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# The political origins of transparency reform: insights from the Italian case

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## Abstract

This research contributes to the expanding literature on the determinants of government transparency. It uncovers the dynamics of transparency in the Italian case, which shows an interesting reform trajectory: until the late 1980s no transparency provisions existed; since then, provisions have dramatically increased under the impulse of changing patterns of political competition. The analysis of the Italian case highlights that electoral uncertainty for incumbents is a double-edged sword for institutional reform: on the one hand, it incentivizes the adoption of ever-growing transparency provisions; on the other, it jeopardizes the implementation capacity of public agencies by leading to severe administrative burdens.

**Keywords:** procedural transparency; freedom of information; website publication; open data; open government; disclosure

## Introduction

In recent years governments have committed to operating in the open, under the scrutiny of citizens and stakeholders, through reforms mandating the disclosure of information. These reforms are motivated by arguments that transparency is ‘the key to better governance’, that is a means for achieving a wide array of objectives, from improving financial performance to preventing corruption and fostering greater trust in government (Hood and Heald, 2006).

Government transparency refers to the extent to which external actors are able to regularly access information that allows them to understand what is going on in government (Meijer, 2013). It is shaped by two factors: the first is the degree to which external actors have access to relevant information that allows them to monitor their government; the second factor relates to the extent to which the accessible information triggers the effects that are promised by open government reforms (Porumbescu *et al.*, 2017: 991).

An expanding line of enquiry has begun to focus on the second factor and it has questioned the extent to which transparency is actually capable of achieving the goals that the conventional wisdom associates to it. In general, this strand of research has shown that the effects of transparency are often limited and differ according to a number of factors such as policy domain, type of information, and citizen characteristics (de Fine Licht *et al.*, 2014; Grimmelikhuijsen and Kasymova, 2015; Porumbescu *et al.*, 2017).

With regard to the first factor, research on the determinants of transparency is part of a broad literature that has linked political competition with the adoption of institutional reforms like independent judiciaries (Ginsburg, 2003; Epperly, 2013), campaign finance regulation (Grzymala-Busse, 2003), and civil service reform (Ting *et al.*, 2012). This literature has sought to explain the

circumstances under which political actors will commit to such reforms that increase their accountability and limit their discretion over state resources, particularly in contexts that are prone to widespread corruption.

The competitiveness of the political system reflects the extent to which incumbents face uncertainty over future control by themselves or their allies, which in turn enhances the attractiveness of institutional reforms, including the adoption of transparency laws (Berliner, 2014). Other studies, however, have found the opposite effect and they link political competition to a lower likelihood of institutional reforms (Meyer-Sahling, 2004; O'Dwyer, 2006).

This paper contributes to the broader study of political competition as a source of incentives to undertake transparency reforms. It extends arguments on the role of political competition to a new empirical context, Italy, in the period 1986–2016. As an unfavorable context with widespread corruption, Italy is an important case since it has displayed a remarkable ‘transparency shift’ in the light of its tradition of government secrecy. Since 1986, a number of transparency provisions have been introduced, and this sequence of initiatives culminated in the launch of a major reform in 2016, aiming to implement freedom of information (FOI). Italy has also experienced a major realignment of the party system over the same period, which greatly enhanced political competitiveness. It is thus a case well suited for intensive investigation of the link between patterns of political competition and transparency reform.

To preview our main findings, our research shows that political uncertainty has facilitated the adoption of transparency reforms as signals of credible commitment to public integrity in a context marked by the increasing politicization of corruption. Political uncertainty made effective pressures from civil society organizations which played a controversial role: on the one hand, they succeeded in maintaining transparency politically salient; on the other, they called for ever increasing legal obligations which are hardly sustainable in the light of the capacity shortage affecting most of Italian public bodies.

The paper is organized as follows. We provide more details on the different types of incentives for incumbents to undertake transparency reforms in the next section. Then, we present in detail the contextual features that make the Italian case noteworthy in comparative perspective. The subsequent empirical section tracks the evolution of transparency laws in the period under examination. In the conclusive sections, we first measure the strength of transparency laws before discussing the implications of our finding for research on the determinants of disclosure.

### ***The role of political competition in transparency reforms***

Transparency makes it more difficult for political actors to benefit from the exclusive control of government information. It makes it more likely for corruption to be exposed as well as creating new rights of access to information that can hardly be revoked in the future. These features make political actors reluctant to commit to disclosure. However, a new strand of literature has underlined that political competition can create conditions in which political actors not only see potential costs but also benefits from the launch of transparency reforms (Berliner and Erlich, 2015; Berliner, 2017). Drawing on this strand of literature, we argue that there are three different explanatory mechanisms for why incumbents adopt transparency reforms: signaling, monitoring, and insurance.

*Signaling* is activated by electoral responsiveness: more competitive elections increase the incentives for incumbents to be responsive to voters’ concerns over the lack of integrity in public offices. Transparency reform is a signal of credible commitment to public integrity directed to voters, to restore public confidence in the wake of scandals, or in response to a general erosion of trust in government (Schnell, 2017).

*Monitoring* is activated by the fragmentation of multiparty coalition governments: in cabinets composed of several parties, coalition partners manage interparty delegation problems by employing a variety of control devices (Thies, 2001). Transparency can be a control device built

into coalition arrangements since it can help partners to make more credible bargains with each other, knowing that formal avenues of bottom-up “fire-alarm” monitoring are available (Michener, 2015a). This kind of monitoring can be a less costly and sometimes more effective complement or even substitute for top-down “police-patrol” oversight like the appointment of junior ministers from different parties (McCubbins and Schwartz, 1984).

