

# Under Construction: Local Government Transparency in a New Democracy

CRISTINA STĂNUȘ

Lucian Blaga University of Sibiu, 34 Calea Dumbrăvii, 550324 Sibiu, Romania

Email: cristina.stanus@ulbsibiu.ro

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The paper argues that understanding the apparent failure of new democracies in establishing transparency as a norm requires a look at how the meaning of transparency is constructed. The argument is illustrated by analysing how local government transparency is shaped in a multi-actor process, under the influence of international policy discourse and domestic factors. Directed qualitative analysis ( $N = 144$ ) was applied on documents issued by the central government, local governments and third sector organisations. The aspects of this process – sometimes not so positive effects of external pressure, the emphasis on standardisation, and the limited policy capacity of all actors – are identified as relevant to the establishment of transparency as a norm.

**Keywords:** transparency, local government, meaning-construction in policymaking, Romania

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## INTRODUCTION

Transparency is a frequently used word for describing contemporary democratic government. Its basic definition emphasises the ability of citizens to access available information concerning what is going on inside the government (Grigorescu 2002a; Piotrowski, Van Ryzin 2007). On the premise that transparency is always good, democracies seem to be converging toward national transparency regimes inspired by international policy discourse on the topic (Erkkilä 2012). In many countries, drawing on constitutional provisions, national governments enact transparency rules applicable to local governments and enforce compliance (Michener, Nichter 2022), creating top-down local government transparency regimes.

Attempts to measure transparency and to explain existing inter- and intra-country variation have rested upon various context-based definitions of transparency (Araujo, Tejedro-Romero 2016; da Cruz et al. 2016; Piotrowski 2010; Spáč et al. 2018; Tavares, da Cruz 2017). Objective supply-side (government capacity, institutional and organizational factors) and demand-side (external pressure, community characteristics) factors are found to explain some of the variation (Grimmelikhuijsen et al. 2017; Michener, Nichter 2022; Tavares, da Cruz 2017). These context-based definitions are the output of processes of adopting the international policy discourse into national forms (Erkkilä 2012). These are subjective meaning-construction multi-actor processes shaped by domestic factors. While the output (the context-based definition of transparency) is well documented, the process behind it is less discussed.

This paper attempts to shed light on how this process of meaning-construction takes place and contributes (or not) to establishing transparency as a norm. It draws on literature concerning subjectivity in the policy process (Linder, Peters 1989; Steinberger 1980) and transparency. It responds to the need for a 'sociological turn' in the study of transparency, focusing on the cultural, political and organisational contexts in which transparency policies are created and implemented (Pozen 2020). Transparency policy is (re)constructed in a political process of meaning-making between the government and stakeholders, who attribute meanings to policies, sometimes based on individual perceptions and subjective values (Linder, Peters 1989; Meijer 2013; Meijer et al. 2015; Pearce et al. 2014; Steinberger 1980). The following section describes the context of this study and discusses its significance.

## CONTEXT

Much of what we know about how local government transparency policy works stems from research on established democracies. Such research has shown that both bottom-up and top-down forces were working in a long-term natural process of shaping a transparency regime. The strength of civil society and its ability to articulate demands for governmental transparency, as well as the emergence of local government transparency initiatives, are important bottom-up factors. Newer democracies are different from this perspective. Under the influence of international assistance for democratisation, they introduce transparency regulations rather artificially, from the top, while bottom-up factors are quite feeble (Camaj 2016). The ability of civil society to demand transparency and to participate in policymaking is stimulated, up to a certain point, by international donors (see Tătar 2006), whose agendas might be disconnected from the governmental ones. Thus, it is unsurprising that the failure of new democracies in establishing transparency as a norm (Grigorescu 2002b; 2003) and the weakness of local transparency compliance outside older democracies (Michener, Richter 2022) are mentioned. Romania is no exception; hence it can be used as a typical case.

