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ORIGINAL ARTICLE

The Force of Law? Transparency of Scientific Advice in Times of Covid-19

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Abstract

Freedom of Information Acts (FOIA) are valuable legal tools to access information held by public authorities but during the first wave of the Covid-19 pandemic time frames to reply to requests were de jure or de facto suspended in many countries. However, the lack of effective legal tools to achieve transparency was not automatically paired with governmental secrecy. This research paper analyses which are the factors that prompted some governments to move from secrecy to transparency while the essential legal tool to achieve disclosure of information was not available. It focuses on the role of 'ecologies of transparency', a concept developed by Seth Kreimer to describe how FOIA needs to be understood as functioning within a collection of factors and actors. Yet, can transparency ecologies still force disclosure of information when FOIA is suspended? Research focuses on a comparative case study about transparency of scientific committees advising governments on Covid-19 in the UK and in Spain. In both countries, members and minutes were initially secret, but the British government published information before being forced by FOIA, while the Spanish executive only released partial information when FOIA was reactivated. The paper argues that information disclosure processes can be understood as supply and demand models. On the demand side, it highlights the role of adversarial press, scientific community, whistle-blowers, the opposition and critics within the governing party as decisive factors within the transparency ecology. On the supply side, it focuses on legitimation needs from the government to explain different outcomes.

Keywords FOIA · Transparency · Agenda-setting · Secrecy · Information · Scientific advice

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1 Introduction

Freedom of Information Acts (hereafter, FOIA) are usually described as the most relevant legal tools to access information held by public authorities. However, during the first wave of the Covid-19 pandemic (March–May 2020), many European states implemented emergency legislation which suspended (Spain, Italy[1]) or extended (Hungary[2]) time frames to reply to information requests. In other countries, requests were not officially suspended but they were de facto delayed (United Kingdom[3]). In spite of this, the lack of an effective legal tool to achieve transparency was not automatically paired with governmental secrecy, and some executives could still be persuaded to disclose information. The current research paper analyses which are the specific factors that prompted some governments to move from secrecy to transparency during an unprecedented crisis in which the essential legal tool to achieve disclosure of information had been suspended or weakened. More precisely, the paper focuses on the role of 'ecologies of transparency', a concept developed by Seth Kreimer in 2008 to describe how FOIA needs to be understood as functioning within a broader collection of factors and actors that are inter-dependent and determine whether information will be disclosed. Thus, the main research question that this paper aims to answer is the following: can an ecology of transparency still achieve its main goal and force disclosure of information when FOIA is either de facto or de jure suspended? And if so, which are the elements that make ecologies successful?

To answer these questions, research has focused on a comparative case study analysing transparency of scientific committees advising governments on how to deal with Covid-19 in the United Kingdom (hereafter, UK) and in Spain. At the beginning of the pandemic in early 2020, many governments created or activated scientific committees which brought together scientists and experts, from virologists to statisticians. Some countries set up independent advice bodies with no government officials, others had a mixed task force with independent experts and government representatives and some included government members only (Rajan et al. 2020:4). In most states, information about members of the committees and the discussions they had were initially kept secret, and citizens did not have access to information that was valuable to evaluate and held the government accountable for the restrictive and unprecedented measures that were implemented.

[1] International Press Institute. Access Denied: FOI deadlines extended or suspended across Europe. June 2nd 2020. Retrieved March 2021: https://ipi.media/access-denied-foi-deadlines-extended-or-suspended-across-europe/

[2] International Press Institute. Access Denied: FOI deadlines extended or suspended across Europe. June 2nd 2020. Retrieved March 2021: https://ipi.media/access-denied-foi-deadlines-extended-or-suspended-across-europe/

[3] Campaign for Freedom of Information. FOI and the pandemic. Retrieved: March 2021 https://www.cfoi.org.uk/2020/04/foi-and-the-pandemic/

Both in the UK and in Spain, members and minutes of scientific committees were initially kept secret because of privacy concerns. The UK government argued that this was done to prevent members from being lobbied and allowed them more freedom to give advice[4], whereas the Spanish executive resorted to data protection to refuse the publication.[5] However, in the UK, the government decided to move from secrecy to transparency within 3 months and all names of members and minutes of meetings were published in May 2020 and are now accessible online.[6] In Spain, the government only disclosed names of members of some advisory committees when forced to do it by the Transparency Council in Autumn 2020. Minutes were not published because the executive argued that they were not recorded[7]. Research has focused on the abovementioned countries because their initial position was similar – no effective FOIA, secret scientific committees – but within months reached opposite outcomes: publication of all information in the UK before being forced by FOIA versus long-term secrecy in Spain and information only partially published when FOIA was reactivated. Therefore, the comparative study of disclosure processes in both countries can help shed light on the relevant factors and actors that need to be activated within the transparency ecology to force the release of information in the absence of FOIA. In other words, what happened in the UK that forced the publication of data but did not happen in Spain?

The paper argues that there are several factors beyond access to information laws that can explain why some countries can move from secrecy to transparency while others cannot when faced with a comparable situation. To do so, it develops a supply and demand model aimed at bridging secrecy and transparency literature by taking into account external factors that put pressure on governments to be more transparent and also motivations from executives to disclose information. Freedom of Information Acts are institutional arrangements where supply and demand can meet but, if they are suspended during an emergency, some countries can resort to alternatives while others have no meaningful way to hold governments accountable. Therefore, to understand how governments move from secrecy to transparency, the following elements need to be considered: who was mobilised to put pressure on the government, how fast they moved, which tools and infrastructure they used and how the government responded to pressure.

[4] Vallance, Patrick. Letter to Rt Hon Greg Clark MP Chair Science and Technology Select Committee. April 4th 2020. Retrieved February 10th 2021 https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/correspondence/Patrick-Vallance-to-Greg-Clark-re-SAGE-composition.pdf

[5] El Español, .Transparencia ordena al Ministerio de Sanidad dar a conocer los nombres del comité de expertos November 30th 2020. Retrieved March 12th 2021. https://www.elespanol.com/espana/politica/20201130/transparencia-ordena-ministerio-sanidad-conocer-nombres-expertos/539946969_0.html

[6] See SAGE Meetings, UK Government. Retrieved: January 2021 https://www.gov.uk/government/collections/sage-meetings-september-2020

[7] Maldita El Gobierno dice ahora que los comités de expertos no están obligados a tomar actas y que "no se dispone" de ellas, a pesar de que Sánchez aseguraba en mayo que sí se estaban tomando y prometía publicarlas. 15th December 2020. Retrieved March 10th 2021 https://maldita.es/malditodato/20201215/gobierno-comites-expertos-actas-sanchez-mayo-prometia-publicar/

2 Transparency Ecologies: Developing an Analytical Framework

Access to Information Laws are pieces of legislation that allow citizens to request information held by public authorities. As pointed out by Dan Berliner: "FOI laws institutionalize transparency by creating legal guarantees of the right to request government information." (Berliner 2014: 479). Experimental research has shown that requests for information sent through FOIA work better than more informal requests that do not mention the law and are not processed under Access to Information legislation (Worthy et al. 2017; Spac et al. 2018; Grimmelikhuijsen et al. 2019).

