the public interest.

The "mobile contract public employee"

In the light of this, the most recent changes will naturally appear puzzling. The question could be put as to whether establishing the figure of the "civil servant citizen" as a sort of ideal-type is not ultimately a passing episode in the long history of the French civil service. Certain signs would seem to point in this direction.

First of all, as shown by the study by Aurélie Peyrin (2017), the idea that the recruitment norm in the civil service should be the statutory norm has lost a great deal of ground. The sociologist showed that only one new public worker in six was tenured in 2014, with the majority of hiring being on fixed-term contracts. That was five years ago as she went on to say that there was no longer anything to prevent the marginalisation of tenure in the

public sector. Time would appear to have proved her right, since one of the explicit purposes of the 2019 Civil Service Transformation Act (TFP) was to extend the use of contract employment to the maximum for permanent jobs (Vie Publique, 2021). There are now no formal obstacles to a considerable increase in both their number and their proportion. The latest available statistics published by the Directorate General for Public Administration and the Civil Service (DGAFP) illustrate a structural trend. From 2011 to 2020, the number of tenured staff in the three branches of the civil service stagnated alongside a sharp increase in the number of contract employees... Even before the effects of the TFP Act could be measured, the proportion of contract employees in the civil service topped 20% (DGAFP, 2022, p. 86).

Another sign can be found in the increasingly overt encouragement to pursue hybrid public-private sector careers. The purpose of this is not just to develop recruitment from outside the administration to attract private profiles to the public sector by leveraging the special competitive examination,[2] but to encourage transitioning between public and private sectors. The ongoing senior civil service reform (Gally, 2022) hence implies periods of mobility prior to promotion with the incentive for some of these periods to be outside the public administration.

However, this idea of shuttling back and forth between public and private sectors is more pervasive. In December 2021, the new director of Sciences Po, Mathias Vicherat, gave students a speech with the following advice:

> "And you could also, and it is what I recommend because Sciences Po is arguably the most interdisciplinary course in France [...], it is what I advise you to do, in your working life, if you can, to straddle public and private sectors. Sometimes, that's frowned upon, called revolving doors, and so on. But the fact is that I think it's enriching to be able to experience different work environments and Sciences Po provides that opportunity. So you can start in the private sector, spend some time in the public sector and then go back to the private sector, or vice versa, and I think that's what makes a working life enriching." (Sciences Po TV, 2021)

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2   This is an alternative civil service admissions procedure: candidates in the private sector, non-profit sector and local public office can take the "special competitive examination" (distinct from the external competitive examination, which requires certain qualifications, and the internal competitive examination restricted to those with a certain number of years of public service) without qualification conditions attached provided they can justify a certain number of years of work experience.

And indeed it is increasingly common. Yet although this shuttling back and forth offers decided individual career prospects, it is worth asking about the effects of these new forms of mobility on public service. Some answers are starting to emerge from social sciences studies. Of particular note is the paper by Antoine Vauchez and Pierre France with what they call the "great blurring" of boundaries between public sphere and private interests due to the facilitation of revolving doors between the political world, the senior civil service and the profession of corporate lawyer (France and Vauchez, 2017). Also of note is the work by Julie Gervais, Claire Lemercier and Willy Pelletier who forged the notion of "public-private managerial nobility" to describe what appears to be a new career ideal-type for part of the administrative elite who exert a not-inconsiderable influence on policies to change the public services (Gervais, Lemercier and Pelletier, 2021). Lastly, a number of journalistic investigations have revealed that ethical "safeguards" are not always as effective as they are made out to be at protecting the public interest against private interests (Aron and Michel-Aguirre, 2022; Mediapart, 2022).

In the above, the terms "civil servants" and "bureaucracy" are used as highly generic blanket terms. Yet, if there is definitely a lesson to be learnt from the leading experts in the history of the State and the administration, it is that the singular is a convenient simplification, but that it remains a simplification all the same (Baruch, 1997).

To understand the civil service, it is essential to constantly juggle scales and multiply the angles of observation. There are countless options: breakdown by ministerial sectors, by civil service branches, and the angles of grades, employment statuses, or even the social diversity of recruitment… To wind up this contribution, it is worth looking into an age-old question brought back into the media spotlight by the latest DGAFP annual report: the question of gender equality in the civil service (DGAFP, 2022, pp. 215–259).

Feminisation of the public administrations: is the civil service a mirror of society?

A look back over the slow process of feminisation in public administrations hones the analysis of the representations attached to the figure of the civil servant and points up certain concrete limitations of the General Civil Service Regulations model.

Male ideal-type, female stereotype

To say that women have always worked is now a truism (Perrot, 1978; Schweitzer, 2002; Maruani and Meron, 2012). Yet if the civil service is a mirror of society, it has to be said that the reflection was particularly distorted in the early days of its history. For a long period of time, practically until the end of 19th century, women were quite simply excluded from the French public administration. In 1845, Vivien made it clear that women were only allowed to work in the postal administration where they might possibly become managers, provided those positions were in the least well-paid secondary offices. In addition, he only addressed the question in a passage regarding the standards of conduct, respectability and moral standing required to work in public service. His position was merely a reflection of the place assigned women in French society at the time. Note that Article 1124 of the 1804 Civil Code stipulated that "the persons dispossessed of rights are minors, married women, criminals and the mentally retarded." Note also that it was not until the marriage settlement reform in the mid-1960s that women were entitled to conclude contracts and open a bank account, for example, without their spouse's authorisation (Viennot, 2020).

So the ideal-type of the competent civil servant was strictly male for a very long period of time. As such, the 19th century was a time of fierce resistance to women entering public administrations, so much so that it was sometimes even in the name of bureaucratic stereotypes that some reconciled themselves to the incorporation of women into the public administrations. One gauge of this is found in the words of Victor Turquan, former Director of the General Statistics Office of France, a distant ancestor of INSEE (French National Institute of Statistics and Economic Studies). In 1896, an estimated 18% of public servants were women. Turquan deemed this to be "considerable", but said that he could but "view the feminisation of the French administration's office in a favourable light" since there was "no need for great vigour to copy letters and file papers" (Turquan, 1899).

Those who went further by defending feminist positions were so imbued with the representations of the time that they insisted that allowing women into the civil service was a humanitarian measure. It kept them out of the factories, dens of iniquity, and it enabled widows and single women to exercise a profession that spared them from prostitution (Frank, 1894). This kind of reasoning justified confining women to low-paid temporary subordinate positions, such that 91% of women in

public employ in the late 19th century received an annual salary of less than 1,000 francs (Turquan, 1899), a sum considered at the time to be one-third below what would be called a minimum subsistence level today.

Gender stereotypes have since, even to the present day, largely determined the administrative sectors into which women have been gradually accepted. In 1873, Paul Leroy-Beaulieu defended the recruitment of women in the civil service in this way: if women are to work, the administration's doors might as well be opened to them. In this, he singled out public instruction on the basis that women had an "instinctive understanding of children" and that they had all the qualities required to look after "these fragile young souls which, so delicate themselves, require such kind consideration." "Woman" was described as "weak" and "feeble" with nature having "entrusted care for the young generations to her frail arms," (Leroy-Beaulieu, 1873).

Indeed, women did start to enter the civil service initially in the education sector ("rooms of asylum", which became nursery schools), but also as child welfare inspectors (De Luca, 2002) following the passing of the social laws of the Third Republic, in particular on limiting the use of child labour. In the other administrations, women were confined mainly to positions as auxiliaries and assistants.

Technical change and feminisation

It was a technical revolution that led in the early 20th century to what was seen as a "female office revolution" (Thuillier, 1988). The introduction of the typewriter followed by the unit record machine in the public administrations put a new spin on the question of the place of women in public administrations.

Still on the basis of gender stereotypes, but also due to the negative representations associated with the use of these machines seen as less noble than the fountain pen and the act of writing in general, typing was considered to be women's work. The first "lady typists" competitive examination was held at the Ministry of Trade in 1919 before being extended to virtually all the administrations on the eve of the First World War. This movement was not exclusive to the public administration but, here again, was a reflection of society as a whole: Delphine Gardey's study shows that this feminisation also occurred in industry (e.g. Renault) and the banks are known to have employed women in their administrative departments very early on (Gardey, 2004).

The movement was, here again, the result of a kind of naturalisation of women's adaptation to administrative work since their eye for detail, assiduousness, obedience and receptive intelligence steered them naturally towards operative occupations (Thuillier, 1988, pp. 32–33), such that the great battle of the 1920s-1930s was no longer over access to jobs, but over career advancement possibilities and access to management positions and, of course, equal pay. However, the climate was not promising: the economic depression saw the lower-paid women accused of competing unfairly with men and fear of a new war with Germany raised concerns about a so-called lower level of fertility among civil servants (De Luca, 2010).

There was long a strong inclination to want to exclude women from the civil service without any real possibility of acting on it. The French government stated its volition to exclude women from the public administrations without really enforcing such a policy. From 1941 to 1947, the proportion of women rose from an estimated 32% to 36% of all civilian personnel, double the percentage judged "considerable" by Victor Turquan four decades earlier. And their numbers have kept on growing, rising from 42% of civilian staff in 1976 to 56% of civil service staff excluding the Ministry of Defence in 1998.