In Romania, transparency policy was discursively linked with the early 2000s effort to remake governing in view of EU accession. Despite their improving political discretion over time, Romanian local governments can operate autonomously only within the limits set in national laws (Stănuş 2016). The central government was able to introduce two inter-related laws regulating transparency for all levels of government. Through these acts – Law on the Freedom of Information No. 544/2001 and Law Regarding Decision-making Transparency No. 52/2003 – a detailed transparency regime applicable to local governments was created. This regime mandates what local governments must transparentise and with what means, while allowing them to do more in terms of information made available and tools. Central government oversight over implementation is minimal. It is assumed that this regime involved the adoption of the international policy discourse and recommendations on transparency. A significant gap between expectations stemming from this regime and the institutionalisation of governmental transparency was identified (Grigorescu 2002a; Dragoş et al. 2012; Schnell 2016). Explanations of this gap have limitedly focused on local capacity and vertical power relations (Dragoş et al. 2012).

## QUESTIONS, ANALYTICAL FRAMEWORK AND METHOD

Two research questions are approached. How is the meaning of local government transparency shaped? Which aspects of the meaning construction process are relevant to the internalisation of transparency as a public sector goal?

Four arenas of transparency, where actors clash over meaning, can be identified in the international policy discourse and the literature. All four are relevant here: (1) justifying transparency policy (and relating it to a broader policy context), (2) placing transparency in a hierarchy of public sector goals, (3) demarcating the descriptors of transparency (the nature and scope) and (4) the practice of transparency (the interplay of actors and mechanisms necessary for implementation). The four arenas are detailed in Table 1.

Three categories of actors are relevant for meaning construction: (1) central government actors defining the framework for political transparency (executive and legislative); (2) local government actors called upon to implement this framework; (3) third sector organisations or groups (TSOs) who monitor and evaluate policy implementation.

Table 1. Analytical dimensions

Arena	Key issues/theoretically relevant questions	Literature
Justifying transparency policy	Should local government transparency be voluntary or mandated by the central government? Is this with reference to democratic functioning, accountability, and/or the citizens' right to information? Are ethical and moral elements emphasised? Are instrumental aspects (transparency as a disclosure system to minimise corruption, protect rights and improve public services, transparency as a less costly reform) emphasised?	Fox 2007; Héritier 2003; Kaufmann, Bellver 2005; Piotrowski, Van Ryzin 2007; Pozen 2020; Weil et al. 2006, 2013.
Transparency in the hierarchy of public sector goals	Theoretically, transparency falls under the category of cross-cutting public sector goals (being less general than sweeping goals, yet more general than goals directed at a strategic level for social or economic service, organizational or program goals and goals associated with the choice of specific policy tools). Is this assumption supported in practice?	Kaufmann, Bellver 2005; Peters 2011; Pozen 2020.
Descriptors of transparency	What information should be disseminated (expanded or narrow information)? How will it be made available (passive, proactive or forced access)? Whom is the information for: other institutions, organised civil society, and/or individual citizens? Is transparency an individual and/or an institutional feature?	Meijer et al. 2012; Cucciniello, Nasi 2014; Cucciniello et al. 2012; Cucciniello et al. 2017; Fox 2007; Meijer 2013; Meijer et al. 2015.
Practice of transparency	To what extent are implementors conscious of and interested in policy meanings? To what extent do they ignore meanings and redefine policies to suit themselves? For example, is there self-regulation of transparency at local government level? Which policy tools are chosen: rewards v. sanctions, top-down/ external verification of enforcement v. self-verification, online v. offline transparency? To what extent do actors implementing transparency policy move to include representatives of other groups in the policy process?	Meijer 2009; Michener 2020; Steinberger 1980.

A directed qualitative document analysis of 144 documents is conducted. The documents were issued between 2001 and 2019, ranging from early documents on the parliamentary debate of the FOI law to implementation reports from local governments published in early 2019.\* The sample of local government documents thus selected (see Table 2) provides enough variation on key variables.