*Insurance* is activated by the vulnerability of incumbents: political actors who anticipate they may soon be out of power can institutionalize transparency, in order to guarantee their own future access to information should they lose power. Further, if incumbents expect that they may soon lose power, there is a strong incentive to put on the shoulders of political opponents the burden of exposure associated to disclosure of information (Berliner, 2014).

All the three explanatory mechanisms (signaling, monitoring, and insurance) work best in contexts with substantial political competition. As highlighted by Schnell (2017), disentangling which mechanism better fits a specific context requires a more-detailed look at the process of policy adoption and evolution in a country. Process tracing of transparency reform sequences is needed to track the role played by the intervening factors that have been identified by previous research on the link between political competition and institutional reforms.

In particular, previous studies have highlighted that insurance is activated only when incumbent turnover is certain (Schuster, 2018); intra-elite monitoring is more likely when the leaders of multiparty coalitions have stronger control of the parliamentary agenda (Michener, 2015a); incentives for accessing information via monitoring and insurance are higher when decision makers expect that transparency reforms will be properly implemented by public bureaucracies (Schnell, 2017); reforms intended as ‘cheap signals’ in countries affected by a capacity gap in implementing transparency can turn into effective disclosure if political attention to transparency keeps a high-agenda status for a long time, leading to consistent pressures for more effective implementation and for strengthening legislation (Schnell, 2017); the posture of key actors (leaders, the media, and advocacy groups) contributes to keep political attention high (Michener, 2017).

To sum up, political competition is a fundamental explanatory variable. Yet, the interaction between contextual features (i.e. agenda status of transparency reform and capacity to implement it, legacy of previous reforms) and empirical patterns of political competition (i.e. more or less fragmented coalition governments, more or less vulnerable incumbents) triggers different types of uncertainty for incumbents that are associated to different explanatory mechanisms.

Transparency reforms are thus immersed in temporal sequences for which multiple factors intersect over time, meaning that they are well suited to be investigated by employing a historical institutionalist take to policy change. This approach has already been applied to transparency by recent comparative analyses (Hillebrandt et al., 2014; Ruijter and Meijer, 2016). For the purposes of this paper, we adopt the ‘process sequencing’ variant of historical institutionalism.

Within the historical institutionalist framework, scholars often consider two dominant types of sequences. The first type emphasizes self-reinforcement of unidirectional trajectories following an initial conjuncture (Pierson, 2004). The second type involves the study of ‘reactive sequences’ (Mahoney, 2000) that do not necessarily reproduce given institutional patterns. These sequences are reactive in the sense each event within the sequence is linked to temporally antecedent events through feedback effects that either reinforce or reverse policy trajectories. Reactive sequences appear to be much more common than self-reinforcing ones, suggesting an approach such as that of ‘process sequencing’ (Howlett, 2009). The dynamic understanding of temporal ordering among events in a sequence makes this approach best suited for addressing the following research question: how political competition interacts with institutional systems to influence not only the adoption of transparency reforms but also their evolution (Schnell, 2017).

## Research design

The state of the art of research on the determinants of government transparency points toward case study research, which opens the way for more in-depth exploratory theorizing (George and Bennett, 2005). Case studies are needed to identify which explanatory mechanism matches the observed policy dynamics best by taking into account not only the adoption of transparency provisions but also their evolution over time (Schnell, 2017).

Italy is a good case for investigating the three explanatory mechanisms activated by political competition. Over the last three decades, it has adopted a spate of transparency reforms. During this period, it has experienced both high levels of perceived corruption and substantial political competition. In this context, opposition parties had the strongest incentive to make the lack of transparency a political agenda item as revealed by the success of the anti-establishment Five Star Movement in the 2013 general elections (Bagnenholm and Charron, 2014), thus increasing pressures for ‘signaling’ commitment to transparency reform.

Concerning pressures for ‘insurance’, they have been increasing since 1992 when wholesale alternation in government occurred for the first time in the history of the Italian Republic. Since then, the affirmation of a bipolar pattern of political competition has made wholesale alternation in government a normal expectation and also a highly frequent occurrence (Chiaromonte, 2010). The affirmation of bipolar patterns of political competition has not, however, reduced the fragmentation of governing coalitions.

Italian governments have always faced coalitions problems (Cotta, 1988) and this feature has been reproduced in the post-1992 period. The persistent fragmentation of multiparty coalitions has kept pressures for intraelite monitoring high as revealed by the reproduction of the appointment of vice-ministers and junior ministers. It remains to be seen whether this ‘police-patrol’ oversight tool has been complemented by transparency as a ‘fire-alarm’ monitoring device in the period under investigation. Since the advent of the bipolar system the executive’s control of the parliamentary agenda has significantly increased (Vassallo, 2007), and this should have lowered the costs of passing transparency reforms as intra-coalitional monitoring devices (Michener, 2015a).

It has also been argued that the extent to which a country is governed by majoritarian or consensual executive politics will shape general approaches to transparency in terms of focus toward proactive or reactive disclosure of information: adversarialism, typical of majoritarian systems, tends to emphasize reactive disclosure, a request-based form of transparency that is used by opposition parties and excluded interests to ‘leverage’ against the excesses of a partisan monopoly of government; conversely, in countries where consensus patterns prevail, transparency supports information sharing among elites and proactive publication facilitates monitoring as intra-coalitional scrutiny of policy and behavior (Michener, 2017).

The ‘unstable new mix’ between consensual and majoritarian features (Morlino, 2013), generated by the emergence of bipolarity in a context of enduring fragmentation in the post-1992 period, makes the Italian case particularly intriguing to investigate whether the focus of transparency has tended more toward proactive publication or reactive disclosure. This paper thus follows the evolution of both reactive and proactive forms of disclosure in Italy over a span of three decades (1986–2016). In doing so, it fills a gap in the literature which has so far omitted to analyze the trajectory of different forms of transparency within a single system. With regard to the comparative literature, there has been substantial research on the political drivers of reactive transparency (Berliner, 2014, 2017; Michener, 2015; Schnell, 2017), while proactive publication has been under-investigated (Worthy, 2015). As for previous research on transparency in Italy, it has focused only on proactive publication (Cucciniello and Nasi, 2014; Cacciatore *et al.*, 2017; Worthy, 2017).

