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Feedback for a better performing public sector

Feedback by independent institutions such as courts, auditors and ombudsmen can guide the public sector on how to improve the performance of the public sector and suppress corruption.

This article underlines that rules and checks are not an effective answer to corruption and growing distrust in society. The heart of the matter is the effectiveness of feedback systems. In (complex) modern states the whole range of democracy – judicial control, audit, supervision by ombudsmen and (market) regulators, and evaluation by independent bodies, and applications in the digital world – are all important examples of feedback.

Feedback depends not only on rules and the existence of legal institutions, but also on (international) cooperation. If, for instance, an audit body is working with a hostile public sector not open to critical reflection, its effectiveness can be limited. In this respect, there is an important difference between power and authority. The same goes for (constitutional) courts and the ombudsman.

Feedback systems in the public sector can only flourish in an open and cooperative context. If not, public services have a tendency to become inward-looking and unresponsive to the outside world.

To conclude, improvement of the performance of the public sector should be based on a learning process; feedback is highly relevant to this. In this context, a culture of difficult conversations is highly relevant as a part of the learning process.

Keywords: Feedback, learning, courts, auditors, ombudsmen, performance, corruption, complexity.

What is the performance of EU Member States from a comparative perspective? How can this performance be improved? How can we fight corruption? Feedback by independent institutions such as courts, auditors and ombudsmen can guide the public sector on how to improve its performance and suppress corruption. The following examples suggest how this might be done and what lessons could be learned.

1. Introduction

This essay aims at making an insight into the importance of feedback mechanisms in view of improving the public sector. Besides introducing some ideas for a fruitful discussion, I frequently refer in this paper to two studies; the performance of the public sector by the Netherlands

Institute for Social Research (SCP) (2015) and the Hertie study on "Public integrity and trust in Europe" (Hertie, 2015). I would like to elaborate on the good functioning of "control of corruption determinants" and citizens' appreciation of the different services of the state, as shown by SCP's study, especially the contribution of modern bureaucracies with an open character to better performance (SCP par. 7.5.8). I will also suggest how the EU could improve its way of acting in order to support the good operation of the Member States.

After a contextual introduction on complexity in modern society and governance, this essay will touch upon the current state of affairs in the EU with a focus on cooperation. The third part of the text will go into corruption and how sound feedback mechanisms may be useful in the fight against it, as a tool to check the discretionary powers of governments. Before concluding, I will illustrate the importance of cooperation and openness in the context of feedback with some concrete examples.

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2. Complexity

Recent events, including the acts of terrorism committed in France by the so-called Islamic State and the influx of refugees into Europe, have put pressure on the functioning of the EU Member States. Trust in the effectiveness of our systems of government is being eroded. The opinion that European cooperation is not a solution for the many challenges we are facing, but instead a source of unrest, is gaining currency. Such views are circulating with ever greater frequency in the media. It is difficult to find convincing answers to the complex problems that we are facing.

Modern society is complex. Local, regional and national governance is complex, as are European and global cooperation. The world we live in is complicated as well, with its focus on finance and complex banking and finance structures, new technologies, and new forms of cooperation. Citizens have begun to claim new – active – roles, and to make greater demands of their governments. This complexity has at least two consequences. Firstly, this increasing complexity causes disorder or even chaos. Chaos theory (small causes, huge consequences) applies not only to climate science, but to our daily life as well. In November, 2015 a Russian fighter crossed into the Turkish airspace for less than a minute and was shot down, causing a significant diplomatic rift. This disagreement affects all NATO members because of Article 5 of the NATO treaty. History shows that this type of escalation, if not well managed, can cause a serious threat to the world peace.

Direct threats to the world peace are not the only factors threatening the stability of our systems of government. Climate change; the chaotic situation in the Middle East; the march of refugees towards Europe; doubts about the stability of the Schengen Area; the aftermath of the euro crisis and the potential collapse of the currency; uncertainty about the sustainability of financial markets and the banking system; the threat of countries leaving the EU; separatism on the rise in regions such as Catalonia and Scotland; the contested position of traditional political parties against rising populism; loudly voiced Euro scepticism; the change in the balance between the USA, Russia and China. These are factors

which can, on their own, disturb the balance of our system. But all of these issues are interrelated, and this exacerbates the problem. There are many issues which can trigger a chain of disturbing or even destructive consequences.