Table 2. Documents analysed

Source	Central government	Local governments	TSOs
Number	58	65	28
Types and selection criteria	Laws, implementation instructions, formal policy proposals, minutes of meetings of parliamentary committees, parliamentary questions, monitoring and evaluation reports. All documents publicly available.	Publicly available annual implementation reports. Disproportionate stratified random sample of 28 LGs (4 counties, 4 county capitals, 4 other urban municipalities of importance, 6 towns, 10 rural municipalities). Maximum 4 reports per LG: one per each of the 2 laws in each of 2 relevant electoral cycles (2004–2008 and 2016–2020).	Monitoring and evaluation reports and policy proposals from major organisations. All documents publicly available.

## RESULTS

The process of constructing the meaning of local government transparency across the four arenas (see Table 3) is initially shaped by the central government. The debate is directed towards two areas: access to information about administrative and financial aspects and access to the decision-making stage of policymaking. An overemphasis of mediated transparency and monitoring focused on FOI implementation by higher capacity local governments (counties, county capitals) further shapes the debate. Moreover, there are two critical moments in the process: the development of the initial regulations (2001–2003, in a multi-actor process excluding local governments) and their revision (2015–2017, in a rather exceptional political situation).

### Justifying Transparency Policy

Different actors advance different justifications focused on the role of central governments, citizen rights, accountability and pragmatic elements. The central government develops distinct argumentation for each of the two laws. TSOs develop an overarching and more sophisticated justification for both laws and other transparency-related provisions. Local governments (LGs) are mainly reactive to the framings provided by other actors.

The central government does not explicitly address *whether it is its place to set rules for local government transparency*. LGs argue that such an intervention ‘institutionalises transparency in the relationship between citizens and public institutions’ (FOI report, Lugo), while TSOs see intervention as necessary to reign in the anti-democratic tendencies of local governments. In the implementation stage TSOs ask for more central government intervention via various institutional levers to stimulate compliance by LGs.

\* In July 2019, transparency provisions were merged into a newly approved Administrative Code. By the time data collection was completed, not enough documents were available to fully assess the impact of this change.

Table 3. Findings across the four arenas of transparency policy

Arena	Transfer of international policy discourse	Differences between categories of actors during the policy cycle	Changes of meaning during the policy cycle and convergence	Relevance to the internalisation of transparency
Justifying transparency policy	Partial transfer. Ethical justifications do not appear. Context-based instrumental justifications, other than those expected, appear (conditionalities of accession).	Yes. Central government and TSOs share to some extent the opinion that this is necessary to reign in the anti-democratic tendencies of LGs. LGs are mainly reactive.	Little change. A rights-based justification is dominant (all actors), with accountability mentioned (LGs, TSOs), but pushed to the background.	
Transparency in the hierarchy of public sector goals	Yes	Yes. LGs and the other actors diverge on the effects of the implementation mechanisms.	Little change, transparency is discursively assumed as a transversal public sector goal.	Implementation mechanisms undermine transversality.
Descriptors of transparency	Yes	Yes. Differences appear concerning the recipients, the type of information (public interest, regulatory v. non-regulatory decisions), proactive v. passive provision. LGs signal an overlap of passive and proactive provision of information.	Changes appear concerning transparency provisions applicable to individuals, the type of information, and proactive provision, but limited convergence. In time a narrower definition of transparency (mostly proactive), which facilitates external monitoring, emerges.	Working definition of transparency narrowed down in time.
Practice of transparency	Partial transfer. The debate over the policy tools is present, yet low-key.	Yes, LGs try to occupy the policy space and shape transparency by their choice of tools and topics.	Significant change due to a top-down (central government, national TSOs) push for formalization and standardization.	The push towards standardisation partially counters meaningful bottom-up initiatives.

The main justification is centred on *the rights of citizens*. The central government frames the need for FOI regulations emphasising the practical aspects of the constitutional right of citizens to be informed. This appears in cabinet proposals and parliamentary debates and informs monitoring of FOI implementation. The overarching justification for the decision-making transparency law is centred on the citizens' right to participate. LGs, though less explicitly and less frequently, use a similar justification. One interesting difference is the mention made by LGs that the FOI law comes in 'support of citizens' (reports from Lugoj, Jibou and Căzăneşti), suggesting a narrative of protection against potential abuse by officials. The same narrative is associated by TSOs to their rights-based justification.