Most European FOIAs are broadly similar on paper (Worthy 2019: 41) but their real effectiveness as tools for transparency depends on many factors that can only be described through empirical research. As Seth Kreimer points out, FOIA must be understood as an "effective check," part of "a broader ecology of transparency" (Kreimer 2008: 1017). The author argues that the goal of the ecology is to confront the actions of the government and, while FOIA is an important element, it also needs pre-requisites such as previous knowledge of what is being asked for and other institutional and informal factors such as "the permanent infrastructure of federal civil servants with integrity, internal watchdogs, reasonably open opportunities to publish and share information, and a set of civil society actors capable of pursuing prolonged campaigns for disclosure." (Kreimer 2008: 1017.) While the author's contribution offers a first insight into the concept, it does not exhaustively describe all the elements that could compose ecologies and how they are inter-linked. On that note, it is relevant to mention a more recent contribution by Mahieu & Ausloos, who connect the ecology concept to transparency provisions within the European Union General Data Protection Regulation (hereafter, GDPR) and describe the ecology of transparency as an "intra-institutional network of actors, laws, norms and practices in which the right of access is being exercised. It is shaped by the interplay between the law, the regulators and the actual practices of civil society." (Mahieu and Ausloos 2020:4)

While literature on transparency ecologies has not been fully developed, several authors have described other political and social ecologies or systems comprised of institutional and non-institutional actors which are inter-dependent. On that note, it is important to highlight the theory developed by Andrew Chadwick (2013) to describe the media system in the early 2010s. He defines the media landscape as a "hybrid media system", as it considers new and old media. According to the author, the hybrid media system is "based upon conflict and competition between older and newer media logics, but it also features important pockets of interdependence among these logics. Actors in the interpenetrated fields of media and politics simultaneously generate and shape the very hybridity that they then seek to exploit" (Chadwick 2013: 285). The author refers to assemblage theory (Deleuze and Guattari 1987; DeLanda 2006) and defines assemblages as being composed of "multiple, loosely coupled individuals, groups, sites, and temporal instances of interaction involving diverse yet highly interdependent news creators and media technologies that plug and unplug themselves from the news-making process, often in real time" (Chadwick 2013: 74).

It can be argued that the aforementioned literature points to the existence of a collection of actors– which is described with different names such as an ecology (Kreimer 2008) or an assemblage (Chadwick 2013) – that has the capacity to be mobilised and use different tools and infrastructure to influence the agenda and pressure the government to address topics and/or disclose information. The collection of actors, while not necessarily acting concertedly – and therefore lacking the main elements to be considered a coalition, namely shared beliefs and coordination (Sabatier and Jenkins-Smith 1999) – can influence the agenda, thus creating demand for information and transparency and asking the government to supply it. The executive will, in turn, have its own strategic reasons to release or conceal information.

2.1 Agenda-Setting, Actors and Tools

It has already been established that to define ecologies it is necessary to consider which actors are involved and how they are inter-linked. Yet, how do these actors succeed? Andrew Chadwick argues that power in the current media system is "exercised by those who are successfully able to create, tap, or steer information flows in ways that suit their goals and in ways that modify, enable, or disable the agency of others, across and between a range of older and newer media settings" (Chadwick 2013: 285). Research in the UK has shown that a topic can be pushed into the agenda by "a campaign assemblage of investigative journalism, political and advocacy elites, and digitally enabled leaders." (Langer and Gruber 2021: 313) In this case, researchers investigated the Windrush scandal – concerning people that were wrongly detained and deported from the UK – and found that several actors were relevant to start and sustain a campaign to bring attention to the topic, including a journalist from The Guardian, some MPs, immigration and legal aid charities, digital advocacy organisations and digital platforms.[8]

Therefore, for ecologies to succeed it seems necessary to hold the power to set the agenda, from which it can be concluded that those actors that have more power to do so will be able to put more pressure on governments to disclose information. The media, particularly adversarial press, is one of the main actors that can sustain prolonged campaigns for transparency and act as an agenda-setter. In fact, previous research has shown a correlation between media's pressure and political behaviour and has highlighted the role of the press as a pro-FOIA lobby[9]. MCombs and Shaw established the link between media coverage and political agenda -setting (1972.) More recent research has shown that political agenda setting by the media is "contingent upon a number of conditions: the kind of issues covered (e.g., obtrusive vs. unobtrusive), the specific media outlets, and the sort of coverage (e.g., negative vs. positive)." (Walgrave and Van Aelst 2006: 103)

[8] Involved actors have been summarised. For complete description of all actors involved see Langer and Gruber 2021, referenced in the bibliography.

[9] See Michael Schudson interview (2016). London School of Economics. Accessed December 2021: Retrieved: https://blogs.lse.ac.uk/medialse/2016/03/03/freedom-of-information-qa-with-professor-michael-schudson/

In Belgium, researchers concluded that mass media determine the political agenda, particularly on symbolic matters more than on substantive policy matters (Walgrave et al. 2008). Previous research has also established a link between media pressure and political transparency. A study from Spain showed that when media pressure was strong, the level of municipal transparency was higher (Cuadrado-Ballesteros et al. 2017.)

However, the press is not the only group that can sustain prolonged campaigns to pressure the government and influence the agenda. Similarly, civil society groups – such as the scientific community – can also put pressure on the government by demanding information, publishing their own data, and also engaging with other actors with a similar interest in transparency – such as by being interviewed by the press–. Mahieu and Ausloos (2020) highlight several examples describing how GDPR can be used by engaged civil society groups such as unions or activists to achieve collective goals. Whistle-blowers are also relevant actors that react when demand for information is high. As pointed out by Ronny Patz, "whether or not motivated by the strategic or tactical considerations of the leakers, leaks should become more likely when the demand for information from outsiders exceeds the formal supply to these outsiders provided by the rules and practices of secrecy and transparency."[10]

The role of the political opposition in setting the agenda and pressuring the government has also been extensively studied. In Denmark, Green-Pedersen and Mortensen (2010) found that opposition parties can focus on issues that are advantageous to them and thus control the party-system agenda, while the government is forced to respond to issues brought up by said agenda. Research in the UK has shown that when the opposition criticises specific social problems, it undermines voters' approval of government competence on that particular issue (Seeberg 2020).

2.2 Information Disclosure Process: a Supply and Demand Model

The main actors that can influence the public agenda and put pressure on the government to disclose information have already been defined. However, demand for information does not always translate into immediate supply. In 2012, Albert Meijer summed up some of the questions that were still unanswered about the government's transparency conundrum. "Is transparency created by push or pull factors? Government may create transparency in response to pull factors from citizens, stakeholders and courts but also in response to push factors from inside the government system. A push factor could be that certain information would boost government's image and enhance government legitimacy. Do citizens get the data they want in response to pressure on government? Or is there a practice of 'data dumping' meant to improve government's image? (Meijer 2012: 7)

[10] Patz, R. 2016. Just the TTIP of the Iceberg. Dynamics and Effects of Information Leaks in EU Politics. European Journal of Risk Regulation. P. 243 7(2), 242-246, quoted in Patz, R, Vigjilenca, A. The ambiguity of leaks: transparency and secrecy in the EU. Transparency and Secrecy in European Democracies. Routledge Research in Comparative Politics. 2020

It can be argued that for transparency ecologies to succeed, demand for information needs to be paired with supply of information by the government. Therefore, information disclosure processes could be conceptualised as a supply and demand model, in which a collection of actors (or an ecology) demands disclosure of information and governments supply it. This supply and demand model will have different results depending on several factors such as the number of actors involved, the tools they use, their strength and other political and legitimation needs. In some cases, collections of actors demanding transparency can negotiate with the government to request more openness regarding a specific topic (Heimstädt 2017) or they can put pressure on the executive without directly engaging with it and thus creating a conflict or fight. Therefore, the conflict can become a site of ethical contestation, or a "space in which new and ambiguous matters of transparency and accountability are claimed, contested and configured." (Heimstädt and Dobusch 2020:3) As Schattschneider argues, "every fight consists of two parts: (1) the few individuals who are actively engaged at the centre and (2) the audience that is irresistibly attracted to the scene. (…) the outcome of all conflict is determined by the scope of its contagion. The number of people involved in any conflict determines what happens; every change in the number of participants, every increase or reduction in the number of participants, affects the result" (Schattschneider 1960: 2)

The demand side of the disclosure process has already been explained, but it is also necessary to understand why governments decide to supply information. Transparency is popularly linked to more governmental legitimacy although research reveals that correlation is not always strong and depends on the context. In fact, some studies have shown that transparency in rationale – reason-giving – can contribute to similar degrees of added legitimacy as in-depth transparency about processes (De Fine Licht et al. 2014.)

