“Through the Looking Glass: The Myths of Transparency in the European Union”

In Lewis Carroll’s *Alice Through the Looking Glass*, Alice, in trying to get the kitten to imitate the red queen, found that when she entered the fantasy world through the looking glass, things did not work quite the same way as in her familiar world. She had to modify her behaviour in order to get along in the looking glass world. In this lecture, I am not proposing that the Looking Glass House of the European Union is a fantasy world, but rather that the world we find upon the other side is not necessarily what it appears to be, with things occasionally even going the other way. To what extent is the world beyond the EU Looking Glass different to that which we might have expected to find, on the basis of the assumptions we carry with us from our own familiar world? Is the concept and practice of “transparency” in the context of the evolving political system of the EU in fact being used rather cleverly by bureaucrats and politicians in order to construct and keep alive certain myths?

As a term of art, transparency could well win the prize for most increased usage of any word in English in the past decade (Safire, 1998: 4). The word is virtually endemic in fields as diverse as the environment, financial markets and security studies. It permeates politics and economics at national and international levels of governance. It very often seems to be used as a “catchword”, a convenient piece of political rhetoric, without its many users taking the trouble to define it with any precision. Generally the term transparency is referred to in such a loose fashion that it can seem to resemble a “garbage-can” of different concepts and principles. The EU is certainly no exception when it comes to the loose fashion in which the term has been bandied about by various actors for over a decade now. In fact the lack of rigour in the use of the term transparency in the EU context is only matched by the vigour with which actors of all shapes, sizes and political leanings rush to support it. Thus, the aim of achieving more transparency in the functioning of public EU institutions is lauded by the European institutions themselves, the politicians and bureaucrats, the members of parliament, the judiciary and (organized) civil society.

In the short time-frame of its emergence as a fundamental guiding principle of the political system of the EU, transparency has been presented as a type of holistic medicine designed to remedy many of the ailments the EU polity is perceived to have. Thus, we are told, it will: increase the legitimacy of the EU; increase citizens’ understanding of what the EU is about; stimulate deliberation about policy-matters; and enable participation
by citizens and their representatives. Concepts such as public access to information, e-government, citizen participation, consultation of experts or citizens, the need to have reasoned decisions, and open decision-making processes, have all in their time been presented as crucial aspects of the concept of transparency. Most recently, in the text of the Constitutional Treaty itself, the Preamble informs us of the symbolic value of transparency: “[a] reunited Europe intends to … deepen the democratic and transparent nature of its public life”.

The Oxford Dictionary of English defines a “myth” as “a widely held but false notion”. In cultural approaches to social science, myths play an important role. Myths can be defined as “stories embedded with meaning”, and they anchor values, guide the behaviour of social actors, tell them what is important and how to act. Myths can have an important function in public administration since they guide those involved through important changes and help them in making sense of these changes. Myths can, however, also be darker in their implications. The construction of myths gives power to those that control them, since people experience politics, policies, problems and solutions through language and stories (Homburg, 2005).

Is transparency as a concept indeed to be understood in fundamental terms, prompting a gradual and incremental change in the levels and expectations of transparency compared even to some years ago? Or must we rather more sceptically ask ourselves if we are not witnessing the canonization of the myths of transparency at the level of the EU in particular? If so, is there an alternative manner of approaching and understanding the significance of the issue of transparency and its place within the overall political system of the EU?

The term “transparency”: a matter of definition

Let us first look more closely at the meaning of the term “transparency”, namely the condition of being transparent. “Transparent” is defined in the Oxford Dictionary of English as an adjective used to connote the process of “[a]llowing light to pass through so that bodies can be distinctly seen”. Indeed, the origins of the term (from Latin *transparere*) suggest something appearing as a result of light – presumably - shining through. The result of the light shining through is that the composition of the space in question can be seen and understood. In the context of political systems and organizations the further leap to subjecting the system or organization to public scrutiny is already made in the Oxford Dictionary of English. So, there are actually several components suggested. First, light must shine through; second, the space in question will then be more or less fully visible; third, this physical result will facilitate both greater intellectual understanding and greater scrutiny on the part of the observers.