The following empirical analysis of the evolution of provisions regarding reactive and proactive forms of transparency is based on the findings of a research carried out between March

2014 and July 2016, which relies on statutory and regulatory sources, secondary literature and 20 semi-structured interviews. Ten respondents were selected, respectively, for reactive and proactive forms of transparency. Interviews were conducted face-to-face in Rome with experts knowledgeable about the specific forms of transparency under investigation. Experts hail from a variety of background, from activists advocating transparency reform, to political leaders, senior civil servants, law professors, and policy advisors working in the bodies responsible for implementing transparency in Italy. The questionnaire included three themes corresponding to the three sets of factors (patterns of political competition, institutional system, and posture of key actors) included in our research framework. In order to maintain their anonymity, in the empirical section interviewees are identified only by their position.

Drawing on the expanding literature on the political determinants of transparency, in the next section we examine the adoption patterns of formal provisions, which is a long way from *de facto* disclosure. In the analysis of the Italian reform sequence we take into account patterns of *de facto* disclosure insofar as they influence the adopters' expectation about compliance with transparency provisions as well as fueling pressures for stronger laws from opposition parties, media, and activists (Schnell, 2017). *De facto* disclosure is thus understood as an intervening factor that triggers feedback effects in the reactive sequence of formal provisions under examination.

In the subsequent section we assess the strength of transparency legislation, which constitutes the outcome of the reform sequence under investigation. Drawing on Michener (2015b), we assess the strength of *de jure* transparency by including in our measurement four dimensions of access to information as follows: *scope*, meaning the range of bodies that are required to disclose information; *restrictions* on information disclosure, meaning the set of exceptions and refusals that limit access to the extent of any conflict with values and interests protected by the law; *oversight on compliance* with transparency provisions, which include the requirement for public authorities to appoint a dedicated official responsible for the implementation of transparency obligations as well as a system in place where citizens can lodge appeals to an independent oversight body endowed with far reaching powers; *simplicity of procedures*, which is enhanced when the law mandates the introduction of centralized, searchable portals enabling citizens to file requests and/or look for published information.

### The evolution of transparency provisions (1986–2016)

Patterns of competitive interaction between Italian parties have evolved from a stable situation to increased competitiveness in the period under examination. The emergence of 'anti-system' parties after the Second World War, namely the communist party and the neo-fascist party, triggered a pattern of tripolar centrifugal competition (Sartori, 1976). Due to their ideological polarization, anti-system parties were permanently excluded from government to the advantage of the dominant party within the system, the Christian Democracy (DC), occupying the center and constituting an indispensable partner for the formation of any coalition government since 1948.

Low political competitiveness entailed the lack of responsibility of the DC and its governing partners, which cemented their power via the colonization of the State, generating spending deficit, widespread corruption and high popular dissatisfaction due to the poor performance of public services. Eventually, massive anticorruption investigations provided the spark for popular dissatisfaction to brought about major political change in the early 1990s, when the party system collapsed and the old governing class was displaced from office (Bull and Rhodes, 1997).

The evolution of patterns of political competition from 1986 onwards can be divided into three periods:

- 1) 1986–95: New parties and movements emerged, challenging established parties since the early 1980s as revealed by the heavy losses suffered by the DC in the 1983 general elections. New parties and movements contested the electoral system, which was reformed after popular referendum held in 1991 and 1993 shifting from proportional representation to a mixed-system, with a strong majoritarian system. In combination with anticorruption investigations, the adoption of the new electoral system accelerated the collapse of the old parties, which occurred in 1992, in the context of a major fiscal crisis. The latter was faced by technical governments, which filled the void of party leadership until the general elections of April 1996.
- 2) 1996–2011: The emergence of pre-electoral coalitions among newly governing parties consolidated a bipolar pattern of political competition, characterized by frequent wholesale alternation in government between center-left (enjoying power in the periods 1996–2001 and 2006–08) and center-right coalitions (enjoying power in the periods 2001–06 and 2008–01).
- 3) 2011–16: The outburst of the sovereign debt crisis in the Euro area triggered the crisis of bipolar patterns of competition, since the new episode of fiscal crisis was faced by a grand coalition, supporting a technical government from late 2011 to early 2013 (Bull and Pasquino, 2018). The general elections held in February 2013 were marked by the success of a new anti-establishment party (Five Star Movement), leading to a hung Parliament. After 2 months, political stalemate was eventually overcome: first, by forming another grand-coalition government; later, by appointing the young center-left leader Matteo Renzi so as to meet the demand for generational change.

In the next three paragraphs we track the sequence of changes of transparency provisions that have been triggered by changing patterns of political competition in each period, focusing on the central level of government.

### **1986–95**

Up until the early 1980s, transparency did not feature on the government agenda. The principle of transparency was not introduced in the Italian Constitution of 1948. Conversely, law 3/1957 regulating public employment enshrined secrecy as a principle of administrative action and a duty of civil servants (Savino, 2010). The emphasis on secrecy was coherent with the Napoleonic administrative tradition that the new Italian democracy had inherited from the fascist regime. This tradition is characterized by formal accountability patterns, meaning that the main elements for control are legal instrumentalities since citizens are not conceived as customers of services holding decision makers to account (Peters, 2008).

