



Maastricht Centre
for European Law



Maastricht University

*MCEL Thesis Project 2021-2022:
The impact of COVID-19 on EU law*

Ella de Jonge

**Transparency in the Time of COVID-19:
Inter-Institutional Information Sharing for
European Parliamentary Oversight in the EU
Vaccines Strategy**

Supervisor: Dr V. Abazi

LL.M. International Laws

ACKNOWLEDGEMENTS

I would like to thank everyone for their continued support in the process of writing this thesis. I am especially grateful to Dr Abazi for her guidance and mentorship.

Many thanks to my professors and fellow students in the Master's Honours Research Track, it was a pleasure to be part of this academic cohort.

Lastly, I want to thank and apologise to my family and friends, for keeping up with my transparency monologues.

ABSTRACT

This thesis examines the principle of inter-institutional transparency during the EU Vaccines Strategy and its possible implications on European Parliamentary Oversight. The COVID-19 pandemic illustrates the importance of transparency in times of emergency. The EU Vaccines Strategy expanded the competence and responsibility of the European Commission, which requires an effective flow of information with the European Parliament to ensure parliamentary scrutiny. This inter-institutional relation between the executive and the parliament is crucial for the development of transparency within the Union. Moreover, transparency shortfalls can weaken the oversight role of the European Parliament. In response to critique on a lack of transparency in the EU Vaccines Strategy, the thesis aims to provide a deeper understanding of how transparency was shaped in times of a pandemic.

By construing a conceptual framework consisting of three dimensions of transparency, the thesis examines the conduct of the two institutions during the Vaccines Strategy. The thesis argues that while several tools of oversight were employed to increase information sharing, the EU Vaccines Strategy is not compatible with the democratic spirit of EU transparency law. This has negatively affected the role of the European Parliament as an oversight institution and places the EU Vaccines Strategy in a larger context of transparency issues in times of crisis. To maintain democratic legitimization of the EU executive, the institutions should strive for open inter-institutional information sharing regimes and ensure adequate oversight mechanisms.

TABLE OF CONTENTS

1	Introduction	7
2	Methodology and Limitations	12
2.1	<i>The EU Vaccine Strategy: A Normative Evaluation</i>	12
2.2	<i>Preconceptions and Assumptions</i>	13
2.3	<i>Structure</i>	14
3	Conceptualizing Parliamentary Oversight and Inter-Institutional Transparency	16
3.1	<i>Strengthening Parliamentary Oversight for Accountability and Democratic Legitimization</i>	16
3.2	<i>Defining Inter-institutional Transparency for Oversight: Law, Theory and Practice</i>	19
3.3	<i>Transparency Standards for Parliamentary Oversight</i>	22
4	Information-Sharing and Oversight Practices in the EU Vaccines Strategy	26
4.1	<i>Transparency: a Fundamental Pillar in the EU Vaccines Strategy?</i>	26
4.2	<i>Reading Rooms, Redactions, and Record-Keeping Controversies</i>	31
5	Information Sharing and Oversight in the EU Vaccines Strategy: Conformity with Transparency Standards?	35
5.1	<i>Shaping Transparency Dimensions in the EU Vaccines Strategy</i>	35
5.2	<i>Implications of Inter-Institutional Transparency Shortfalls for Parliamentary Oversight</i>	38
6	Conclusions	42

LIST OF ABBREVIATIONS

APA	<i>Advance Purchase Agreement</i>
CONTACT GROUP	<i>COVID-19 Vaccines Contact Group (hereinafter ‘Contact Group’)</i>
THE COMMISSION	<i>The European Commission</i>
ENVI COMMITTEE	<i>The Committee on the Environment, Public Health and Food Safety</i>
THE EP	<i>The European Parliament</i>
THE EU	<i>The European Union</i>

FRAMEWORK AGREEMENT

The Framework Agreement on relations between the European Parliament and the European Commission

ITRE

The Committee on Industry, Research and Energy

INTA COMMITTEE

The Committee on International Trade

MS

Member States

LIST OF TABLES

Table 1 Dimensions of Transparency – guiding benchmarks	23
Table 2 Transparency Practices in the EU Vaccines Strategy	32
Table 3 Implications of the EU Vaccine Strategy on the Dimensions of Inter-Institutional Transparency	39

1 INTRODUCTION

Transparency in the European Union (hereinafter ‘EU’) is a crucial principle for maintaining good governance. Transparency entails an open and timely flow of information between the government and citizens as well as between government institutions *inter se*.¹ From an institutional perspective, such transparent information regimes are necessary to ensure parliamentary oversight over the processes and outcomes of decision-making bodies.² The European Parliament (hereinafter ‘the EP’) shares in particular a strong-institutional tie with the European Commission (hereinafter ‘the Commission’).³ The Commission is accountable to the EP, which, as the sole directly elected institution, is tasked to conduct oversight and monitor the Commission.⁴

The COVID-19 pandemic, one of the most severe public health crises, shows the importance of inter-institutional transparency in times of emergency. The pandemic reflects the ‘silent’ expansion of the EU’s power and responsibility.⁵ The EU has limited powers in health law and policy, yet a combination of different provisions spread across EU legislation provide a wide

¹ D Curtin and M Hillebrandt, Transparency in the EU: constitutional overtones, institutional dynamics and the escape hatch of secrecy in Research Handbook on EU Institutional Law (A Lazowski and S Blockmans eds, Edward Elgar Publishing 2016) p. 190.

² *ibid.*, p. 194; M Hillebrandt, ‘EU Transparency as ‘Documents’: Still Fit for Purpose?’ (2021) 9 *Politics and Governance* 292–293.

³ M Egeberg, A Gornitzka and J Trondal, ‘A Not So Technocratic Executive? Everyday Interaction between the European Parliament and the Commission’ (2014) 37 *West European Politics* 1 p. 15; Art. 17 *Consolidated version of the Treaty on European Union [2012] OJ C326/13*

⁴ *ibid.*

⁵ E Becker and T Gehring, ‘Explaining EU integration dynamics in the wake of COVID-19: a domain of application approach’ 2022 *Journal of European Public Policy* 1 pp. 10–11; A de Ruijter, ‘EU Health Law & Policy: The Expansion of EU Power in Public Health and Health Care’ (OUP 2019) pp. 8, 139, 176.

‘web of competences’ to address health crises.⁶ The EU vaccine strategy is a clear example of this expansion of competence and responsibility.

In June 2020 the Member States (hereinafter ‘MS’) agreed to mandate the Commission to negotiate and conclude Advance Purchase Agreements (hereinafter ‘APAs’) with pharmaceutical companies to procure COVID-19 Vaccines.⁷ The EU has thereby established ‘the most far-reaching international joint procurement scheme’ by combining different frameworks and regimes, securing at least 4.2 billion doses of vaccines.⁸ This expansion of authority necessitates an effective flow of information between the institutions to enable parliamentary scrutiny. Nonetheless, the vaccine strategy reveals possible hindrances in the EP’s performance of its oversight role.⁹ The joint procurement of vaccines by the EU for this reason has received considerable critical attention. In addition to criticism about shortages and a ‘slow roll-out’ of vaccines, the strategy has been criticized for transparency shortfalls.¹⁰

⁶ See KP Purnhagen and others, ‘More Competences than You Knew? The Web of Health Competence for European Union Action in Response to the COVID-19 Outbreak’ 11 *European Journal of Risk Regulation*; The authors argue, opposing a traditional legal analysis of limited competences in health policy within the treaties, that the EU has more powers spread through EU primary law to respond to the pandemic, beyond the measures that have currently been employed.

⁷ European Commission (EC), *Annex to Decision approving the agreement with Member States on procuring Covid-19 vaccines on behalf of the Member States and related procedures final C(2020) 4192* (18 June 2020); European Commission (EC), *Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank EU Strategy for COVID-19 vaccines OM/2020/245 final*. (17 June 2020).

⁸ European Commission, ‘Safe COVID-19 vaccines for Europeans’ (2022) <https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans_en> accessed 29 August 2022; R Beetsma and others, ‘Public support for European cooperation in the procurement, stockpiling and distribution of medicines’ (2021) 31 *The European Journal of Public Health* 253 pp. 254 - 255; Art. 5 (2) TEU ; *Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2016] OJ 326/49* Art. 168; Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union OJ L 70, Arts. 4, para 5 (b); Council Regulation (EU) 2020/521 of 14 April 2020 activating the emergency support under Regulation (EU) 2016/369, and amending its provisions taking into account the COVID-19 outbreak OJ L 117.

⁹ See sections 3.2 and 4.

¹⁰ R Forman and E Mossialos, ‘The EU Response to COVID-19: From Reactive Policies to Strategic Decision-Making’ (2021) *JCMS* p. 62; ‘The European Union’s vaccine-acquisition strategy’ (2021) 27 *Strategic Comments* 1; J Deutsch and S Wheaton, ‘How Europe fell behind on vaccines’ *Politico Europe* (Brussels) J Deutsch and S Wheaton, ‘How Europe fell behind on vaccines’ (2021) <<https://www.politico.eu/article/europe-coronavirus-vaccine-struggle-pfizer-biontech-astrazeneca/>> accessed 29 August 2022.

Vital questions on the level of transparency surrounding the APA negotiations have been addressed in the literature, by the EP and the European Ombudsman.¹¹

Clear examples of transparency deficiencies are found in the initial refusal to publish contracts, the abundance of redactions within the subsequently released contracts, and an absence of sufficient justifications for the redactions.¹² Moreover, unclarity remains regarding the negotiation team, the price and quantity of vaccine doses, delivery schedules and liability clauses.¹³ Particularly the maladministration due to the refusal of access to text messages exchanged between Commission President and the CEO of Pfizer has been heavily criticized.¹⁴ A key issue is that the procurement of vaccines is partly funded through public resources, therefore necessitating a higher level of transparency and accountability.¹⁵ Within the – perhaps necessary – confidential negotiations, parliamentary oversight necessitates information on the strategies, topics and positions.¹⁶ The continuous calls by the EP for information on the negotiation process, as well as the considerable redactions in the published APAs indicate the opposite occurred.¹⁷

¹¹ See S Sciacchitano and A Bartolazzi, ‘Transparency in Negotiation of European Union With Big Pharma on COVID-19 Vaccines’ (2021) 9 *Frontiers in Public Health* 1; European Parliament, *Resolution 2021/2678 of 21 October 2021 on EU Transparency in the development, purchase and distribution of COVID-19 vaccines* (2021); European Ombudsman, *The European Commission and transparency in the context of the EU response to the COVID-19 crisis*’ Case SI/4/2020/PL (2021) .

¹² K Hussman, ‘Global access to Covid-19 vaccines: Lifting the veil of opacity’ U4 Anti-Corruption Resource Centre <<https://reliefweb.int/sites/reliefweb.int/files/resources/lifting-the-veil-of-opacity-in-covid-19-vaccines-to-combat-the-pandemic.pdf>> accessed 29 August 2022 p. 19; Transparency International and Accountability World Health Organization Collaborating Centre for Governance, and Transparency in the Pharmaceutical Sector, *For Whose Benefit? Transparency in the development and procurement of COVID-19 vaccines* (2021), p. 24.

¹³ *ibid.*

¹⁴ European Ombudsman, *The European Commission's refusal of public access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company on the purchase of a COVID-19 vaccine* Case 1316/2021/MIG (2021).