In the context of a democratic political system, the light shining
though will have to be fairly structural in nature, and the observers on the outside, hovering at the threshold of the Looking Glass, will in the ultimate analysis be the citizens. On this analysis and reasoning, the location of the political system - at the national level or at the international level, or even at the supranational level - is immaterial. In practice, the term transparency is entrenching itself increasingly as a new standard of behaviour for institutions, from inter-governmental organizations such as the World Bank, the International Monetary Fund and the World Trade Organization to more supra-national organizations such as the European Union, to national governments and beyond, to non-governmental organizations in their various forms as well as to private corporations (Florini, 1999).

The first period of transparency: dominated by law, lawyers and bureaucrats

If one turns specifically to the level of the EU, it is possible to discern at least two periods in which the concept of transparency has evolved distinctly. The first period in the history of EU transparency was clearly dominated by a very legal understanding of transparency. The focus in this first time-period was very much on gradually constructing a right of access by the public to certain categories of documents held by the three main decision-making institutions of the EU, namely the Council of Ministers, the Commission and the European Parliament (Bradley, 1999; Ragnemalm, 1999; Vesterdorf, 1999). This rights-based approach was counter-balanced by a system which recognised that the institutions could refuse access to their documents for a number of reasons, including, most controversially, the right to refuse access where this would be contrary to their institutional interest in the “confidentiality of their own proceedings”. In this first period, the Community Courts played a crucial role. They effectively built, in a short period of time, a body of case-law which on the whole kept pressure on the institutions to behave fairly and to devise adequate systems of scrutiny. They tended to interpret rather generously the scope of the legal provisions so that, for example, specific institutional arrangements did not operate to reduce the reach of the access provisions.

Thus in the very first case to reach the Courts the Guardian journalist, John Carvel, successfully challenged the Council’s refusal to grant him the agendas and minutes of various Council meetings, including those relating to the new and sensitive area of justice and home affairs policy making.1 Later, the Swedish Union of Journalists challenged the refusal of the Council to reveal documents relating to the establishment of Europol, using the more generous Swedish Freedom of Information Law to highlight the unnecessary degree of secrecy that prevailed at the European level. 2

The technique of legal interpretation used by the Courts during this foundational period involved a type of teleological reasoning, which placed the Code of Conduct adopted by the three decision-making institutions in the context of its broader democratic purpose. The Courts tended to emphasise the underlying purpose of access to information, namely to provide the “public”, i.e. “citizens”, with a means of controlling abuse of power and corruption, as well as the general activities of public institutions. Thus the Courts developed what can be termed a constitutional perspective on access to information provisions *avant la lettre*. Only later were these “rights” given an explicitly constitutional foundation, first in the Treaty of Amsterdam, then in the Charter on Fundamental Rights, and most recently in the Constitutional Treaty.

This tendency was also underpinned by the complementary work of the Ombudsman, who also adopted what might be called a legal approach in his work, although his emphasis was more on more structural aspects of the manner in which certain institutions - chiefly the Council and the Commission - made or did not make information available. Thus, the first Ombudsman tended to focus on putting flesh on what he termed “good administrative behaviour”, in a manner which was highly complementary to the more formal judicial interpretation of the Courts (Magnette, 2003). Indeed, it can be said that the work of the Ombudsman helped to move the understanding of transparency in the EU context away from a predominantly individual and passive focus on the legal right of every citizen to have access to certain documents, to a much broader and pro-active duty of the EU administration to ensure that information about its policies and actions is made genuinely accessible.

