

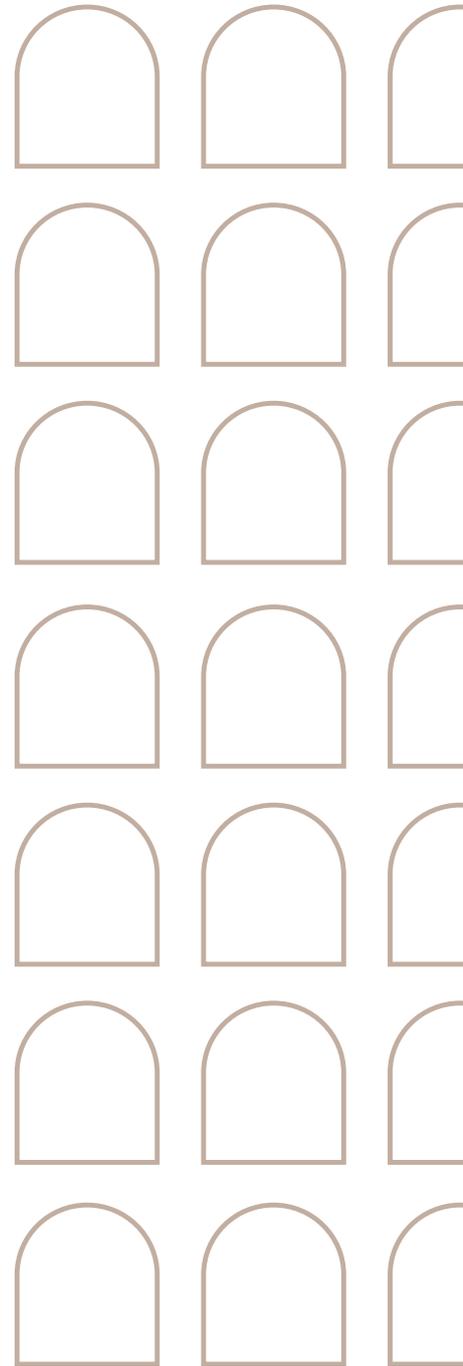
STG Policy Papers

POLICY BRIEF

THE RIGHT TO KNOW: AN EMERGING GLOBAL ISSUE IMPLICATIONS FOR PARLIAMENTARY ASSEMBLIES

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EXECUTIVE SUMMARY

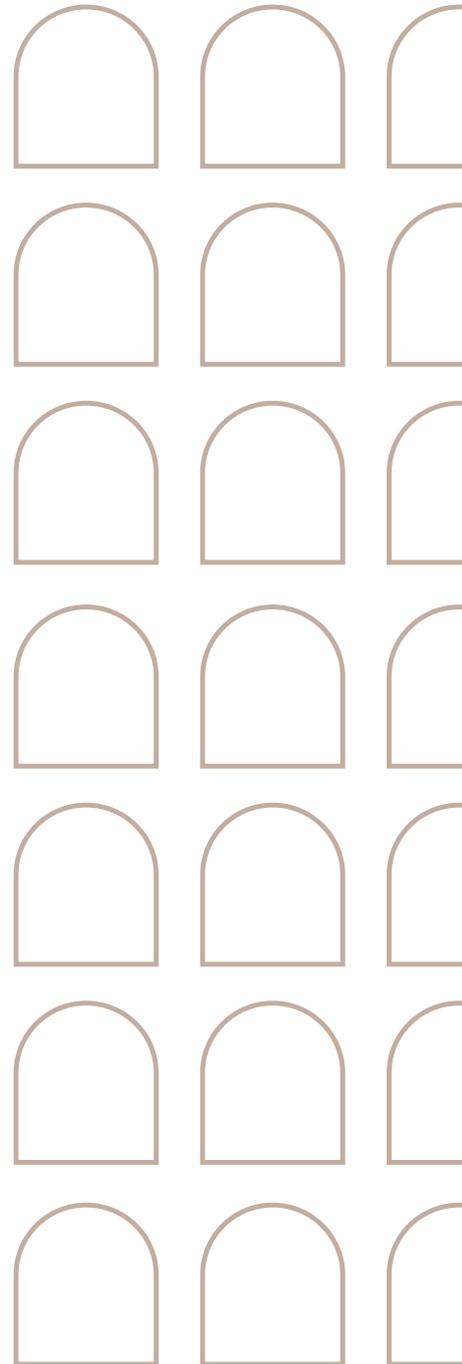
On 22 June 2021 the Parliamentary Assembly of the Council of Europe¹ approved a [Resolution](#) tabled by [Roberto Rampi](#) (MP, SOC: Socialists, Democrats and Greens) on the right to know, defined as the citizen's civil and political right to be actively informed of all aspects regarding all stages of the policy-making and administrative / rulemaking process, in order to allow for the full and democratic participation, and hold public goods administrators to account according to the standards of human rights and the Rule of Law.