The second consequence of complexity is the need of the human mind to simplify information. Nobody, and no institution, is capable of knowing all the relevant facts and correlations and possible disciplinary approaches to understand what is happening in the world and what kind of action is needed or desirable. Mostly, "crises" provoke "measures" which are supposed to be effective. However there is no "grand design" or imaginary blue print. Our social and economic reality has been built on a sequence of crisis reduction measures, for instance the EU's "six-pack and two pack" to ensure more economical stability. Measures are mostly drafted along one or two disciplinary approaches: market regulation in order to mitigate the dangers of market failures, and political compromises to pacify the upcoming unrest.

From a historical perspective, international political cooperation is the most powerful instrument for coping with complex problems. The EU is an eminent and striking example of cooperation being used to reduce the complexity of problems European countries were facing after World War II. But the EU itself has become a complex system and many citizens do not understand what is going on in "Brussels". And this erodes the legitimacy of European cooperation.

3. European cooperation

In 2015, many uncertainties challenged the strength of European cooperation and of the national governments at Member State level. In the aftermath of the 2008 financial crisis, 2015 provided a great deal of stress on policy making. Just as the stress tests that have been introduced for banks (which were once deemed too big to fail before failing, doing serious harm to national economies), Member States themselves have been exposed to stress that tests their strength and credibility. In this light, the study of the Netherlands Institute for Social Research (SCP) on the performance of the public sector in the EU in 2004 and 2015 is highly relevant.

The study introduces a (simplified) heuristic framework in order to understand the complexity of modern society (SCP Chapter 1, Fig. 1). It also provides statistical evidence on performance.

Public sector achievement in 36 countries:

A comparative assessment of inputs, outputs and outcomes

(The Netherlands Institute for Social Research, 2015)

This report answers the question of how the 28 EU Member States plus Canada, the US, Japan, South Korea, Australia, New Zealand, Norway and Switzerland performed in the various domains of the public sector in the period 1995–2012. We look in detail at education and health, and more broadly at social safety, housing, social security and public administration. The most recent results for education, health, housing, social security and public administration broadly show the following picture for the Member States of the European Union:

- *Northern European countries performed best on average in each of these five sectors, followed by Western European countries.*
- *Central and Eastern European and Southern European countries performed less well on average in each of these five sectors, with one exception: the performance of Southern Europe on health (life expectancy and infant mortality) was comparable with Western Europe.*



European cooperation is based on the presumption of democracy and the rule of law. Article 2 of the EU Treaty states that the Union is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”. According to the Copenhagen criteria, new Member States are obliged to comply with the following principles: the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the “acquis”); and adherence to the aims of political, economic and monetary union. The first criterion must be fulfilled before accession negotiations are launched.

It is evident that the pressure on the EU system and on cooperation between Member States relates to many of the fundamental issues mentioned above. In this respect, it is highly relevant to reflect on the performance of individual Member States. The SCP study “Public sector achievement in 36 countries” puts forward “good governance as the best indicator as the most fruitful approach”

and offers valuable material for such reflection (par. 7.2.2). The different elements of good governance are highly correlated (7.3.1). It states that political systems in the Member States and at EU level should inspire trust, because the stability of political systems is contingent upon trust. For this reason, it is of paramount importance to consider the extent to which corruption in the Member States is eroding public trust. The Hertie School on Governance (Hertie) has produced a study on “Public integrity and trust in Europe”, which offers valuable data and insights on this topic.

The legitimation of states can be based on outputs, but also on institutional safeguards, such as the rule of law and accountability. The SCP report “Public sector achievement” focuses on the comparison of output of countries and provides some evidence for “output legitimation”. The “Public Integrity and Trust” report focuses on corruption and integrity. It describes a paradox: more rules and enforcement are not a guarantee for more integrity. On the contrary: administrative simplicity, trade openness, rule of law, audit and these kind of institutional safeguards correlate with trust (pp. 38 and 39), and therefore with greater institutional stability. This may also extend to the good functioning of public services such as health care, education, housing, energy and the civil service.

The SCP report introduces the concept of a national resilience barometer. This instrument aims to give an overview of many factors linked to the strength of states in relation to their demographic, economic and social circumstances, and the state of their public finances (pp. 35-72). These factors can be considered as the circumstances under which the state has to perform. Some states have a more favourable position than others, for instance in connection with ageing, poor participation in the labour market and a weak economic outlook. The SCP report concludes that only a few states have very solid societal circumstances. Many states face major challenges (p. 69).