¹⁵ Sciacchitano and Bartolazzi (n11) p. 3; Hussman (n12) pp. 2 – 3.

¹⁶ Curtin and Hillebrandt (n1) p. 191; V Abazi and J Adriaensen, ‘EU Institutional Politics of Secrecy and Transparency in Foreign Affairs’ (2017) 5 *Politics and Governance* 1.

¹⁷ European Parliament, ‘COVID-19 vaccines: MEPs call for more clarity and transparency’ (2021)

<<https://www.europarl.europa.eu/news/nl/press-room/20210111IPR95308/covid-19-vaccines-meps-call-for-more-clarity-and-transparency>> accessed 29 August 2022

<https://www.europarl.europa.eu/news/nl/press-room/20210111IPR95308/covid-19-vaccines-meps-call-for-more-clarity-and-transparency> accessed 4 April 2022.

This dispute between transparency and secrecy is not unknown to the institutions and is part of a recurring theme in the academic debate on EU decision-making processes.¹⁸ In fact, the EU commonly resorts to secrecy in times of crisis, disrupting the flow of information between the executive and the parliament.¹⁹

The inter-institutional relations and competition are an important factor that contribute to the development of transparency within the EU.²⁰ Transparency shortfalls within this inter-institutional context can weaken the EP's overall oversight role.²¹ Thus, although often approached from the perspective of citizens' access to documents, equally important is to understand how the principle of transparency works between EU institutions, in their respective capacities and working together in the interest of the EU citizen. Academic interest in inter-institutional transparency is therefore growing.²²

To date there has been little agreement on the definition, scope and purpose of the principle of transparency in the literature.²³ Recent studies on the vaccine strategy of the EU have studied the black-letter law of the APAs and argued a lack of transparency and accountability.²⁴ However, there is a research gap on how the principle of transparency has been applied between the Commission and the EP during the procurement of vaccines, and how European parliamentary oversight took place in this respect. Considering these underlying

¹⁸ Dias Simoes, F, 'The European Parliament's Oversight Powers over Trade and Investment Negotiations' (2017) 2 *European Investment Law and Arbitration Review* 335-337; See P Birkinshaw, *Freedom of information: the law, the practice, and the ideal* (4th ed. edn, Cambridge University Press 2010) p. 381.

¹⁹ See V Abazi, *Official secrets and oversight in the EU: law and practices of classified information* (Oxford University Press 2019) pp. 1-2; A Alemanno, 'Unpacking the principle of openness in EU law: transparency, participation and democracy' (2014) 39 *European Law Review* D Curtin, 'Overseeing Secrets in the EU: A Democratic Perspective' (2014) 52 *JCMS* 684.

²⁰ M Hillebrandt, 'The big lesson after ten years of EU transparency reforms? You will never get it right' (*Open Government in the EU*, 14 Januari 2020)

<<https://www.eu-opengovernment.eu/?p=1064>> accessed 4 April 2022; D Wyatt, 'Is the Commission a "lawmaker"? On the right of initiative, institutional transparency and public participation in decision-making: ClientEarth' (2019) 56 *Common Market Law Review* 825 pp. 834, 844.

²¹ Abazi (n21) pp. 42, 45.

²² Curtin and Hillebrandt (n1) p. 191.

²³ See J Mendes, 'The Principle of Transparency and Access to Documents in the EU: for what, for whom, and of what?' (2020) 4 *University of Luxembourg Law Working Paper Series* (n13); See Alemanno (n19); See D Curtin and A Meijer, 'Does transparency strengthen legitimacy?' (2006) 11 *Information Polity* 109.

²⁴ See M F Popa, 'Negotiating our health: The EU Public Policies on COVID-19 Vaccination and the Astra Zenica Advance Purchase Agreement' [2021] *Challenges of the Knowledge Society* 453; Sciacchitano and Bartolazzi (n11).

factors, this thesis seeks to contribute towards an understanding of information sharing between the Commission and the EP in the EU Vaccines Strategy, and how in turn such transparency practices have affected the oversight role of the EP. Thus, the thesis poses the following research question:

‘How has the EU Vaccines Strategy shaped the principle of inter-institutional transparency between the European Commission and the European Parliament, and has this affected European Parliamentary Oversight?’

In order to answer the research question, this thesis first addresses the following sub-questions:

‘Which standard of inter-institutional transparency must be upheld for the European Parliament to fulfil its oversight role?’

‘In practice, what type of information has been shared between the European Commission and the European Parliament, in what manner, and with whom? Which tools of parliamentary oversight have been employed for this purpose?’

2 METHODOLOGY AND LIMITATIONS

The following section discusses the normative framework against which the Vaccines Strategy will be evaluated.²⁵ Before presenting the remaining structure of the thesis, the underlying assumptions and limitations will be disclosed.²⁶

2.1 *The EU Vaccine Strategy: A Normative Evaluation*

The thesis seeks to evaluate parliamentary oversight during and after the procurement of COVID-19 vaccines, addressing the inter-institutional information sharing regimes between the Commission and the EP. The normative framework consists of the principle of transparency necessary for parliamentary oversight against which the conduct of the institutions will be assessed.²⁷ Section three therefore provides a conceptual framework for this evaluation, answering the first sub-question of the thesis (*Which standard of inter-institutional transparency must be upheld for the European Parliament to fulfil its oversight role?*).²⁸

To offer a complete normative framework, the legal rules, underlying theories, and debates on inter-institutional transparency will be explored. As previously stated, the thesis approaches transparency from an inter-institutional perspective. Thus, although Regulation 1049/2001 can be seen as the ‘core’ piece of legislation on access to documents for EU citizens, the conceptual framework focuses less on the regulation, and more on the relevant inter-institutional relations between the EP and the Commission.²⁹

²⁵ S Taekema, ‘Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice’ (2018) 8 *Law and Method* 1 pp. 7 – 9.

²⁶ R van Gestel and H.W. Micklitz, ‘Why Methods Matter in European Legal Scholarship’ (2014) 20 *European Law Journal* 292, p. 314.

²⁷ Taekema (n25) pp. 7 – 9.

²⁸ *Ibid*, p. 7; Transparency is an internal framework, constituting a normative value found within EU law, in contrast to external frameworks that can be used to evaluate legal principles. Instead of the law itself, the conduct of the institutions is evaluated.

²⁹ See G Rosén and A E Stie, ‘Not Worth the Net Worth? The Democratic Dilemmas of Privileged Access to Information’ (2017) 5 *Politics and Governance* 51; E Coremans, ‘From Access to Documents to Consumption of Information: The European Commission Transparency Policy for the TTIP Negotiations’ (2017) 5 *Politics and Governance* 29 p. 30.

The proposed conceptual framework is primarily drawn from the relevant articles in the treaty and the academic literature on the development of transparency.

Based on this discussion of the law, theory, and pitfalls of transparency, a standard of inter-institutional transparency necessary for parliamentary oversight is proposed.

The thesis discusses three dimensions of transparency which form the benchmarks central for its analysis. These benchmarks are employed when addressing the second sub-question, examining how transparency and parliamentary oversight occurred practice during the vaccine strategy. The materials necessary to answer the second sub-question are collected primarily through parliamentary questions and debates, and Commission communications. Information was furthermore gathered from correspondence with MEPs, as well as documents provided by the EP's Transparency Unit and Citizens' Enquiries Unit upon requesting access.³⁰ Assessing these findings against the conceptual framework provides an insight on how inter-institutional transparency has been shaped in the Vaccines Strategy, and how this has affected parliamentary oversight.

2.2 Preconceptions and Assumptions

This thesis is built upon and limited by certain assumptions and ideological preconceptions that underly its line of argumentation.³¹ The principle of transparency is often discussed from the perspective of citizens' access to information for public trust and public deliberation.³² While the thesis recognizes the importance of transparency in the form of public access, the focus is on inter-institutional transparency in the context of oversight and accountability.

In analysing the role of parliamentary oversight during the procurement of COVID-19 vaccines, the thesis follows a supranational perspective on the discussion of democratic legitimacy of the EU.

³⁰ *E-Mail of the European Parliament's Citizens' Enquiries Unit, April 26 2022 E-Mails from MEP 1 assistant, 29 April 2022 - 5 May 2022 ; Correspondence with MEP 2, 21 July 2022, 8 August 2022 .*

³¹ van Gestel and Micklitz (n26) p. 314.

³² See for instance Wyatt (n20); Hillebrandt (n2).

It thus considers that accountability of the EU institutions through an accountability forum at EU level, i.e. the EP, is desirable.³³

Moreover, within the larger academic debate on balancing transparency and secrecy within the EU, the thesis does not presume that an increase of transparency is by definition the sole method to achieve an accountable and efficient procurement process, or to contribute to the overall legitimacy of the Union.³⁴ Indeed, there are several arguments and empirical evidence that indicate the opposite, focusing for instance on the negative effects of transparency on the efficiency and costs of decision-making.³⁵ However, this thesis recognizes that from a legal point of view, the EU institutions should ensure the widest access possible, while interpreting the limitations to the access to information strictly. Transparency-evasive behaviour fundamentally undermines the democratic spirit of the Treaty.³⁶ Secrecy and confidentiality may be necessary during the vaccine negotiation process. However, it is submitted that at a minimum, the process should be subject to a transparent oversight mechanism to ensure that such secrets are justified and monitored.³⁷ This is based on the assumption that parliamentary oversight is crucial for democratic legitimization of the EU executives. Further justifications, supported by a broad interpretation of the principle of inter-institutional transparency, will be discussed in the following sections.³⁸

2.3 *Structure*

The overall structure of the thesis will take the form of six sections. Section three provides the conceptual framework that will be employed to evaluate the conduct of the Commission and the EP in the process of vaccine procurement.

³³ M Bovens, D Curtin and P 't Hart, *The Real World of EU Accountability: What Deficit?* (M Bovens ed, 1st edn edn, Oxford University Press 2010) p. 28.

³⁴ See Wyatt (n20) pp. 834 – 835; Curtin and Meijer (n23).

³⁵ *ibid*; E Coremans, 'Opening up by closing off: how increased transparency triggers informalisation in EU decision-making' (2020) 27 *Journal of European Public Policy* 590 *ibid* See C Lindstedt and D Naurin, 'Transparency Is Not Enough: Making Transparency Effective in Reducing Corruption' (2010) 31 *International Political Science Review* 301.

³⁶ Wyatt (n20) p. 836; Mendes (n23) p. 18; Curtin and Hillebrandt (n1) p. 202.

³⁷ Abazi and Adriaensen (n16), p. 2.

³⁸ EM Poptcheva, 'Parliamentary Oversight: Challenges Facing Classic Scrutiny Instruments and the Emergence of New Forms of 'Steering' Scrutiny' in Olivier Costa (ed), *The European Parliament in times of EU crisis - Dynamics and Transformations* (Palgrave Macmillan 2019) p. 27; International and World Health Organization Collaborating Centre for Governance (n12) p. 9.

The development of parliamentary oversight and its relevant tools will be mapped.

The section subsequently defines inter-institutional transparency. Taking into account the underlying law, theory, and possible transparency drawbacks, it proposes a standard of transparency for parliamentary oversight.