In a sense, this legal phase culminated with the adoption of a new and binding legal instrument, Regulation 1049/2001, which entered into force on 3 December 2001. This Regulation was meant to introduce more transparency into the work of the EU institutions. In several respects, it clearly did so. The extension of the rules to documents authored by third parties constitutes a large increase in transparency in principle, although there are potentially significant restrictions placed upon those rules. However, in many respects the new Regulation was considered disappointing by many commentators (see Peers, 2002; De Leeuw, 2003). Quite apart from the provisions in the new Regulation which set a lower standard than the prior rules, the EU institutions arguably spent their greatest political capital defend-

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ing their existing practices, and therefore missed the opportu-
nity to examine whether those practices should be reconsidered.
In particular, the Regulation does not expressly reduce the ex-
tent to which the Council can keep a large number of docu-
ments secret during the legislative procedure on the grounds
that they reveal Member States’ positions, nor the Commis-
sion’s ability to insist upon the secrecy of all documents relating
to infringement proceedings even after the close of those pro-
cedings. While it is possible that the case law interpreting the
new Regulation will ultimately ‘chip away’ at these practices,
the Regulation clearly obliges advocates of greater openness
and transparency to fight for the appropriate interpretation via
the Ombudsman and the Courts, instead of entrenching changes
in practice at the outset.

What is noteworthy, since the adoption of the Regulation, is that
those seeking greater access to information have on the whole
not been very successful. Thus, whereas the Courts ruled in fa-
vour of the applicants in seven out of the first ten ‘public ac-
cess’ cases, the Courts agreed with the institutions in ten of the
next thirteen cases. The Court of First Instance, having heard
due cases concerning the new Regulation, has ruled in favour of
the Member States’ right to veto Council documents on three
occasions and the Council’s right to protect the confidentiality
of its legal service opinions on another. The only victory for an
applicant concerned the Commission’s decision to withhold a
very large file on the ground of its size.3

In conclusion, after some ten years, it can be said that the legal-
constitutional approach has been solidly anchored within legal
texts, including, at the most fundamental level, the Constitu-
tional Treaty. Therefore it has caused changes, by giving citi-
zens a tool to obtain the documents they wish to obtain, albeit
with a considerable and significant time-lag. I do not agree with
one commentator who has very recently dismissed the exercise
of the formal legal right of access to information as insignificant
and almost anecdotal in the first ten years of its life. It is cer-
tainly true that those who have used the public access provi-
sions have tended to be professionals, having some of the ex-
pertise required to understand a highly complex and multi-
layered political and legal system - namely journalists, lawyers
and academics.4 The legal arena of rights and principles has
only to a very limited extent empowered the “public” in any
meaningful sense. However, that is not the point. Those early
challengers, seeking to go through the EU Looking Glass, were
empowered to peer into previously dark rooms, to force the in-
stitutions to justify their behaviour, and -more often than not -
to modify their behaviour in a structural fashion. Moreover, the
implementation of the obligation to make available and main-
tain a register of documents has caused many more shafts of
light to enter the darker recesses of the structure of the EU’s
Looking Glass House, enabling the “public” or their representa-
tives to discover which documents they might wish to access.
The second period: dominated by politics, bureaucrats and politicians

Perhaps the best way to understand the legal contribution is that it has made certain institutions more aware of how they can proactively make their own information available to a broader public, using the medium of information and communications technology (ICT), and that this can, in the long term, assist in the process of obtaining more social legitimacy for the EU. The second phase in the debate on “transparency” has involved the institutions themselves, albeit prompted and at times pushed by certain applicants seeking to expand the frontiers of openness. Thus, during the late 1990s, Statewatch, a British civil liberties non-governmental organisation (NGO), mounted a concerted strategy of challenging the Council in particular before the Ombudsman, concerning the manner in which information was made available to the public. The result is that the Council today maintains an extensive, and on the whole accessible, Register of its documents on the Internet. For those with the expertise, time and courage to wade through the masses of documents placed on the Internet, it is possible to engage in a process of some scrutiny of and deliberation upon the multifarious activities of the Council in its diverse configurations. Another more recent example is provided by the ‘Euro-sceptic’ Danish MEP, Jens Peter Bonde, who over a period of several years maintained pressure upon the Commission to produce a complete list of all its working groups, which it finally did in 2004. Thus, a revised list of some 1684 working groups active in 2004 has now finally been made available to the public via the Internet.