**The limitations
of the General Civil Service Regulations**

Hence the big issue, from the 1950s to today, is no longer one of access to jobs, but equality. This calls for a focus on the limitations of the General Civil Service Regulations in this regard. Under the French Constitution of 1946, the French people proclaimed that the law guarantees "women equal rights to those of men in all spheres" and that "France" guarantees "to all equal access to public office". The 1946 General Civil Service Regulations were less extensive in that they stipulated that no distinction would be made between the genders "subject to" "special provisions". The 1959 reform of the civil service regulations rammed the point home with the possibility to waive equality by means of "extraordinary measures provided for by specific civil service regulations and required by the nature of the positions." Florence Descamps clearly shows the effects of these possibilities available to the government as employer, and especially the Ministry of Finance: a "lead ceiling" loomed over women with some positions remaining closed to them until the 1970s (Descamps, 2013).

This particular case reveals a fundamental point that could well be generalised. In the early 1950s, Gabriel Ardant, himself Inspector of Finance and former close adviser to Pierre Mendès France, wrote a comment about the civil service regulations that is still highly relevant today:

> *"We readily criticise the rigidity of the civil service regulations as one of the main causes for the inadequate productivity of the public services. [...] We must be clear about one point. Many failings that can be found are due not to the legislation, the rules and regulations, but to the use that is made of them by managers at all levels." (Ardant, 1953)*

As Frédéric Edel shows in a study of legal instruments for gender equality in the workplace, over the 1980s-1990s, between socialist governments, the extension of the civil service regulations and, most importantly, pressure from international organisations, from the International Labour Organization (ILO) in Europe, all formal limitations on equality disappeared (Edel, 2013). Yet all the empirical studies on the question show that gender inequalities persist in the civil service even today (Marry et al., 2017).

Nevertheless, we can commend the fact that the inequalities and discrimination measured in the civil service are generally considered as lesser than in the private sector (particularly in terms of pay). However, if one considers that the government and public authorities should be model employers in this respect, it has to be said that the current situation is not satisfactory (DGAFP, 2022, pp. 215–259).

Conclusion

In 1954, on leaving his position, the first Director of the Civil Service wrote that, "The benefits of studying the civil service largely transcend the administrative frame. Such a study identifies, from one specific example, certain general aspects of contemporary social life," (Grégoire, 2005, p. 342). Who would disagree with that? In today's world, marked as much by a lack of attractiveness in certain sectors of public action as by a growing distrust of the senior civil service, another text by Roger Grégoire merits particular attention.

In 1948, on the completion of a three-track overhaul of the civil service (creation of the civil service directorate, the French Senior Civil Service School (ENA) and the corps of principals; the General Civil Service Regulations; and creation of the grade-related pay scale), Roger Grégoire argued for an end to the incessant use of the expression "civil service reform". The Director of the Civil Service saw the expression as an "artificial and superficial" concept evoking the idea of an "abrupt and radical transformation". He suggested replacing it with the notion of "civil service policy" fashioned out of "patience and perseverance" and a "good pinch of compromise" whose "success, as always, depends on the work of those who conduct it and the support of those affected by it" (Grégoire, 1948).

Over the decades that followed, the civil service was incessantly reformed, modernised and, more recently, transformed (Melleray, 2019) without always heeding that suggestion made by its first director. Maybe the time has come to think about it.

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France and Denmark: two continuing vocational training models with different results?

Christèle Meilland

The 16th issue of *APRP* looked at the links between continuing education and career paths. The following paper compares vocational training systems and cultures between France and Denmark.

The issue also consists of a "Joint interview" providing an overview of the actors and the organisation of continuing education in France, as well as a testimony of two teachers-researchers in management sciences devoted to the organisational, theoretical and pedagogical issues of vocational training in the field of public innovation.

https://www.cairn.info/revue-action-publique-recherche-et-pratiques-2023-1.htm

France and Denmark: two continuing vocational training models with different results?

Christèle Meilland

Incentives for adult training and lifelong learning have been in place for several decades in all European Union countries and the fast-tracking of the digital transition in the wake of the COVID-19 pandemic has further emphasised the need for fair access to this training. This investment in continuing vocational training for adults should pave the way for an increase in workers' skillsets, improved employability and more secure career paths. It is perceived as a means of countering unemployment as well as a key measure for the competitiveness of businesses. This means that societies have high expectations that vocational training will act as a cross-cutting instrument for reconciling individuals' hopes and requirements with those of the companies and the economy.

France and Denmark have different training models but there are certain similarities in their approach to lifelong learning. Denmark is seen as one of the best-performing countries for vocational training which is one of the cornerstones of Danish flexicurity (see Box 1), a key component of its lifelong learning strategy. With this flexicurity model, in which a central place is given over to adjusting and responding to change, adult training is still a major means of action on the labour market. Encouraging workers to improve their skills and to gain further qualifications is one of the asserted goals of employment policies. As a result, the training system is viewed as essential for the due and proper functioning of the Danish economy; it is one of the mainstays of the "wellbeing society" with its motto "work longer and work better".[1] In France, vocational training is a right bestowed on all adults which is set out in the founding texts,[2] thus demonstrating the importance attached to this notion. In the same way as in Denmark, it is seen as a crucial measure for employability, the competitiveness of businesses and economic growth. It became central to French employment policy as soon as the right to training during working hours was introduced in 1971. Since then, a large amount of legislation has altered the initial system and, in recent years, two major reforms have been launched to upgrade the adult training system and bring it into line with changes to the labour market: the 2013 national multi-sector agreement which aimed to make the system strategic in terms of providing more secure career paths and the Career Choice Act of 5 September 2018 which sought to bolster individuals' freedom in choosing training options.

The purpose of this paper is to highlight the particularities of continuing training models in France and Denmark in order to examine their differences and similarities. This comparison will underscore how the incumbent systems reflect the positioning and dialogue between domestic public policies, labour market stakeholders, vocational training institutions, the unions and employers' federations. Although recent reforms (in both countries) aimed to improve the appeal of the training systems, we will show that the repercussions (with respect to participation, for instance) are far from identical. The paper is split into three sections: after having given an overview of the Danish and French continuing vocational training models, the second part will cover the differences and similarities of participation in

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training in the two countries. We will then review the impact of social and economic models on the development of, and the importance bestowed on, vocational training in Denmark and in France.

Box 1: The Danish flexicurity model

The Danish flexicurity model combines generous unemployment benefits, flexible labour market legislation (with few regulations concerning hiring and firing) and an active employment policy (Meilland, 2013). It is a tripartite model with central government, employers and the unions having a key role in the functioning of the labour market. In Denmark, the government is still central to economic and social life but, with regard to the workings of the labour market, it has a mostly non-interventionist approach and Danish legislation contains very few labour law statutes. The flexicurity model is often referred to as a "golden triangle": the combination of flexibility for businesses and security for workers, job-seeking incentives and the protection of human capital. This combination of flexibility and security derives from the basic notion that these two aspects can enhance each other reciprocally. The system brings strong external mobility into play (with little protection for jobs held), income security (with a robust and generous unemployment benefit and social support system) and an active labour market policy. With this system, job security is not tied in with legal or contractual protection but with enhanced "employability" and individuals' ability to handle occupational transitions. Employer federations, trade unions and workers, 70% of whom are unionised, fully adhere to this system. The majority of the functioning of the labour market is governed by collective bargaining agreements which set out pay conditions, dismissal methods and overall working conditions. In some ways, labour market legislation is replaced by more restrictive collective bargaining agreements.

Box 2: Continuing training and Europe

In Europe, adult continuing training and especially vocational training for workers has been subject to intense discussions since the turn of the century (Céreq Échanges, 2020). With rollout of the Lisbon Strategy in 2000 followed by the Europe 2020 Strategy, Member States must make every effort to increase the employment rate of the population aged 20 to 64 from 69% to at least 75%, including through the greater involvement of women, older workers and the better integration of migrants in the workforce.[3] In 2017, the European Pillar of Social Rights recognised in its first principle that "Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market".[4] In 2020, the five-year plan presented by the European Commission shaped the European Skills Agenda which aims to help individuals and businesses develop more and better skills. The Agenda includes quantitative objectives for upskilling and reskilling to be achieved by 2025 with the onus on low-skilled adults and the unemployed. This focus on adults remains a priority for the European political agenda as part of the updated strategic framework of European cooperation in education and training for 2021-2030, including those who are furthest removed from education and training. In addition, the EU has set itself a new objective of encouraging 50% of adults and 15% of 15 to 64 year olds to take part in education and training sessions by 2025.

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3 https://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf
4 https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_fr

Continuing vocational training, a cornerstone of Danish flexicurity

Continuing vocational training in Denmark is a cornerstone of the flexicurity system and a key component of active labour market policies.[5] It is becoming increasingly important as the government and the social partners see it as the main means of countering unemployment and the risk of shortages of skilled workers (Meilland, 2017). One of the main features of the Danish vocational training model is that it is central to discussions between the government and the social partners. The latter have an active role in drawing up training content to help jobseekers find work or to encourage workers to change jobs. The system is also very closely tied in with Danes' high levels of occupational mobility with almost one third of them changing jobs every year. Since the 2008 crisis, successive governments have focused more on flexibility instead of security when adjusting the model. This is borne out by the tightening of the unemployment benefit system and active employment policies (including vocational training). Against this backdrop, the position of vocational training (included in active labour market policies)[6] has been strengthened as it is a means of providing more secure career paths: its objective is to enable jobseekers to find employment more rapidly, to foster their potential retraining and to help workers acquire the new skills that are required by companies. In light of this, the training system has been overhauled to make it more appealing to workers and jobseekers, i.e. more flexible and more focused on companies' requirements (Landsorganisationen i Danmark[7] [LO], website). Over the last two decades, successive governments have concentrated on the development of vocational skills for young people or the less young, and they have targeted low-skilled or unskilled individuals. The goal is two-fold: to focus vocational training on vulnerable groups such as "older adolescents", people far removed from the labour market and the unemployed, and to "reboot" vocational training. These changes to the training system are designed to offset the disaffection of young people and the overall drop in adult participation, and to enable the system to maintain its appeal. A third of Danish workers do not feel the need to take continuing training. This is why a tripartite agreement was reached in 2017 under impetus from the social partners and the government. It contained a raft of measures to help workers adjust to the new skills required on the labour market and to convince them of the benefits of lifelong learning. The main measures aimed to favour reskilling options for unskilled and skilled workers with the setting up of a reconversion fund, to strengthen basic skills (such as information and communication technologies (ICT) and English), to increase the allowance paid to all those participating in adult vocational training programmes (Arbejdsmarkedsuddannelser, AMU) and to improve access to and the quality of AMU courses[8] (greater flexibility, easier enrolment system, etc.) (Planet Labor, 2017).