4. The heart of the matter

Reading the Hertie study, it is important to note that the primary argument of that paper is that evidence-based integrity policies are within reach, notwithstanding the fact that the context in each individual Member State is different and

that there is no uniform solution. Tailor-made national strategies should be designed to gradually catch up in terms of institutional performance or governance standards. The Hertie study warns that the mantra "more rules" is ineffective in this process. It states: "EU funds come with the most restrictive rules in the world, but they are not distributed competitively". From the perspective of the European Court of Auditors, I would like to observe that the error rate, reflecting an estimate of the money that should not have been paid out because it was not used in accordance with EU rules in the spending of EU funds is persistently high, and that many projects fail to deliver sufficient value for money. This bad performance erodes citizens' trust in EU's effectiveness.

The Hertie study states that, according to the World Bank, control of corruption rests on six pillars: administrative simplicity; trade openness; auditing standards; judicial independence; and e-government services and users. Empirical evidence shows that these issues are strongly interrelated.

Public integrity and trust in Europe (Hertie School, 2015)

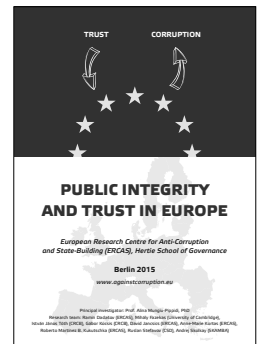
This report provides an analysis of the relations between trust and public integrity. The results showed that citizens define corruption broadly as they look at the society's capacity to value merit (hard work and competence) as a source of success instead of (political) connections. The report provides an alternative to the use of subjective perceptions of trust and corruption by providing 6 quantitative indicators that can explain corruption control within countries.

The lessons learned from the review of evidence go beyond both survey figures and institutional fixtures, and can be summed up rather as revealing more general prerequisites of policies which would help to restore political trust in Europe: five of them.

- *Evidence-based integrity policies are not only desirable, but within reach*
- *Diversity of contexts calls for multiplicity, not uniformity of solutions*
- *Smart societies prevent corruption before it happens*
- *Target the real countries, not the legal Countries*
- *Politicians matter more than civil servants in redressing trust*

Corruption can be controlled using legal and social constraints (a strong judiciary, strong audit, and societal norms which endorse public integrity). On the negative side, the Hertie report argues that authorities enjoy wide discretionary powers to decide on material resources such as foreign aid, EU structural funds, public sector

employment, contracts, etc. These uncontrolled powers fuel corruption. As an example, Georgia, a post-communist country, used to require citizens to possess licences in order to carry out many activities; for instance, running a bakery or a shop. Every licence was an opportunity for bribery. Georgia put a stop to this practice by



introducing transparent town hall services¹. The level of citizen satisfaction with this responsive and transparent approach to public service has been high, and the system has been recognised internationally. Corruption has been reduced significantly.

Another important feedback mechanism that is capable of reducing corruption is the use of e-government tools. This includes the use of emerging ICTs like Internet, World Wide Web and mobile phones to deliver information and services to citizens and businesses. These tools can help the fight against corruption through feedback by reducing the discretion governments have (Bhatnagar 2003). A good instance where such tools have been used is the e-citizen portal in place in Singapore, which includes a feedback unit, where citizens can express their views in a constructive manner on several issues including national policies (Huong Ha, 2013, p. 181). In this way the government interacts with citizens to shape policies based on their needs. The system in place has received the Stockholm Challenge Award and has been used internationally as a best practice example in the realm of e-government².

In themselves, rules and checks are not an effective answer to corruption and growing distrust in society. Besides transparency, independent judicial control, ombudsmen and audit can be helpful. In my view, the heart of the matter is the effectiveness of feedback systems such as the judiciary and audit bodies. Modern states are complex systems; these systems should include several feedback systems³. Democracy is a simplified feedback system, because voters can express their views at elections once every certain number of years. The parliamentary system, in combination with a free press, can contribute to the day-to-day debate on the effectiveness of policymaking and the performance of the state. However, the strength of democracy can be

seriously damaged by clientelism and nepotism. Courts can control administrative actions, including the arbitrary or even corrupt exercise of discretionary powers. Auditors add transparency to the system by auditing the legality and regularity of public finance and, ideally, reporting on the value for money gained by public investments. An ombudsman can deal with citizens' complaints, and can combat maladministration and abuses of power. Oversight bodies can monitor banks and other financial institutions. Market and competition authorities can supervise and regulate fair competition, and can contribute to trust in those markets.