In this second and more overtly political phase of the development of transparency in the EU, transparency is perceived not only as a goal in itself but also as a tool for a more democratic way of working and reaching decisions (Deckmyn, 2002: 120). The Commission has unquestionably taken the lead, particularly in its White Paper on Governance (2001), in presenting the goal of greater openness as a means of achieving more democracy. The Commission’s White Paper on Governance also suggests that increased transparency will lead to greater involvement of citizens in the processes of EU policy-making. Thus the Commission also makes the link with increasing the citizen’s sense of belonging in Europe: “[d]emocracy depends on people being able to take part in public debate. To do this, they must have access to reliable information on European issues and be able to scrutinise the policy process in various stages. Providing more information and more effective communication are a precondition for generating a sense of belonging to Europe” (European Commission, 2001: 11). This is basically an argument that transparency will enhance public acceptance of the institutional structures of the EU. It seems that transparency, in the sense of disclosure of information by public actors, is generally closely connected to legitimacy. The political theory is that when citizens have the possibility to monitor policy-making and scrutinize its results, the legitimacy of institutional structures is en-
Introducing formal and social legitimacy

There are, however, several different types of legitimacy which must be distinguished. First of all there is purely formal legitimacy, in the sense of the manner in which a particular public authority is constituted and acts according to accepted legal rules and procedures. Although many lawyers tend to focus on the formal legitimacy of the EU, which on the whole is quite in order, there is increasing recognition – even among lawyers – that the crucial issue is that which can be termed social legitimacy. Social legitimacy refers to the loyalty of European citizens to the EU. The theory is that when citizens know – or can find out – what the EU does, their sense of being European citizens may be strengthened (European Commission, 2001: 11). It is clear that a sense of social legitimacy of the EU will not be created simply by the attribution of rule-making competences to common institutions – although the welfare gains through integration which should be made possible by the creation of those institutions can be expected to facilitate it. Social legitimacy has to be created over time, simply by the practice, and habit, of doing things together. There is only so much that can be done to accelerate this process by symbol-building campaigns and communications strategies.

One assumption that is made is that increased transparency can facilitate the process of strengthening public confidence in the EU, thereby enhancing, in the long term, its social legitimacy (European Commission, 2001: 11). This can be referred to as the first myth of transparency, namely that: transparency strengthens the social legitimacy of the EU. The problem with this assumption, however, is that transparency may not deliver the expected results, and may even have negative overall effects on social legitimacy. Many citizens show no interest in receiving more information on the EU. If one looks at the figures on who is seeking access to documents in the EU, it has been calculated that, taking the access request numbers in relation to the population of the EU, only one in thirty-three thousand citizens has exercised that right to date, which has led one commentator to describe the exercise of formal access to documents as “practically anecdotal” (Cotino, 2005). Increasing transparency of processes and results is therefore not necessarily going to increase the perception of the social legitimacy of the EU on the part of those who never seek information. On the other hand, it can of course be argued that since the Council and the Commission have been obliged to provide a list of all their documents in a Register on the Internet, the rate of online access is 400 times that of non-virtual access. In 2003, 181,317 different users paid approximately 760,000 visits - some 800 per day - and accessed almost 6 million electronic documents. These figures are certainly more impressive. At the same time, ever greater transparency may in itself result in negative effects on social legitimacy if exploited by the media and those wishing to damage the repu-
Citizens may not want to belong to a polity when they only hear about all the mistakes and fraud and incompetence in “Brussels”.

Figure 1: The First Myth

| Transparency of (the results of) policy-making | Public confidence in the EU | Social legitimacy |

The right of participation as input legitimacy?

Another way of looking at the challenge of transparency in the EU is through a distinction between input legitimacy and output legitimacy. Output legitimacy means that people agree that a particular structure should exist, and even participate in rule-making, because of the benefits this brings. Social acceptance is thus instrumental and conditional, as well as independent of an affective relation. Input legitimacy, on the other hand, means that social acceptance of the structure in question derives from a belief that citizens have a fair chance (however understood) to influence decision-making and scrutinise the results. The ability to influence, and to hold accountable, can be realised either through forms of representation which are held to be legitimate, or through such direct participation as is held to be meaningful, or through some combination of the two. On the whole, the legitimacy of the EU and its decisions has tended to be focused upon the output side of the equation rather than the input side (see, in particular, Majone, 1996; Scharpf, 1999).