Secrecy surrounding legal or scientific advice for policy is not a phenomenon unique to the Covid-19 pandemic. Decision-making processes are not always published, and many authors claim that while publishing them might increase public understanding of their complexity, it could also lead to confusion (O'Neill 2002 in De Fine Licht 2020.) Similarly, Andrea Prat claims that "while transparency on consequences is beneficial, transparency on action can have detrimental effects." (Prat 2005: 863). De Fine Licht argues that, since transparency in decision-making situations can also have adverse effects, a solution could be found on an agreement to publish post-decision justifications. The author states that they "constitute a promising compromise between transparency and secrecy in governance, one that requires decision-makers to provide careful justifications for their decisions and policies to the public, but where parts of the decision-making process remain secret." (De Fine Licht 2020: 29)

At the beginning of the crisis in early 2020, most countries were secretive about the scientific advice they were receiving, arguing that that would allow scientists to freely express their views. Christian Kreuder-Sonnen points out that, in the context of a crisis, secrecy can be used as a way to manage the crisis (reactive) or to exploit it and reach political goals that otherwise would be harder to achieve (active) (Kreuder-Sonnen 2018: 975). In the UK, secrecy was the default position of the government, but in May 2020 the government decided to publish the names and

the minutes of scientific meetings. In Spain, the government published the names in November 2020 – when forced by the Transparency Council – but refused to publish the minutes arguing that these committees are not legally obliged to record them.[11]

Based on the aforementioned literature, it shall be hypothesized that in the UK pressure from several actors increased demand for transparency, which was met with supply of information despite the lack of an effective FOIA. Therefore, it can be hypothesized that the variance between countries can be due to several differences in the ecology of transparency – understood as a collection of intertwined actors and factors that enable transparency and disclosure of information, in line with definitions from Kreimer and Mahieu & Ausloos.– More precisely, on the demand side, the following research sections focus on the role of the media, the scientific community, whistle-blowers, the opposition and critics within the governing party as decisive factors that were activated in the UK but not in Spain, which had to rely on severely delayed FOIA requests to achieve disclosure of some information. On the supply side, research analyses the role of independent scientific advice (UK) versus civil servants' advice (Spain), the role of leaks in pressuring the government and how different strategies to either contain or suppress the virus might have created distinct needs for legitimation from governments.

3 Transparency Tools: Suspended Freedom of Information Acts

The main goal of the current article is to examine if transparency ecologies can succeed without FOIA, for which it is necessary to look at the state of FOIA during the studied period (March- May 2020). The 2020 Media Pluralism Monitor, which tracks the state of media freedom in European Union countries, highlighted the following problems regarding the practice of FOIA in several states during the first year of the pandemic: long time frames to answer requests, administrative silence, high refusal rates, long and ineffective appeal procedures and tactics to evade disclosure such as misusing exemptions, mostly data protection and copyright law.[12] While these problems have been linked to FOIA practice for several years, the Covid-19 crisis and the emergency legislation that was passed to fight it exacerbated them in 2020/ 2021. In March 2020, many European countries implemented emergency legislation which affected Access to Information Laws / Freedom of Information Acts. In Italy the right was suspended for two months (Carlini and Brogi 2021) and in Spain for almost three months. In Hungary, time frames were increased from

[11] Maldita El Gobierno dice ahora que los comités de expertos no están obligados a tomar actas y que "no se dispone" de ellas, a pesar de que Sánchez aseguraba en mayo que sí se estaban tomando y prometía publicarlas. 15th December 2020.Retrieved: March 2021 https://maldita.es/malditodato/20201215/gobierno-comites-expertos-actas-sanchez-mayo-prometia-publicar/

[12] Centre for Media Pluralism and Media Freedom. Monitoring Media Pluralism in the Digital Era. European University Institute, 2021. P.29 https://cadmus.eui.eu/bitstream/handle/1814/71970/CMPF_MPM2021_final-report_QM-09-21-298-EN-N.pdf?sequence=1&isAllowed=y

30 to 90 days (Bátorfy and Szabó 2021) and the same happened in Romania, which went from 30 to 60 days (Popescu et al. 2021).[13]

In England, FOIA was not suspended but on the 16th of March 2020 the Information Commissioner's Office announced that: "we understand that resources, whether they are finances or people, may be diverted away from usual compliance or information rights work. Whilst we can't extend statutory timescales, we will not be penalising public authorities for prioritising other areas or adapting their usual approach during this extraordinary period."[14] However, in practice, time frames were extended. Advocacy group Campaign for Freedom of Information warned in April 2020 that "many public authorities are now warning requesters that responses to FOI requests may be delayed. Some are asking requesters to consider limiting their requests to the minimum information they need, deferring requests for the time being or withdrawing those previously made. These authorities are seeking requesters' understanding and co-operation (…) Other authorities are simply suspending their FOI function altogether and saying they will not answer requests at all until further notice. It is hard to judge what the case for such an approach is without knowing the circumstances of the authorities concerned."[15] In fact, the UK Department of Health and Social Care stated the following on its FOIA website during the first wave in spring 2020: "We are currently experiencing very high volumes of enquiries and are focusing our resources on the Coronavirus (COVID-19) response."[16]

In March 2020, Spain passed a bill to declare a State of Alarm[17]. All administrative procedures' time frames were suspended, which also affected FOIA. Therefore, most requests sent from March until May 2020 were not processed. According to official data, the Spanish government received 1934 FOIA requests from March 2020 until May 2020. In the same period of 2019, it received 1758.[18] After suspending administrative time frames for almost three months, FOIA requests were processed again from June 1st, irrespective of the date when they were sent. [19]

[13] More information on the state of FOIA in Europe can be found in the following Monitoring report by Centre for Media Pluralism and Media Freedom. Monitoring Media Pluralism in the Digital Era. European University Institute, 2021. P.28 Access: https://cadmus.eui.eu/bitstream/handle/1814/71970/CMPF_MPM2021_final-report_QM-09-21-298-EN-N.pdf?sequence=1&isAllowed=y

[14] Information Commissioner's Office. ICO's blog on its information rights work. March 26th 2020. Information Commissioner's Office. Accessed August 2021. Retrieved February 2021: https://ico.org.uk/about-the-ico/news-and-events/icos-blog-on-its-information-rights-work/

[15] FOI and the pandemic. Campaign for Freedom of Information (April 6th 2020). Retrieved: March 2021. https://www.cfoi.org.uk/2020/04/foi-and-the-pandemic/

[16] UK Government. Contact the Department of Health and Social Care Gov.uk https://contactus.dhsc.gov.uk/ Accessed: March 2021.

[17] See Boletín Oficial del Estado. Real Decreto 465/2020, de 17 de marzo, por el que se modifica el Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19. BOE. https://www.boe.es/buscar/doc.php?id=BOE-A-2020-3828

[18] Government Spain. Portal de Transparencia. Accessed: March 2021 Datos del Derecho de acceso - Derecho de acceso a la información pública - Portal de la Transparencia de la Administración del Estado. https://transparencia.gob.es/transparencia/transparencia_Home/index/Derecho-de-acceso-a-la-informacion-publica/Datos-derecho-de-acceso.html

[19] Castro, C. Abogacía General del Estado. A.G. POLÍTICA TERRITORIAL Y FUNCIÓN PÚBLICA 3/20 (R-405/2020) https://transparencia.gob.es/transparencia/dam/jcr:9f461f6b-9161-48bb-8ca6-ee70d3310f9b/InformeAGE-MJUS-SuspensionPlazosDA-1.pdf

3.1 FOIA and Scientific Committees

In both analysed countries, FOIA requests were sent to government departments to ask for information about the composition of scientific committees and minutes of its meetings. In the UK, several requests were sent to different government departments to obtain information about the Scientific Advisory Group for Emergencies (hereafter, SAGE.) According to the website What Do They Know, which tracks and publishes requests sent by citizens, on April 17th 2020 a request was sent by an individual to the Department of Health and Social Care. It asked for "a list of current members of the Scientific Advisory Group for Emergencies."[20]

Several requests were sent in the following days to the Government Office for Science, but they were not positively answered until the government had already published information online in May 2020. Arguably, they could have been considered an exemption under FOIA paragraph 35, which states that information held by a Government Department could be exempt of publication if it relates to the formulation and development of government policy (Freedom of Information Act 2000).[21]

In Spain, several requests were also sent to the Department of Health to ask for information about some of the 7 committees that were advising the government. However, because the right (Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno) was suspended from March 2020 until May 2020, no answers were received. It was not until September 2020 when the Public Health Department answered some requests and said that because of data protection names were not going to be released. They stated that "they are civil servants who are not considered senior officials or executive staff."[22]

In November 2020, the Transparency Council ordered the Government to publish the names of the members of the technical committee that decided which regions could ease the lockdown in spring. It argued that data protection limitations did not apply, and it was in the interest of the public to know how the government was making "relevant decisions." The Council also complained about the fact that the request was sent on May 6th and the government did not reply until September 29th. In December 2020, the government replied to a FOIA request, and it emerged that the 14 members of the committee were civil servants who worked for the Ministry of Health and one external epidemiologist. However, it did not publish minutes of meetings, and later stated that those were not formal committees and were exempt

[20] What do they know. SAGE members - a Freedom of Information request to Department of Health and Social Care - https://www.whatdotheyknow.com/request/sage_members April 17th 2020. Retrieved: February 2021

[21] Freedom of Information ACT UK (2000). Accessed March 2021: https://www.legislation.gov.uk/ukpga/2000/36/section/35

[22] El Español. Transparencia ordena al Ministerio de Sanidad dar a conocer los nombres del comité de expertos (elespanol.com). November 30th 2020. Retreieved : March 2021. https://www.elespanol.com/espana/politica/20201130/transparencia-ordena-ministerio-sanidad-conocer-nombres-expertos/539946969_0.html

from keeping them.[23] The reply contradicted the Prime Minister, who in spring had said that minutes were kept, and they would eventually be published[24].