Section four consecutively explores how parliamentary oversight and information sharing regimes have taken place in practice within the EU Vaccines Strategy, guided by the three transparency dimensions laid down in the previous section. Based on these preceding discussions, the fifth section analyses the implications of transparency regimes during the Vaccine Strategy on parliamentary oversight and examines whether the institutions have fulfilled their respective roles in light of the theoretical framework. Thereafter, conclusions will be drawn.

3 CONCEPTUALIZING PARLIAMENTARY OVERSIGHT AND INTER-INSTITUTIONAL TRANSPARENCY

This section first explores the role and development of the EP as an oversight institution and provides an overview of its respective powers and tools (section 3.1). Subsequently, it construes a conceptual framework of inter-institutional transparency necessary to conduct parliamentary oversight. A standard of information sharing for a transparent oversight process is proposed, based on a discussion on the law, theory, and possible pitfalls that surround the principle of transparency (section 3.2 and 3.3).

3.1 Strengthening Parliamentary Oversight for Accountability and Democratic Legitimization

Parliamentary oversight can be defined as the scrutiny of one actor over another actor's activities to evaluate whether certain criteria have been complied, possibly followed by recommendations or orders.³⁹ At EU level, the EP is mandated to exercise political control over the executive institutions to safeguard core principles as democracy, openness, and transparency.⁴⁰ Over the years the oversight role of the EP has been strengthened formally by the attribution of a wider range of oversight powers, as well as informally, through internal rules and practice. To overcome inter-institutional transparency hindrances parliamentary checks have been reformed and oversight powers increased with the introduction of the Lisbon Treaty.⁴¹ Likewise, institutional practice, informal changes, and judicial activism have contributed to a more solid oversight role for the EP and an increase of access to information of other EU institutions.⁴²

These powers are crucial for the EP to exercise political control over the executive.⁴³

³⁹ Abazi p. 23; M Busuioc, *European Agencies: Law and Practices of Accountability* (Oxford University Press 2013) p. 35.

⁴⁰ *ibid*; Art. 14 (1) TEU.

⁴¹ *ibid*, p. 40 – 42; Abazi (n19) p. 24.

⁴² *ibid*.

⁴³ Poptcheva (n38) pp 27 – 29; Art 14 (1) TFEU.

Oversight instruments allow the EP to both hold the executive accountable, as well as to communicate these developments at EU level with the European Citizens.⁴⁴ The EP is the sole EU institution that is directly elected by the EU citizens. In this sense, the EP connects the EU and the citizens, who can understand EU-decision making better and form public opinion based on the outcome of oversight processes.⁴⁵ In addition to providing a public deliberation platform, parliamentary oversight is an essential feature for democratic legitimization of the EU executives. Oversight ensures that decisions and responsibility are attributed to the right actor, and that decision-making processes can be influenced when necessary.⁴⁶ Thus, in the interest of the leading research questions, parliamentary oversight is above all an important instrument to assure accountability of the Commission towards the EP. For the purpose of this thesis accountability is defined as the relationship between the Commission and the EP ('the actor and the forum') where the Commission is obliged to explain and justify their conduct to the EP.⁴⁷ Consequently, the EP needs access to information, paired with explanations, control, remedies, and sanctions.⁴⁸ In the case of the Vaccines Strategy, this translates into requiring parliamentary access to information on i.a. negotiation strategies and positions is crucial.⁴⁹

Although mainly ex-post in nature, the EP has several instruments at its disposal to exert parliamentary scrutiny and maintain inter-institutional transparency. An instrument specific to the inter-institutional relationship between the EP and the Commission is the motion of censure, concretizing the accountability structure between the executive and the oversight forum.⁵⁰ Additionally, the EP can request the Commission President to withdraw individual Commissioners from the Commission, who will consider and explain their decision in case of refusal.⁵¹

⁴⁴ *ibid*, pp. 27 - 29; Abazi (n19) p. 24.

⁴⁵ *ibid*.

⁴⁶ Poptcheva (n38) p. 27.

⁴⁷ M Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13 *European law Journal* 447 p. 450.

⁴⁸ *ibid*, p. 951; Bovens, Curtin and 't Hart (n33) p. 1081.

⁴⁹ Curtin and Hillebrandt (n1) p. 191; Abazi and Adriaensen (n16) pp. 1 – 2.

⁵⁰ Poptcheva (n38) p. 30; Art. 234 TFEU.

⁵¹ *ibid*; Art. 17 (6) TEU; See the European Parliament and the European Commission, *Framework Agreement on relations between the European Parliament and the European Commission of 20 November 2010 OJ L 304* (2010).

The EP furthermore possesses the power of inquiry. By establishing committees of inquiry, breaches of EU law (contraventions) and maladministration (e.g. administrative irregularities, avoidable delays, and most notably the refusal to provide information) can be investigated.⁵² At the final stage, the committee will submit a report, based upon which a resolution can be adopted by the EP with non-binding recommendations. While committees of inquiry can interview witnesses, request documents, and consult experts, it does not have the power to sanction. Inquiry has nevertheless developed as an effective instrument of parliamentary oversight towards the Commission, which has generally complied with the EP's requests and recommendations.⁵³

The literature has focused most extensively on the instrument of parliamentary questioning.⁵⁴ Through oral and written questions, MEPs can directly exercise their oversight roles.⁵⁵ Questions are used to gather information, as well as to establish institutional accountability by drawing attention to issues which have not been adequately addressed by the executive according to the EP.⁵⁶ They thus form an important tool for inter-institutional transparency. Particularly opposition parties use parliamentary questions to diminish informational asymmetries and scrutinize the Commission.⁵⁷ This can be explained by the fact that while other oversight tools may require a majority in the parliament, the minority in the EP can take initiative to raise questions *proprio motu*.⁵⁸ Therefore, due to its ad hoc nature, written parliamentary questions in particular serve as a valuable oversight mechanism.

It allows for a fast, direct flow of information between the MEPs, has relatively few procedural restraints, and questions are usually handled by the responsible person.⁵⁹

⁵² Poptcheva (n38) pp. 33 – 34; Art. 226 TFEU.

⁵³ *ibid*, p. 32.

⁵⁴ See A Akbik, *The European Parliament as an Accountability Forum* (Cambridge University Press 2022) pp. 46 – 47.

⁵⁵ S O Proksch and J B Slapin, 'Parliamentary questions and oversight in the European Union' *European Journal of Political Research* 50 (2010) p. 56; Poptcheva (n38) p. 35; Art. 230 (2) TFEU

⁵⁶ Poptcheva (n38), p. 36.

⁵⁷ Proksch (n55), pp. 58 – 59.

⁵⁸ Poptcheva (n38) p. 36.

⁵⁹ *ibid*, pp. 34 – 35, 60; Oral questions on the other hand are only answered by one Commissioner in front of the EP, who may not always be the expert on every topic of the MEPs questions.

However, classified information nevertheless escapes parliamentary oversight as such confidential content will not be part of parliamentary questioning.⁶⁰

3.2 *Defining Inter-institutional Transparency for Oversight: Law, Theory and Practice*

Parliamentary oversight requires transparent inter-institutional information sharing. However, the principle of transparency is subject to an ongoing academic debate regarding its definition, purpose, and usefulness, and its underlying objectives are ‘contested and under conceptualised’.⁶¹ A brief review of the literature shows that this ‘ambivalent’ principle can be approached from different angles and offers a variety of definitions.⁶² Transparency entails the right of access to documents, but also extends to holding meetings in public, and sharing information.⁶³

The Lisbon Treaty has transformed transparency into a principle of a more constitutional nature, as had already been recognized before by the European General Court.⁶⁴ The Treaties offer a democratic reading of transparency, where decisions are taken as openly and closely as possible to the citizens, to ensure their right to participate in the democratic life of the Union.⁶⁵ EU institutions must therefore maintain an open, transparent, and regular dialogue and conduct their work as openly as possible. The Commission is explicitly obliged to consult concerned parties to ensure that the EU’s actions are coherent and transparent.⁶⁶

⁶⁰ Abazi (n19) p. 139.

⁶¹ Curtin and Hillebrandt (n1) p. 193.

⁶² Mendes (n23) p. 33; See J Davis, ‘Access to and Transmission of Information: Position of the Media. In Openness and Transparency in the European Union’ European Institute of Public Administration 1998 p. 121; M Den Boer, ‘Steamy Windows: Transparency and Openness in Justice and Home Affairs’ In Openness and Transparency in the European Union, p. 105; M Bovens, ‘Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism’ (2010) 33 West European Politics 946 2010 p. 946.

⁶³ P Craig and G De Búrca, *EU Law Text, Cases and Materials* (6th revised edition edn, Oxford University Press 2015) p. 571.

⁶⁴ Curtin and Hillebrandt (n1) pp. 190, 196, 200; Transparency was introduced as Declaration No. 17 to the Treaty of Maastricht in 1992, and was used by the Courts to pressure the institutions to ‘behave fairly and to devise adequate systems of scrutiny’; D. Curtin ‘Citizens Fundamental Right of Access to EU information an evolving digital passepartout? CMLR p. 9 – 10; *Case T-194/94, Carvel and Guardian Newspapers v. Council* ECR II-2765 ; *Case T-14/98, Hautala v. Council* ECR 2001 I-09565 .

⁶⁵ Arts. 1, 10 (3) TEU.

⁶⁶ Craig and De Búrca (n63); Arts. 11 (2), (4) TEU; Art. 15 (1) TFEU.

Overall, as a legal principle transparency has developed primarily as a citizens' right of access to documents to ensure open decision-making, which is further regulated in EU secondary law.⁶⁷

From an institutional perspective, transparency regimes are shaped by inter-institutional agreements.⁶⁸ The Framework Agreement on relations between the European Parliament and the European Commission (hereinafter 'Framework Agreement') was concluded to ensure an effective and transparent exercise of powers and prerogatives.⁶⁹ The Framework Agreement reflects the Court of Justice's broad interpretation of information-sharing obligations in line with the principle of sincere cooperation.⁷⁰ Its objective is to foster constructive dialogue between the institutions and 'improve the flow of information' as well as to strengthen the political responsibility and legitimacy of the Commission.⁷¹ In particular, part III of the Framework Agreement reveals a clear commitment to inter-institutional transparency.⁷² Members of the Commission must ensure a regular and direct flow of information with the chair of the relevant parliamentary committee.⁷³ Moreover, Parliamentary Resolutions with specific requests must be responded to with information in writing. The Parliament in turn must distribute this information widely within the institution (intra-institutional transparency).⁷⁴

The literature attributes a wider, normative meaning to transparency, interpreted as a standard for the EU institutions to comply with and a crucial requirement to hold EU representatives accountable.⁷⁵ Transparency thereby aims to achieve the broader (and perhaps ambitious) democratic objectives of the Treaty.

⁶⁷ Arts. 10 (3) and 11 TEU; Art. 15 (1) and (3) TFEU; European Union, Charter of Fundamental Rights of the European Union (2000/C 364/01) OJ C 364/3 Art. 42 ;Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents OJ L 145 , 31/05/2001; Craig and De Búrca (n63) pp. 568, 569.

⁶⁸Coremans, 'From Access to Documents to Consumption of Information: The European Commission Transparency Policy for the TTIP Negotiations' p. 29.

⁶⁹ Framework Agreement (n51).

⁷⁰*Case C-658/11 European Parliament v Council of the European Union ECLI:EU:C:2014:2025*

⁷¹ Framework Agreement (n51) Art. I (1).