I will, however, begin by focusing on the input side of the equation, as it is this aspect that has moved very prominently to the fore in the Commission’s thinking and practice since its White Paper on Governance in 2001. Initially, transparency was indeed proclaimed in the European Union without its complement: the recognition of concrete rights of participation for citizens. More recently, a broader understanding of transparency has emerged. For example, the Commission in its White Paper on Governance reasons that more interactivity, in the sense of participation by citizens in policy-making, can increase the input legitimacy of the European Union. It recognised that what is needed is “[a] reinforced culture of consultation and dialogue; a culture which is adopted by all European Institutions and which associates them in the consultative process…It should…be underpinned by a code of conduct that sets minimum standards, focusing on what to consult on, when, whom and how to consult. Those standards will reduce the risk of the policymakers just listening to one side of the argument or of particular groups getting privileged access. These standards should improve the representativity of civil society organisations and structure their debate with the Institutions” (European Commission, 2001: 14-17). The Commission indeed subsequently adopted general principles and minimum standards for consulting non-institutional interested parties on the major policy initiatives it
proposes (European Commission, 2002; 2003: 14-16).

An explicit ‘right’ of participation was expressed in more general terms in the text of the Constitutional Treaty. The final article of the new title in the Constitution (Article I-50: “The democratic life of the EU”) declares: “[i]n order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible”. The assumption underlying the second myth of EU transparency can thus be formulated as: citizen participation increases the input legitimacy of the EU.

Figure 2: The Second Myth

The problem with this general assumption is that research shows that political participation has in practice the form of a pyramid: many people participate a little and few people participate a lot. It is indeed very hard for citizens to participate in policy-making and to influence this process. Lacking the depth of knowledge, skills and access needed to participate in decision-making processes, the vast majority of the public is cut off from a meaningful role in political activities. This cut-off process is often referred to as the process of depoliticization (Fischer, 1990: 29). This process of depoliticization is very advanced in the EU. If only a small minority of citizens participate in policy-making, is it even possible to speak about legitimacy? In any event, we must recognize that the relation between opportunities for participation by citizens in the policy-making process and the overall input legitimacy of the European Union is not simple. Certainly, although participation can generally be regarded as an important element of democratic policy-making, it is not very realistic in the context of the EU, where participation will tend to be limited to a small group of experts from governments, private enterprise and social groups. A large majority of citizens will not be involved, and paradoxically, this majority may even question the input legitimacy of the EU more when opportunities for participation are strengthened.

One can further argue that participation at the European level is, in any event, not about individual citizens but about civil society organizations and NGOs. These organizations can represent citizens in a manner different to that of official representative bodies. In this sense, the input legitimacy of the European Union could be strengthened if the participation of civil society groups is known to citizens, and if citizens perceive this input to be legitimate. However, there are problems here too, since the democratic nature of many NGOs is increasingly questioned. At the same time, specifically at EU level, it seems that it is not uncommon for the Commission to effectively fund NGOs which they then consult prior to policy-making, so the auton-
covery of such organisations may be called into question. There is clearly, therefore, no simple or direct relation between participation and input legitimacy as such.

**Does transparency increase the output legitimacy of the EU?**

But what of the contribution of transparency then to a different facet of legitimacy, namely output legitimacy? The theory is that when citizens perceive the EU to be efficient and effective, its output legitimacy is strengthened. The idea is that the effectiveness and efficiency of the EU can be enhanced through consultation and dialogue in policy-making (Working Group 2A, 2001: 4, 12; Working Group 3B, 2001: 23). It is worth noting that neither the European Commission nor other institutions of the EU explain what they mean by the concept of effective and efficient policy. They assume a relationship between consultation and effective policy, but they do not explain why this should be the case. The third myth can thus be formulated as: A reinforced culture of consultation and dialogue increases the output legitimacy of the EU.