This definition is taken directly from the [Global Committee for the Rule of Law](#) "Marco Pannella". In this way, the Council of Europe acknowledges the ingenuity and political battle for the right to know of the legendary former MEP and Italian MP [Marco Pannella](#), active on this issue since the days of the Iraq War in 2003, until his death in 2016. Today the right to know is an emerging global issue, spanning from state secrecy to the systematic manipulation of information. This Policy Brief informs on the recent developments in the Italian Senate, where the Human Rights Committee approved a Resolution exactly one year after the Council of Europe, explains the difference between 'information' and 'knowledge', and explores the implications of this emerging global issue for Parliaments.

¹ The Council of Europe has 46 Member States. It is the leading organization in Europe for human rights.

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1. THE COUNCIL OF EUROPE: TRANSFORMING INFORMATION INTO KNOWLEDGE

The 2021 Council of Europe Resolution was a landmark. For the first time an international organization defined a new right and suggested ways to implement it across its Member States. But what are the roots of the Council of Europe's initiative?

At the outset, the Parliamentary Assembly of the Council remarks serious concerns with disinformation, the erosion of parliamentary prerogatives, and the rise of distrust that is "endangering democratic governance and the effective implementation of public policy". These concerns go beyond the dimension of media freedom and information. They also cover the relationship between executive and parliament, often clouded by secrecy on the reasons and evidence behind key government decisions on, for example, foreign policy, international politics, and public health. Here we start to see how the right to know is wider than the right to information.

Indeed, Resolution carries on pointing to a three-dimensional concept. It introduces three "active dimensions" related to the "implementation of the right to know". They are, according to the Resolution:

- Automatic obligations to inform. These are obligations that public authorities should comply with (independently of specific requests and whether the interest of a given citizen or stakeholder is affected),
- the right of citizens to be informed and "contribute to the drafting and appraisal of laws, regulations and other policy instruments", and
- the promotion of "an educational and cultural environment that enhances and stimulates citizens' continued learning in an information society".

Administrative documents and decisions accessible by default, access and participation to public decision-making (not exclusively via consultation rights, but throughout the life-

cycle of public policies), and education are the three domains or "active dimensions" that transform information into the broader public good of knowledge. In a formula: information + meaningful access and participation + education.

The new right, however, needs instruments to become tangible and accessible. Indeed the Resolution is explicit about policy instruments that give "full effect to a citizen's right to know" and therefore points to mechanisms for information, public comment, consultation, impact assessments and ex-post regulatory and legislative evaluation.

To condense in a formula, the right to know is whole-of-government, whole-of-life-cycle² and whole-of-society. To this end, the Resolution calls on the Member States to recognize the right to know as civil and political right, ratify the [Tromsø convention](#), establish independent national monitoring systems of the accuracy and completeness of the information provided by national media (with granular data on at least a monthly basis), a transparency-by-design approach (on information of public interest, company registers, and lobbying), common measures to counter the culture of secrecy, and the promotion of "cultural places" such as libraries, theaters, museums, and live-music venues.