AMU programmes[9] are far and away the largest component of the adult continuing

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[5] In 2015, Denmark earmarked 7% of its GDP for education expenditure which put it in first place among EU Member States (European average = 4.9%) (OECD website).

[6] Active labour market policies refer to all the measures/reforms implemented to help jobseekers find work or workers to change jobs. These policies allow for contact between the public authorities, the unions, employers' federations and individuals. In Denmark, the active policy is grounded in the principle of rights and obligations. The employment department undertakes to offer active measures, in particular training, and jobseekers commit to taking these courses.

[7] The Danish union Landsorganisationen i Danmark (LO) is the main workers' confederation with around a million and a half members, mainly operatives and clerical staff, in a country with a very high rate of unionisation at around 85%. In 2018, LO merged with the FTF and the new confederation, Fagbevægelsens Hovedorganisation (FH), was set up on 1 January 2019.

[8] See the following paragraph and, in particular, note 9 below.

[9] AMU is government-subsidised training. Low-skilled and skilled participants are entitled to a fixed allowance financed by the government, the Government Grant System for Adult Training (VEU-godtgørelse) corresponding to the maximum unemployment benefit rate. Companies paying regular wages to employees participating in adult vocational training programmes are entitled to receiving the grant instead. There are about 100 schools approved by the Ministry of Children and Education for providing adult vocational training programmes all over the country. The social partners play a major role in the management, priority setting, development, organisation and quality assurance of adult vocational training programmes, and at local level through representatives on school boards and education committees. At national level, there is a National Advisory Council for Adult Education and Continuing Training (VEU-rådet) for the Ministry of Children and Education and 11 continuing training and education committees, each responsible for a specific sector of the labour market. At local level providers of adult vocational training programmes are in close dialogue with local trade committees (https://eng.uvm.dk/adult-education-and-continuing-training/adult-vocational-training).

training system,[10] with respect to the number and diversity of courses, and the number of participants; they offer training for employment (the literal translation). The programmes were introduced in 1960 with the aim of expanding and improving the skills of all individuals in line with companies' requirements and local labour market conditions. They include features of Danish flexicurity: flexibility for both workers and employers. The training offered in AMU centres, in vocational colleges or in certain accredited private institutions, seeks to provide adults with skills and competences tailored to the labour market, mainly in specific sectors or for specific jobs. The programmes essentially cater for workers although jobseekers may also be entitled to take them. AMU programmes (there are around 3,000) are intended to heighten knowledge in a specific area or to broaden know-how in related areas. However, to provide an easy overview, these programmes have been gathered into approximately 130 joint competence descriptions, equivalent to 130 job areas. These are short courses of half a day to a week on average, are often taken on a part-time basis and are very frequently adapted depending on changes affecting the labour market (https://eng.uvm.dk/adult-education-and-continuing-training/adult-vocational-training).

The social partners exert significant influence over the content of the programmes as they appoint the 11 specialised sector-specific committees which decide on these programmes. These national committees have joint decision-making responsibilities for all the training programmes. The programmes can be adapted very rapidly and this flexibility is one of their essential features. Between 200 and 400 new programmes are developed every year in the space of six weeks whilst others, seen as obsolete, are phased out. If necessary, the Ministry of Children and Education has three weeks during which to object. A lack of reply represents agreement to introduce programmes in the 100 vocational training institutions: colleges, adult training centres, private centres and local trade union committees.[11] Over time, AMU centres have become somewhat independent as regards financial management and rolling out training programmes. The courses are offered to workers and to jobseekers as part of the activation of employment policies. Once the activation period has been triggered, the jobseeker must either complete an internship in a company, accept a job or undergo training in their area or in a related area.

After levelling off between 2005 and 2007, followed by an increase in the wake of the 2008 financial crisis, the number of AMU participants fell as from 2011 (down 31% compared to 2010) and subsequently continued to drop. In 2015, there were around 523,736 participants in AMU programmes, some 50% less than at its peak in 2010. This significant reduction in adult participation in training, in particular in AMU, as from 2011, followed on from a sharp increase during the crisis (2008 to 2010) when vocational training was rebooted. In Denmark, adult participation in training is very closely linked to economic conditions.

AMU courses provide both practical and theoretical teaching with a strong focus on hands-on workshops, and the programmes can be taken on a part-time or full-time basis. They take place in schools, workplaces or online for certain subjects. All AMU programmes lead to qualifications and all participants can have a personal skills assessment to build a customised programme. AMU training can also be adapted to the requirements of each company. There is very close collaboration between AMU training providers, local businesses and local job centres to set up relevant programmes for workers and the unemployed in a given area by making sure that the required vocational skills are available locally. Initially, AMU courses were used to streamline the transition of unskilled agricultural workers towards industry. Today, they train workers for new jobs in the service sector, the digital sector and the green economy. It is a key means for continuing skills development and the reskilling of individuals as well as being highly flexible. "The AMU system is

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10 Adult continuing education and training programmes providing general qualifications can be broken down as follows: preparatory adult education (FVU), basic reading and writing, and mathematics essentially for individuals with learning difficulties or for whom Danish is not their mother tongue; basic adult education (GVU) for low-skilled individuals with at last two years' work experience; general adult education (AVU) for individuals who did not complete the first cycle of secondary education; higher preparatory lessons in a single subject (HF enkeltfag) for adults needing to obtain an existing higher secondary education diploma for access to a specific higher education course; adult vocational training (AMU), mainly for skilled or unskilled workers on the labour market who need to expand their skills, and for jobseekers. The programmes are developed and adapted according to the requirements of the labour market.

11 C. De Gastine, "Danemark : derrière les succès du système de formation continue", *Metis*, 6 December 2012, https://goo.gl/zmNk9S.

designed to train unskilled workers for specialised tasks and to support the needs of the labour market, and it is a fantastically agile system because you can combine the many AMU courses like Lego bricks according to the individual's or business's needs," explains Lotte Mollerup, head consultant at Danske Erhvervsskoler og Gymnasier, an AMU training institution in Copenhagen.[12]

Danish labour market flexibility is not simply due to the liberal firing rules but also to companies' ability to reorient workers and, therefore, employees' ability to commit to using new technologies, even in new jobs. This is why AMU is a flagship of Danish flexicurity: it helps boost internal and external flexibility[13] (Henning Jorgensen, 2017) and vertical and horizontal workforce mobility.

In France, the vocational training system is constantly being recast

Although, at the outset, adult vocational training was not perceived as an employment policy, it became so with the Act of 1971 which introduced a real entitlement to training during working hours and which required companies to earmark a percentage of their payroll for vocational training. Since that date, as in Denmark, the French vocational training system has been subject to a multitude of reforms. The reforms introduced since the 2000s have mainly been focused on providing more secure career paths and flexicurity on a more European scale. This was the case with the Act of 4 May 2004 on lifelong learning and social dialogue, which was taken up by the social partners and which sought to foster social promotion and the adaptation of workers' skills, and, more importantly, the 2018 Career Choice Act which had two main goals: to give individuals new rights with regard to choosing their working life throughout their career and to bolster companies' investment in their employees' skills. This Act enabled work-based training schemes to be considered as fully-fledged training. The liberalisation of French regulations and legislation governing vocational training has allowed for the emergence of training methods which go beyond the lessons and courses that the French system previously limited. In the past, vocational training was mainly focused on adaptation to the work position to the detriment of job turnover, work-based training and apprenticeship. Similarly, the expansion of apprenticeship, which already existed in many European countries including Denmark, has allowed continuing vocational training to be overhauled in France. The French model is moving closer to the Danish one in which training programmes are more flexible and personalised. Nevertheless, despite the French system having made progress and its promotion of apprenticeship, it is still highly fragmented: "As an example of this continued differentiation, the Act of September 2018 addresses apprenticeship but not the academic vocational path. And there is a reason for this as the two sectors are overseen by two ministerial departments which have historically had great difficulty in cooperating. It is the same demarcation between Education and Training, which is deep-rooted in French institutional and political history, that represents this other segmentation separating higher education from continuing training" (Dayan, 2019).

Danish and French public action models for adult continuing training have the same objective of matching the training of workers with labour market requirements. In both countries these are means of countering unemployment and the risk of shortages of skilled workers. That said, workers' participation in these training systems varies both in terms of the employees' features (gender, age, qualifications) and the characteristics of user companies.

Different use of vocational training in France and in Denmark

The 2019 Cedefop survey flags up the very significant difference in participation rates for 25 to 64 year olds (over the four weeks prior to the survey) between France and Denmark, in both nominal terms and as a trend.