*An accountability-based justification* is articulated predominantly by the LGs and TSOs. The parliamentary debate over decision-making transparency only narrowly touches upon accountability, in relation to potentially requiring local governments to record the individual votes of councillors. For LGs, accountability is, to some extent, a pragmatic aspect, linked with a view of citizens as clients. TSOs employ an elaborate justification: 'citizens have the means to verify and evaluate the quality of government, thus making use of their right to good government' (IPP 2004).

*Instrumental justifications* are visible throughout the policy cycle. TSOs emphasise the anti-corruption effects of transparency. The central government emphasises the conditionality of EU accession and the need to counterweight legislation on classified information and the protection of personal data. The conditionality justification is puzzling, as during the legislative process it is clearly specified that EU accession does not involve a formal requirement to enact FOI regulations. Another pragmatic justification advanced by the central government relates transparency to the success of wider reforms, enhancing the expertise available and the legitimacy of public entities.

### **The Prioritisation of Transparency**

The prioritisation of transparency is debated throughout the policy cycle. All actors discursively assume transparency as a transversal goal. Initially, the central government is reluctant and resists the proposal expanding the applicability of FOI to public companies and privatisation contracts. Following the passing of both laws, the central government issues implementation norms aimed to facilitate compliance monitoring. These mandate that within each LG a dedicated compartment or a single civil servant will take charge of implementation, thus providing citizens with an identifiable interface to access information. This leads, by LGs' assessments, to a low acceptance of transparency as a norm outside the dedicated compartments, which affects overall institutional transparency. Even TSOs contribute discursively to undermining transparency as a transversal goal. When the government proposes to unify relevant regulations, including the two transparency laws, into an Administrative Code, TSOs call for keeping transparency regulations separate.

### **Descriptors of Transparency**

In terms of *transparency for whom*, the FOI provisions list legal persons (individual citizens and legal entities), other public institutions and the media. LGs assume a similar position, although with some nuances. Some show reticence regarding information requests from businesses, while others overemphasise individual citizens as recipients of information. TSOs add their own emphases: transparency in relation to other public entities and the need to facilitate access to information for national minorities and people with disabilities. In the decision-making transparency provisions, the central government singles out businesses (to be informed of regulatory proposals which may concern them) and formally organised civil society. LGs consider that only formal organisations can be represented in consultation processes. TSOs tend to emphasise their own role within consultation processes without problematising the inclusion of others.

In terms of *transparency by what means*, initial FOI provisions mandate the active delivery of information at the LG office and set clear rules for passive delivery. During implementation, LGs significantly shape this. They point to an overlap, as citizens use passive transparency

provisions to request actively provided information. TSOs list categories of information, not specifically mentioned in legal texts, which they believe should be made available proactively: information about elected officials and their policy initiatives, information frequently requested by citizens and annual institutional reports. LGs are divided on whether they have a proactivity obligation in relation to provisions outside the two laws. Over time, central government monitoring and evaluation reports of FOI implementation increasingly stress the proactive side of transparency. This is reflected in the 2016 changes to the FOI implementation rules, which address some of the issues pointed out by both LGs and TSOs.

In terms of *individual v. institutional transparency*, FOI provisions and related central government documents emphasise the institutional level. Provisions concerning elected officials and public employees are placed outside the mainstream transparency discourse in separate laws. Some LGs bridge the artificial gap created by central government regulations and treat as proactive transparency obligations all provisions concerning individual elected officials (declarations of assets, activity reports). Two topics were intensely debated in the policymaking stage concerning decision-making transparency: whether provisions apply to decisions made by collective bodies (councils) and/or individual decision-makers and whether LGs should maintain individual voting records for local elected officials. The latter has created conflict during implementation, as local councils have declined to do it, stating that accountability for decisions is collective. TSOs problematise two aspects: the individual activity reporting obligations of local elected officials and their voting records. The central government reacts to the positions of other actors but chooses not to bring individual transparency aspects into the main transparency regulations and opts instead for making recommendations.