In an accompanying [Recommendation](#), the Parliamentary Assembly recommends that the Committee of Ministers instruct the [Steering Committee for Human Rights \(CDDH\)](#), in collaboration with the [Steering Committee of Media and Information Society \(CDMSI\)](#) to:

"launch a study to identify good practice in the range of policy instruments that provide for accountability throughout the policy-making and administrative processes, considering in particular the conditions under which consultation, impact assessments of proposed legislation, freedom of information, the ombudsman, ex-post legislative reviews and administrative judicial reviews can generate accountability"

² The reference is to life-cycle of public policies, from agenda-setting to implementation and evaluation.

This study has not been carried out yet. However, independently from the Council of Europe's Recommendation, the European Research Council-funded project [Protego](#) (Procedural Tools for Effective Governance) gathered data on the above-mentioned policy instruments across the European Union 27 Member States and the UK. Yet, the wider membership of the Council of Europe, which extends well beyond the European Union, has not been covered.

2. THE ITALIAN SENATE INITIATIVE

Recently, the [Human Rights Committee](#) of the Italian Senate carried out hearings to learn more about the contents of the right to know and its implementation. The floor of the Senate received a [resolution](#) from said Committee on 22 June 2022. In the same month, the Global Committee for the Rule of Law launched in Rome a world-wide campaign to promote the recognition of a universal right to know at the United Nations (UN). The [Rome declaration](#) asks "governments and parliaments to commit to a strong and effective follow-up, at the United Nations, to the Resolution and Recommendation of the Parliamentary Assembly of the Council of Europe approved in June 2021 which recognize the Right to Know as a human right".

The right to know – I said when I was [heard](#) in Senate – is both a foundation and a map. It is foundational because – in the way it is endorsed by the Council of Europe - it covers the whole political process. Foundations are essential to those who carry out political work, such as governments, Members of Parliament, and political parties. It is also a navigator because it provides a map to address problems that will define the near future of our democracies with the necessary policy instruments. If political systems do not act on the implications of the Resolution of the Council of Europe, the world will not remain as it is. It will get worse. Standing still is not an option, as shown by the thick web of disinformation around the invasion of Ukraine.

3. WHAT NEXT? THE IMPLICATIONS FOR PARLIAMENTARY ASSEMBLIES

The Council of Europe and the initiative of the Italian Senate signal momentum for the right to know. Perhaps (actually, hopefully) we will soon witness the same momentum at the United Nations too. The UN is the best venue to recognize this emerging global and universal right.

What are the lessons learned and how can they be useful to policy-makers? Thanks to the ERC project Protego, I had the opportunity to carry out research on the design of policy instruments (the same instruments mentioned in the [Recommendation](#) of the Council of Europe) that seek to embed evidence in public policy. I will focus on **this** dimension of the right to know, without entering the discussion on the other two dimensions of information and culture/education. I will deal with the implications for Parliamentary assemblies, although there are for sure equally if not more important implications for governments, regulators, and civil society organizations.

Let us consider the early stages of the policy process. When public decisions emerge at the stage of policy formulation, stakeholders and the general public should have the right to be notified and the right to comment on the basis of meaningful and sufficiently detailed elements of the proposal. This is the policy instrument of **consultation**, or, as known in the North-American experience, notice and comment.

What is the role for Members of Parliament? Parliamentary assemblies are the natural fora to challenge governments when they degrade, as they often do, consultation into a tick-the-box exercise that does not leave traces on the development of laws and regulations. For Parliaments, the agenda is to push consultation towards the wider concept of participation. Additionally, inputs raised during consultation provide evidence, data, information that MPs can then use when discussing and challenging bills initiated by the executive.