Despite the differences between both countries – in the UK the right was never officially suspended as in Spain – in both cases FOIA requests were not a relevant tool to force governments to be more transparent during the first months of the Covid-19 pandemic. However, in the UK the government moved from secrecy to transparency about scientific committees in three months, whereas the Spanish government only did so partially when eventually forced by the Transparency Council through a FOIA request by the end of 2020.

4 Demand for Information Regarding Scientific Advice: Actors and Tools

The following chapters will focus on the abovementioned case study analysing transparency of scientific committees in the UK and in Spain in order to establish if transparency ecologies can be successful when FOIA is not active and to describe the necessary elements for that to happen. More precisely, the current section focuses on the actors that conformed transparency ecologies in both countries and the tools they used to achieve its goals. Therefore, the current chapter focuses on demand for transparency and how that reached the public agenda, while the following chapter focuses on the supply side: the government and its interests. Both chapters include detailed empirical research, which is necessary to understand minor differences between countries that could be relevant to explain different outcomes despite similar initial situations.

As Seth Kreimer points out, previous knowledge of what is being asked for when demanding information is essential to request data (Kreimer 2008: 1025). In January 2020, the UK government set up SAGE, which has been activated 9 times since its creation in 2009. Before SARS-COV2, members held meetings to assess other threats such as the nuclear incident in Fukushima in 2011 and the Ebola (2014, 2018) and Zika (2016) viruses[25]. The name and purpose of the committee were described in the government's website and citizens could know what the main goal and objectives of the committee were from the beginning of the pandemic.[26]

[23] Maldita.es El Gobierno dice ahora que los comités de expertos no están obligados a tomar actas y que "no se dispone" de ellas, a pesar de que Sánchez aseguraba en mayo que sí se estaban tomando y prometía publicarlas. December 15th 2020. Retrieved: January 2021 https://maldita.es/malditodato/20201215/gobierno-comites-expertos-actas-sanchez-mayo-prometia-publicar/

[24] Maldita.es El Gobierno dice ahora que los comités de expertos no están obligados a tomar actas y que "no se dispone" de ellas, a pesar de que Sánchez aseguraba en mayo que sí se estaban tomando y prometía publicarlas. December 15th 2020. Retrieved: January 2021 https://maldita.es/malditodato/20201215/gobierno-comites-expertos-actas-sanchez-mayo-prometia-publicar/

[25] For more information see: UK Government. Scientific Advisory Group for Emergencies. Accessed: February 2021 https://www.gov.uk/government/organisations/scientific-advisory-group-for-emergencies/about

[26] UK Government. Scientific Advisory Group for Emergencies. Accessed: February 2021 https://www.gov.uk/government/organisations/scientific-advisory-group-for-emergencies/about

In Spain, there was no pre-existent body and the government set up a Scientific-Technical Committee on March 21st 2020, two weeks after implementing a lockdown and imposing a state of alarm claiming to be following the science.[27] However, that was not the only committee of experts that was set up during the first wave of the Coronavirus pandemic. In spring 2020, the Spanish government created up to 7 committees with similar names from "Scientific – Technical committee" to "Technical committee to ease lockdown.[28] Most committees did not have a specific site on the official government website, and objectives and hierarchy of the bodies were not explained. That made it difficult for citizens to know which committees were advising the government, their goals or even their existence. The confusion was summed up by a Spanish journalist at Newtral, who in an article stated that "it is hard to know how many committees exist, who the members are, when they meet, what reports they produce," and she added that it was also impossible to find out to what extent these committees influenced the government's decisions.[29] Specificity is key to ask for more transparency and, as Seth Kreimer points out, in order for information requests to succeed, "they must be precisely framed, and framing such requests requires knowledge regarding the activities to be illuminated." (Kreimer 2008: 1025). In other words, it is hard to ask for information about issues that are unknown and cannot be specifically referred to.

4.1 The Press as the Main Agenda-Setter

As explained in the theoretical section of the paper, the press is one of the most powerful actors that can shape the public debate and set the agenda. During Covid, that was not an exception. In the UK, media outlets started covering the lack of transparency of SAGE in early March 2020 and the coverage increased in the following weeks. Newspapers from all sides of the political spectrum published several pieces collecting scientists' comments and opposition complaints about the secrecy of SAGE. The criticism came from left-wing press such as The Guardian, but also from The Daily Mail, traditionally closer to Conservative governments, which published the following headline: *Why are the people who will decide the fate of the country kept a SECRET? MPs demand names of government's faceless science advisers on SAGE committee who will decide when we leave lockdown*[30] **.** The

[27] La Moncloa. Constituido oficialmente el Comité Científico Técnico COVID-19 . March 21st 2020. Retrieved: March 2021: https://www.lamoncloa.gob.es/presidente/actividades/Paginas/2020/210320comite.aspx

[28] Maldita.es. No, el Comité Científico no es el mismo que el Comité Técnico para la Desescalada que decidió el paso de fases: el Comité Científico se creó el 21 de marzo y se reunía semanalmente. August 3rd 2020. Retrieved March 2021: https://maldita.es/malditobulo/20200803/comite-cientifico-no-tecnico-para-desescalada-decide-cambio-fases-sanidad-niega-existencia-covid19/

[29] Newtral, ¿Un comité de expertos transparente? Lo que sabemos y lo que deberíamos saber. May 2020. Retreieved March 2021: https://www.newtral.es/comite-expertos-transparencia-lo-que-es-y-loque-deberia-ser/20200517/

[30] Maidment, J. Daily Mail, Why are the people who will decide the fate of the country kept a SECRET? MPs demand names of government's faceless science advisers on SAGE committee who will decide when we leave lockdown. April 15th 2020 Retrieved: February 2021 https://www.dailymail.co.uk/news/article-8220695/Coronavirus-MPs-demand-government-publish-names-SAGE-experts.html

Telegraph, traditionally close to Conservative governments too, published the following article: *Calls for names of scientists shaping UK strategy to be made public amid fears over coronavirus transparency*[31]

The issue was not only covered by national press but also international media outlets. The New York Times published an extensive article about the secrecy of SAGE stating that it "operates as a virtual black box. Its list of members is secret, its meetings are closed, its recommendations are private and the minutes of its deliberations are published much later, if at all. Yet officials invoke SAGE's name endlessly without ever explaining how it comes up with its advice — or even who these scientists are."[32]

In Spain, most media outlets barely covered the lack of transparency of the committees until the opposition complained about it in April 2020. Later, one of the committees also made the headlines when a member admitted that they were not consulted by the government on the decision to start easing the lockdown.[33] The issue was then covered by national and regional media outlets from all sides of the ideological spectrum, but mostly by outlets that usually oppose the current socialist government: *The government's 'atrezzo' scientists: decisions are attributed to them but they do not know it* – El Confidencial[34], *A member of the scientific committee says that Sánchez did not ask them before reactivating non-essential activities* – Voz Populi[35], *Trilla reveals that the Spanish government has not consulted with the Covid-19 scientific committee to lift complete lockdown* – Diari Ara (Catalan)[36], *These are the scientists to whom Sanchez listens to (when he wants to).* El Independiente[37]