⁷² *ibid*, Art. III (9).

⁷³ *ibid*, Art. III (12).

⁷⁴ *ibid*, Art. III (16).

⁷⁵ Alemanno (n19) p.7; Mendes (n23) p. 3; Hillebrandt (n2) p. 293.

It has become a standard set to create a Union closer to the citizens, that improves the democratic deficit and overall legitimacy of the Union (known as the democratic function of transparency).⁷⁶ Yet, although praised for its underlying fundamental ambitions, the principle of transparency is not free from criticism. As a legal principle, its strict and narrow interpretation impacts institutional documentation, creates administrative hurdles, and complicates oversight processes. The right to access only applies to already existing documents without requiring a certain standard of record-keeping and is therefore criticized for being ‘wide yet shallow’.⁷⁷ Moreover, it has been argued that transparency is presented as a ‘holistic medicine’ fit to remedy and improve several issues and critique that the EU endured over the years. According to this perspective, transparency has become an ‘end in itself’ to criticize institutions for not meeting its normative standards without acknowledging its possible deficiencies.⁷⁸ A much debated question is whether transparency increases the legitimacy of the EU. Focusing excessively on accountability and transparency may affect decision-making and performance in practice, decreasing efficiency and effectiveness. Consequently, transparency may have negative effects on social legitimacy.⁷⁹ The literary discussion about the limitations and ‘contours’ of the commitment to transparency in the EU therefore continues.⁸⁰

A worrying development in EU information-sharing practices is the growing preference for secrecy, causing information necessary to monitor the behavior of institutions to become inaccessible.⁸¹ This can be explained by tendencies of pragmatism and informality as well as internal administrative rulemaking.

Information is isolated to specific phases in decision-making processes or to specific actors, creating a power imbalance in who determines which actor can access information and when.⁸² These transparency shortfalls are not limited to

⁷⁶ibid.

⁷⁷ibid, p. 293.

⁷⁸ Curtin and Meijer (n17) p. 110; Mendes (n23) p. 7.

⁷⁹ Curtin and Meijer (n17) p. 119.

⁸⁰ C Bradley, ‘Transparency and Financial Regulation in the European Union: Crisis and Complexity’ (2012) 35 Fordham International Law Journal 1171 p. 1174.

⁸¹ Abazi (n21) pp. 32 – 34.

⁸² Abazi (n19) p. 26 – 29.

the expanding executive power of the EU but have a spillover effect in parliamentary oversight.⁸³

Executive secrecy creates an information asymmetry between the executive and the oversight institution. Meetings take place behind closed doors, and there is an increase of rulemaking on official secrets (European Union Classified Information), making access to sensitive information increasingly difficult.⁸⁴

In turn, parliamentary oversight over the executive power also increasingly occurs in secrecy.⁸⁵ This phenomena is known as ‘closed parliamentary oversight’, meaning that ‘both the manner in which the oversight is conducted, and the results of the oversight process are unavailable to the public’.⁸⁶ Access to information by the EP loses its value if MEPs are not able to share information, both with the public as well as intra-institutionally with other MEPs.⁸⁷ As a result, transparency is in essence circumvented.⁸⁸ While EU primary law provides for clear provisions to ensure democratic legitimacy, inter-institutional information asymmetries in practice hinder processes of parliamentary oversight and accountability.⁸⁹ Particularly alarming is that these information asymmetries not only occur in technical subject matters, but also in matters of democratic concern.⁹⁰

3.3 Transparency Standards for Parliamentary Oversight

Answering the first sub-question on which standard of inter-institutional transparency must be upheld for the European Parliament to fulfil its oversight role, the following conclusions can be drawn.

Despite its controversies and potential pitfalls, transparency nonetheless is an important prerequisite for parliamentary oversight and accountability that contributes to the reduction of the democratic deficit.⁹¹ While transparency itself does not include scrutiny or accountability per se, it demands the openness and

⁸³ Abazi (n21) p. 32.

⁸⁴ Abazi (n21) p. 32.

⁸⁵ *ibid*, pp. 43 – 45.

⁸⁶ *ibid*.

⁸⁷ Curtin (n19) p. 11.

⁸⁸ Abazi (n19) p. 139.

⁸⁹ Curtin (n19) p. 4; Abazi (n21) p. 39.

⁹⁰ *ibid*.

⁹¹ *ibid*, p. 120; Bradley (n80) p. 1173; Curtin and Hillebrandt (n1) p. 194.

flow of information between the institutions that is necessary for parliamentary oversight.⁹²

It is the mechanism that allows the public to oversee the processes and outcomes of decision-making by the EU institutes.⁹³ For the purpose of this thesis, inter-institutional transparency therefore is understood as provisions of information sharing that allow monitoring the processes and outcomes of the EU institutions.⁹⁴ In other words, in accordance with this principle, information about the Commission must be available to the EP to allow monitoring of its workings or performance.⁹⁵

The thesis employs three benchmarks to analyse the inter-institutional transparency in the Vaccines Strategy, namely the manner, the depth, and the width of information sharing.⁹⁶ The purpose of employing these benchmarks is to analyse whether transparency has increased or decreased in the Vaccines Strategy. These dimensions of transparency are measurable by answering the following questions. The manner of provision of information refers to how information has been shared. This can be classified as reactive, in response to a specific request, or proactive, where information is available regardless of whether access has been requested.⁹⁷ In the case of the Vaccines Strategy, the question is thus whether the Commission has taken initiative in providing information, or whether information was shared upon request by the EP.

The depth of transparency is measured by asking what type of information has been shared. Depth can occur ‘in existence’, meaning that information is available about the format of practices (e.g. the fact that a meeting took place). Depth can also take place ‘in substance’, meaning that information is available about the content of these practices (e.g. the availability of agendas or minutes).⁹⁸ Lastly, the width of information sharing asks with whom information has been shared. In other words, it measures the number of people that had access to

⁹² Bovens, Curtin and 't Hart (n33) p. 38.

⁹³ Curtin and Hillebrandt (n1) p. 194.

⁹⁴ Ibid (n1) p. 194.

⁹⁵ A Meijer, ‘Understanding the Complex Dynamics of Transparency’ (2013) 73 Public Administration Review 429 p 430; Curtin and Hillebrandt (n1) p. 194.

⁹⁶ Coremans, ‘From Access to Documents to Consumption of Information: The European Commission Transparency Policy for the TTIP Negotiations’ p. 31.

⁹⁷ *ibid*, p. 32.

⁹⁸ *ibid*, p. 31.

information and naturally increases if more institutional actors have the same access.⁹⁹

An increase of transparency can be concluded if information is shared proactively, ‘in substance’, with a widened audience. Conversely, reactive information sharing ‘in existence’, to a limited amount of people translates into a decrease of transparency.¹⁰⁰

Secrecy and confidentiality do not a priori constitute a breach of transparency. Yet, at a minimum, limitations to transparency should only be invoked if necessary, requiring justifications based on legitimate reasons.¹⁰¹ Accountability moreover necessitates that certain information should always be accessible. From an inter-institutional perspective, this means that the EP should be allowed to access information independently from the Commissions discretion. Reliance on the executive on whether information is accessible interferes with the parliament’s role as an oversight institution.¹⁰² Equally crucial is that the EP is able to perform its oversight function in public.¹⁰³ While certain information may need to remain secret, the outcomes of parliamentary oversight, as well as the existence of secrecy as such should be open to the public, in a timely manner. Openness of public oversight can foster public debates on how processes such as vaccine procurement should be handled in the future and can increase public trust and support.¹⁰⁴

This section has answered the first sub-question (which standard of inter-institutional transparency must be upheld for the European Parliament to fulfil its oversight role?). It is apparent that institutional transparency has a variety of legal, theoretical, and practical definitions. Several transparency ‘pitfalls’ have been identified, which have been taken into account when formulating an adequate standard of transparency. The definition and dimensions of transparency used to study information sharing regimes in the EU Vaccines

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*, p. 32.

¹⁰¹ Abazi and Adriaensen (n16) p. 2; Curtin (n19) p. 687.

¹⁰² Abazi (n21) pp. 36 – 37.

¹⁰³ *ibid.*, p. 33; Curtin (n19) p. 4.

¹⁰⁴ Abazi (n21) pp. 32, 38; See Hillebrandt (n2).

strategy are summarized below in Table 1. The following section will use these benchmarks to explore parliamentary oversight in practice.

Inter-institutional Transparency	Provisions of information sharing that allow monitoring the processes and outcomes of the EU institutions
Dimension of Transparency	Question
Manner of information sharing <ul style="list-style-type: none"> · <i>proactive</i> · <i>reactive</i> 	How has information been shared?
Depth of information sharing <ul style="list-style-type: none"> · <i>in substance</i> · <i>in existence</i> 	What type of information has been shared?
Width of information sharing	With whom has information been shared?

Table 1 Dimensions of Transparency – guiding benchmarks

4 INFORMATION-SHARING AND OVERSIGHT PRACTICES IN THE EU VACCINES STRATEGY

The following section examines how parliamentary oversight has taken place (and continues to take place) in the EU Vaccines Strategy, exploring the three transparency dimensions during the negotiation stage and after the conclusion of the APAs. Summarizing the information sharing regimes and tools of parliamentary oversight employed, it depicts how inter-institutional transparency has manifested in practice. Section 4.1 addresses the manner of provision of information, while section 4.2 discusses the depth and width of transparency in the EU Vaccines Strategy.

4.1 *Transparency: a Fundamental Pillar in the EU Vaccines Strategy?*

*‘Transparency is trust, and trust is key when it comes to vaccines’*¹⁰⁵

The Commission has recognized the importance of transparency during the COVID-19 pandemic and emphasized at the beginning of the Vaccine Strategy that ‘trust needs transparency’.¹⁰⁶ To foster information sharing and to increase parliamentary scrutiny of the EU’s vaccines strategy a contact group between the Commission and the EP was created.¹⁰⁷ Through this contact group several Commissioners engaged in discussions on the vaccine strategy with MEPs of three parliamentary Committees.

From March 2021 to March 2022, at least 23 meetings took place.¹⁰⁸

The EP has recently urged the commission to include the contact group in future vaccine negotiations to increase transparency, asking specifically for weekly

¹⁰⁵ European Parliament, ‘Debate on EU transparency in the development, purchase and distribution of COVID-19 vaccines 16 September 2021’ (2021) <https://www.europarl.europa.eu/doceo/document/CRE-9-2021-09-16-ITM-013_EN.html> accessed 29 August 2022, Statement by Member of the Commission, answering an oral question on behalf of Commissioner Kyriakides.

¹⁰⁶ European Commission (EC), ‘Speech by President von der Leyen at the European Parliament Plenary on the state of play of the EU’s COVID-19 Vaccination Strategy 10 January 2021’ (2021) <https://ec.europa.eu/commission/presscorner/detail/en/speech_21_505> accessed 29 August 2022.

¹⁰⁷ *ibid*; European Parliament (EP), *Conference of Presidents Minutes of the ordinary meeting of Thursday 11 February 2021 PV CPG 11.02.2021 PE-9/CPG/PV/2021-03* (2021).