Secrecy has also been reinforced by patterns of political competition, since the DC and its minor coalition partners exploited their permanent monopoly of power to colonize public bodies by means of patronage. The appointment of administrative elites loyal to the governing parties kept government information undisclosed to the public while making it ‘available’ to the stakeholders willing to provide incumbents with support (Di Palma, 1979). The entrenchment of consensual patterns made incumbents devoted to secrecy as a shield for shady deals, reproducing their power as ‘gatekeepers’ to the intricacies of how public resources are distributed between coalition partners (Interview, Administrative Law Professor, Rome 22 May 2014).

Yet, pervasive clientelism undermined the performance of bureaucracies fueling public dissatisfaction as revealed by the 1983 general elections, when the DC suffered serious losses. This made incumbents aware that they might have been out of power after almost four decades of undisputed dominance. Political uncertainty made transparency appealing for incumbents, leading to the introduction of two provisions regarding reactive disclosure of information at the central level of government.

The first provision (Law 349/1986) introduced transparency in the environmental protection sector. It was activated by incentives for ‘signaling’ as the governing parties aimed at winning

support of newly emerging green movements. Pressure on governing parties increased after the Chernobyl nuclear disaster of early 1986, which triggered a mass media campaign for environmental transparency. This call was addressed by Law 349/1986 introducing FOI exclusively for the environmental sector.

Yet, this measure did not contribute to revert public negative attitude toward the governing parties as highlighted by the steady increase of local authorities governed by opposition parties and new movements. The latter campaigned for decentralization and local government reform with a view to undermine the monopoly of power held by DC and its allies at the central level of government. The increase of political uncertainty made incumbents aware that they were destined to lose power activating the ‘insurance’ mechanism. It triggered the introduction of two varieties of reactive transparency at different levels of government: whereas unrestricted FOI was introduced at the local level of government (Law 142/1990), disclosure was made contingent on being party in an administrative procedure at the central level (Law 241/1990).

The perception that massive political and institutional change, disrupting the relationship between parties, supporting stakeholders, and bureaucracies, was imminent at the local level made FOI an attractive insurance mechanism against the complete loss of power. In the case of central government, the loss of power was expected to be less acute, given the institutionalization of the relationship between bureaucracies and interested parties supporting the DC and its allies, which had been running government since 1948. This led the incumbents to dismiss the proposal to introduce FOI at the center, as recommended by a commission of experts, led by Law Professor Mario Nigro, which had been entrusted with the task of drafting legislation, deeming it ‘too forward’ (Interview, State Attorney and former member of the Commission for Access to Administrative Documents, Rome 4 May 2015). Rather, reactive disclosure to the parties involved in an administrative procedure was finally enacted as it was congenial to the DC’s need for insurance against loss of power: it excluded from government information the public at large, while making information available for those interested parties that had been connected to the governing coalitions for decades. Basically, restricted reactive disclosure was understood as a mechanism replacing the gate-keeping role of political parties (Interview, Administrative Law Professor, Rome 22 May 2014).

Given the high level of political turmoil generated by the rise of new political parties and the collapse of the old one, in the period 1992–96 governments were short-lived and mostly composed of technocrats lacking political incentives for transparency reform. Rather than introducing new forms of transparency, these governments issued secondary legislation disciplining the implementation of Law 241/1990 (Regulation 352/1992) while mandating the introduction of Public Relations Offices as points of contact between administrations and citizens that were supposed to receive requests to access information (Legislative Decree 29/1993).

### **1996–2011**

The frequent wholesale alternation in government between multiparty coalitions did not lead to the introduction of transparency provisions in the period 1996–2008. Two features of political competition kept the salience of political incentives for reform low. First, tension between the judiciary and the political class has grown around the figure of Silvio Berlusconi, the undisputed leader of the center-right coalition, facing several corruption charges. The result has been the harsh polarization of conflict between the coalitions alternating in government, while the center-right coalition focused on the need to reform a judiciary that was deemed too politicized and too powerful, the center-left coalition displayed a greater concern for legality, focusing its anti-corruption approach on the repression side. The latter was made noticeable by media coverage focused on the criminal aspects of corruption. Consequently, corruption prevention was downgraded to a minor issue in electoral campaigns, which have been dominated by the debate on the reform of judiciary and public administration from 1996 onwards (Della Porta and Vannucci, 2007). This kept the incentives for the ‘signaling’ mechanism at a minimum.

Second, the two pre-electoral coalitions constituted fragmented gatherings, in which new political actors coexisted with political personnel inherited from the old parties that had run the country in the period 1948–92. The fragmentation and the instability of the party system led to the reproduction of ‘police patrol oversight’ by vice- and junior ministers as the key monitoring device. The general uncertainty shortened the time horizons of incumbents, encouraging them to resort to the device inherited from the old regime as the readily accessible tool for monitoring. The general uncertainty of the party system also kept incentives for ‘insurance’ low since exit from office has not been perceived as certain. This discouraged incumbents from introducing provisions that would have constrained them if they had succeeded in coming back to power.

Given the lack of incentives for transparency reform, political leaders were rather attentive to the risks associated to reactive disclosure in a context where patronage and state capture remained widespread (Di Mascio, 2014). Law 15/2005 was introduced to make the notion of ‘interested party’ more restrictive, stating that only subjects with a legal qualified interest in an administrative decision (implying that their interest is actual, concrete, and direct), were entitled to file a request for access to information (Interview, Administrative Law Professor, Rome 18 June 2015). It was also explicitly stated that no right to generally monitor the workings of public bodies was granted by Law 241/1990.