Denmark with very high rates, well above the European average (more than triple apart from 2020 owing to the COVID-19 pandemic) for both women and men, appears as a country with high

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12 https://epale.ec.europa.eu/en/blog/amu-system-lets-danish-workforce-continuously-improve-its-skills
13 Internal mobility covers workers moving from one position to another in the same companies whilst external mobility concerns workers moving from one company to another. Horizontal mobility involves a worker changing to a position with the same hierarchical levels or the same levels of responsibility. Vertical mobility refers to a worker being promoted in the company's hierarchy.

levels of adult training. Conversely, whilst French rates are well below those of Denmark, they increased sharply in 2015 to exceed European rates.

As regards the trend for participation rates, there has been a substantial fall in adult training rates in Denmark since the 2010s for both workers and the unemployed. This is backed up by Danish statistics pointing to a certain disaffection with lifelong learning. This situation can be explained by two factors: firstly, the training rate for Danish workers rose sharply between 2008 and 2010 in the wake of the economic and financial crisis and, after 2010, the rates returned to more normal levels. Secondly, extreme fiscal tightening due to reforms to the system (in particular the recasting of training funding systems, an increase in vocational reconversion expenses and a reduction of the maximum period for entitlement to unemployment benefits from four to two years) caused falling participation rates for both workers and the unemployed. On the other hand, in France, which had a rate below that of the EU average in 2010, rates rose very significantly in 2015. As 2020 was an exceptional year, it is presented here for information purposes only. This different use of vocational training by adults underscores the societal disparities of national models, including with respect to the promotion of continuing vocational training.

Table 1: The share of adults aged 25 to 64 who participated in a formal or non-formal[14] education and training activity in the four weeks preceding the survey in relation to the total population of the same age (in %)

	2010	2015	2020
EU women	8.4	10.9	10
DK women	39.4	37.5	23.6
FR women	5.4	21.2	14.6
EU men	7.3	9.2	8.3
DK men	26	25.6	16.4
FR men	4.5	15.9	11.2

Source: Eurostat, website.
https://ec.europa.eu/eurostat/databrowser/view/
TRNG_CVT_12S/default/table?category=educ.educ_
part.trng_cvt.trng_cvt_02

Segmentation based on age and gender

Gender is the second differentiating factor in training. In this opinion poll conducted in EU Member States, although women and men unanimously acknowledge the importance of continuing vocational training and are optimistic about the positive effects of training on employment or jobseeking, their opinions diverge concerning the influence and heft of training in the future; it is seen as much more important by men than by women. In addition, according to the data collected, women are more likely to embark on organised vocational training for personal development whereas men are more inclined to do so to improve their professional skillsets. Lastly, although the people polled affirmed that they need to constantly upgrade their skills to do their jobs, more men stated that they lack basic skills. French studies have shown that gender differences in relation to vocational training concern training conditions and methods rather than access to vocational training (very minor differences) (De Larquier, Remillon, 2022). These works reveal that women – at least in France – take slightly more training on average, for longer periods of time, that they take more training in their free time, more often fund their training themselves and obtain qualifications or certification less often. Also in France, the effect of events relating to forming a family is significant in women's careers and, therefore, in their training patterns. Additionally, the positive impact of training on changing jobs is less significant for women than for men and this is surely tied in with women's lower levels of mobility. Eurostat statistics mostly confirm these European findings: more Danish and French women than their male counterparts stated that they had taken part in training during the four weeks preceding the survey (see Table 1 above). The gender gap was more than 10 points in Denmark and between one and five points in France.

The 2022 Cedefop survey shows that training becomes more important with age, not only when the individual is part of the workforce (25/64 years old), but also for those aged over 65. Irrespective of their age, 88% of adults consider that they need to keep their skills up to date to do their job (Cedefop, 2022); these figures are based on statements.

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14 Formal training covers internships, continuing training, seminars and conferences. This is training that is dispensed by a trainer or specialised speaker in a location away from the workstation. Non-formal training relates to other training, often in work-related situations (i.e. at the workstation), or to self-training (training practices when the person trains mainly alone, possibly by using special training resources).

However, with regard to participation rates, the trends are reversed. On average in Europe, 57% of 25 to 34 year olds polled stated that they took part in an organised and work-related training activity during the year of the survey compared to 49% of 45 to 54 year olds, and only 33% of 55 to 64 year olds. Table 2 shows that the higher the training participation rate, the younger the individuals, which is relatively logical. It therefore appears that there is a divergence between interest in training and actual participation. Moreover, the type of training also varies according to age: the older the individual, the more the reasons for wanting training become personal rather than professional. Participation in training is also higher among those with a high-level education (52%) compared to those with a low-level education (17%).

Table 2: Participation rate in education and training by age

For indiviwduals aged 25 to 64

	2012	2015	2020
Denmark	31.6	31.5	20
France	5.7	18.6	13

For individuals aged 20 to 34

	2012	2015	2020
Denmark	56.6	57.1	43.5
France	22.9	34.6	29.7

Source: https://ec.europa.eu/eurostat/databrowser/view/TRNG_LFS_03__custom_5697703/default/table

French and Danish companies are increasingly involved in training

An examination of adult continuing vocational training in companies shows the effect of European and national public policies in recent years which aim to encourage businesses to invest in training their employees.

Whilst in 2005, 60% of EU companies arranged training for at least one member of their staff, this figure was 73% in 2015. France is at the top of the range with 79% of companies offering training, whereas Denmark posts 87% and is among the countries with the highest rates like the other Nordic countries. This initiative is obviously very sensitive to economic conditions as, during the COVID-19 pandemic for instance, the training offering plummeted (72% for Denmark and 76% for France in 2020 according to Eurostat). This means that, although France and Denmark have different adult continuing training participation rates, investment by companies seems fairly comparable in the two countries.

In 2015, 48.3% of French workers took continuing vocational training funded by their employer during the reference calendar year (12 months)[15] whereas the figure was 34.6% for Denmark. In the same year, 86.6% of Danish companies offered vocational training to their employees compared with 78.9% in France.

Table 3: Participants in continuing vocational training courses by gender as a % of persons employed in companies

	2010	2015	2020
EU women	35.6	38.7	
DK women	35.9	34.2	25
FR women	42.2	45.9	44.9
EU men	38.5	42	
DK men	37.1	35.4	25.1
FR men	47.4	49.8	47.5
EU total	37.6	40.8	
DK total	37.1	34.6	25.5
FR total	45.4	48.3	46.6

Source: Eurostat.
https://ec.europa.eu/eurostat/databrowser/view/TRNG_CVT_12S/default/table?category=educ.educ_part.trng_cvt.trng_cvt_02

Companies' training strategies also vary according to company size. The data in Table 4 highlights how many large enterprises with more than 250 employees provide training, in particular French companies, whereas large Danish firms appear to be less implicated. If 2010 is excluded, the smallest Danish and French enterprises take more or less the same action on training.

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15 As a percentage of all staff employed in all the companies polled, Eurostat, Continuing Vocational Training Survey (CVTS).

Table 4: Participants in in-company continuing vocational training courses by size of enterprise as a % of persons employed in companies

For enterprises with 10 to 49 employees:

	2010	2015	2020
EU	25	30	
DK	35.8	25.4	20.6
FR	26.7	27.4	24

For enterprises with 250 employees or more:

	2010	2015	2020
EU	46	47.7	
DK	36.5	41.8	29.8
FR	55.6	62.3	60.4

Source: Eurostat. https://ec.europa.eu/eurostat/databrowser/view/TRNG_CVT_12S/default/table?category=educ.educ_part.trng_cvt.trng_cvt_02

An important point is that Danish companies appear to be less implicated than their French counterparts because they make more use of training institutions. Danish workers most often take AMU vocational training[16] which is highly dependent on central government and the social partners, and this explains Denmark's lower rates in these Tables. The scope of national training models is of utmost importance to ascertain the position of these instruments in society.

Table 5, which sets out the average annual volume of training for workers in the EU, France and Denmark, attests to the extent of training in Denmark (187 hours on average, compared with 77 hours in France in 2007). The majority of the workforce takes part in adult education and the Danish government participates in this respect. However, the Table shows the fall off in 2010 in Denmark and the subsequent similarity in the average number of training hours in the two countries as from 2011. In France, there was a substantial increase between 2007 and 2016

which enabled it to exceed the European average which had itself fallen. This can be explained by the increased participation in France combined with the fact that training courses are often long which generates a large volume of hours.

Table 5: Mean instruction hours per year by salaried participant in formal and non-formal education and training

	2007	2011	2016
EU	99	104	94
DK	187	128	101
FR	77	81	98

Source: Eurostat.
https://ec.europa.eu/eurostat/databrowser/view/TRNG_AES_149/default/table?category=educ.educ_part.trng.trng_aes_12m2

Although there are different challenges, do the two models have the same goal of lifelong learning?