¹⁰⁸ European Parliament Debate (n105); *Correspondence with European Parliament Transparency Unit 26 July 2022*.

information updates including a detailed study on the production, import, and export of vaccines.¹⁰⁹

Furthermore, on 10 March 2022 a special parliamentary committee was set up on ‘COVID-19 pandemic: lessons learned and recommendations for the future, its responsibilities, numerical strength and term of office’.¹¹⁰ The Committee is mandated to investigate the EU’s COVID-19 Vaccines Strategy. Specifically, its aim is to understand ‘how it was able to ensure the delivery of safe and effective vaccines, including the negotiation of Advanced Purchase Agreements and Joint Purchase Agreements, [and] the transparency and enforcement of contracts’.¹¹¹ The Committee will consist of 38 members who take office for 12 months and who shall produce a report with recommendations.¹¹² The Commission should contribute to a regular and direct flow of information with the chair of the special Committee.¹¹³

In addition to the contact group and parliamentary committee, the EP has made use of several oversight instruments in the hope to increase access to information and to fulfil its scrutiny task. A parliamentary resolution has been adopted, multiple parliamentary questions have been raised, and thus far two parliamentary debates have taken place. Moreover, alternative routes outside the ‘traditional’ oversight toolbox have been taken to widen parliamentary access to information.

§In response to the transparency controversies of the EU Vaccines Strategy, the EP has adopted a resolution on the transparency in the development, purchase and distribution of COVID-19 vaccines.¹¹⁴ The EP finds that due to the use of public funds, an essential prerequisite for citizens’ trust is the full transparency on the purchase and distribution of COVID-19 vaccines. Transparency is seen as a fundamental pillar within the EU Vaccines Strategy.¹¹⁵

This is based on the line of reasoning that a lack of transparency during the pandemic constitutes a breach of the citizens’ right to information. More

¹⁰⁹ European Parliament Resolution (n11) para 7.

¹¹⁰ European Parliament, *Decision of 10 March 2022 on setting up a special committee on COVID-19 pandemic: lessons learned and recommendations for the future 2022/2584(RSO)* (2022).

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ Framework Agreement 2010 (n51), III. (16).

¹¹⁴ European Parliament Resolution (n11).

¹¹⁵ *ibid.*, C.

specifically, uncertainty, disinformation and vaccine hesitancy and undermining of the overall action against the pandemic is feared.¹¹⁶ The EP has stressed the Commission's obligation to act as openly and closely as possible to the citizens and condemns the refusal to disclose the negotiation team.¹¹⁷ The Resolution asks the Commission to initiate a legislative proposal for future joint vaccine procurements that includes clear transparency provisions. It furthermore requests the Commission to review the terms of price confidentiality agreements, to disclose the members of the negotiation teams and the criteria based on which the team was selected.¹¹⁸ Furthermore, the EP asks for publications of non-redacted APAs and information on the price per vaccine dose and procurement strategies, which has not been released thus far.¹¹⁹ Pursuant to the Framework Agreement, it is expected that the Commission provides the requested information in writing.¹²⁰

The parliamentary questions that have been addressed to the Commission regarded inter alia the refusal of publishing unredacted contracts and the lack of parliamentary scrutiny.¹²¹ Recently, due to the controversies on the exchange of text-messages, the Commission was requested to provide its criteria and interpretation of Regulation 1049/2001.¹²²

The Commission was furthermore asked to explain the overall lack of inter-institutional transparency towards the EP.¹²³ In response, the Commission

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*, I.

¹¹⁸ European Parliament Resolution (n11) paras 5 – 6.

¹¹⁹ *ibid.*

¹²⁰ Framework Agreement (n51) Art. III. (16).

¹²¹ S. Rafaela, 'Openness and transparency in COVID-19 vaccine contracts Priority question for written answer P-005537/2021 13 December 2021'

<https://www.europarl.europa.eu/doceo/document/P-9-2021-005537_EN.html> accessed 29 August 2022.

¹²² Vice-President Jourová on behalf of the European Commission, 'Answer to Parliamentary question P-005139/2021(ASW) 18 January 2022'

<https://www.europarl.europa.eu/doceo/document/P-9-2021-005139-ASW_EN.html> accessed 29 August 2022.

¹²³ H. Laporte, 'Transparency of contracts between the EU and vaccine producers Question for written answer E-000925/2021 16 February 2021'

<https://www.europarl.europa.eu/doceo/document/E-9-2021-000925_EN.html> accessed 29 August 2022.

stated that vaccine manufacturers have a legitimate interest in marketing their product, which is why the APAs cannot be fully disclosed in accordance with Regulation 1049/2001. While the Commission stated that it may publish less-redacted APAs in the future, confidentiality will remain due to contractual obligations.¹²⁴

Moreover, two separate debates on EU transparency in the COVID-19 Vaccine Strategy have occurred ‘as part of its scrutiny of the Commission’s work programme and its execution’.¹²⁵ In these debates the EP has emphasized the uncertainty and misinformation caused by a lack of transparency, which complicated parliamentary oversight.¹²⁶ In the first debate, the Commission was asked to provide information on how the public funds have been used, and to provide details on the APAs, such as the price of the vaccines, and the negotiation strategies employed.¹²⁷ One MEP stressed the importance of transparency for accountability, stating that

‘Transparency is vital for public trust. In this age in which disinformation and propaganda is flooding social media, the only antidote is clear information and transparency.’¹²⁸

It was furthermore indicated that the MEPs have not been able to exercise its obligation to ensure democratic oversight over the EU budget used by the Commission to purchase vaccines.¹²⁹

In response, the Commission stressed the importance of transparency and referred to the APAs that have been published as well as the special contact group as examples of how transparency has been increased. The Commission

¹²⁴ Ms Kyriakides on behalf of the European Commission, ‘Answer to Parliamentary question E-000925/2021(ASW) 26 July 2021’ <https://www.europarl.europa.eu/doceo/document/E-9-2021-000925-ASW_EN.html> accessed 29 August 2022.

¹²⁵ , *E-Mail of the European Parliament’s Citizens’ Enquiries Unit, April 26 2022.*

¹²⁶ European Parliament Press Release (n17).

¹²⁷ European Parliament Debate (n105)

¹²⁸ *ibid*, Statement by MEP Petar Vitanov.

¹²⁹ European Parliament Debate (n105).

furthermore stated that, in the aftermath of the Vaccines Strategy, an ‘in-depth review’ will take place.¹³⁰

The second debate focused specifically on transparency and administrative standards regarding public access requests pursuant to Regulation 1049/2001.¹³¹ The dispute revolved primarily around the access to the text messages and interpretation of the transparency regulation. Once more, the main sentiment amongst the MEPs was that the EP has not been able to exercise parliamentary oversight on the negotiations of the APAs. While it was recognized that certain information cannot be disclosed, it was argued that there was a lack of justifications in line with EU law.¹³² In response, the Vice-President of the Commission referred to reforms of the Commission documents register, the legislative proposals on Regulation 1049/2001, and the ongoing self-monitoring of the Commission’s administration as a sign of transparency commitments. Furthermore, it was stated that the Commission proactively published the APAs and will respond to the Ombudsman’s recommendations on the text messages within due time.¹³³

Besides parliamentary questioning and debates, several MEPs furthermore initiated proceedings at the European Court of Justice. The MEPs request full access to information within the APAs on the price of the vaccines and the advance payments liabilities in response to the Commission’s decision to not provide access to information.¹³⁴

¹³⁰ *ibid.*

¹³¹ European Parliament, ‘Debate on Transparency and administrative standards - the treatment of public access requests based on Regulation (EC) No 1049/2001’ <https://www.europarl.europa.eu/doceo/document/CRE-9-2022-03-10-ITM-003_EN.html> accessed 29 August 2022.

¹³² European Parliament Debate (n131).

¹³³ *ibid.*

¹³⁴ A Holmgaard Mersh, ‘Health brief: Transparency in COVID contracts’ (27 April 2022) <<https://www.euractiv.com/section/health-consumers/news/health-brief-transparency-in-covid-contracts/>> accessed 29 August 2022; See The Greens, ‘Summary of the Application for annulment of 22 October 2021 in Case Auken and others v European Commission’ <http://extranet.greens-efa.eu/public/media/file/1/7312?link_id=1&can_id=311cfe77dbd653cc6b56a85f2a603bd4&source=email-vertraege-mit-impfstoffherstellernttransparenz-gruenenefa-fraktion-reicht-beim-eugh-klage-auf-recht-auf-zugang-zu-informationen-ein-zitat-von-jutta-paulus&email_referrer=email_1340192&email_subject=vertr_ge-mit-impfstoffherstellernttransparenz-gr_nenefa-fraktion-reicht-beim-eugh-klage-gegen-eu-kommission-ein-zitat-von-jutta-paulus&link_id=1&can_id=ec7e963a785ada937d4a0c8a54562b8e&email_referrer=email_1340230&email_subject=vaccine-contractstransparency-greensefa-group-submits-application-to-the-ecj-to-claim-right-to-access-to-information-by-the-eu-commission> accessed 29 August 2022.

4.2 *Reading Rooms, Redactions, and Record-Keeping Controversies*

The type of information that has been shared and the number of people that had access to this information has varied over the course of the EU Vaccines Strategy. During the negotiation stage, a few MEPs of the Committee on the Environment, Public Health and Food Safety (hereinafter ‘ENVI Committee’) were granted access to the agreements in a reading room. However, these selected MEPs were not allowed to scan, copy, or share information on the agreements.¹³⁵

In the same manner, a reading room was made available to other interested MEPs in January 2021 to scrutinize one redacted APA of the six APAs concluded at that point in time. By the end of the month, the Commission started publishing redacted versions of the remaining contracts in the interest of transparency and accountability.¹³⁶ In March, the Commission released the list of the seven Member States that were represented in the EU vaccine negotiation team (France, Germany, Italy, Poland, Spain, Sweden, and the Netherlands) after refusal to disclose any information due to EU data protection rules.¹³⁷

The Special COVID-19 Vaccines Contact Group (hereinafter ‘Contact Group’) that was created at the start of the EU Vaccines Strategy was co-chaired by three parliamentary committees. Different Commissioners would brief the chairmen of the ENVI Committee, the Committee on Industry, Research and Energy (hereinafter ‘ITRE Committee’), and the Committee on International Trade (hereinafter ‘INTA Committee’).¹³⁸

Minutes of the Contact Group meetings are not available, however the twenty-three agendas that were provided by the EP upon request show that information was shared on the most recent developments and ‘state of play’ of the vaccines rollout. Meetings further concerned i.a. information on research and development, production and export, and authorization of vaccines, as well as the

¹³⁵ European Parliament Debate (n104); European Parliament Press Release (n17).

¹³⁶ European Commission, ‘Vaccines: contract between European Commission and AstraZeneca now published’ (29 January 2021)
<https://ec.europa.eu/commission/presscorner/detail/en/ip_21_302> accessed 29 August 2022.

¹³⁷ European Ombudsman, *How the European Commission ensures transparency in relation to ‘advance purchase agreements’ negotiated with pharmaceutical companies for vaccines against COVID-19 Case 175/2021/DL*; European Commission, *Comments of the Commission on a suggestion for improvement from the European Ombudsman Complaint by MEP ref. 0175/2021/DL*.