Further, the right to know implies that governments must produce and make public the evidence on which they base their decisions. This was the most thorny issue in the [Iraq Inquiry](#) in the UK. Beyond foreign and defence policy, the same principle is applied to ordinary law-making process via the instrument of **impact assessment**. The latter can become an evidence-rich document that shows the data and intervention logic that lead the government to introduce new legislation. Impact assessment is grounded on the right of all citizens, affected stakeholders and of course Members of Parliament to know the evidence that leads a government to act. This right (of citizens) has a mirror image in the obligation (of public decision-makers) to “give reasons” before making a public decision – an obligation enshrined in the US [Administrative Procedure Act](#) since 1946. Here are examples of how this concept can become politically relevant. During the Brexit process, MPs at Westminster pressed the then Theresa May’s government to inform the MPs on whether there were [impact assessments](#) of the effects of leaving the European Union. Conservative MPs criticised their own Prime Minister Boris Johnson in November 2020 for having introduced a lockdown in England without a full impact assessment covering both the public health risks and the economic implications. Always in the UK, there were heated debates on why the government was keeping scientific advice about the Covid-19 pandemic [secret](#).

Absent an impact assessment (or anytime there is a largely incomplete impact assessment) an MP should always raise critical questions and keep the executive accountable for not having done this important homework. With governments introducing landmark policy packages to foster the digital and ecological transition, the presence and publicity of science and evidence used by the executive become fundamental properties of good governance.

The **Ombudsman** allows access to a wide range of citizens, independently of their economic and cultural capital, to a form of quasi-litigation. In our context, the fundamental nexus is between Ombudsman

and parliamentary assemblies -- indeed we distinguish parliamentary Ombudsman offices, with wide jurisdiction on public administrations, from sectoral ones. **Freedom of information acts** can strike the balance between values such as security, confidentiality, and transparency, as we documented with Protego [data](#) on 28 countries.

Legislative evaluation is where Parliaments can keep the government to account for the results achieved by laws and programs – like the national plans implementing [Next Generation EU](#). Although historically MPs have not demonstrated a huge appetite for this instrument (legislative evaluation), Parliaments should be knowledgeable about whether existing laws and regulations are fit for future. Indeed, are existing laws and regulations fit to support ambitions plans for a digital world where citizens are in control of their data? Does the regulatory stock foster or hinder socially-responsible innovation? These questions are essential for MPs to exercise their scrutiny function. To illustrate: MPs can push the government on the presence or absence of evaluations, their timing, the questions asked in evaluations, the level of publicity and publication, and finally what the government wants to do with the results of the evaluations. Recent [studies](#) on Switzerland show that members of representative assemblies (Cantonal and Federal in this case) can and actually use evaluations to learn. I [documented](#) some evaluation-related questions raised by Members of the European Parliament, showing that MEPs can be active in this role.

[Research](#) shows that what matters is the interaction among these instruments, **how they work together** in a more or less coherent ecology. We are talking about the mechanisms that link some properties of the right to know across the instruments, and make them operate in synergy. And Parliaments can also trigger comprehensive reviews of how the instruments we talked about work together. In countries where the nationwide Audit institution reports to Parliament, parliamentary assemblies can ask the Supreme Audit institution of the country to carry out periodic reviews.

4. RIGHT TO KNOW AND RIGHT TO SCIENCE

Finally, the right to know has been strengthened by recent developments at the United Nations. The UN published on 30 April 2020 an important [General Comment](#) on the Right to Science. The right to science as defined in the General Comment is not (just) the right of the scientists to freedom of scientific research, it is the right of all citizens. It has right-to-know dimensions: hopefully we will see the emergence of a UN rapporteur on how governments are delivering on the right to science, allowing citizens to learn and to know about this issue. And to insist on the UN: Parliaments have the opportunity to put pressure on the executive to be pro-active in setting the stage for a global initiative on the right to know. In the meantime, the war in Ukraine reminds every day of how information can be manipulated to create just the opposite of knowledge, that is, confusion and distrust in democracy.

5. CONCLUSION

The right to know is an emerging global issue. It adds fundamental dimensions to the right to correct information and the fight against fake news and propaganda. Parliaments should press governments to move the debate to the United Nations. At the domestic level, MPs can hold the government to account by leveraging the policy instruments that protect this right.