In terms of *transparency of what*, most of the national debate is centred on the subtle distinction between information destined to be made public (favoured by the executive, narrow) and information of public interest (favoured by parliament, included in the FOI law, broad). The executive decisively shapes this in its implementation guidelines by proposing a narrow list of documents to be made available proactively. This leads to implementation debates concerning documents outside this list, with some LGs arguing there is no legal obligation to provide them, proactively or passively. TSOs argue at all stages that all documents are of public interest. In the decision-making transparency regulations, the distinction between regulatory and non-regulatory decisions made by public entities is essential. The former is subject to citizen consultation procedures when a preferred alternative was already selected (narrow transparency). The central government argues that this is to avoid burdening the day-to-day operations of public entities. This leads to debates within LGs and conflicts between governmental actors and TSOs pursuing a broader definition. LGs generally see it as their legal obligation to consult citizens for regulatory decisions.

## The Practice of Transparency

The debate over the practice of transparency is twofold. First, instead of an expected debate on the local self-regulation of transparency we find the opposite focus on standardisation. Second, there is a relatively low-key discussion of policy tools.

*Formalisation and standardisation* are core to the central government approach to the practice of transparency. Thus, a long list of aspects is regulated: organisational structures charged with implementation, timetables, traceability of written FOI requests, written invitations to public debates for organised interests, copying costs or crowd management rules for public



meetings. Implementation rules push standardisation further (document templates, managing complaints) while affirming institutional autonomy in implementation. TSOs also prefer a typified implementation of transparency provisions, as it aids their monitoring efforts. Some TSOs criticise any departure from the use of central government templates, while others develop templates for the less regulated areas (such as transparency provisions concerning individual local elected officials) and propose them to LGs, thus incentivising rulemaking by local actors. The 2016 changes to national regulations, incentivised and influenced by some TSOs, move further towards the standardisation of FOI implementation (going as far as specifying the format of files to be published online). Changes to the monitoring criteria specifically link secondary transparency provisions (mostly those related to individual elected officials) to the main ones. The decision-making transparency provisions are left outside the standardisation drive.

Local variations in FOI implementation nevertheless appear: whether a political advisor to the mayor can take charge of implementation, dealing with the overlap between passive and proactive access to information, legal deadlines and publishing of annual activity reports. Central government reports explain variations as resulting from confusions and erroneous classifications, while acknowledging that regulations do leave some space for variation. Some higher capacity LGs find ways to shape transparency by their choice of tools (developing online tools before being compelled to do so, mapping local TSOs interested to participate in policy consultation) and topics (documents outside the compulsory list, topics of public consultation beyond minimal requirements), as well as by developing internal rules. The same LGs usually depart from top-down imposed formats for their annual self-assessment of transparency reports. Some of this variation disappears after the 2016 standardisation drive.

The debate on policy tools approaches all theoretically relevant aspects: sanctions v. rewards, external v. self-verification of enforcement and online v. offline transparency. The sanctions v. rewards debate is predominantly focused on the FOI law. There is reticence on behalf of the cabinet to include sanctions in the FOI proposal. Hence minimalist provisions, referring to civil servants that hinder implementation (but not politicians), are added by the parliament. Civil servants in LGs see this as problematic and argue that compliance sometimes depends on political decisions outside their control. The central government clearly prefers top-down external verification of enforcement by a government agency, while it creates conditions for external verification by the TSOs. In time, the dismantling of the national monitoring infrastructure contributes to narrowing the meaning of transparency employed (by pushing to the background the harder to monitor provisions). The initial regulations emphasise offline transparency tools. In 2016, as part of its standardisation push, the central government moved to emphasise the use of online tools. The change in regulations follows a significant change in LG practice aided by TSOs.