¹³⁸ Correspondence EP Transparency Unit (n108).

communication strategy of the Commission, risk assessments, and lessons learned thus far. Each meeting moreover provided room for questions and answers.¹³⁹

While the Commission has emphasized the importance of transparency in the vaccine negotiations, illustrated in the Contact Group, it maintains nonetheless that not all information on the negotiation stage and within the contracts can be disclosed.¹⁴⁰ The main reasons for refusing to share information are the commercial interests and standard non-disclosure clauses in the APAs that protect legitimate interests of the companies. The Commission has argued that sensitive business information could not be disclosed as it would weaken the EU's negotiation position.¹⁴¹ The ten APAs now published on the Commission's website are subject to several redactions.¹⁴² To illustrate, it is estimated that approximately a quarter of the EU-CureVac agreement is redacted.¹⁴³ The cost of the vaccines, information on funding, Intellectual Property rights, liability rules remain redacted to the EP and the public.¹⁴⁴ In response to the question whether the Commission will release unredacted versions of the APAs ex post, the Commission stated that a full disclosure of the contracts to the public will remain impossible due to contractual obligations.¹⁴⁵

Moreover, controversy on the Commission President's text message exchange with the chief executive of Pfizer has sparked discussions on record-keeping standards.¹⁴⁶ The Commission has not provided access to the text-messages,

¹³⁹ *ibid*, A summary of 23 Draft Agendas provided by the EP Transparency Unit upon request, Minutes of the Contact Group were not available.

¹⁴⁰ Ms Kyriakides on behalf of the European Commission, 'Answer to Parliamentary question - P-005537/2021(ASW)' (29 March 2022) <https://www.europarl.europa.eu/doceo/document/P-9-2021-005537-ASW_EN.html> accessed 29 August 2022.

¹⁴¹ Sciacchitano and Bartolazzi (n11) p. 3; Hussman (n12) pp. 2 – 3; European Parliament Debate (n131).

¹⁴² European Commission, 'EU Vaccines Strategy' <https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/public-health/eu-vaccines-strategy_en> accessed 29 August 2022.

¹⁴³ International and World Health Organization Collaborating Centre for Governance (n12) p. 20, which shows that 24 % of the published version of the APA with CureVac has been redacted.

¹⁴⁴ See for instance European Commission, 'Advance Purchase Agreement ("APA") for the Production, Purchase and Supply of a COVID-19 Vaccine in the European Union' <https://ec.europa.eu/info/sites/default/files/apa_astrozeneca.pdf> accessed 29 August 2022, Clause 1.15.

¹⁴⁵ Parliamentary Question – Answered (n124).

¹⁴⁶ European Ombudsman Case (n14).

arguing that such documents are excluded from its record-keeping policy as they are ‘by nature a short-lived document which does not contain in principle important information concerning matters relating to the policies, activities and decisions of the Commission’.¹⁴⁷ Several MEPs however contend that text messages are subject to record-keeping, as they fall within the scope of Regulation 1049/2001 as a document. The regulation defines any content in written or electronic form on matters relating to such policies and activities within the institution’s sphere of responsibility as a document, and therefore includes text-messages according to the MEPs.¹⁴⁸

This section examined how information has been shared in the EU Vaccines Strategy, what type of information, and with whom. The findings are summarized below in Table 2. In total, four channels of information sharing were in place between the Commission and the EP, exchanging information regarding the overall vaccines production and rollout, as well as communication strategy. Inter-institutional information sharing and parliamentary oversight currently continues in the special COVI Committee. Several tools of parliamentary oversight have been used (primarily questions and debates) with the objective of gaining access to information that is presently unavailable. The following section will evaluate these results against the conceptual framework proposed in section 3.

Dimension of Transparency	Practice in Vaccines Strategy
Manner	Meetings of Special Contact Group

¹⁴⁷ Parliamentary Question – Answered (n122).

¹⁴⁸ See for instance S in 't Veld, ‘Von der Leyen’s text messages with the CEO of Pfizer: Commission violation of the Regulation on public access to documents Priority question for written answer P-005139/2021’ <https://www.europarl.europa.eu/doceo/document/P-9-2021-005139_EN.html> accessed 29 August 2022.

	<p>Reading room for APAs</p> <p>Special COVI Committee</p> <p>Parliamentary debates and questions</p>
Depth	<p>‘State of play’ of the vaccines rollout, information on R&D, production, export, and authorization of vaccines, communication strategy, risk assessments, lessons learned</p> <p>Missing information: cost of vaccines, funding, IP rights, liability rules, negotiating team</p>
Width	<p>Negotiation stage: few MEPs of the Committee on the Environment, Public Health, and Food Safety</p> <p>Special Contact Group: MEPs of ENVI Committee, ITRE Committee, INTA Committee</p>

Table 2 Transparency Practices in the EU Vaccines Strategy

5 INFORMATION SHARING AND OVERSIGHT IN THE EU VACCINES STRATEGY: CONFORMITY WITH TRANSPARENCY STANDARDS?

Based on the previous findings in section four on how inter-institutional transparency and parliamentary oversight occurred in practice throughout the Vaccines Strategy, the following section in turn examines these practices against the conceptual framework. The section first analyses the information sharing regimes and addresses whether the proposed transparency standard of section three has been fulfilled (section 5.1). The section then discusses the implications of the current transparency dimensions on the EP's oversight role in the Vaccines Strategy (section 5.2).

5.1 Shaping Transparency Dimensions in the EU Vaccines Strategy

The results of section four show a fluctuation between the different dimensions of inter-institutional transparency. In examining how the manner, width and depth of transparency took shape in the Vaccines Strategy, the following can be concluded.

The manner of provision can be largely classified as reactive in nature, with few examples of proactive steps towards transparency. Indeed, notwithstanding the abundance of redactions, the Commission first proactively published one APA on its official website, shortly followed by releasing all existing contracts. Other forms of information sharing, such as the special contact group, or responses to oversight tools, were however reactive.¹⁴⁹ Requests to parliamentary access on information concerning the Vaccines Strategy are furthermore rarely granted, illustrated by the continuing request for releasing the price of the vaccines and liability clauses.¹⁵⁰

The nonexistence of the minutes of the special contact group together with the in-camera oversight during the negotiation stage renders a comprehensive analysis of the depths of transparency challenging.

¹⁴⁹ Conference of Presidents Meeting (n107).

¹⁵⁰ See most recently European Parliament COVI Committee, 'Debate on the impact of the COVID-19 pandemic on democracy and fundamental rights with Vice-President and Commissioner for Values and Transparency, Vera Jourová' (21 June 2022) <https://multimedia.europarl.europa.eu/en/webstreaming/covi-committee-meeting_20220621-0945-COMMITTEE-COVI> accessed 29 August 2022.

However, the agendas of the Contact Group's meetings show that a wide range of topics were covered.¹⁵¹ This indicates a progress towards more in-depth contact between the Commission and the EP, sharing information in substance.¹⁵² The EP's specific request to continue this form of information sharing in future vaccine negotiations confirms that the contact group was a positive development for inter-institutional transparency in the vaccine strategy.¹⁵³

The number of people that were able to access information during the Vaccines strategy to the contrary did not benefit from a comparable increase. Particularly at the start of the vaccine strategy the width of transparency was rather narrow. As the negotiation stages progressed and APAs were concluded parliamentary access widened, although within the boundaries of the Commission's discretion. For example, access was granted to specific MEPs in reading rooms, while intra-institutional transparency with other MEPs was prevented.¹⁵⁴ Furthermore, an increase of transparency on the dimension of width has currently stagnated. To date, information on the price of the vaccines, as well as the liability clauses, remain inaccessible to the EP.

In answering the question of how, with whom, and what type of information has been shared between the institutions, the following conclusions can be drawn. At the level of manner and width inter-institutional transparency was primarily reactive and confined. From this perspective, transparency in the Vaccines Strategy has decreased, and does not fulfil the standard necessary for parliamentary oversight.¹⁵⁵ The information-sharing regimes that were established during the vaccine strategy on the other hand contributed to an increase of the depth of transparency.

¹⁵¹ Correspondence EP Transparency Unit (n108).

¹⁵² See Section 4.2.

¹⁵³ European Parliament Resolution (n11) para 7.

¹⁵⁴ See section 4.2.

¹⁵⁵ See section 3.3.

The Commission has furthermore stressed the importance of transparency and made several efforts to ensure institutional information sharing with the EP.

The EP has been informed on the negotiation process to a certain extent, primarily through the special contact group. Moreover, in terms of EU collaboration in times of emergency, the Vaccines Strategy can be seen as a successful and novel joint procurement scheme constructed within the boundaries of EU law.¹⁵⁶

However, a preference for secrecy can be observed, illustrated by the several redactions in the APAs, as well as in the narrow interpretation of transparency law, excluding parliamentary access to information. Certain information should always be accessible, independently from the Commission's discretion. Effective parliamentary oversight requires wider access, meaning that even in cases of justified confidentiality, at least the EP should have access to information and be able to share the outcome of parliamentary oversight within the institution as well as with the public.¹⁵⁷ The Commission thus far has remained with its point of view that it is fully committed to transparency and accountability, by publishing the redacted APAs and acting in accordance with Regulation 1049/2001, while further information cannot be disclosed to the EP.¹⁵⁸ The Commission confirmed that the redactions will remain, meaning that important information continues to be withheld from parliamentary scrutiny.¹⁵⁹ As the negotiation phase has passed and multiple APAs have been successfully concluded, it can be asked why inter-institutional transparency cannot be increased at this point in time.

Recent developments in the transparency debate between the Commission and the EP however may lead to more information sharing in the future. Of the three separate hearings with different Commissioners that have taken place to date, one hearing was largely dedicated to discussing the transparency issues of the Vaccines Strategy.¹⁶⁰ Institutional transparency could therefore still increase in the aftermath of the procurement process.

¹⁵⁶ Commission, 'Safe COVID-19 vaccines for Europeans'; Beetsma and others (n8) pp. 254 – 255.

¹⁵⁷ See sections 3.2 – 3.3.

¹⁵⁸ See most recently COVI Committee debate (n149).

¹⁵⁹ See Parliamentary Question (n105).

¹⁶⁰ COVI Committee debate (n158).

5.2 Implications of Inter-Institutional Transparency Shortfalls for Parliamentary Oversight

The findings of the previous sections indicate that inter-institutional information sharing between the Commission and the EP during the COVID-19 pandemic has interfered with the EP's oversight role. Overall, the Vaccines Strategy showcases how the power- and information asymmetries between the Commission and the EP complicate parliamentary oversight.¹⁶¹ In the procurement process the Commission and its negotiation team have a monopoly over certain information, rendering transparency even more crucial considering its democratic objectives.¹⁶² As previously discussed, parliamentary oversight on the Vaccine Strategy necessitates at least information on the strategies, topics and positions.¹⁶³ Ideally, the EP can access this information independently from the executive.¹⁶⁴ The analysis of the vaccine strategy in the previous section shows the opposite.

During the ongoing negotiations, the EP indeed was able to monitor the process to a certain extent. Oversight was possible through the special contact group, as well as for a limited number of MEPs who could examine the relevant documents. However, throughout the Vaccines Strategy, the EP has endured several obstacles in exercising its oversight role. The selected MEPs were not able to share the outcome of this process within the parliament, nor with the European citizens, rendering the access of information less valuable.¹⁶⁵ Without being able to publish the results of oversight to the public, nor with other members of the European Parliament, the Vaccines Strategy was subject to 'closed oversight' and reduced intra-institutional and inter-institutional transparency.¹⁶⁶ While the oversight process is shared with the public through parliamentary questions and recorded debate, its outcome showcases that oversight is largely unsatisfactory. The main focus of parliamentary oversight is

¹⁶¹ Abazi (n21) p. 39.