There appears to be a paradox between the asserted requirement for companies to have new skills, individuals' desire to acquire these skills (and, thereby, either higher wages, employment for jobseekers, or a more senior position, etc.) and the low rate of adults taking training, especially in France, but also in other EU Member States. Few countries have met the target set by the EU (see Box 2): the EU average in 2019 was 11.8% and it fell to 9.2% in 2020 mostly due to the COVID-19 pandemic (Cedefop, 2022, Briefing Note). This average hides huge disparities between countries which are brought to light, in particular, by the comparison between France and

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16 AMU is largely publicly financed. Providers must negotiate budgets and targets with the Ministry of Education annually. In addition, there is a participation fee for most courses, on average corresponding to approximately EUR 100 per week, which is generally paid by the employer. Unemployed participants taking part in AMU as part of their individual employment plan are exempt from any fees. These costs are covered by the Ministry of Employment. Participants are entitled to a fixed allowance, the Government Grant System for Adult Training (VEU-godtgørelse). In 2018, the amount available is DKK 4,300 (EUR 578) per week, corresponding to the maximum unemployment insurance benefit rate. As most participants are employed and receive a full salary during the training period, this allowance is primarily paid to employers as partial reimbursement of wages (Cedefop, *Vocational education and training in Europe: Denmark*, 2018).

Denmark. In certain countries, such as France, mere requirement is insufficient and does not seem to trigger motivation. Adults' disaffection with training can be seen in all the countries (at different levels) although they do acknowledge the merit and importance of continuing vocational training, and have a positive and constructive image of it (Cedefop, 2022). In other countries, including Denmark, participation in training, even if it is currently lower than in the years prior to 2010 and is higher among certain categories of the workforce only, is still broadly significant.

The French and Danish models presented in this paper have similar features (gender differences, differences between ages, etc.) as well as diverging ones related to participation rates or average number of hours of training. There are various explanations such as seeking a pay rise which is not necessarily automatic or differences in the societal models applying to the individuals. Adults consider participation in training as an opportunity to improve their employment conditions and wages although this improvement is not guaranteed. It is difficult to find a causal effect of training on wages (Céreq Échanges, 2020) or, more broadly, on promotion: "Companies tend to offer more training to employees who they are looking to reward and promote which can lead to an over-estimation of the actual impact of training" (Céreq Échanges, 2020). Empirical works on the connection between training and wages show that workers' participation in training leads to substantial salary hikes. However, researchers have proved that individuals' wages rise because they were chosen for training beforehand (owing to their potential). Training therefore has no causal effect on income... even though training is actually associated with an improvement in career prospects, especially if analysed over the long term. So, research conducted on the impact of training on career paths by Olivier Cassagneau-Francis, Robert Gary-Bobo, Julie Pernaudet and Jean-Marc Robin shows, despite strong bias,[17] that relatively long training courses can have a positive effect on wages (Céreq Échanges, 2020). Ultimately, training is thought to have varying effects depending on its duration: "Short training courses foster access to open-ended employment contracts and full-time jobs; longer courses appear to have a certain positive impact on hourly wages" (Cassagneau-Francis et

al., 2020, p. 25). In Denmark, giving priority to short training courses (which can supplement each other) favours the hiring of jobseekers or low-skilled workers under long-term contracts. The flexibility of training in Denmark tends to provide security for participants. These dual features of vocational training (flexibility and security) are the cornerstones of Danish flexicurity. In France, it is rather skilled individuals who take training or have access to training, which is often over the long term, in particular for jobseekers. There are more barriers to training such as costs and distance[18] in France than in Denmark (subsidies, shorter and more local training options).

This lack of causality between training and additional income could be one of the explanations for low adult participation in vocational training. Another explanation is certainly the specific societal context of each country. In Denmark, apprenticeship has been substantially expanded over a long period of time and, as from initial training, the notion that young people learn by doing things, by putting themselves in a position to do things, is promoted. This acquisition of practical know-how has been fostered: for instance, since 2010 the "Ny Mesterlaere" *(New apprenticeship)* scheme has included a full one-year in-company programme without theoretical training. This grounding of practice in training is down to the Danish social partners which are attempting to guarantee a skilled workforce for companies. Training is equated with building Lego (a Danish brand) which allows individuals to work their way up and design their own career paths. All this flexibility should lead to the security of having a job. Initial training *must* be supplemented whereas the French vocational training system is only seen as an *option* for supplementing initial training. In France, continuing training is not considered a requirement as initial training can be sufficient throughout an individual's career. This is in line with Cécile Van de Velde's analysis of the family and career paths of young French and Danish people which points to the existence of two different models for entering adult life which are connected to the socio-political and cultural tenets of the two countries. The Danish model tends to foster early independence and significant toing and froing between studies and professional experience whilst the French model tends to over-value initial training with career paths

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17 The authors highlight the fact that using the vocational training system is an endogenous variable as this use is determined by unknown individual features. In other words, individuals taking training are thought to be "more ambitious, or more promising, or more productive".

18 In "La formation des adultes", Insee Première, no. 1468, 2013.

being characterised and overshadowed by the initial diploma and the first job. Danish vocational training is viewed as a strategic investment in society and is strongly subsidised by central government. Its priority is to counter the lack of skilled labour and to address the ageing workforce whereas changes to vocational training in France are essentially aimed at "contributing to companies' performance levels" (Céreq, 2020) and providing individuals with more secure career paths.

This comparison shows that the influence of a country's economic and social model is still substantial for the development of vocational training and, even though the reforms introduced in France and Denmark over the last two decades are converging with increasingly common features – greater flexibility and less security – highly prevalent national specificities nevertheless remain and demonstrate the still highly problematic issue of diminishing the dividing line between initial and continuing training.

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Barriers to Implementing Transparency in EU Institutions

Stéphanie Novak

The 18th issue of *APRP* brought together contributions dedicated to the links between transparency and public action. The following paper presents both the effects and the limitations of transparency policies in the European institutions.

The "Joint interview" published in this issue is a dialogue between a professor of management sciences and a member of the Transparency International association questioning the very notion of transparency, the way it imposed itself in the public debate, the actors who carry it and the legislative stages that framed it. The second article of the issue looks at the roots, perimeter and meanings of the notion of transparency in law.

https://www.cairn.info/revue-action-publique-recherche-et-pratiques-2023-3.htm

Barriers to Implementing Transparency in EU Institutions

Stéphanie Novak

Since the 1990s, EU institutions have developed policies that are designed to make their work and decision-making processes more accessible to the public. These policies are introduced against a historical backdrop in which transparency has gradually become a "global" norm (Peters, 2013). In this respect, several countries have introduced access to information acts over the past 60 or so years. EU transparency policies developed in the last few decades are the product of events and factors such as Denmark's rejection of the Maastricht Treaty in 1992, MEPs being tasked with acquiring more information on the Council of the European Union's[1] work, a string of corruption scandals, and decisions made by the Court of Justice of the European Union[2] and the European Ombudsman that are often in support of increasingly open institutions. Against this backdrop, EU institutions present access to information policies as solutions to a European "democratic deficit" and transparency as a tool to ensure greater accountability among decision-makers, increase citizens' trust in their representatives and bolster the legitimacy of the institutions.

However, there are a myriad of ways to coordinate access to information, and reforms on the matter have not necessarily resulted in the intended outcomes. This paper will provide an overview of the main regulatory changes and their impacts, and also will attempt to identify the barriers facing EU transparency policies. In the first section, we analyse the notion of transparency. Next, we explore developments on the transparency front in EU institutions and their consequences – first and foremost taking into account Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents – followed by the barriers to transparency in legislative institutions. In the final section, we examine the decisions made by the Court of Justice and the European Ombudsman in relation to access to documents and discussions on the limits and barriers to transparency.

Transparency: an in-vogue quality...

Transparency is a coveted quality to the extent that one has the impression that it is not just a means to an end – that of ensuring democratic governance – but an end in itself. It is often associated with the development of new technologies, but the principle of openness underpinning transparency considerably predates this. Enlightenment philosophers – namely Kant, Rousseau and Bentham – played a key role in the emergence of this principle, upheld to prevent abuse of power (Meijer, 2015). Very often regarded as a cure for the various ills of modern politics – corruption, low citizen participation in public forums, undue influence exerted by interest groups and scant information about decision-making processes, which makes it difficult to determine which positions the stakeholders have taken (Hood and Heald, 2006) – transparency is commonly seen as a key component of the democratic accountability of representatives. This notion of democratic accountability (Przeworski, Stokes and Manin, 1999) relates to the need for citizens to be informed of the positions backed by their representatives during political debates. This information in turn will allow them to make an informed choice during elections. Transparency can therefore be defined as "the availability of information about an actor that allows other actors to monitor the workings or performance of the first actor" (Meijer, 2013, p. 430).

...serving various purposes and with different tools used to implement it

Although transparency relates to public access to information, it may have various distinctive *purposes* and be implemented using a variety

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1 Hereinafter the Council.
2 Hereinafter the Court of Justice.

of *tools*. According to Grimmelikhuijsen et al., (2013, p. 576), the object of transparency can be decision-making processes (e.g. parliamentary debates), the content of the policies adopted (what problems are the policies intended to solve and how are the policies implemented?) and the outcomes or effects of these policies. Mansbridge (2009) makes a distinction between transparency in process, relating to information on the decision-making process, and transparency in rationale, which relates to representatives explaining to citizens the content of the policies they have adopted. She draws a link between transparency in process and democratic accountability, considered an opportunity for citizens to *punish*, with their ballot, elected officials for having backed positions or acts that they disagree with. Transparency in rationale, which focuses on the *explanation* given by representatives for their political decisions and not on the monitoring of their actions by citizens, is linked to narrative democratic accountability. Given that the relationship between transparency and trust is often brought to the forefront for discussion, it should be noted that these two forms of transparency have a differing relationship with trust. Transparency in rationale and narrative democratic accountability assume a high level of trust among citizens in their representatives, while transparency in process and democratic accountability – based on the possibility of punishing elected officials – are considered as standing in opposition to the tools employed to build trust. Furthermore, the definition of transparency used by the institutions is broader than the disclosure of information on decisions, including also information about the career and income of politicians (elected members of the European Parliament and European Commission) and EU civil servants, so as to mitigate the risk of corruption or conflict of interest. It also covers interest groups that must detail their objectives, resources and staff when they are listed on the EU transparency register (2021 Transparency Register).