In the period 2008–11 incentives for ‘signaling’ became intense as revealed by the consolidation of the Five Star Movement imposing its agenda and rallying cries on transparency (Tronconi, 2018). The Berlusconi IV cabinet reacted to the pressures by media and movements by introducing a measure regarding proactive disclosure of information on institutional websites (Legislative Decree 150/2009). This measure was designed as a signal of credible commitment to public management reform in response to a general erosion of trust in public institutions. Incumbents were interested exclusively in reputational benefits yielded by transparency reforms as a symbolic action motivated by the need to reassure and to appear to act, and stakeholders were in fact not engaged in the selection of information to be published. As a result, public bodies were obliged to publish data that people did not consider to be most useful (Cucciniello and Nasi, 2014). The disregard of informational benefits resulting from ‘monitoring’ and ‘insurance’ was further highlighted by the adoption of the decree of the President of the Council of Ministers 143/2011. This provision curbed reactive disclosure as it protected the confidentiality of most documents recorded by the Prime Minister Office.

Proactive publication was privileged by the government as it could establish the boundaries of transparency, keeping undisclosed information concerning political representatives and decision-making processes that carry high costs for incumbents. Popular dissatisfaction with government performance has been addressed by launching a campaign against public employees in response to media concerns regarding low performance of government. To restore public confidence, this campaign targeted public employees as secure slackers hindering the productivity of the public sector (Interview, Policy advisor under Berlusconi IV government, Ministry for Public Administration, Rome 9 May 2014). As part of this campaign, proactive publication disclosed information concerning administration of resources, including the salaries of senior officials, and performance evaluation of public workforce.

### **2012–16**

In the context of the fiscal crisis undermining the legitimacy of political parties that had been running government since 1996, corruption scandals encouraged media to call for a new anti-corruption strategy focused not only on repression but also on prevention, with transparency regarded as the best of disinfectants. This call was joined by the Five Star Movement, which kept transparency and corruption as key topics of its broader approach to unmediated popular sovereignty via the implementation of digital tools for direct democracy (Manucci and Amsler, 2018).



These pressures influenced the agenda of the Monti government in the run-up to the general elections that were to be held in early 2013. The launch of a new personal party (*Scelta Civica*) by the Prime Minister activated the ‘signaling’ mechanisms since Monti committed to disclose information in the attempt to gain support of constituencies interested in the issues of corruption and transparency. Transparency provisions were focused on the proactive release of information to address the Five Star Movement’s call to exploit digitalization for the purpose of accountability. The emphasis on proactive disclosure implied the introduction of a national framework for the release of data sets held by public administrations in re-usable forms (Law Decree 179/2012). Further, a major anticorruption package was approved in late 2012, providing for a new set of requirements for publication of corruption-sensitive data on procurement as well as empowering the government to compile existing legal obligations into a code dedicated to proactive transparency (Law 190/2012).

Codification was needed to streamline obligations, which were dispersed among different sets of provisions generating uncertainty about the publication of information on institutional websites (Cacciatore *et al.*, 2017). Yet, the demand for streamlining requirements was overlooked by the Monti government as it was interested exclusively in gaining reputational benefits. Given the call for ever increasing obligations by media and Five Star Movement, simplification of proactive transparency would have been interpreted by constituencies as a signal of not credible commitment. Therefore, incumbents multiplied formal obligations, which were finally gathered within Legislative Decree 33/2013. This provision was finalized just before the elections in order to maximize its electoral impact and it provided for the unprecedented publication of information on political representatives, including income and asset declarations, that had been long advocated by media and activists (Interview, Policy advisor under the Monti Government, Ministry for Public Administration, Rome 29 April 2014).

With regard to informational benefits resulting from ‘monitoring’ and ‘insurance’, they were disregarded in light of the failure of public management reforms like performance management, better regulation, and digitalization. Successive waves of these reforms had been launched since early 1990s with no successful implementation, and their failure implied the lack of meaningful information on performance and procedures to be released complemented by limited digitalization to speed up record management. Negative experience with public management reforms brought discredit on the prospects of compliance with transparency provisions. Chances of effective implementation of transparency provisions were deemed as unlikely by incumbents because the weaknesses of organizational and technical prerequisites for effective disclosure were destined to be exacerbated by spending cuts enacted in reaction to fiscal stress.

At the 2013 general elections, Monti was not able to win large support from the public and the Five Star Movement became the third pole in a context marked by high political uncertainty. After 2 months of political stalemate, a government led by Enrico Letta, a member of the center-left Democratic Party, was formed as an unwieldy left-right coalition, which disbanded after less than one year, paving the way for the advent of a center-left government led by the new leader of the Democratic Party, Matteo Renzi. Yet, political uncertainty remained high given the precarious majority supporting the Renzi government in Parliament. In a context marked by a further round of major corruption scandals, political uncertainty activated the ‘signaling’ mechanism as the new government committed to transparency in the attempt to erode the Five Star Movement’s electoral base.

After its appointment, the new government took promptly measures concerning proactive disclosure: Law Decree 66/2014 mandated the publication of rough data on transactions and payments in a re-usable form; Law Decree 90/2014 extended proactive transparency to independent regulatory authorities as well as imposing sanctions on those officials who do not comply with the most salient obligations. Then, the Renzi government launched a major reform of transparency in the context of a broader modernization of the public sector envisaged by Law 124/2015. This provision empowered the government to revise Legislative Decree 33/2013 in

accordance with two goals: first, to revise the framework for proactive disclosure to simplify legal obligations as well as extending their application to state-owned enterprises; second, to introduce FOI as unrestricted form of reactive disclosure (Interview, Policy advisor under Renzi Government, Ministry for Public Administration, Rome 18 March 2016).