**Figure 3: The Third Myth**

There is a definite relationship between this myth and the previous one regarding input legitimacy. The second myth stresses that, when the different institutions of the European Union consult citizens and other stakeholders in the first stage of policy making, there is a greater chance that the policy-outcome as well as the whole process will be seen as legitimate, and because of that, people will accept it more easily. This increases the efficiency and effectiveness, because we cannot speak about an efficient process when citizens and stakeholders reject the outcome of the process or the process itself. So, acceptance leads to more efficiency (Wallace and Young, 1997: 61). The literature about lobbying in Brussels refers to the relation between the participation of lobby groups at all policy-making stages and greater effectiveness, since the policy outcomes will be more widely accepted. It follows that similar efficiency and effectiveness gains may follow from the participation of citizens and other stakeholders (Bignami, 1999: 11; Kok et al., 2004: 33), thus strengthening the overall output legitimacy of the EU.

The consultation of citizens and interest groups, however, does not always have positive consequences for the efficiency of the process. When the different institutions of the European Union

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6 The preparation of the White Paper was organised in the form of six ‘working areas’ and twelve working groups. The papers of the different working groups are published on the Internet: http://europa.eu.int/comm/governance/prepa_lh_en.htm (November 14, 2005). In this paper, I refer to the number of the working groups. The references give the titles of the relevant documents.
have to consult as many citizens as possible, and when they are obliged to give all citizens the possibility to participate in the process, this can lead to enormous delays in the process of decision-taking (Mazey and Richardson, 1993: 34). It is also possible that different interest groups and citizens make use of different styles of participation and lobbying, and it costs a lot of time and money for the institutions of the European Union to work with all these different styles (Wallace and Young, 1997: 51). It may therefore be quite inefficient to let citizens and interest groups participate in the policy-making process, because it takes a lot of time to realize this. Too much emphasis on participation can thus lead to sub-optimal and inefficient decisions instead of improved performance. When citizens perceive the EU, as they often seem to, as an inefficient policy-maker, the result of increased opportunities for participation may result in a decline of output legitimacy.

The issue of expert input into EU policy-making

Very often the corollary of arguing that citizen participation is inefficient, costly and too time-consuming is to argue that it only makes sense to include experts in the policy-making process. European policy-making has a strong input from different kinds of experts: the EU is sometimes called an ‘expertocracy’. The assumption is often made that increasing the transparency of expert input will enhance public trust in policy-making. When citizens know which experts are consulted and how these consultations are used in policy-making processes, the assumption is that their confidence in policy-making will be strengthened. One could argue, therefore, that input legitimacy will be enhanced in this manner, since citizens will have a better chance to scrutinize policy-making and this will enhance their social acceptance of policy-making structures.

Traditionally, the experts are responsible for the facts and the citizens for the values. However, more and more facts and values are interconnected and it is impossible to separate them. So, policymakers and politicians could think that citizens are involved in policy-making because some experts or interest groups participate on behalf of them. But is this rather meagre and uncertain result to be equated with input legitimacy for citizens? This leads to formulating a **fourth myth** as: **transparency of expert input in policy-making leads to more input legitimacy**.

**Figure 4: The Fourth Myth**

| Transparency of expert input | Confidence in policy-making | Input legitimacy |

Why is it important for citizens to see which experts participate in policy-making and the manner in which they influence the process? It is of course important that citizens can check
whether the experts are indeed independent of the governmental process. An ideal situation exists when the experts are independent, and their advice is entirely based on their expert knowledge, not on their personal interests (Peters and Barker, 1993: 189; Joerges and Vos, 1999: 333). Experts in fact often present themselves as being “independent” (Fischer, 1990: 160). Through transparency mechanisms it is possible for citizens to check the backgrounds, opinions, interests and way of working of experts, and when they do this, they can conclude for themselves whether or not an expert is indeed independent.

The answer to the problem of legitimacy versus participation lies according to some authors in the application of a new concept of democracy, namely what is termed “democratic elitism” or “deliberative supranationalism”. Democratic elitism does not mean that citizens should be totally ignored in the policy process. It should always be possible for them to participate in the process and there must always be enough room left for meaningful debate (Fischer, 1990: 15, 343). However, when experts are really interested in the problems and wishes of the people, it is possible that they participate on behalf of them. Christian Joerges (2002) has, in the context of the EU, taken this argument quite far, arguing that the (expert) committees are arenas for deliberative supra-nationalism in the sense that the experts deliberate on behalf of the public. This view is contested, to put it mildly.