There are various tools used to grant the public access to information. If the object of transparency is the decision-making process, citizens can attend debates in person (e.g., during parliamentary sessions) or remotely (e.g. in the case of the Council, within which ministers of EU Member States negotiate EU legislation). However, access to the debates may only be granted once they are over, in the form of minutes. While attending debates encourages citizen participation, reading minutes allows citizens to acquire information but not to influence the procedure underway. While the institutions do not grant access to their debates, instead favouring transparency in their policies (this is for example the case for the European Central Bank [ECB], Curtin, 2017) and/or the outcomes thereof, a variety of new tools, such as press releases and annual reports, are used to disclose information to the public.

To help with the analysis of the tools coordinating public access to information, a distinction should also be made between passive and active transparency. Passive transparency is when citizens may request a document – the procedures for exercising this right are generally set out in freedom of information laws. On the other hand, active transparency is when the institutions directly grant access to documents, a process facilitated by new information technologies (de Terwangne, 2004). Generally speaking, the European Union has shifted from passive to active transparency.

The concept of transparency can also be distinguished from that of publicity (Naurin, 2006). Transparency means that the information is available but that citizens may not necessarily be able to comprehend it (e.g. if an institution were to publish all its documentation online without providing the tools needed to understand its nature, the manner in which it is produced and drafted, and also how to use the search function in the digital archives). Publicity has the implication that the information is structured in such a way that citizens can use it. Transparency is required to ensure that permission to disclose information is granted carefully, but it is this principle of openness that drives democratic accountability.

Although transparency is a democratic imperative, a number of empirical studies over the past 20 years have highlighted the costs of transparency and its potential for unintended or even counterproductive consequences.[3] Some of this work shows that transparency's impacts vary depending on the cultural and/or institutional context. For example, comparative studies posit that transparency does not necessarily build citizens' trust in their government, and that it can even have the opposite effect (Grimmelikhuijsen et al. [2013] analyse this topic through a comparison of the Netherlands with South Korea). Some research has also examined transparency's impact on negotiations; negotiators generally claim that secrecy is needed for such proceedings (Stasavage,

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3   On the unintended consequences of transparency, see Erkkilä, 2012.

2006; Novak and Hillebrandt, 2020). This subject has fuelled debates on what limits to place on transparency. Another critical viewpoint is that the potential to publicly disclose decision-making processes is overestimated: within EU institutions, it is said to be a commonplace practice for negotiators, when subject to disclosure obligations, to push back the "real" debates to non-public spaces. This consequence raises issues in that it implies that there is only a veneer of transparency. We continue our discussion on this topic and the friction between negotiation and transparency in later sections.

Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents and the limits of transparency

The increasing importance of the principle of transparency

Since the Maastricht Treaty (1992) and the Laeken Declaration (European Council, 2001), the principle of transparency – also known as the principle of openness – has gradually become more and more important within EU institutions. The right of access to documents of the Union's institutions is referred to in Article 15 of the Treaty on the Functioning of the European Union. The arrangements for exercising this right are set out in Regulation (EC) No 1049/2001, which marked a major step for EU transparency policy. This regulation concerns access to European Parliament, Council and Commission documents, and other EU institutions have produced their own transparency rules. Regulation (EC) No 1049/2001 was adopted following negotiations between (i) stakeholders in favour of an ambitious regulation – notably the European Parliament, which had an interest in acquiring more information about the Council's work, along with a coalition formed of Finland, the Netherlands, Sweden and Denmark, countries where transparency had been a long-standing political principle – and (ii) Member States, particularly Germany, France and the United Kingdom, more inclined to want to safeguard the confidentiality of certain documents and which feared that this new regulation would require

disclosing documents pertaining to national security issues, a concern heightened by their closer ties with NATO (Bjurulf and Elgström, 2004). The regulation, adopted in 2001, is a compromise factoring in these different positions, as is often the case for the European Union. A few years later, the Commission began work on revising the regulation to address the Parliament's requests. The adoption of the Treaty of Lisbon and its Article 15 regarding the right of access to information especially made it necessary to adapt the regulation so that it could cover all institutions (Maes, 2010). In 2008, the European Commission adopted a proposed revision of the regulation. However, negotiations have come to a standstill as a result of the diverging opinions of the Parliament, Council and Commission. The Parliament criticises the Commission's proposal for using a definition of "document" that is far too narrow and for not encompassing enough institutions. Some Member States would prefer that certain documents (e.g. those related to state aid and competition policy) not be subject to the revised regulation (European Parliament, 2013 and 2023).

Legislative documents, accessible by default

Pursuant to Regulation (EC) No 1049/2001, legislative documents must be accessible by default. These are defined as "documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States" (Article 12(2)). The regulation outlines the circumstances in which the institutions may or may not grant access to a given document. These exceptions cover documents where disclosure would undermine the protection of (i) the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State, and (ii) privacy and the integrity of the individual. Furthermore, the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests, court proceedings and legal advice, and the purpose of inspections, investigations and audits (Article 4(2)). Article 4(3) stipulates that public access to a document shall be refused if disclosure of the document would seriously undermine the institution's decision-making process. This exception applies to ongoing decision-making processes, but may also be invoked after a process has ended. This reasoning is to some extent detailed in the recitals of the regulation: "Wider access should be granted to documents in cases where the institutions are acting in their legislative

capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent".

The institutions have 15 days to respond to any applications for access received. In the event of a refusal of an application, the applicant has the right to make a confirmatory application. If the institution once again refuses the application, the applicant has the right to refer to the Court of Justice or the European Ombudsman. All refusal letters from the institutions are publicly available. An analysis of replies to confirmatory applications has shown that in addition to the specific interests detailed in Article 4(2), the institutions commonly invoke the protection of the decision-making process pursuant to Article 4(3) (Novak and Hillebrandt, 2020). More specifically, the arguments given are as follows: the necessity of negotiation; the act of publishing a document would risk bringing negotiations to a standstill as representatives would be unable to explain to citizens that they had to change their position during the process; the risk that trust breaks down between the decision-makers to the extent that open exchanges are no longer possible; the risk that stakeholders no longer want to leave a paper trail of their work, which would lead to a purge of the archives;[4] and the risk of external pressure if the negotiation process is still under way. An analysis of the methods employed by the Court of Justice and the European Ombudsman to address these arguments when considering refusals to access documents is presented below. For the moment, it should be noted that most arguments used under Article 4(3) relate not just to the decision-making process in general but more specifically to negotiations. Arguments relate on the one hand to the possibility that a decision-maker's position can change during the process, which is a fundamental characteristic of negotiations and compromise that requires stakeholders to make concessions, and on the other to the difference between a closed-door meeting, in which stakeholders can hold honest discussions, and a public session which does not allow for real discussions. This reference to negotiations combined with a requirement for confidentiality proves problematic in a legislative context, i.e. when it is a matter of adopting rules and regulations that will be applicable to all Member States. Although this tug of war between the necessity of negotiation and public

access to information is factored into Regulation (EC) No 1049/2021 and into the decisions of the Court of Justice and the European Ombudsman, this very real problem still needs to be resolved, and Article 4(3) serves to cover cases in which transparency could jeopardise the negotiation process. Furthermore, the issue is not just that the institutions refuse to grant access to legislative documents on the pretext of negotiations, but that the reasons given in this case are often opaque – citing the "ability to negotiate" (European Ombudsman, 2016) is vague and understood only by insiders for the most part. This in particular raises the issue of legitimate limits on transparency.

One would think that refusals to disclose documents pursuant to Article 4(3) relate primarily to the Council: its work is effectively carried out for the most part by permanent representatives and deputy permanent representatives of Member States (Council, 2009, Article 19), who are generally career diplomats. However, negotiations are carried out beyond the intergovernmental sphere; as is detailed below, negotiations are characteristic of relations between the institutions and the decisions made within them. The Commission and the Parliament also refuse to disclose certain documents citing reasons relating to the ability to negotiate.

Barriers to transparency in the legislative procedure

Two main aspects of the legislative procedure have been criticised for a lack of transparency: a) deliberations within the Council and b) the trilogues, tripartite closed-door meetings during which representatives of the Commission, Council and Parliament work out compromise legislation.

The Council: procedure transparency and disclosure

The Council is known to be the least transparent institution of the institutional "trio" formed with the Commission and the Parliament. However, this institution is gradually opening up. To some extent, the Council's transparency is centred on the procedure (Mansbridge, 2009), but it will be evident that its impacts on democratic accountability are limited and that it is often used for political spin.

Since 1994, Council votes on legislative acts have been made public. Some of the plenary sessions

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4 On this matter see Flinn and Jones, 2009.

– the initial debate on the legislative proposals and the vote to adopt legislative acts, as well as a number of intermediary debates, based on the decisions of the six-month presidency – can be streamed on the Council website (Council, 2009, Article 9). Furthermore, the agenda of the Permanent Representatives Committee (Coreper) and the Council, in addition to the Council minutes, are published directly on the institution's website.