Recent years have shown that the Internet – if citizens' access to it is not limited by the state – can contribute to openness and spontaneous feedback on the functioning of many systems. Services are compared, evaluated and commented on. The tone in which this is done may be harsh and unfair at times, but it is overly effective in channelling and expressing the views of citizens. It is to be expected that during the coming years, the influence of internet feedback will grow, and innovative supervisory systems will emerge.

The whole range of democracy – judicial control, audit, supervision by ombudsmen and (market) regulators, and evaluation by independent bodies, and applications in the digital world – are all important examples of feedback. The concept of feedback should be understood in a broad sense. In general in nature, in the human body and in society, feedback is essential. History has shown that the Enlightenment and the spread of the democratic system were key to the economic development of modern Western States. Markets – when they function properly – are governed by feedback: Adam Smith's invisible hand. The separation of power described by Montesquieu and De Tocqueville – the inherent balance of power between the legislator, executive and judicial power – is a feedback system. Feedback should not only be seen as an opposing force, but also as a source of improvement and innovation.

Our analyses of modern society and government structures can be made more useful if we identify the effectiveness of the feedback systems that are in place or of those which are malfunctioning or missing. We can also see that local, regional and national feedback systems are only

¹ Gogidze (2013) or <https://www.youtube.com/watch?v=XE2oIb2gdQY>.

² Stockholm Challenge. 2006. The eCitizen Portal. Tagline: Government Services – A click away Stockholm Challenge 2006.

³ "Creating collective action – and providing political support – at the level of *strategic groups* within society seems to be the only good governance change strategy that has worked in the past". (Mungiu-Pippidi, 2015, p. 213).

partially effective. Although many politicians and sections of public opinion oppose European or global solutions, daily life shows that missing or malfunctioning feedback systems can threaten the future development of society. For instance, climate change is the result of a non-existent feedback system in the global climate mechanism, caused by the reduction in the amount of ozone in the stratosphere, the overproduction of carbon dioxide and subsequent global warming. The global ecosystem is disturbed because the existing feedback system is not able to regulate the climate. Only international cooperation can offer new instruments to halt this disturbance.

5. Competition and cooperation

Competition in markets is based to a large extent on indirect feedback on production and prices. Market supervision as a feedback system should contribute to optimal markets where this indirect feedback can function. However, progress in modern society is often made by more direct feedback, especially in the public sector (health care, education, safety) where feedback mechanisms are essential for government to serve society effectively. I would like to frame this "direct feedback" as "a difficult conversation". "Speaking truth to the power" is an important example of starting up a difficult conversation. The role of the judiciary, auditors, ombudsman and other independent institutions is not only focused on the direct control of, for instance, legality, but plays a role in the long-term development of a complex discourse that facilitates the development of the public sector in a positive direction. Indeed, these instruments contribute to accountability.

Feedback depends not only on the existence and effectiveness of legal institutions, but also on cooperation. If, for instance, an audit body is working with a hostile public sector not open to critical reflection, its effectiveness can be limited. In this respect, there is an important difference between power and authority. The same goes for (constitutional) courts and the ombudsman. Feedback systems in the public sector only can flourish in an open and cooperative context. If not, public services have a tendency to become inward-looking and unresponsive to the outside

world. In this context, a culture of silence can hinder difficult conversations.

For example, the Dutch National Ombudsman investigated the response of doctors and the Inspectorate for Health Care to medical errors. The Inspectorate was functioning in an inward-looking way in its relation with patients and their family. The effectiveness of feedback to medical doctors and health care institutions was only limited. In response, the legislator organised a hotline for complaints. A new feedback instrument was thus put in place. The Inspector General for Health Care observed that hospitals which deal in a serious way with patients' complaints offer better quality in their health care than those which are more inward-looking and less responsive. This suggests that feedback systems are part of an effective learning process for organisations and institutions. In this context, the importance of the Internet and digital feedback systems becomes greater. A step further in this development is made by open data. Open data can effectively connect the different parts of the public sector with civil society.