Every right comes with costs in terms of the activities of the courts, state budget, information campaigns, as well as political costs to actually follow up on adoption and be committed to implementation. Governments adopt policy innovations and rights for different reasons, including emulation and compliance with standards – but then they implement selectively and do not commit resources – as I found out in a [study](#) on regulation carried out with Fabrizio De Francesco and Vera Tröger. At the same time, the costs of communication and information campaigns are lower if there is a vibrant coalition of advocacy organizations like the Global Committee on the Rule of Law raising the profile of the right to know.

Should the United Nations adopt the right to know, the most sensible implementation step would be to create a Special Rapporteur. This step would trigger costs. There are Rapporteurs who visit countries and Rapporteurs who work from their desk. There are Rapporteurs with half of their budget provided by voluntary contributions, hence the question arises which countries will be most like to give voluntary contributions? These are serious questions that make us reflect soberly on the difference between adoption (whether by a parliament, the government of country X, the Council of Europe or, hopefully in the future, at the United Nations) and implementation – two different and equally important arenas.

MPs and advocacy organizations should include the cost dimension in their vision. And to conclude with a word on the vision, what is the right to know for? It is for the citizen's active and meaningful participation. "To know in order to deliberate" – this is how [Luigi Einaudi](#) described the essence of political rights in liberal democracies.³

3 The full quote is "First Know, Then Discuss, and Finally, Deliberate" Luigi Einaudi, *Prediche Inutili*, Einaudi, Turin, 1964: 3–14.

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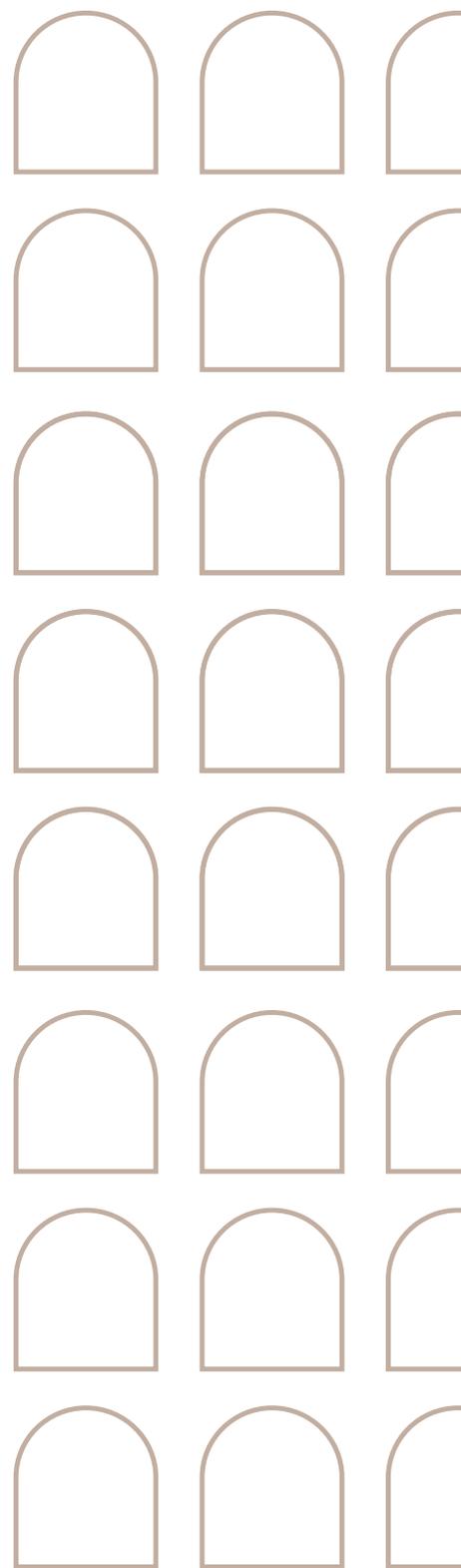
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