Some media outlets that are traditionally closer to the current government such as Eldiario.es did not choose this angle for their headlines. Instead, they focused on the fact that the advisor said that it would be "prudent" to keep the lockdown, and only explained what he said about the government not consulting

[31] Mendick, R. *Calls for names of scientists shaping UK strategy to be made public amid fears over coronavirus transparency.* The Telegraph *April 14th 2020 Retrieved: February 2021* https://www.telegraph.co.uk/news/2020/04/14/calls-names-sage-scientists-made-public-amid-fears-transparency/

[32] Lander, M. The Secretive Group Guiding the U.K. on Coronavirus. April 23rd 2020. Retrieved March 2021: https://www.nytimes.com/2020/04/23/world/europe/uk-coronavirus-sage-secret.html

[33] Tv3. El govern espanyol no ha consultat el comitè d'experts per aixecar el confinament. April 10th 2020. Retrieved: March 2021 https://www.ccma.cat/324/trilla-el-govern-espanyol-no-ha-consultat-el-comite-dexperts-per-aixecar-el-confinament/noticia/3003798/

[34] Villareal, A. El Confidencial Los científicos de 'atrezzo' del Gobierno: les achacan las decisiones pero ellos no lo saben. April 10th 2020. Retrieved March 2021: https://www.elconfidencial.com/espana/2020-04-10/sanidad-expertos-coronavirus-hibernacion-antoni-trilla_2543900/

[35] Asunción, F. VozPopuli. Un miembro del comité científico dice que Sánchez no les consultó antes de reactivar las actividades no esenciales. April 11th 2020. Retrieved: March 2021: https://www.vozpopuli.com/espana/miembro-cientifico-gobierno-consulto-confinamiento_0_1345065579.html

[36] Diari Ara. Trilla revela que el govern espanyol no ha consultat el Comitè Científic de la Covid-19 per aixecar el confinament total. April 10th 2020. Retrieved March 2021: https://www.ara.cat/societat/coronavirus-covid-19-antoni-trilla-comite-cientific-pedro-sanchez-govern-espanyol-confinament_1_1167230.html

[37] Ordoñez, R. El Independiente. Estos son los científicos a los que escucha (cuando le interesa) Pedro Sánchez. April 11th 2020. Retrieved: March 2021: https://www.elindependiente.com/politica/2020/04/11/cientificos-comite/

with them when readers clicked on the article.[38] Some factchecking organisations (Maldita.es and Newtral) followed up the matter and sent FOIA requests to the government, but since time frames to reply were suspended for almost three months[39], they could not publish more information until their requests were answered in Autumn 2020.

In the UK, media outlets rallied around the demand for more transparency from SAGE. All relevant newspapers – irrespective of their ideology – published articles about the lack of transparency and editorials demanding to know more about members and minutes. A coalition for transparency within media outlets was quickly activated, as it had happened before. In 2015, newspapers from all sides of the political spectrum signed a joint letter concerned about the Commission on Freedom of Information.[40] In 2021, British newspaper editors united again to call on the government to protect the Freedom of Information Act amid concerns over blocked requests and blacklisted journalists.[41] It can be argued that the same media coalition in favour of Freedom of Information was activated again, this time without a signed manifesto, to ask for more transparency from SAGE.

In Spain, some media outlets covered the lack of transparency of the committees, but many only did it when an opposition politician complained. There was no daily pressure from all outlets and no international coverage either. Unlike the UK, the Spanish press did not rally around the topic. Journalists came together to demand direct access to politicians in press conferences[42] - they had been prevented to attend them because of Covid-19 regulations – but the coalition did not extend to demanding more transparency and access to information about scientific committees.

4.2 Active Civil Society: the Role of the Scientific Community

Literature on ecologies of transparency has identified active civil society as one of the elements needed for ecologies to succeed. One of the first groups that was activated in the UK to request transparency regarding the committee of experts was the

[38] Eldiario.es El epidemiólogo Antoni Trilla vería "prudente" mantener el confinamiento estricto más allá del lunes. April 9th 2020. Retrieved March 2021: https://www.eldiario.es/catalunya/epidemiologo-antoni-trilla-sanchez-confinamiento_1_2265748.html

[39] Publico. El Gobierno aprovecha el estado de alarma para suspender el Portal de Transparencia. April 16th 2020. Retrieved: March 2021 https://www.publico.es/politica/gobierno-aprovecha-alarma-suspender-portal-transparencia.html

[40] Campaign for Freedom of Information. 140 press and campaign bodies urge PM not to weaken FOI Act. September 22nd 2015. Retrieved: April 2021 https://www.cfoi.org.uk/2015/09/140-press-and-campaign-bodies-urge-pm-not-to-weaken-foi-act/

[41] Robinson, M. Daily Mail British newspaper editors call on the government to protect the Freedom of Information Act amid concern over blocked requests. February 9th 2021. Retrieved: April 2021. https://www.dailymail.co.uk/news/article-9240251/British-newspaper-editors-call-government-protect-Freedom-Information-Act.html

[42] See joint manifesto: 20 Minutos. La Libertad de Preguntar. April 4th 2020. Retrieved : March 2021 : https://www.20minutos.es/uploads/files/2020/04/01/LaLibertaddePreguntar.pdf

scientific community. On March 17th 2020, several scientists published a letter in the scientific journal The Lancet asking for the evidence informing the UK's Covid-19 public health response. They stated that "with the UK increasingly becoming an outlier globally in terms of its minimal social distancing population-level interventions, transparency is key to retaining the understanding, cooperation and trust of the scientific and healthcare communities as well as the general public, ultimately leading to a reduction of morbidity and mortality."[43] Nature also published a piece in which it called for more transparency, mentioning the UK strategy. "Publish the evidence and embrace open research."[44]

Former Government Chief Scientific Adviser (hereafter, GCSA) David King set up Independent SAGE, an online committee of scientists which aimed "to provide independent scientific advice to the UK government and public on how to minimise deaths and support Britain's recovery from the COVID-19 crisis," according to the description on their website. Their meetings were broadcasted on YouTube and the first one took place on May 3rd 2020. King said that "you can't hide behind the scientists (…) particularly if those of us in the public domain don't know what the scientists were advising because the advisers are not free to come on radio and television and tell us what their advice has been."[45] It has later emerged that Independent SAGE was founded by activist group The Citizens, which also runs *The Real Facebook Oversight Board* and claims the following as its foundational principle: "We began with Britain. At the start of the worst pandemic in 100 years, we brought together leading scientists to create a shadow accountability body to challenge the UK government's response to COVID-19. We forced openness and transparency onto the government by modelling what openness and transparency looks like."[46]

In Spain, some scientists complained about the handling of the crisis, and some came together to ask for an independent review about it (García-Basteiro et al. 2020)[47], but there was no sustained and coordinated pressure from the scientific community to ask for more transparency about the committee. It must be added that, unlike in Britain, most members of the most controversial scientific committees were not independent scientists but civil servants, who do not usually disclose confidential information to the public.

[43] Alwan, N et al. Evidence informing the UK's COVID-19 public health response must be transparent VOLUME 395, ISSUE 10229, P1036-1037, MARCH 28, 2020 Published:March 17, 2020DOI:10.1016/S0140-6736(20)30667-X https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30667-X/fulltext

[44] Nature. Coronavirus: three things all governments and their science advisers must do now . March 17th 2020: https://www.nature.com/articles/d41586-020-00772-4

[45] Devlin, H. Public's trust in science at risk, warns former No 10 adviser. The Guardian. May 3rd 2020. Retrieved: April 2021: https://www.theguardian.com/world/2020/may/03/publics-trust-in-science-at-risk-warns-former-no-10-adviser

[46] We are the Citizens. About Us. Retrieved September 2021: https://the-citizens.com/about-us/

[47] García- Basteiro et al. The need for an independent evaluation of the COVID-19 response in Spain. The Lancet. CORRESPONDENCE| VOLUME 396, ISSUE 10250, P529-530, AUGUST 22, 2020. Published:August 06, 2020DOI: https://doi.org/10.1016/S0140-6736(20)31713-X

4.3 Opposition and Devolved Administrations

As explained in Section 2, literature has shown that the opposition holds power to set the agenda. In the UK and in Spain, opposition parties criticised the lack of transparency regarding scientific committees and asked the government to release more information. In both countries, opposition parties seemed publicly united in asking for more transparency. It is relevant to mention that both countries have devolved administrations, some of them led by different parties than those in government at the national level and with their own political agendas. In the UK, Scottish First Minister Nicola Sturgeon (SNP) criticised the lack of transparency of SAGE.[48] Regional Presidents in Spain did the same, but while Scotland was effectively more transparent than the national government, most Spanish regions were not. Spain consists of 17 Autonomous Communities and 2 autonomous cities. Unlike the UK, the proportional electoral system does not usually allow parties to rule on their own and coalitions are increasingly common. Even if a party achieves an overall majority in one election, it is unlikely that they will manage to achieve one at both national and regional levels. Therefore, almost all political parties are in government in at least one of the regions, and health policies can be decided by each region.