In my view, applying the concept of more deliberative democracy in the context of expert committees in the EU does not provide an adequate answer for the problems of legitimacy. While transparency of expert input may increase the confidence of citizens in European policy-making, it may also happen that when citizens see how policy-making actually comes about, their confidence may diminish, not increase. It is not always salutary to peer into the entrails of decision-making, even assuming that one has the time, money and expertise to make sense of it. It can in practice lead to negative views, of the government, experts and the policy-making process, on the part of citizens (Bovens, 2003: 128-9).

Transparency and public accountability

The rhetoric about transparency in the European Union has unquestionably been important in mobilizing bureaucrats and politicians and getting changes underway. However, myths not only function as beacons showing the way to a desirable future, to a new and better European Union. They can also have dysfunctional effects. In certain cases, transparency will not strengthen the effectiveness and legitimacy of the EU but rather weaken it. Myths may thus play a role in manoeuvring the European Union into an undesirable situation. Where does this deconstruction of these four myths bring us? Does it follow that the EU should not strive for even greater transparency?
In my view, this is not the right conclusion. On the contrary, in spite of all the critique and attempts to demonstrate the flaws of transparency, it remains both conceptually and methodologically pivotal in our further thinking concerning the evolution of the EU as a political system. What the European Union needs at this stage of its development is a much more sophisticated view of the relationship between transparency and legitimacy. Transparency is not a panacea for legitimacy (Deckmyn, 2002: 109); rather, the most important consequence of a transparent policy-making process is that citizens have the possibility to control this process. To control the different steps in the policy making process and the way different actors act, transparency is a necessary condition and first step. It is but a first step within a much broader architecture of accountability, understood as a social relationship in which an actor feels an obligation to explain and to justify his or her conduct to some significant other (Day and Klein, 1987: 5; Romzek and Dubnick, 1998: 6; Lerner and Tetlock, 1999: 255; McCandless, 2001: 22; Pollit, 2003: 890).

In developing the legitimacy of the EU both as a polity and as a policy forum, it is important to concentrate on what can be termed “public accountability”. The adjective “public” relates to the openness of the policy-making process. The account giving is done in public in the sense that it is open or at least accessible to citizens. According to my colleague in Utrecht, Mark Bovens, there are five functions of public accountability (see, Bovens, 2004). These include the function of democratic control; of enhancing the integrity of public governance; and of improving performance by fostering institutional learning. Together, these three functions provide a fourth function of public accountability which is primordial, namely to maintain or to enhance the legitimacy of public governance.

*Figure 5: Accountability relations between citizens and the European Commission*

The relationship between transparency and legitimacy is thus to be understood within the context of the multiple accountabilities of the EU (figure 5). Legitimacy will be strengthened only when citizens have confidence in the various accountability arrangements of the EU. For those who wish to move once and for all beyond the realm of political rhetoric, the crucial chal-
The challenge is to construct the guiding principles of a system of public accountability of the various actors at the European level, performing not only legislative tasks, but increasingly significant executive tasks and even what is often these days referred to as “operational” tasks (Curtin, 2004). A system of multi-level governance calls for its counterpart of multiple-level accountabilities. The system of accountabilities will be multi-layered in the sense that it will include political accountability, legal accountability, financial liability and administrative liability.

Transparency is certainly important, but it needs to be accompanied by other fairly rigorous efforts to enhance accountability at the various levels of the EU political system and with regard to its various actors. This will most probably constitute the third phase of transparency, when the role of the citizens and their various representatives will be to design and participate in the architecture of a public accountability system of the EU. That architecture will facilitate moving through the Looking Glass in order to assess, scrutinize and sometimes sanction the behaviour of the several institutions exercising various legislative and executive powers upon the other side of Looking Glass Wall.

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