¹⁶² Curtin and Hillebrandt (n1), pp. 197 – 198.

¹⁶³ Abazi and Adriaensen (n16) p. 2.

¹⁶⁴ See section 3.5.

¹⁶⁵ Curtin (n23) p. 11.

¹⁶⁶ Abazi (n21) p. 33.

the lack of oversight and transparency instead of the substance of vaccine procurement.¹⁶⁷

Access to the redacted information in the concluded APAs regarding important clauses such as the price of the vaccines and contractual liability has to date not been granted.

Thus, although parliamentary oversight has been possible in the Vaccines Strategy, the transparency deficiencies between the institutions has prevented the EP from fully fulfilling its oversight role. This is illustrated by the continuous use of traditional and non-traditional oversight tools aimed at increasing parliamentary access to information. Certain MEPs have pursued access outside the ordinary parliamentary oversight instruments by bringing the matter before the Court of Justice. It is not unusual for MEPs to seek access to information through Regulation 1049/2001 and subsequently the Court in their individual capacity, which can be used as a means to shape transparency standards.¹⁶⁸ Furthermore, the parliamentary resolution is a clear call for adequate and efficient information sharing between the Commission and the EP on the Vaccines Strategy in order for the EP to exercise its role as an oversight institution, in particular with regards to the EU budget.¹⁶⁹ Although the Contact Group and COVI Committee can be seen as a method to address this criticism, the crucial aspect of public deliberation is still absent since the outcome of the oversight processes have not been shared with the public.

As stated previously, transparency can be limited, and in some cases must be limited, if legitimate justifications are provided. To argue opposite may well hinder institutional decision-making.¹⁷⁰ From the Commission's perspective, limitations are seen as necessary to diminish its negative effects on decision-making and to uphold contractual obligations. However, the prioritization of commercial concerns came at the cost of a loss of transparency and oversight.¹⁷¹ Each transparency controversy is explained by the same line of argumentation, based on commercial interests, non-disclosure clauses and

¹⁶⁷ Abazi (n19) p. 138.

¹⁶⁸ V Abazi and M Hillebrandt, 'The legal limits to confidential negotiations: Recent case law developments in Council transparency: Access Info Europe and In 't Veld' (2015) 52 *Common Market Law Review* 825 pp. 826, 845.

¹⁶⁹ European Parliament Resolution (n11) O.

¹⁷⁰ Curtin and Hillebrandt (n1) p. 191.

¹⁷¹ *Ibid* pp. 207 – 209.

sensitive business information, which raises the question on whether one ‘fit-for-all’ justification can be seen as sufficient.

The Commission’s preference for secrecy in the vaccine procurement process is not an isolated case but should be placed in a larger context of EU secrecy practices during times of crisis.¹⁷² With the development and constitutionalization of transparency, simultaneously a rise of transparency-avoiding practices can be observed within the institutions, who narrowly interpret the applicable legal frameworks. Besides the excessive number of redactions, this secrecy-practice is also illustrated by the Commission’ interpreting text messages with pharmaceutical companies regarding the conclusion of APAs as falling outside the scope of regulation 1049/2001. This is particularly concerning considering its weakening effect on parliamentary oversight and the democratic process of the EU.¹⁷³

In answering the question on how parliamentary oversight has been conducted over the procurement of COVID-19 vaccines, it is apparent that the secrecy surrounding the negotiation process of the APAs has complicated oversight processes. The previous analysis shows that the criticism on the lack of transparency and parliamentary oversight in the Vaccines Strategy is not completely unfounded. While the strategy has demonstrated the benefits of a common EU approach and has carved out a larger role for the EU in the field of public health, the procurement process also illustrates the difficulties in balancing secrecy and transparency, at the cost of parliamentary oversight. Table three below summarizes the analysis of inter-institutional transparency in the EU Vaccines Strategy.

Inter-institutional Transparency – provisions of information sharing that allow monitoring the processes and outcomes of the EU institutions

Transparency Dimension	Practice in the Vaccines Strategy	Impact on Inter-Institutional Transparency
-------------------------------	--	---

¹⁷² Abazi (n19), pp. 1 – 2.

¹⁷³ Bovens, Curtin and ’t Hart (n33) p. 191.

<p>Manner of Information sharing <i>How has information been shared?</i></p>	<p>Meetings of Special Contact Group Reading room for APAs Special COVI Committee Parliamentary debates and questions</p>	<p>Primarily reactive, with few proactive transparency commitments</p>
<p>Depth of Information Sharing <i>What type of Information has been shared?</i></p>	<p>‘State of play’ of the vaccines rollout, information on R&D, production, export, and authorization of vaccines, communication strategy, risk assessments, lessons learned Missing information: cost of vaccines, funding, IP rights, liability rules, negotiating team</p>	<p>Increase of in-depth information sharing through the contact group, both in substance and in existence</p>
<p>Width of Information Sharing <i>With whom has information been shared?</i></p>	<p>Negotiation stage: few MEPs of the Committee on the Environment, Public Health, and Food Safety Special Contact Group: MEPs of ENVI Committee, ITRE Committee, INTA Committee</p>	<p>Narrow, increased throughout the Vaccines Strategy, yet within the boundaries set by the Commission</p>

Table 3 Implications of the EU Vaccine Strategy on the Dimensions of Inter-Institutional Transparency

6 CONCLUSIONS

This thesis has explored how the principle of inter-institutional transparency has operated in practice between the Commission and the EP during the EU Vaccines Strategy. It explored the different dimensions of information sharing and its implications for parliamentary oversight in the EU joint procurement of COVID-19 vaccines. The aim of the thesis was to provide a deeper understanding of how inter-institutional transparency in times of a pandemic affected parliamentary oversight, in response to critique on a lack of transparency in the Vaccines Strategy.

The thesis first addressed the sub-question of what standard of inter-institutional transparency is required to ensure adequate parliamentary oversight in the EU. This discussion was preceded by an overview of the development of parliamentary oversight, its purpose, and necessary instruments. It was shown that inter-institutional transparency, in the shape of a democratic and normative standard to which the EU institutions must adhere to, is a *condicio sine qua non* for an open and accountable oversight process. Defined as provisions of information sharing for parliamentary oversight, the thesis identified three dimensions of inter-institutional transparency to measure its functioning in practice. For this purpose, the parliament necessitates independent access to information on the workings and performance of the Commission during the procurement process, including information on the negotiation strategies, topics and positions. The thesis has further argued that although secrecy and confidentiality can be necessary for effective decision-making, it must be ensured that the existence of secrecy and the outcomes of parliamentary oversight are transparent.

The second sub-question concerned how the dimensions of inter-institutional transparency and parliamentary oversight manifested in practice. Several channels of information sharing were identified. Furthermore, it was shown that throughout the start of the Vaccines Strategy a selected number of people had access to information.

Transparency was evaded *inter alia* by redacting documents and preventing access to information on the negotiation team, price of the vaccines, as well as on the contractual liability clauses. In addition to the conventional oversight tools such as parliamentary questions, debates, as well as a resolution and special committee, a few MEPs addressed this lack of transparency by means of Regulation 1049/2001 and the Court of Justice.

Based on these findings, in response to the main research question: *'How has the EU Vaccines Strategy shaped the principle of inter-institutional transparency between the European Commission and the European Parliament, and has this affected European Parliamentary Oversight?'* the following can be concluded. The information sharing on the EU Vaccines Strategy did not fulfill the requirements of the principle of transparency, from both an inter-institutional, as well as intra-institutional perspective. The thesis demonstrated that transparency was mostly reactive and lacked in width, while the depth of information sharing increased to a certain extent. In turn, this has negatively affected European Parliamentary oversight, which has taken place behind closed doors. The majority of the discussions on the Vaccines Strategy has revolved around this lack of transparency and oversight, instead of addressing the substantial content of the negotiations and conclusions of the APAs. The Vaccines Strategy has thereby impaired the role of the EP as an oversight institution and is not fully in conformity with the democratic spirit of EU transparency law.¹⁷⁴

The recent creation of the COVI Committee however indicates a desire for more transparency in the EU Vaccines Strategy and will hopefully provide lessons for future vaccine procurements. However, the Vaccines Strategy provides another example of the ever-returning transparency issues in times of crises, and underlines once more the importance of open information regimes and parliamentary oversight for the democratic legitimization of the EU executives.

¹⁷⁴ Wyatt (n20) p. 836; Mendes (n23) p. 18; Curtin and Hillebrandt (n1) p. 202.

Bibliography

Books

Abazi V, *Official secrets and oversight in the EU: law and practices of classified information* (Oxford University Press 2019)

Akbik A, *The European Parliament as an Accountability Forum* (Cambridge University Press 2022)

Birkinshaw P, *Freedom of information : the law, the practice, and the ideal* (4th ed. edn, Cambridge University Press 2010)

Bovens M, Curtin D and 't Hart P, *The Real World of EU Accountability: What Deficit?* (Bovens M ed, 1st edn edn, Oxford University Press 2010)

Busuioc M, *European Agencies: Law and Practices of Accountability* (Oxford University Press 2013)

Craig P and De Búrca G, *EU Law Text, Cases and Materials* (6th revised edition edn, Oxford University Press 2015)

Curtin D and Hillebrandt M, *Transparency in the EU: constitutional overtones, institutional dynamics and the escape hatch of secrecy in Research Handbook on EU Institutional Law* (Lazowski A and Blockmans S eds, Edward Elgar Publishing 2016)

Poptcheva E, 'Parliamentary Oversight: Challenges Facing Classic Scrutiny Instruments and the Emergence of New Forms of 'Steering' Scrutiny' in Costa O (ed), *The European Parliament in times of EU crisis - Dynamics and Transformations* (Palgrave Macmillan 2019)

Journal Articles

'The European Union's vaccine-acquisition strategy' (2021) 27 Strategic Comments

Abazi V and Adriaensen J, 'EU Institutional Politics of Secrecy and Transparency in Foreign Affairs' (2017) 5 Politics and Governance 1

Abazi V and Hillebrandt M, 'The legal limits to confidential negotiations: Recent case law developments in Council transparency: Access Info Europe and In 't Veld' (2015) 52 Common Market Law Review 825

Alemanno A, 'Unpacking the principle of openness in EU law: transparency, participation and democracy' (2014) 39 European Law Review

Becker E and Gehring T, 'Explaining EU integration dynamics in the wake of COVID-19: a domain of application approach' 2022 *Journal of European Public Policy* 1

Beetsma R and others, 'Public support for European cooperation in the procurement, stockpiling and distribution of medicines' (2021) 31 *The European Journal of Public Health* 253

Bovens M, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13 *European Law Journal* 447

—, 'Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism' (2010) 33 *West European Politics* 946

Bradley C, 'Transparency and Financial Regulation in the European Union: Crisis and Complexity' (2012) 35 *Fordham International Law Journal* 1171

Coremans E, 'From Access to Documents to Consumption of Information: The European Commission Transparency Policy for the TTIP Negotiations' (2017) 5 *Politics and Governance* 29

—, 'Opening up by closing off: how increased transparency triggers informalisation in EU decision-making' (2020) 27 *Journal of European Public Policy* 590