The inclusion of FOI in the government agenda represented a major turn in the historical trajectory of transparency in Italy. It was driven by the consolidation of a network of movements, *FOIA 4 Italy*, which had been campaigning for the introduction of the right to information since 2012. This network voiced the dissatisfaction of media and activists about the evolution of transparency provisions, in which legal obligations for proactive disclosure set by government had not gone hand in hand with citizens' preferences. In 2013, it conducted the first monitoring study testing reactive disclosure of information held by government. The overall outcome of this study revealed that requesting information via the channel introduced by Law 241/1990 was a very ineffective approach for citizens, civil society organizations, and media professionals, as they all experienced the wall of mute refusal of their requests (Diritto di Sapere, 2013).

Based on the evidence gathered through this monitoring, movements urged the government to set up a more effective legal framework. This call was joined by major newspapers and it was finally addressed by the Renzi government, which adopted Legislative Decree 97/2016 providing for FOI. This provision was enacted in the late spring of 2016 after a major campaign of media and activists, who complained about severe weaknesses in a preliminary draft that had been approved by the Council of Ministers in the early 2016. This draft highlighted the search for reputational benefits to be gained by incumbents through the adoption of a weak framework for the right to information.

Pressures from media and activists led to an unprecedented dialogue between government and civil society. This dialogue generated a number of key improvements that were adopted by the government to send a signal of credible commitment: the elimination of mute refusals of the requests of access, thus requiring government to provide motivations behind refusals; the provision of fast and cheap non-judicial remedies; and the inclusion of operational guidelines issued by the *National Anticorruption Authority* (ANAC) to ensure homogeneous implementation of the new rules across public bodies (Interview, Open government activist, Rome 10 June 2016).

Finally, both activists and the Five Star Movement expressed concerns about reform proposals regarding the streamlining of legal obligations for proactive disclosure and the postponement of their entry into force. These proposals were meant to support the implementation of legal obligations by reducing administrative burdens imposed on public bodies as well as providing them with the time needed to build up capacity for effective disclosure. Yet, these proposals were opposed by activists and opposition parties as measures trying to hide corrupt dealings.

As a reaction to these pressures, the Renzi government sent a signal of commitment to transparency and anticorruption by keeping unaltered the principle of immediate application of legal obligations for proactive disclosure. Credible commitment was also shown by introducing further obligations, including the publication of asset and income declarations by senior civil servants, as well as imposing sanctions on a wider range of officials who do not comply with legal obligations (Interview, Policy advisor under Renzi Government, Ministry for Public Administration, Rome 11 July 2016).

### The strength of transparency laws

The evolution of transparency provisions in Italy is most consistent with the 'signaling' explanation. As shown by Table 1, incentives for insurance waned after the party system realignment of the early 1990s whereas there is no sign that transparency laws were adopted as a monitoring mechanism by the incumbents.

**Table 1.** The evolution of transparency laws in Italy (1986–2016)

Period	Patterns of political competition	Transparency advocates	Political incentives for reform	Provisions for reactive disclosure	Provisions for proactive disclosure
1986–95	End of the monopoly of power of multiparty coalitions dominated by the DC	Green Movements; movements calling for a renewal of the party system	Signaling Insurance	Environmental transparency (Law 349/1986) Introduction of access to information restricted to interested parties in an administrative procedure (Law 241/1990)	No provision
1996–2011	Frequent wholesale alternation in government between multiparty coalitions; polarization of competition on the repressive approach to anticorruption	Media focusing on low performance of public employees; rise of the Five Star Movement	Signaling	Procedural transparency made more restrictive (Law 15/2005); introduction of limits to the access of Prime Minister Office documents (DPCM 143/2011)	Introduction of disclosure on the performance of public bodies (Legislative Decree 150/2009)
2012–16	Crisis of bipolarism	Consolidation of the Five Star Movement; consolidation of a network of movements calling for the introduction of freedom of information	Signaling	Introduction of the Freedom of information (Legislative Decree 97/2016)	Introduction of disclosure of data sets in a reusable form (Law Decree 179/2012); revision of website publication (Legislative Decree 33/2013); release of information on expenditures in a reusable form (Law Decree 66/2014); more powers entrusted to the ANAC (Law Decree 90/2014); revision of website publication (Legislative Decree 97/2016)

DC = Christian Democracy; ANAC = National Anticorruption Authority.

A major feature of the formal framework generated by the reform sequence is the fragmentation of the varieties of transparency, which have been introduced and transformed over time as disjoint sets of obligations. By postponing the introduction of the right to information until 2016, the activation of the signaling mechanism stimulated a peculiar sequencing of varieties of disclosure. In those systems marked by the early introduction of FOI, requirements for active disclosure have been introduced later to ensure the publication of the most frequently requested information. Conversely, the late introduction of FOI in Italy has implied that the demand for transparency has been anticipated by multiplying active disclosure requirements just to gain reputational benefits, well beyond a minimum set of standards for publication. As a result, Italy features a burdensome level of proactive disclosure across public administrations. Standardization of active disclosure also generated an ‘awareness gap’, since the government mandated for the release of ever increasing amount of data on institutional websites to address the call for more transparency without being aware of what information had been requested by users.

In terms of *scope*, the strength of transparency laws has been always high for reactive disclosure while it has increased over time with regard to proactive disclosure. Organizations that enjoy wide autonomy from political leaders, like independent regulatory authorities and state-owned companies, have been in fact subject to obligations for proactive disclosure in the period 2014–16. This extension constituted a reaction to concerns regarding widespread patronage and corruption practices that had shed light on the persistent influence of incumbents over their workings.

With regard to *restrictions* on transparency, the strength of laws regulating reactive disclosure has been low until 2016 when the requirement to provide reasons for requests was scrapped by the Renzi government, thus enabling not only interested parties but also citizens to access information. However, significant restrictions are still in place with the aim of protecting privacy as a right to be balanced against transparency. It is worth noticing that governments have not struck a clear balance between transparency and privacy so far as revealed by the existence of two separate and conflicting regulations – one on transparency and the other on privacy. Furthermore, transparency laws have entrusted the Italian Data Protection Authority with binding powers to assess whether any form of disclosure would harm privacy.