While legislative work must be made public by default, access to the procedure is still restricted. Firstly, the minutes of Coreper are not available despite the fact that in most cases this is where compromises are reached: pursuant to the Rules of Procedure of the Council, "Coreper shall endeavour to reach agreement at its level to be submitted to the Council for adoption" (Council, 2009, Article 19). Permanent representatives receive instructions from their ministers, but have a degree of leeway for negotiating agreements. This has led to the German wordplay of *Vertreter-Verräter* (meaning "representative" and "traitor" respectively) being coined within Coreper. Only ministers have the right to vote, and they publicly approve legislation once the permanent representatives have negotiated agreements behind closed doors. The minutes of working groups are also not published. These groups comprise experts who are nominated by Member States and the first to receive the Commission's legislative proposals. They are tasked with discussing any technical difficulties before submitting amended proposals to Coreper. In 2020, Emilio De Capitani submitted a request for access to certain documents exchanged within the "Company Law" working group and was refused access by the Council (De Capitani v Council 2023). The EU official then embarked on an endeavour to increase the amount of public information concerning the decision-making process. A few years prior, he had requested access to documents relating to trilogues (De Capitani v Parliament, 2018, see below). In the case of the Council, it should also be noted that some documents are often filed in the register once the Council Secretariat has redacted certain information (e.g. the identity of Member States defending certain positions). For other documents, their existence is noted in the register but they cannot be viewed.[5]

What is more, making the ministers' votes on adopted legislative acts public would only be the tip of the iceberg. Indeed, votes against legislation are not published; to our knowledge, such votes rarely are cast because the Presidency of the Council would not ask delegations to vote if it believes that a qualified majority (or a unanimous vote, in cases where qualified majority voting does not apply) may not be reached. An agreement by qualified majority is also generally reached behind closed doors during a Coreper meeting, while the official public vote is held a few weeks later. When representatives know that a qualified majority in favour of an act has been reached, they may choose to not reveal their feelings of scepticism or discontent with a vote against or abstention. Based on our interviews,[6] it seems that they often feel that there is no point to the voting, and that it is even counterproductive, as in their view it draws attention from the media who would paint it as a failure, even if the Council is known to decide "by consensus". On average, roughly 80% of legislative acts are adopted with no votes against or abstentions, as the delegations generally follow the consensus. Voting behaviour varies from one Member State to another. Some Member States do all they can to avoid casting votes against or abstentions. For certain Member States, such as Denmark and Sweden, the vote cast by ministers reflects the respective national parliament's position: if a parliamentary majority is reached to reject a legislative proposal, the minister concerned cannot participate in the compromise. This loyalty to respective parliaments helps to make the procedure more transparent. Furthermore, votes against and abstentions declared publicly represent tools for communicating with certain interest groups: a delegation may vote in such a way to send a message to these groups, demonstrating that it has attempted to protect national interests, albeit in vain (Novak, 2011).

In the case of public votes in the Council, Curtin's (2017) observation about the ECB is applicable: it is the institution which has control over transparency as a communication tool – since it decides how it will be implemented – so that transparency does not control the institution. According to Curtin, while the ECB has transformed into a powerful supranational institution as a result

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5   For more on the treatment of sensitive documents, refer to Article 9 of Regulation (EC) No 1049/2001.
6   From 2006 to 2022, we conducted over 100 interviews with Council members. These interviews were held to learn about the institution's decision-making practices and the impacts of transparency policies on decision making. See for example Novak, 2011.

of the economic and financial crisis of the 2010s, it suffers from a deficit in democratic accountability. As it is not subject to Regulation (EC) No 1049/2001, the ECB has adopted its own transparency practices and reports on its work through press releases. However, this kind of transparency in rationale adopted by the ECB is more a case of disclosing than sharing information so as to uphold its responsibilities to citizens and national parliaments.

Cases of voting in the Council and the ECB show how transparency policies, intended to ensure the accountability of representatives, can actually be fashioned by decision-makers to into a tool for political spin. This risk emerges if the institutions decide themselves when information can be disclosed – whether it be votes, debates or documents – and if there is no third-party agent ensuring the proper implementation of transparency. Council debates should also be mentioned in this respect. Excluding debates that are required to be public, i.e. initial debates on legislative proposals, the six-month presidency is free to choose when to make sessions open. It may use the public dimension of debates to push through legislation and deter a delegation from expressing any objection without providing a strong argument, or alternatively use other strategies to do so. If there is no third-party agent involved, the public nature of debates could also encourage decision-makers to move the decision making to behind the scenes or during lunchtime – in an interview,[7] a member of the Council Secretariat compared the Council's public debates to Potemkin villages. In certain respects, the European Ombudsman and the Court of Justice ensure the placement of third-party agents, albeit downstream of the procedure for the Court and with no obligation to do so for the European Ombudsman. However, the loyalty binding ministers to their respective parliaments in certain Member States would suggest that national parliaments could to some extent assume this role of third-party agent.

When stakeholders see that representatives are avoiding public debate in the decision-making process, they often argue that negotiations in public do not work. As noted previously, the friction between negotiation and transparency is not only raised by Council members. The

Parliament[8] and the Commission[9] have also refused access to legislative documents on the grounds that their publication would jeopardise ongoing negotiations. This last point has prompted us to analyse the issue of closed-door trilogues.

Trilogues and four-column documents

The Treaty of Lisbon increased the powers of the European Parliament by extending the ordinary legislative procedure, which is currently applied in most cases. Consequently, the Council and the Parliament have the same influence and must together approve the Commission's proposals so that they are adopted. This shift is partly the result of the "deficit in democracy". As the Parliament is an institution whose work is more publicly available than that of the Council, it would be expected that this institutional reform would increase public access to legislative work. In her decision on the Council's transparency, the European Ombudsman also observed that the Parliament provides more information on its work and that the Council should base its approach on this (European Ombudsman, 2018, Preliminary comments, § 9). However, under the ordinary legislative procedure, closed-door negotiations between the Commission, the Council and the Parliament have become commonplace. EU institutions work out compromises that will then be formally adopted by the Council and the Parliament (Curtin and Leino, 2017; Brandsma, 2019). In other words, alongside the progress made in transparency regulations, non-public negotiation forums have surged in number.

During trilogues, the stakeholders use "four-column" documents. The Commission's legislative proposal is given in the first column, the positions of the Parliament and the Council are set out in the second and third columns, while the fourth column is reserved for the inter-institutional compromise proposal. When the legislative procedure is under way, the institutions do not proactively publish these documents. In 2015, the European Ombudsman opened an inquiry into the transparency of trilogues. One of its findings was that these meetings, that are a vital stage of the procedure, are not transparent enough. She therefore recommended that a user-friendly database be created in which the four-column documents would be classified (European

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7   Interview on the impacts of the Treaty of Lisbon on the decision-making of the Council, the Council Secretariat, Brussels, November 2012.
8   See for example De Capitani v Parliament, 2018.
9   See for example ClientEarth v Commission, 2018, § 13.

Ombudsman, 2016, § 65). These documents are required to understand the political accountability of the institutions, since they indicate their positions on the articles of legislative texts, the amendments they have requested, and to what extent the final compromise text differs from their requests. According to the information at our disposal, there are plans to set up this database as per the European Ombudsman's recommendation in 2016, but there is still no sign of it[10] (see also Leino-Sandberg, 2022, p. 4).

The key issue: when should access to documents be granted?

A lack of transparency in the legislative procedure is widely acknowledged by experts (Curtin and Leino, 2017). It is the subject of criticism from civil society, particularly from non-governmental organisations and citizens who have taken it upon themselves to challenge the refusal of access to documents, as well as by the European Ombudsman and, indirectly, by certain judgments of the General Court and the Court of Justice. A topic featuring in this debate is the moment when legislative documents should be published, which, in the words of the European Ombudsman, is the "key issue" (2016, § 53): when the procedure is under way – a factor which would encourage public participation in debates – or once the procedure is closed – which would allow citizens to acquire the information but not take part. While the European Ombudsman, after her 2015 inquiry into trilogues, recommended publishing four-column documents ex post so as to maintain the "capacity to negotiate" (European Ombudsman, 2018, § 30), others call for access to documents during the course of negotiations. For example, in his appeal before the General Court, Emilio De Capitani stated that he had only received the four-column documents he requested from the Parliament once the procedure had finished, even though he had expected to receive them when the procedure was still under way (De Capitani v Parliament, 2018). Similarly, he challenged the fact that the Council had only granted him access to the legislative documents exchanged within the "Company Law" working group once an agreement was reached by the Council and the Parliament. As a result, he was not able to provide the public with the relevant information and prompt a debate (De Capitani v Council, 2023, § 16). In March 2022, 40 civil-society organisations and trade unions challenged the insufficient information provided about the trilogues on the Digital Markets Act (Transparency International EU, 2022; see also Statewatch, 2023) and particularly the fact that a document published without the fourth-column information (i.e. the compromise reached by the institutions) was presented as the most up-to-date version when that was not the case. These organisations alleged that it was all the more necessary to inform citizens about the trilogues under way as Big Tech had been exerting intense pressure on negotiators. Curtin and Leino posit that four-column documents should be actively published "in real time" since they relate to the legislative procedure and the most powerful interest groups have access to information on trilogues (2017, p. 1710). In terms of access to information, this situation puts citizens at a disadvantage and creates what Curtin and Leino ironically refer to as "highly selective transparency" (2017, p. 1693; Leino-Sandberg, 2022, p. 12).