Curtin D, 'Overseeing Secrets in the EU: A Democratic Perspective' (2014) 52 *JCMS* 684

Curtin D and Meijer A, 'Does transparency strengthen legitimacy?' (2006) 11 *Information Polity* 109

Dias Simoes, F, 'The European Parliament's Oversight Powers over Trade and Investment Negotiations' (2017) 2 *European Investment Law and Arbitration Review* 335

Egeberg M, Gornitzka A and Trondal J, 'A Not So Technocratic Executive? Everyday Interaction between the European Parliament and the Commission' (2014) 37 *West European Politics* 1

Forman R and Mossialos E, 'The EU Response to COVID-19: From Reactive Policies to Strategic Decision-Making' (2021) *JCMS*

Hillebrandt M, 'EU Transparency as 'Documents': Still Fit for Purpose?' (2021) 9 *Politics and Governance* 292

Lindstedt C and Naurin D, 'Transparency Is Not Enough: Making Transparency Effective in Reducing Corruption' (2010) 31 *International Political Science Review* 301

Meijer A, 'Understanding the Complex Dynamics of Transparency' (2013) 73 *Public Administration Review* 429

Mendes J, 'The Principle of Transparency and Access to Documents in the EU: for what, for whom, and of what?' (2020) 4 *University of Luxembourg Law Working Paper Series*

Popa MF, 'Negotiating our health: The EU Public Policies on COVID-19 Vaccination and the Astra Zenica Advance Purchase Agreement' [2021] *Challenges of the Knowledge Society* 453

Proksch SO and Slapin JB, 'Parliamentary questions and oversight in the European Union' (2010) 50 *European Journal of Political Research*

Purnhagen K and others, 'More Competences than You Knew? The Web of Health Competence for European Union Action in Response to the COVID-19 Outbreak' 11 *European Journal of Risk Regulation*

Rosén G and Stie AE, 'Not Worth the Net Worth? The Democratic Dilemmas of Privileged Access to Information' (2017) 5 *Politics and Governance* 51

Sciacchitano S and Bartolazzi A, 'Transparency in Negotiation of European Union With Big Pharma on COVID-19 Vaccines' (2021) 9 *Frontiers in Public Health* 1

Taekema S, 'Theoretical and Normative Frameworks for Legal Research: Putting Theory into Practice' (2018) 8 *Law and Method* 1

van Gestel R and Micklitz HW, 'Why Methods Matter in European Legal Scholarship' (2014) 20 *European Law Journal* 292

Wyatt D, 'Is the Commission a "lawmaker"? On the right of initiative, institutional transparency and public participation in decision-making: ClientEarth' (2019) 56 *Common Market Law Review* 825

Hillebrandt M, 'The big lesson after ten years of EU transparency reforms? You will never get it right' (*Open Government in the EU*, 14 Januari 2020) <<https://www.eu-opengovernment.eu/?p=1064>> accessed 4 April 2022

Treaties, Directives, Regulations

Consolidated version of the Treaty on European Union [2012] OJ C326/13

Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2016] OJ 326/49

Council Regulation (EU) 2020/521 of 14 April 2020 activating the emergency support under Regulation (EU) 2016/369, and amending its provisions taking into account the COVID-19 outbreak OJ L 117

Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union OJ L 70

European Union, Charter of Fundamental Rights of the European Union (2000/C 364/01) OJ C 364/3

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents OJ L 145 , 31/05/2001

Case Law

Case C-658/11 European Parliament v Council of the European Union ECLI:EU:C:2014:2025

Case T-194/94, Carvel and Guardian Newspapers v. Council ECR II-2765

Case T-14/98, Hautala v. Council ECR 2001 I-09565

Ombudsman E, How the European Commission ensures transparency in relation to 'advance purchase agreements' negotiated with pharmaceutical companies for vaccines against COVID-19 Case 175/2021/DL

—, *The European Commission and transparency in the context of the EU response to the COVID-19 crisis' Case SI/4/2020/PL (2021)*

—, *The European Commission's refusal of public access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company on the purchase of a COVID-19 vaccine Case 1316/2021/MIG (2021)*

Inter-institutional Agreements

Commission tEPatE, *Framework Agreement on relations between the European Parliament and the European Commission of 20 November 2010 OJ L 304 (2010)*

Commission Communications, Decisions

(EC) EC, *Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank EU Strategy for COVID-19 vaccines OM/2020/245 final*. (17 June 2020)

—, *Annex to Decision approving the agreement with Member States on procuring Covid-19 vaccines on behalf of the Member States and related procedures final C(2020) 4192* (18 June 2020)

Commission E, *Comments of the Commission on a suggestion for improvement from the European Ombudsman Complaint by MEP ref. 0175/2021/DL*

European Parliament Decisions, Resolutions

(EP) EP, *Conference of Presidents Minutes of the ordinary meeting of Thursday 11 February 2021 PV CPG 11.02.2021 PE-9/CPG/PV/2021-03* (2021)

Parliament E, *Resolution 2021/2678 of 21 October 2021 on EU Transparency in the development, purchase and distribution of COVID-19 vaccines* (2021)

—, *Decision of 10 March 2022 on setting up a special committee on COVID-19 pandemic: lessons learned and recommendations for the future 2022/2584(RSO)* (2022)

European Parliament Questions

Commission MKobotE, ‘Answer to Parliamentary question E-000925/2021(ASW) 26 July 2021’
<https://www.europarl.europa.eu/doceo/document/E-9-2021-000925-ASW_EN.html> accessed 29 August 2022

—, ‘Answer to Parliamentary question - P-005537/2021(ASW)’ (29 March 2022)
<https://www.europarl.europa.eu/doceo/document/P-9-2021-005537-ASW_EN.html> accessed 29 August 2022

Commission V-PJobotE, ‘Answer to Parliamentary question P-005139/2021(ASW) 18 January 2022’
<https://www.europarl.europa.eu/doceo/document/P-9-2021-005139-ASW_EN.html> accessed 29 August 2022

in ’t Veld S, ‘Von der Leyen’s text messages with the CEO of Pfizer: Commission violation of the Regulation on public access to documents Priority question for written answer P-005139/2021’
<https://www.europarl.europa.eu/doceo/document/P-9-2021-005139_EN.html> accessed 29 August 2022

Laporte H, ‘Transparency of contracts between the EU and vaccine producers Question for written answer E-000925/2021 16 February 2021’

<https://www.europarl.europa.eu/doceo/document/E-9-2021-000925_EN.html>
accessed 29 August 2022

Rafaela S, 'Openness and transparency in COVID-19 vaccine contracts Priority question for written answer P-005537/2021 13 December 2021'

<https://www.europarl.europa.eu/doceo/document/P-9-2021-005537_EN.html>
accessed 29 August 2022

Online Sources

Hussman K, 'Global access to Covid-19 vaccines: Lifting the veil of opacity' U4 Anti-Corruption Resource Centre

<<https://reliefweb.int/sites/reliefweb.int/files/resources/lifting-the-veil-of-opacity-in-covid-19-vaccines-to-combat-the-pandemic.pdf>> accessed 29 August 2022

Deutsch J and Wheaton S, 'How Europe fell behind on vaccines' *Politico Europe* (Brussels)

International T and World Health Organization Collaborating Centre for Governance A, and Transparency in the Pharmaceutical Sector, *For Whose Benefit? Transparency in the development and procurement of COVID-19 vaccines* (2021)

(EC) EC, 'Speech by President von der Leyen at the European Parliament Plenary on the state of play of the EU's COVID-19 Vaccination Strategy 10 January 2021' (2021)

<https://ec.europa.eu/commission/presscorner/detail/en/speech_21_505>
accessed 29 August 2022

Commission E, 'Advance Purchase Agreement ("APA") for the Production, Purchase and Supply of a COVID-19 Vaccine in the European Union'
<https://ec.europa.eu/info/sites/default/files/apa_astrazeneca.pdf> accessed 29 August 2022

—, 'EU Vaccines Strategy'

<https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/public-health/eu-vaccines-strategy_en> accessed 29 August 2022

—, 'Vaccines: contract between European Commission and AstraZeneca now published' (29 January 2021)

<https://ec.europa.eu/commission/presscorner/detail/en/ip_21_302> accessed 29 August 2022

—, 'Safe COVID-19 vaccines for Europeans' (2022)

<https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans_en> accessed 29 August 2022

Committee EPC, ‘Debate on the impact of the COVID-19 pandemic on democracy and fundamental rights with Vice-President and Commissioner for Values and Transparency, Vera Jourová’ (21 June 2022)
<https://multimedia.europarl.europa.eu/en/webstreaming/covi-committee-meeting_20220621-0945-COMMITTEE-COVI> accessed 29 August 2022

Deutsch J and Wheaton S, ‘How Europe fell behind on vaccines’ (2021)
<<https://www.politico.eu/article/europe-coronavirus-vaccine-struggle-pfizer-biontech-astrazeneca/>> accessed 29 August 2022

Greens T, ‘Summary of the Application for annulment of 22 October 2021 in Case Auken and others v European Commission’
<http://extranet.greens-efa.eu/public/media/file/1/7312?link_id=1&can_id=311cf e77dbd653cc6b56a85f2a603bd4&source=email-vertraege-mit-impfstoffherstellernttransparenz-gruenenefa-fraktion-reicht-beim-eugh-klage-auf-recht-auf-zugang-zu-informationen-ein-zitat-von-jutta-paulus&email_referrer=email_1340192&email_subject=vertr_ge-mit-impfstoffherstellernttransparenz-gr_nenefa-fraktion-reicht-beim-eugh-klage-gegen-eu-kommission-ein-zitat-von-jutta-paulus&link_id=1&can_id=ec7e963a785ada937d4a0c8a54562b8e&email_referrer=email_1340230&email_subject=vaccine-contractstransparency-greensefa-group-submits-application-to-the-ecj-to-claim-right-to-access-to-information-by-the-eu-commission> accessed 29 August 2022

Holmgaard Mersh A, ‘Health brief: Transparency in COVID contracts’ (27 April 2022)
<<https://www.euractiv.com/section/health-consumers/news/health-brief-transparency-in-covid-contracts/>> accessed 29 August 2022

Parliament E, ‘Debate on Transparency and administrative standards - the treatment of public access requests based on Regulation (EC) No 1049/2001’
<https://www.europarl.europa.eu/doceo/document/CRE-9-2022-03-10-ITM-003_EN.html> accessed 29 August 2022

—, ‘COVID-19 vaccines: MEPs call for more clarity and transparency’ (2021)
<<https://www.europarl.europa.eu/news/nl/press-room/20210111IPR95308/covid-19-vaccines-meps-call-for-more-clarity-and-transparency>> accessed 29 August 2022

—, ‘Debate on EU transparency in the development, purchase and distribution of COVID-19 vaccines 16 September 2021’ (2021)
<https://www.europarl.europa.eu/doceo/document/CRE-9-2021-09-16-ITM-013_EN.html> accessed 29 August 2022

Other

Correspondence with European Parliament Transparency Unit 26 July 2022

Correspondence with MEP 2, 21 July 2022, 8 August 2022

E-Mail of the European Parliament's Citizens' Enquiries Unit, April 26 2022

E-Mails from MEP 1 assistant, 29 April 2022 - 5 May 2022