In spring 2020, the President of the Community of Madrid, Isabel Díaz Ayuso (People's Party), complained about the decisions taken by one of the technical committees, which did not allow Madrid to ease the lockdown. Ayuso stated that she had asked the Spanish Prime Minister to publish the names and the technical reports written by the committee.[49]At the same time, Madrid was also criticised for the lack of transparency of its own committee of experts. According to press reports, the committee was set up in January 2020 but only met 5 times and, although the names of the initial members were public, press reports indicated that membership changed throughout the meetings. There were no reports or minutes because, according to the regional government, it was a "consultative body," so no minutes were recorded, and deliberations and conclusions were not written down.[50] In Catalonia, President Joaquim Torra said publicly that more transparency was needed and asked: "how can a decision be taken without listening to the scientific experts?"[51] At the same time, he also received advice from independent scientists. Some were announced in

[48] Sample, I et al. UK to name scientists on coronavirus advisory group Sage | World news | The Guardian. Published April 27th 2020. Retrieved: February 2021. https://www.theguardian.com/world/2020/apr/27/uk-to-name-scientific-advisers-on-emergency-coronavirus-group-sage

[49] El Independiente. El Gobierno de Ayuso acusa a Sanidad de negar a Madrid el paso de fase con un comité de expertos "inexistente. July 30th 2020. Retrieved: March 2021: https://www.elindependiente.com/politica/2020/07/30/el-gobierno-de-ayuso-acusa-a-sanidad-de-negar-a-madrid-el-paso-de-fase-con-un-comite-de-expertos-inexistente/

[50] Alonso, J. Madrid no reúne a su comité de expertos desde el 27 de febrero. Cadena Ser. September 29th 2020. Retrieved: march 2021 https://cadenaser.com/emisora/2020/09/29/radio_madrid/1601395367_485120.html

[51] Diari Ara. Trilla revela que el govern espanyol no ha consultat el Comitè Científic de la Covid-19 per aixecar el confinament total. April 10th 2020. Retrieved March 2021: https://www.ara.cat/societat/coronavirus-covid-19-antoni-trilla-comite-cientific-pedro-sanchez-govern-espanyol-confinament_1_1167230.html

press releases, but others were only leaked to the press[52]. There were no minutes or official information about these experts or their input.

Spanish opposition parties used transparency to criticise opponents, but they were also criticised for not being transparent when in government. In the UK, most opposition parties had no executive responsibility and, if they did, such as the SNP in Scotland, they were in fact being more transparent with names of members of committees.

4.4 Criticism Within the Governing Party

While not usually described in transparency literature, the current case study shows that critics within the governing party also have power to set the agenda and push for disclosure of information. In Britain, some members of the governing party (Conservative) criticised the lack of transparency of SAGE. Among them, the Former Health Secretary Jeremy Hunt and the Science and Technology Select Committee leader, MP Greg Clark. In fact, Clark confronted GCSA Sir Patrick Vallance, when he stated before the Parliamentary Committee that the names of SAGE members were not meaningful.

> Clark: *"It might be meaningful in the sense that many people think it is important that the Government should be informed by the advice of scientists during this crisis. Obviously, you and Professor Whitty are visible representatives of science, but for the reasons that you have set out you draw on the wealth of UK scientific expertise. In order for people to understand that that breadth is appropriately broad and representative, there would be an interest in knowing which disciplines, institutions and individuals are represented and have the ear of you and Professor Whitty, and thereby of Government."*[53]

In Spain, there was no relevant public criticism by members of the parties in government (Socialist Party and Podemos.) Members of the parties that comprise the government coalition did not ask critical questions in Parliamentary committees and criticism came only from the opposition.

4.5 Whistle-Blowers and Leaks

As pointed out in the theoretical section, whistle-blowers react to demand for information, and it is more likely that they will leak data when demand is high. In April 2020, the British newspaper The Guardian published a leak with the names of all members of the SAGE committee, before the government published it. The

[52] Segura, C. Oriol Mitjà, el científic de capçalera de Torra. El País. April 12th 2020. Retrieved: March 2021: https://cat.elpais.com/cat/2020/04/11/catalunya/1586628624_107552.html

[53] House of Commons Science and Technology Committee. Meeting March 25th 2020. Oral evidence: UK science, research and Technology capability and influence in global disease outbreaks, HC 136. Q76 Retrieved: February 2021: https://committees.parliament.uk/oralevidence/237/pdf/

piece of news was picked up by other media outlets and prompted reactions from the opposition and the scientific community.[54] It emerged that the controversial Prime Minister's chief political adviser at the time, Dominic Cummings, and a data scientist who worked on the Vote Leave campaign for Brexit, attended the meetings. The Guardian reported that they were among the 23 attendees on the 23rd of March meeting, the day when Boris Johnson announced the lockdown.[55] The Guardian exclusive was picked up by most media outlets, scientists, and the opposition. In the following days, other newspapers from The Telegraph to Scottish newspapers The National or The Herald published the news[56]. Bloomberg published a follow-up article in which it disclosed that Cummings "pushed scientists to back UK lockdown."[57] Revelations were published after weeks of stories and editorials about the lack of transparency of SAGE. Most journalists were actively chasing the story, hoping to be leaked the information by a whistle-blower.

In Spain, some members of some committees were also leaked to the press, but the leak was published in the state news agency, and it only involved a committee that was not controversial[58]. Since the state news agency rarely publishes critical information, it can be hypothesised that the leak came from the government itself and they deemed it right to publish names of some of the least relevant committees, which were barely known to the press and the public. Teresa Ribera, one of the Vice-Presidents stated that some experts "preferred not to be named," and had not been paid to participate. Therefore, it was not even possible to know all the members of the least controversial committees.[59] Members of the technical committee to ease lockdown – the one that the opposition wanted to know more information about, and the press was writing about– remained unpublished until the government was forced to disclose them through a FOIA request in Autumn 2020.

[54] Carrell, S et al. Revealed: Cummings is on secret scientific advisory group for Covid-19. The Guardian. April 24th 2020. Retrieved: February 2021: https://www.theguardian.com/world/2020/apr/24/revealed-dominic-cummings-on-secret-scientific-advisory-group-for-covid-19

[55] Carrell, S et al. Revealed: Cummings is on secret scientific advisory group for Covid-19. The Guardian. April 24th 2020. Retrieved: February 2021: https://www.theguardian.com/world/2020/apr/24/revealed-dominic-cummings-on-secret-scientific-advisory-group-for-covid-19

[56] Carmichael, H. UK Government facing calls on transparency over scientific advice. April 25th 2020 Retrieved: February 2021: The National https://www.thenational.scot/news/18405348.uk-government-facing-calls-transparency-scientific-advice/

[57] Morales, A, et al. Johnson's Top Aide Pushed Scientists to Back U.K. Lockdown. Bloomberg. April 28th 2020. Accessed March 2021: https://www.bloomberg.com/news/articles/2020-04-28/top-aide-to-u-k-s-johnson-pushed-scientists-to-back-lockdown

[58] EFE. Este es el consejo de sabios que asesora al Gobierno en la desescalada. April 29th 2020. Retrieved: March 2021: https://www.efe.com/efe/espana/portada/este-es-el-consejo-de-sabios-que-asesora-al-gobierno-en-la-desescalada/10010-4234460

[59] Méndez, R. El Gobierno incumple la Ley de Salud Pública al ocultar los expertos que lo asesoran. El Confidencial. May 7th 2020. Retrieved March 2021: https://www.elconfidencial.com/espana/2020-05-07/gobierno-ley-salud-publica-nombre-expertos-desescalada_2584175/

5 Information Supply: the Government

The current case study shows that for transparency ecologies to succeed, multiple actors need to be mobilised quickly to influence the audience and force the government to move from secrecy to transparency. However, albeit necessary, these are not the only conditions that need to be met. In fact, as proven by previous high-profile cases such as the Iraq War Cabinet minutes[60], a strong group of actors is not enough in all cases. In order for them to succeed in their demands, these need to be met with a supply of information. For that to happen, the government needs its own strategic reasons. It can be argued that in the current case the virus mitigation strategy followed by the UK at the beginning of the crisis – as opposed to the suppression one followed by most European neighbours – became a key element that forced the government to seek more legitimation by being more open. It is also relevant to mention the role of leaks, since some information was published in spite of the government's initial refusal to do so. Therefore, the government's decision was not based on choosing between the release of information versus secrecy but on information released by others versus secrecy.