## DISCUSSION

The analysis has pointed out some relevant aspects in relation to the role of external pressure, government capacity and organisational support within public sector organisations in implementing transparency policy and embedding transparency as a norm in the public sector (see Grimmelikhuisen et al. 2017; Michener 2019; Pozen 2020). First, the local transparency regime studied here was built, like others (see Dowley 2006), on the assumption that external pressure is always good, given the emphasis placed on media access to public information and facilitating external monitoring of implementation by TSOs. Results show that TSOs have



had a positive and less positive influence on local government transparency. Their emphasis on standardisation and their contribution to weakening the transversality of transparency as a public sector goal are an example of potentially less positive influence. Second, the literature has emphasised the capacity of local governments as relevant for greater transparency (Araujo, Tejedo-Romero 2016; Dragoş et al. 2012; Piotrowski 2010; Spáč et al. 2018). This analysis pointed out that the capacity of all actors is relevant during implementation. The inability of the central government to clarify and monitor the decision-making transparency provisions combines with the low capacity of local governments to implement them and limitations in TSO monitoring. The result is a narrowing down of the definition of local government transparency employed in practice by pushing to the background the harder to monitor and implement provisions concerning the transparency of decision-making. This happens despite a formal broadening of the initially restrictive legal definition of transparency. Third, the literature discusses the role of organisational choices in realising transparency (Meijer 2013). This analysis has shown how the choice by the central government of a simple implementation mechanism (making a single unit responsible for transparency instead of spreading the responsibility across the institution) has, in fact, hindered the build-up of diffuse support for higher transparency within local governments.

## CONCLUSIONS

This paper examined how local government transparency is shaped and established as a norm in new democracies, analysing the case of Romania. It focuses on the (re)construction of the definition of transparency found in the international policy discourse under the influence of domestic political and organisational factors and its consequences for how transparency as a norm is internalised. Romania is in many ways a typical case for the top-down introduction of a local government transparency policy where bottom-up factors are feeble.

Some points are relevant for practitioners of local government transparency in Romania and elsewhere. From the beginning and throughout implementation, a (top-down) drive towards a degree of standardisation that makes for easy monitoring of compliance and leaves little room for (bottom-up) self-regulation by local governments can be observed. Aspects such as the extent to which some documents are published on-line in certain file formats are prioritised over how passive requests for information or public consultation procedures are dealt with. This creates premises for formal rather than meaningful transparency. The data analysed shows that, even if the available policy space was limited, local governments of sufficient capacity were slowly transitioning to more meaningful (less unidirectional and decontextualised) transparency. This is consistent with the previous findings on the positive relationship between local autonomy and transparency (Keuffer, Mabillard 2019). Warranting further research, given the limits of this analysis, is the observation that some of these local initiatives and diversity in transparency policy were discouraged by top-down policies. More attention should be given to how local mechanisms and initiatives can be linked with national transparency policy.

Some limits of the analysis must be mentioned. First, for practical reasons, it was limited to documents coming from just 28 local governments. It was therefore not possible to account for the impact of regional/local cultural factors. Second, it has taken at face value the positions expressed in documents coming from the main civic TSOs. Deeper/further analysis should consider their donor-driven nature and the congruence between the donor and governmental agendas.

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CRISTINA STĂNUȘ

## Skaidrumas kuriamas: vietos valdžios skaidrumas naujoje demokratijoje

### *Santrauka*

Straipsnyje teigiama, kad, norint suprasti akivaizdų naujų demokratijų nesugebėjimą įtvirtinti skaidrumo kaip normos, būtina pažvelgti į tai, kaip konstruojama skaidrumo prasmė. Šis teiginys grindžiamas proceso, kuriuo vietos valdžia, veikiama tarptautinės politikos principų ir vidaus veiksmų, formuoja skaidrumo koncepciją ir į kurią įsitraukia daugelis veikėjų, analize. Tyrimui taikyta centrinės valdžios, savivaldybių ir trečiojo sektoriaus organizacijų sukurtų dokumentų kryptinga kokybinė analizė ( $N = 144$ ). Minėto proceso aspektai – kartais ne toks teigiamas išorinio spaudimo poveikis, standartizacijos akcentavimas ir riboti visų veikėjų politiniai pajėgumai – laikomi reikšminiais įtvirtinant skaidrumą kaip normą.

**Raktažodžiai:** skaidrumas, vietos valdžia, reikšmės kūrimas vykdam politiką, Rumunija