This choice has not only placed significant restrictions on effective disclosure but it has also further complicated the fragmentation of the *oversight on compliance*. The data protection authority has to accommodate tensions with three different transparency authorities reflecting the fragmentation of forms of disclosure: the *Commission for Access to Administrative Documents* (CADA), introduced by Law 241/1990 to oversee the implementation of access to information by ‘interested parties’; the ANAC, introduced by Legislative Decree 150/2009 and restructured later by Law 190/2012, Law Decree 90/2014 and Legislative Decree 97/2016, which is responsible for the oversight on proactive disclosure of information on institutional websites; the *Agency for Digital Italy* (AGID) entrusted by Law Decree 179/2012 with the task of overseeing the proactive release of datasets in a reusable form.

These specialized authorities are complimentary to the ordinary review of decisions by administrative courts. The latter fits the legalism that is typical of the Napoleonic tradition and it makes transparency an enforceable right: if a public authority does not comply with a legal obligation to publish information or it refuses a request for access to information, a citizen can challenge the decision before a judge. However, the costs and time-consumption of the judicial review implies a strong disincentive to challenge administrative decisions as well as posing the risk of administrative courts’ overload.

To address the shortcomings of the ordinary review by judges, transparency laws provide for a complimentary role not only by specialized authorities but also by internal remedies. Each public administration has been required to appoint a senior civil servants acting as ‘Responsible for Transparency’. According to Legislative Decree 33/2013, whenever a legal obligation for

publication is disregarded by a public administration, citizens can file a request for publication addressed to the Responsible for Transparency. Further, Legislative Decree 97/2016 introduced the right to lodge an appeal to the Responsible for Transparency within the public authority that failed to comply with the legislation on the right to information.

Requesters can challenge a decision by the Responsible for Transparency only with reference to proactive disclosure. As already mentioned above, external appeals are lodged with the ANAC whose members are appointed in a manner that is protected by political interference. Further, the ANAC enjoys financial independence and it is entrusted with powers to perform effectively the oversight function. It can rely on a network of independent evaluation bodies that are appointed in each public body to assess the progress of proactive disclosure on institutional websites against the standards set by law. ANAC can also inspect the premises of public authorities before imposing sanctions on those bodies which do not comply with legislation on proactive disclosure.

External *ad hoc* review is also provided for reactive disclosure to requests submitted by interested parties. Law 241/1990 does not provide for internal review but it allows requesters to lodge an appeal with the CADA, a collegial body located within the Prime Minister Office. The strength of review by the CADA is curbed not only by the lack of independence from incumbents but also by the advisory nature of its opinions that are not backed by sanctions. With regard to FOI, Legislative Decree 97/2016 does not provide for external review, meaning that unjustified denials of requests are not sanctioned. This also implies that the ANAC is tasked to issue guidelines for the implementation of the legal framework on the right to information but it lacks a key precondition for the enactment of this regulatory function: the case by case review that permits any oversight body to elaborate standards that may harmonize implementation across public bodies.

Whereas the ANAC plays no role in the review process concerning FOI, the Data Protection Authority provides advice to the Responsible for Transparency, acting like the body for internal review, whenever appeals against refusals are supposed to generate privacy breaches harmful to subjects other than the requester. The Data Protection Authority is also empowered to sanction privacy breaches that are generated by proactive disclosure of data sets in reusable forms. The publication of reusable datasets is also undermined by the weak arrangements for oversight since the specialized authority, the AGID, has not been entrusted with monitoring and sanctioning powers.

Conversely, proactive disclosure of information in reusable forms enjoys the highest level of *simplicity of procedures* thanks to the introduction of a central portal managed by the AGID, gathering data sets as well as enabling users to file requests for the release of further data sets. As for publication of data categories on institutional websites, it suffers from a high level of fragmentation. Legislative Decree 97/2016 has introduced only the principle of publication on thematic portals of data that public administration have been obliged so far to disclose on their institutional website, without providing for a governance structure ensuring that government-wide standards, data exchange requirements, and data reporting requirements are met and implemented.

However, the highest complexity of procedures is exhibited by reactive disclosure. The government has not committed to the creation of a consolidated portal, which allows for online submission and tracking of requests. Further, each administration enjoys autonomy in relation to the identification of the offices receiving requests as well as to the publication of details about the location of these offices.

All in all, the complexity of procedures interacts with the fragmentation of the oversight bodies and it generates disproportionate burdens for public authorities. The latter are forced to set up multiple offices in order to implement different legal obligations regulating the release of the same information in multiple forms. Complexity and fragmentation of channels for submitting requests and appeals also impairs the exercise of the right to information, as it makes difficult for citizens to be aware about the intricacies of legal requirements lacking any coherence.

## Discussion and conclusions

Over the past three decades, Italian governments have introduced and redefined a legal framework to facilitate access to information starting from a situation of no transparency provisions before 1986. The outcome of the reform sequence is reported in Table 2, providing a relatively simple representation of the strength of transparency legislation in Italy.

In a context marked by the persistent fragmentation of multiparty coalitions, the focus of transparency laws has tended more toward proactive disclosure as revealed by the late introduction of the right to information in 2016 with weak arrangements for the oversight on compliance with provisions regulating request-based transparency. This finding is consistent with the expectation that consensual systems, where information-sharing occurs only between elites to smooth the process of bargaining (Peters, 2006: 1087), strive to grant citizens right to request any information that might be of public interest.