When most European countries had already implemented a lockdown in early March 2020, the UK's GCSA, Sir Patrick Vallance, argued that the government's aim was "to try and reduce the peak, broaden the peak, not suppress it completely; also, because the vast majority of people get a mild illness, to build up some kind of herd immunity so more people are immune to this disease and we reduce the transmission." Public backlash prompted the then Health Secretary Matt Hancock to say that "herd immunity" was not a part of the government's strategy arguing that "that is a scientific concept, not a goal or a strategy."[61]

In spite of his remarks, the UK was still not under lockdown while most of Europe – and the world – already were. Amongst other factors such as society already practising social distance and pressure from the opposition, a model by the Imperial College warning about the risks of the "mitigation" strategy was key for the government to change its strategy. The report, by Imperial College epidemiologist and SAGE member Neil Ferguson predicted that the UK could have up to 550,000 Covid-19 deaths if nothing was done to avoid it[62]. The national lockdown was not implemented until March 23rd. On April 24th, The Guardian published a list of most SAGE members leaked by a whistle-blower. It emerged that the Prime Minister's chief political adviser at the time, Dominic Cummings, attended the 23rd of March meeting, the day when Prime Minister Boris Johnson announced the lockdown.[63]

[60] Norton-Taylor, R. Tony Blair's Iraq meetings to remain secret after government veto. The Guardian. July 31st 2012. Retrieved: April 2021 https://www.theguardian.com/politics/2012/jul/31/iraq-invasion-government-documents-secret

[61] Johnston, J. Matt Hancock insists 'herd immunity' not part of government's plan for tackling coronavirus . March 15th 2020. Retrieved February 2021 https://www.politicshome.com/news/article/matt-hancock-insists-herd-immunity-not-part-of-governments-plan-for-tackling-coronavirus

[62] Van Elsland, S et al. COVID-19: Imperial researchers model likely impact of public health measures. Imperial College London. March 17th 2020. Retrieved: February 2021: https://www.imperial.ac.uk/news/196234/covid-19-imperial-researchers-model-likely-impact/

[63] Carrell, S et al. Revealed: Cummings is on secret scientific advisory group for Covid-19. The Guardian. April 24th 2020. Retrieved: February 2021: https://www.theguardian.com/world/2020/apr/24/revealed-dominic-cummings-on-secret-scientific-advisory-group-for-covid-19

In mid-April, the UK was reporting around 5.000 diagnosed Coronavirus cases every day, but due to lack of testing, the real number of infections is thought to be much higher. In the midst of the crisis and with several voices blaming the government for its initial delayed response, the government had more pressure to publish the scientific rationale behind its decisions and to clarify to what extent its decisions matched those recommended by scientists, particularly after the controversial leak. Thus, the government needed to evaluate whether the costs of keeping a secret were higher than the costs of releasing information. In late April, government scientists Chris Whitty and Patrick Vallance, who had previously defended that members should be kept secret, said that more information and evidence would be published soon. In May, both the names and minutes were published.

A UK study done in April 2020 showed that "whilst 52.7% of respondents said the government was making the right decisions, only 42.3% thought the government tells the truth about COVID-19 most or all of the time." (Enria et al. 2021: 15) "Across both high-trust and low-trust groups, there were consistent concerns about the coherence, transparency and accountability of communications and decision-making, including uncertainty about the role of evidence and experts, as well as fears that the response was being politicised. This not only gives an insight into the reasons for a lack of trust in the response in low-trust groups, but also suggests that for high trust groups, a positive assessment of government decisions and support for enforcement in a time of crisis did not entirely eliminate concerns about transparency." (Enria et al. 2021: 16)

Meanwhile, in Spain there was some controversy about lockdown measures at the beginning of the crisis, mostly about whether the government should have allowed rallies in Madrid when Coronavirus had already reached Spain[64]. However, at the time there was hardly any mention of transparency of the scientific committee advising the government. In fact, despite the government claiming that they were following the science, lockdowns were imposed even before the first scientific-technical committee was officially created. When the committee was officially set up in March it met directly with the Prime Minister and its goals were not defined, nor was it possible to know what they were discussing[65].

As the crisis progressed and more committees were created, the opposition started asking about them, particularly about those that were technical and were asked by the government to make decisions, not just give independent advice. The issue became more controversial and politicised when one of the technical committees was put in charge of evaluating which regions could ease the lockdown in late April-May 2020. Then, regional politicians and the opposition demanded to know how decisions were taken and journalists sent FOIA requests, which were not answered until Autumn, when political discussions had turned to other topics. Once

[64] El Confidencial. Sanidad no ve necesario suspender las manifestaciones del 8M por el coronavirus. March 2nd 2020. Retrieved: March 2021: https://www.elconfidencial.com/espana/2020-03-02/sanidad-manifestaciones-8m-coronavirus_2478003/

[65] La Moncloa. Constituido oficialmente el Comité Científico Técnico COVID-19 . March 21st 2020. Retrieved: March 2021: https://www.lamoncloa.gob.es/presidente/actividades/Paginas/2020/210320comite.aspx

the opposition found out that technical committees were in fact comprised of civil servants and not independent experts, pressure shifted towards the government and the opposition assumed that decisions were political and not based on advice by scientists.[66] When asked about minutes of meetings by the foreign press, Prime Minister Pedro Sánchez stated that they would be published. Months later, the government replied to a FOIA request saying that they never existed because they were not legally obliged to record them.[67]

In the UK, the government needed to explain why they made an initial political decision that was an outlier compared to other European countries and could cost more lives than a more cautious approach. They said that they were guided by the science and released information to prove that statement, especially after some information was already leaked by whistle-blowers. In fact, publication of minutes showed that the initial approach of SAGE was not elimination of the virus but mitigation.[68] However, the committee that was more controversial in Spain was not an independent committee of experts that advised the government, but an internal committee of technical civil servants that decided which regions were allowed to ease the lockdown. Contrary to the British case, most practical decisions were based on advice by committees of civil servants led by politicians.

The initial decision of the UK government to pursue "herd immunity" instead of confining the population became an outlier in Europe, and the government needed to justify it through the publication of scientific advice, which corroborated that the mitigation strategy was recommended by the committee. The Spanish government, despite claiming that decisions were made following the science, did not have a scientific committee when the crisis started or when lockdown was imposed. While the UK had an independent committee keeping minutes, FOIA requests finally revealed that in Spain that was not the case.