Again, feedback, learning and responsiveness in the public sector can only flourish in a context of openness and cooperation. Cooperation is an often underestimated factor in innovation. The public sector is introducing market effects in order to improve performance, like in health care, education and housing. The doctrine of New Public Management is partially based on this approach. Competition with winning and losing parties might be helpful for developing healthy markets, and public services can to a certain extent benefit from the pressure of competition. However, an interesting topic for debate might be the question of whether – according to negotiation theory – cooperation in the sense of integration of interests is appropriate for the public interests that are served by the public sector. The SCP report "Public sector achievement" offers a broad overview of the performance of the different sectors in the EU Member States. To what extent is this performance based on markets? How strong and independent are feedback systems in the public sector of the EU Member States? How open and responsive to civil society are these states' civil services? Is market competition effective in health care, housing and education? These

are all relevant questions for starting a difficult conversation on the improvement of the public sector in the EU Member States.

What about the performance of the EU itself? How responsive is the EU in respect of the challenges of those days? The EU's multiannual financial framework allows only limited flexibility in how the EU budget is spent. The migration crisis has shown a lack of cooperation between Member States in responding to the challenges it brought about. There is a strong focus in Member States on simply spending money, the motto being "use it or lose it". There is precious little feedback from civil society, and the EU is losing its credibility. How effective are the EU's feedback systems? For more than twenty years, the European Court of Auditors has been reporting a persistently high error rate; in recent years, this rate has been around 4.5%. Until recently, the performance of the EU budget received only limited attention from its member states and institutions. In response to this criticism, the European Commission has announced a focus on results-based budgeting. This raises the question of how results or performance should be determined and measured. It also raises the question of how effective feedback systems in the EU are, and how effectively the EU institutions learn from the input they get, as well as the question of how effectively Member States are contributing to European cooperation, or (alternatively) seeking to loosen ties with each other and with the European project?

6. Conclusion

What do countries need in order to be effective in serving civil society? Corruption is one of the strongest dangers to the credibility of governments. The Hertie study on public integrity has shown that organising effective independent feedback systems forms the basis of a successful strategy against corruption. Administrative simplicity; trade openness; auditing standards; judicial independence; and e-government services and users are the interconnected key elements of this strategy. Market competition is based on indirect feedback by Adam Smith's invisible

hand. Market participants are consequently eager to respond to consumers' wishes. In the public sector, more direct feedback systems are and need to be in place. These systems can help improve the performance of the public sector, in spite of its complex nature. What is essential is the openness and responsiveness of the public sector to feedback. Improvement of the performance of the public sector should be based on a learning process; feedback is highly relevant to this.

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Informacja zwrotna jako narzędzie do lepszego funkcjonowania sektora publicznego

Informacja zwrotna wyrażona przez niezależne instytucje takie jak sądy, kontrolerzy i rzecznicy może być wykorzystywana przez sektor publiczny do poprawy jakości jego funkcjonowania oraz do zwalczania korupcji. Autor zwraca uwagę na to, że przepisy i kontrole nie stanowią skutecznej odpowiedzi na korupcję i rosnącą nieufność w społeczeństwie. W tym kontekście wyjątkową rolę może odegrać efektywność informacji zwrotnych. W nowoczesnym państwie, które jest tworem skomplikowanym, takie elementy systemu demokratycznego jak nadzór ze strony sądu, rzeczników i organów regulacyjnych dla rynku, kontrole oraz ewaluacja przez niezależne podmioty, a także zastosowania w świecie cyfrowym stanowią ważne przykłady informacji zwrotnych. Informacje zwrotne zależą nie tylko od przepisów i istnienia instytucji prawa, lecz także od współpracy, także międzynarodowej. Jeżeli np. organ kontrolny ma do czynienia z wrogo nastawionym podmiotem sektora publicznego, nieskłonny do przyjmowania krytyki, wówczas skuteczność takich informacji może być ograniczona. W tym kontekście można mówić o istotnym rozróżnieniu między władzą i autorytetem. To samo dotyczy sądów, w tym trybunału konstytucyjnego oraz rzecznika praw obywatelskich. Systemy reagowania (informacji zwrotnych) w sektorze publicznym sprawdzają się jedynie w otwartym i współpracującym otoczeniu. W przypadku jego braku służby publiczne mają skłonność do zamykania się w sobie i braku uwrażliwienia na świat zewnętrzny. W konkluzji autor stwierdza, że o poprawie działania sektora publicznego stanowi proces uczenia się, w którym istotną rolę odgrywają informacje zwrotne. W tym sensie gotowość do prowadzenia trudnych rozmów jest ważną częścią tego procesu.

Słowa kluczowe: informacje zwrotne, uczenie się, sądy, kontrolerzy, rzecznicy, funkcjonowanie, korupcja, złożoność.