However, our intensive analysis of the Italian reform sequence highlights that, contrary to the hypothesis suggested by Michener (2017), the focus on proactive disclosure has not supported the ‘transparency as monitoring’ paradigm. Rather than introducing transparency as a new tool for ‘fire-alarm’ monitoring, incumbents privileged the use of a well-established ‘police-patrol’ monitoring device like the appointment of vice- and junior-ministers to keep tabs on coalition partners in a volatile context.

The instability of the party system in the post-1992 period also discouraged incumbents from expecting informational benefits yielded by the introduction of transparency as an ‘insurance’ mechanism against loss of power. This finding is consistent with the account provided by Schuster (2018), arguing that the exit from office incentivizes reform as insurance only when it is perceived as certain by incumbents. The comparison between the pre- and post-1992 periods confirms this prediction: reform as insurance was introduced by the DC and its allies when they were bound to lose power in the early 1990s; insurance was disregarded by cabinets in the context of electoral volatility that made incumbent turnover uncertain in the post-1992 period.

The finding that political uncertainty was not associated to transparency reforms yielding informational benefits in terms of ‘insurance’ and ‘monitoring’ makes the Italian case noteworthy in the context of the current debate on the link between political competition and institutional reforms that constrain incumbents’ discretion over state resources. Our finding provides

**Table 2.** The strength of transparency laws in Italy (2016)

Dimension	Reactive disclosure	Proactive disclosure
Scope	Wide	Wide after the expansion of obligations to independent regulatory authorities and state-owned companies in the period 2014–16
Restrictions	Repeal of the duty to provide reasons for requests in 2016; conflict between transparency and privacy regulations	Conflict between transparency and privacy regulations
Oversight	Ordinary review by administrative courts; interested parties in an administrative procedure can lodge an appeal with the Commission for Access to Administrative Documents; Citizens can lodge an appeal with the Responsible for Transparency in each public authority; no sanctioning powers for transparency authorities; external review and sanctioning powers for privacy breaches	Ordinary review by administrative courts; internal review by responsables for Transparency and external review by the ANAC for violations of legal obligations regarding publication on institutional websites; sanctioning powers entrusted to the ANAC; no monitoring and sanctioning powers entrusted to the AGID
Simplicity of procedures	No portals for online submission and tracking of requests; each authority enjoys autonomy in the identification of the offices receiving requests	Only data sets in a reusable form are published on a centralized portal; lack of a governance structure implementing thematic portals for disclosure of data categories

ANAC = National Anticorruption Authority; AGID = Agency for Digital Italy.

empirical support for the strand of research highlighting that incumbents resist reforms that constrain discretion over state resources when political competition is characterized by polarization and unstable fragmentation (Meyer-Sahling, 2004; O'Dwyer, 2006). In such a context, the uncertainty about the future incentivizes short-term thinking focused on patronage practices that provide incumbents with immediate advantage in the attempt to withstand a volatile environment.

The Italian case is also noteworthy since it highlights the implications for institutional reforms of politicization of corruption, an electoral strategy that has been increasing over time in most European countries in the last few decades (Bagenholm and Charron, 2014). The campaigns of outsider actors, fighting against the corrupt system with the intent of 'cleaning up' politics, has been particularly attractive in Italy as revealed by the success of the Five Star Movement. These campaigns provided incentives for launching transparency reforms as signals of credible commitment to integrity by incumbents who determined the expediency of forms of disclosure. Under increasing pressure of influences from outside, political leaders have met the integrity-driven demand by reinforcing publication on institutional websites while keeping reactive disclosure restricted to interested parties until 2016. This enabled political leaders to claim credit for a more politically convenient reform such as proactive disclosure, which keeps secret the information that is not available on websites. Eventually, the demand for FOI has become too urgent to be avoided. However, the lack of *ad hoc* review, monitoring and sanctioning powers for FOI complemented by the regulatory role entrusted to the data protection authority is an indicator of the persistent reluctance to adopt a fully fledged right to information.

Thus, the increasing politicization of corruption has forced incumbents to send ever strengthening signals of commitment to unrestricted disclosure. This finding is consistent with previous research conducted by Schnell (2017) that highlighted how the introduction of weak provisions for transparency as 'cheap signals' of commitment made them hard to reverse and increased pressure for more expensive signals. However, we did not find that the focus of signals has shifted from formal obligations to effective compliance in the last stages of the reform sequence. Quite unexpectedly, our analysis highlights that the arrested development of transparency was generated by the pressures from civil society organizations, which generally contribute in a range of ways to the success of transparency laws (Puddephatt, 2009). Italian civil society organizations contributed to maintaining transparency reform on the agenda but they also made proposals for simplification an attack target. By allowing the governments to claim credit for the introduction of ever increasing legal obligations, civil society organizations let the fragmentation of transparency grow and public bodies now have to divide their scarce resources among multiple forms of disclosure.

Finally, our analysis revealed that incumbents were the only actors concerned with administrative capacity as a key prerequisite for compliance with transparency provisions. We found that the implementation gap of administrative reforms (digitalization, performance management, better regulation, customer services) has collided with transparency reform in the late stages of the sequence under examination. The implementation gap of administrative reform made incumbents aware that no informational benefits could be expected in a context where the capacity gap affecting public bodies made compliance with transparency provisions unlikely.

Whereas civil society organizations have understood transparency as an isolated legal framework, incumbents have conceived 'transparency in the path of administrative reform' (Piotrowski, 2007) by taking into account the implications of administrative reforms for the capacity to disclose information. This finding heightens sensitivity to the interaction between transparency and administrative reforms and we think it offers a promising avenue for further research, along the lines suggested by a previous study on Italy (Cacciatore *et al.*, 2017). It is also worth highlighting that the implications of our findings are limited to the Italian context and that more comparative research is needed to understand how transparency laws evolve over time.

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