The transparency register

As mentioned before, access to information concerns distinct elements of political life and is coordinated using various tools. Another important development in transparency policy was the creation in 2011 of the Transparency Register operated jointly by the Parliament and the Commission in which interest groups must be listed if they wish to carry out certain institution-related activities, such as being involved in a Parliament public hearing. The register contains information on, for example, the interest groups represented at EU level, their structure, their financial resources and their staff. It is designed to promote more transparent dialogue between the institutions and civil society groups, and is based on a very broad definition of lobbying since a wide variety of organisations can be listed, from multinationals and consulting firms to non-governmental organisations. When an interest group is listed in the register, it undertakes to observe certain rules of conduct in their interactions with EU institutions. Since 2021, the register has been jointly operated by the Commission, the Parliament and the Council, and organisations' inclusion in the register has been required to carry out interest representation activities, reflecting one of the European Ombudsman's recommendations (2016, § 28; 2021 Transparency Register). However, even when registration was optional, a considerable number of organisations had joined the register. It appears

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10 As of June 2023, the date of publication of this paper.

that the register's success can be attributed to a reputational concern for organisations: the register may be considered by interest representatives as a means of legitimising their work. Furthermore, given the large number of organisations listed in the register, not appearing in it would leave organisations in a difficult position (Nastase and Muurmans, 2020). Nevertheless, as the Qatargate[11] scandal has shown, ineffective monitoring of external pressure on the institutions is an issue which is far from being resolved. It could be argued that it is all the more difficult to tackle this problem as the European Commission promotes a kind of consultative democracy in which lobbying holds a central position, which has subsequently been sanctioned by the Transparency Register (Robert, 2018). What is more, the actual impacts of the register on European democracy have yet to rear their head. For example, it seems that citizens use this public information to a very limited extent, and also that the European Commission believes that this register is a tool for experts and not the wider public (Robert, 2018).

Court of Justice and European Ombudsman responses to justifications for limited transparency

The impact of their decisions on transparency policy implementation

Transparency policies have a limited reach in terms of democratic accountability, which is partly due to there being no third-party agents to oversee their upstream implementation. When the Court of Justice hears cases in which an institution has not granted access to documents and rules in favour of greater transparency (see for example Hautala v Council, 2001; Sweden and Turco v Council, 2008; Access Info Europe v Council, 2011; Council v Access Info Europe, 2013; De Capitani v Parliament, 2018; De Capitani v Council, 2023), its decisions will influence how institutions will act in the future. The judgments of the General Court in the De Capitani v Parliament (2018) and De Capitani v Council (2023) cases are key to increasing public access to information in two stages of the legislative procedure characterised by closed-door sessions, namely trilogues and

working group negotiations within the Council. The work of the European Ombudsman has an influence on at least two levels: she can inquire on single cases, as she did recently concerning the Council's refusal to grant access to legislative documents related to the Digital Markets Act (2022); and she can also issue recommendations following broader inquiries, as was the case for the trilogue transparency case (2016) and the Council transparency case (2018). However, the institutions do not necessarily follow these recommendations – or at least not all of them – and if they do, not always in a prompt manner (e.g. the online database for four-column documents). In 2018 for example, the European Ombudsman published recommendations on the Council's transparency and the institution failed to reply within the legal time limit of three months, which meant that she closed the case citing maladministration (2018, p. 1).

Countering arguments supporting limited transparency

The positions adopted by the two transparency "watchdogs", the Court of Justice and the European Ombudsman (Hillebrandt and Leino, 2021), help to keep public access to information on the institutions' agenda and reveal the limits of institutional transparency in spite of Regulation (EC) No 1049/2001. In addition, their decisions analyse certain arguments used by the institutions to maintain a negotiation "space" (European Ombudsman, 2016), whether these arguments are used in letters of refusal to grant access to documents, during negotiations on transparency rules and in inter-institutional relations. The Court of Justice and the European Ombudsman have for example challenged the argument that publishing documents when the decision-making process is under way would make negotiations more rigid (see for example Council, 2014) as representatives would be unable to explain to the public why they changed their positions. In response to this reasoning, the Court of Justice and the European Ombudsman stated that citizens are absolutely able to understand changes in position (Access Info Europe v Council 2011, § 69; De Capitani v Parliament, 2018, § 102; De Capitani v Council 2023, § 79; European Ombudsman, 2016). This counterargument serves to challenge a seemingly common-sense theory that is regularly cited by the institutions. However, it should be noted

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11 The Qatargate scandal erupted in December 2022, involving current and former European Parliament members who allegedly received money from Morocco and Qatar in an attempt to influence parliamentary decisions.

that this theory is shaky, in that determining whether to grant access to information on the basis of conjecture regarding the (in)capacity of citizens means using an undetermined variable as a criterion. What should be taken into account is less the capacity of citizens and the impact this would have on decision-makers' behaviour – which varies depending on the context – and more the public's right to be informed. Furthermore, if the (in)capacity of citizens is to be cited, all that it would take is a published document sparking outrage and bringing negotiations to a standstill for advocates of confidentiality to claim once again that negotiation and transparency are incompatible (Novak, to be published).

The institutions sometimes claim that a procedure that is too public would open the door for external pressure. However, non-governmental organisations and experts note that those participating in trilogues are pressured by lobbies, a factor that helped the European Ombudsman form her decision on the transparency of trilogues. She flipped this argument around by noting that it is valid for groups to try to influence the procedure; in her opinion, the true problem is that in a non-transparent environment only the groups with the most contacts and resources have the means to exert any influence. This is why opening up the procedure to all is necessary (2016, § 26).

Negotiation and transparency: can you have both?

Generally speaking, the "capacity to negotiate" (European Ombudsman, 2016, § 43 and 44) is a barrier to transparency, often cited by stakeholders to promote its restriction. In her decision on trilogues, the European Ombudsman sought to balance effective decision-making processes with access to information. She attempted to maintain the "capacity to negotiate" by recommending that the initial positions of the institutions are published *before* the trilogues begin, and that the

four-column documents are published *once the procedure is finished*. This solution would allow the institutions to negotiate and would avoid the issue of a concession being offered and then withdrawn during a decision (2016, § 54). This issue could be poorly received by the public, and lead to negotiators no longer making concessions. The European Ombudsman's line of argument does not seem to be fully compatible with the idea that citizens understand that negotiators have to switch positions in order to reach a compromise (2016, § 45). It is also not a solution to the issue raised by the European Ombudsman herself, namely the privileged access of certain groups to information, which would in her words justify a democratic opening of the process. It is also because of these apparent contradictions that basing access-to-information decisions on citizens' alleged abilities (or lack thereof) is problematic. When legitimate limits to transparency are discussed, an argument which appears to be fundamental is that negotiating behind closed doors serves to strengthen the influence of certain interest groups while civil society is kept in the dark. This is the case not only because it can constitute real cases of opaque lobbying, but also because the perception of this risk generally lowers the level of trust in the institutions.

With that said, these considerations do not mean negotiation and transparency can easily coexist. As mentioned above, this real issue is less related to the ability of citizens to understand – which could be debated ad infinitum – and more to decision-making practices. An argument often used by the institutions when they refuse access to a document is that public meetings would prevent decision makers from having open exchanges. This was contested by the General Court in the Access Info Europe v Council[12] case, which noted that the Council did not convincingly demonstrate how publishing a document could actually damage trust between participants and discourage them to speak freely (2011, § 73). In fact, empirical studies on the Council show that negotiations make it difficult for the various parties to learn

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12 This case was brought by the non-governmental organisation Access Info Europe against the Council. In 2008, as part of its work to raise the level of institutional transparency, Access Info Europe applied to the Council for access to a note sent by its Secretariat General to the Working Party on Information set up by the Council, concerning the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents. That document contains the proposals for amendments and for re-drafting entered by a number of Member States at the meeting of the working party on 25 November 2008 (Access Info Europe v Council, § 6). The Council sent this document to the organisation, with the identity of the Member States mentioned in the note redacted so that there was no way of telling what position had been defended by which Member State. The Council justified this partial access to the document by arguing that disclosing the identity of the Member States mentioned would seriously undermine the decision-making process. In 2011, Access Info Europe challenged this decision before the General Court which ruled in favour of the pro-transparency organisation.

about the interests of other parties (Novak, 2011). This is particularly the case within the Council, where understanding what are the interests of each stakeholder is an ongoing problem for the various delegations and the presidency conducting the negotiations. Any negotiation situation implies a difference in preferences and interests, and in what will be said to other negotiators – the position defended. For example, it is common practice to ask for more than is really needed because then, knowing that concessions will be made, potential losses are minimised. Negotiation also entails the formulation of strategies which, by definition, are not revealed to the other negotiators. The European Ombudsman noted this, observing that making trilogues more transparent should not lead to the institutions revealing their strategies which constitute the way each institution intends to negotiate with the other two (2016, § 57). A lot can be said about the links between negotiation and a lack of transparency, but what is important to note in this paper is that discussions behind closed doors are not necessarily transparent. This lack of internal transparency within the institutions is also a barrier to public access to information: how are citizens expected to receive information about decision-making processes when stakeholders do not openly share information even among themselves?

It is clear that while the Court of Justice and the European Ombudsman uphold the right of access to information, there is no consensus on the limits that could be validly imposed on it. While the exceptions mentioned in Article 4(2) of Regulation (EC) No 1049/2001 are relatively specific, the protection of the decision-making process mentioned in Article 4(3) is vague and does not effectively address the friction between the capacity to negotiate and public access to information, since the decision to publish documents must be made on a case-by-case basis. Given the importance of negotiations in international and supranational bodies, and their increasing influence on national legislation, transparent negotiations and the democratic accountability of the stakeholders involved are a major political challenge.

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