6 Transparency Momentum: when Supply and Demand Meet

Relevant actors that comprised transparency ecologies in both countries have already been defined. Their strength should not only be measured by their power, but it should also be considered how fast they could be mobilised and for how long they sustained their pressure. In other words, how fast can demand for transparency be strong enough to force supply of information? At the beginning of the Coronavirus

[66] Congreso de los Diputados. Diario de Sesiones. Año 2020 XIV LEGISLATURA Núm. 132. P. 17. July 30th 2020: https://www.congreso.es/public_oficiales/L14/CONG/DS/CO/DSCD-14-CO-132-C1.PDF

[67] Maldita El Gobierno dice ahora que los comités de expertos no están obligados a tomar actas y que "no se dispone" de ellas, a pesar de que Sánchez aseguraba en mayo que sí se estaban tomando y prometía publicarlas. December 15th 2020. Retrieved March 10th 2021 https://maldita.es/malditodato/20201215/gobierno-comites-expertos-actas-sanchez-mayo-prometia-publicar/

[68] See SAGE minutes: Coronavirus (COVID-19) response, 25 February 2020. Retrieved: February 2021: https://www.gov.uk/government/publications/sage-minutes-coronavirus-covid-19-response-25-february-2020

crisis in March 2020, both the British and the Spanish government chose secrecy by default. In the UK, the government ended up publishing names and minutes of meetings in May, but in Spain names of members of the most controversial committees were not published until December 2020.

In the UK, one of the first notorious complaints about the lack of transparency of SAGE was done on March 17th 2020, when several scientists published a letter in the scientific journal the Lancet asking for the evidence informing the UK's Covid-19 response. The issue was picked up by the press and headlines about SAGE started appearing often in most media outlets since mid-March. The House of Commons Science and Technology Committee also asked for more transparency on March 25th[69]. In a matter of weeks – and even days -, several actors activated in the UK to demand more information from SAGE: scientists wrote to scientific journals and were often seen on TV and quoted in newspapers asking for more transparency; journalists from all outlets started covering the issue and competing to publish more information about the committee; the opposition started complaining and members of the governing party led a very critical Science Committee session in Parliament.

Journalists tried to publish more information since March and, in mid-April, The Guardian found a secret source that leaked a list of members[70]. On May 4th 2020 the government published the names of members and the same actors that had been pushing for the names to be published then pushed for more transparency about minutes of meetings. They were published on May 29th. Once that information was released, they asked for the conflict of interests register.[71] In less than three months, the government moved from full secrecy to almost full transparency and published all information on the official website. They did it even before the Information Commissioner or a court legally asked them to do it through a FOIA request.

In Spain, the first complaints about the lack of transparency of committees of experts were not made in March but in April. In Parliament, the opposition asked the Prime Minister to release more information about members.[72] Media outlets started covering the issue once the opposition complained about it, but most did not follow it up daily. In fact, Pablo Casado, leader of the opposition, asked for more transparency but said that they would ask to see the minutes of those meetings via an Inquiry Committee once the crisis was over.

Transparency about committees made the headlines again in May, when the government set up a seventh committee, this time to evaluate which regions could start easing lockdown. Those regions that were not allowed to ease it complained about it and the opposition asked for transparency again. People's Party took the matter to

[69] See House of Commons Science and Technology Committee. Meeting March 25th 2020. P. 16. Retrieved: February 2021: https://committees.parliament.uk/oralevidence/244/pdf/

[70] Sample, I. Who's who on secret scientific group advising UK government?. The Guardian. April 24th. Retrieved: January 2021 https://www.theguardian.com/world/2020/apr/24/coronavirus-whos-who-on-secret-scientific-group-advising-uk-government-sage

[71] See Thacker, P. Conflicts of interest among the UK government's covid-19 advisers BMJ 2020; 371 doi: 10.1136/bmj.m4716 (Published 09 December 2020)

[72] Congreso de los Diputados. Diario de Sesiones Año 2020 XIV LEGISLATURA Núm. 17. April 9th 2020: https://www.congreso.es/public_oficiales/L14/CONG/DS/PL/DSCD-14-PL-17.PDF

the Ombudsman, who did not publish a resolution until July 28th[73], when lockdown had been eased and the committee was no longer active. In the meantime, FOIA requests that were sent by journalists and lawyers in spring did not receive a – negative – response until September. Then, FOIA requests sent by the media and individuals reached the Transparency Council, an independent authority set up to uphold the right to access information held by public authorities. In November 2020, the Council asked the government to publish the names of members of the committee, and they were published in December 2020.[74] In March 2021, after receiving several FOIA requests asking for minutes of meetings, the government finally published some documents online. It uploaded PDFs with a summary of data and topics raised in meetings of some committees but no minutes.[75] The issue was picked up by the online newspaper eldiario.es but no other outlets followed it up and political debates had already shifted towards other topics, so there was almost no public awareness about it.[76]

To sum up, in the UK actors pushing for more transparency acted fast and sustained their pressure until information was first leaked to the press and then published by the government, which happened within three months from the beginning of the crisis. However, in Spain actors did not act that quickly or at the same time and could not sustain their pressure. Pressure was not strong enough to force the government to change its position quickly and the executive only published information when it was forced to do so by the Transparency Council via a FOIA request, almost a year after the crisis had started. By then, political debates were focused on other topics.

7 Conclusion

The current research paper has described how information disclosure processes worked in the absence of FOIA during the first wave of the Covid-19 pandemic. Through research and analysis of a comparative case study on transparency of scientific committees advising governments, it has proved that when FOIA is not available, other actors can be activated to increase demand for information and put pressure on the government to supply it. Past literature had pointed out that FOIA needed to be understood as functioning within a transparency ecology (Kreimer 2008) which involved several inter-linked actors that could determine whether information would be published. The unprecedent suspension of FOIA – either de jure or de facto – during the first wave of the pandemic has allowed for

[73] RTVE. Sanidad reconoce que no hubo un comité de expertos para la desescalada al margen del equipo de Fernando Simón. July 30th 2020. Retrieved March 2021: https://www.rtve.es/noticias/20200730/sanidad-reconoce-no-hubo-comite-expertos-para-desescalada-margen-del-equipo-fernando-simon/2034841.shtml

[74] El Español, Transparencia ordena al Ministerio de Sanidad dar a conocer los nombres del comité de expertos (elespanol.com), November 30th 2020. Retrieved March 2021

[75] Gobierno de España. Ministerio de Sanidad. Reuniones del Comité Técnico para la Desescalada. Accessed March 2021: https://www.mscbs.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/actas.htm

[76] Cabrera, E et al. Las actas de las reuniones en Moncloa de los primeros días de la pandemia se hacen públicas un año después. March 6th 2021: https://www.eldiario.es/sociedad/gobierno-publica-documentacion-comites-tecnicos-covid-19-desescalada-no-actas-reuniones_1_7276057.html

the study of the importance of the law as a transparency tool and the role of other relevant actors in the disclosure process. Research has shown that, in some cases, transparency ecologies can still be successful when FOIA is not active, while in other cases there is no disclosure of information until FOIA is reactivated.

The research paper has conceptualised information disclosure processes as supply and demand models, where several actors demand the release of information while the government holds the power to supply it for its own strategic reasons, which are in turn affected by the strength of the demand. In the UK, demand for transparency was high and it involved several engaged actors that could be rapidly mobilised through a non-legal process based on public pressure. Eventually, it was met with the government's interest to supply information in order to legitimise its actions. In Spain, the ecology of transparency did not manage to force the release of information before FOIA was reactivated.

In this case, the main actors involved were the media, civil society organisations, and formal political institutions. More precisely, research has identified the following actors as being the most relevant ones to explain differences between both countries on the demand side: the press, the scientific community, the opposition, whistle-blowers and critics within the governing party. It is relevant to mention that motivations for these actors might not have been the same but just happened at the same time for different internal reasons. On the supply side, the composition of the committees (independent scientists versus civil servants) and different legitimation needs emerging from opposed strategies to deal with the spread of the virus (mitigation versus suppression) can explain why governments took opposed decisions.

Therefore, in the UK the lack of an effective FOIA was circumvented by a strong transparency ecology which rapidly forced the release of information. On the other hand, in Spain, the lack of an effective FOIA could not be circumvented, and information remained unknown until the law was active again and the Transparency Council forced the government to publish part of the information, which happened more than half a year after the first lockdown was implemented. Official replies to requests ended up showing that most scientific committees were comprised of civil servants and no official minutes were kept.

To sum up, while in some countries access to information and transparency remained possible through informal tools, others needed the force of law – via Freedom of Information Acts – to force the government to publish information. Further empirical research is needed to examine whether the model could be applied to different secretive topics that were contested during the same period of time – such as transparency of Covid-19 procurement– and how changes in topics, actors and tools would affect supply and demand of information.

Declarations

Conflict of Interest The author declares no competing interests.

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