



Austrian Federal Ministry for
European and International Affairs

Regulation of e-democracy: An introduction

- track 6 workshop -

**CoE Forum for the Future of Democracy 2008
'E-democracy'**

Thomas M. Buchsbaum | Madrid, 16 October 2008



Austrian Federal Ministry for
European and International Affairs

- **"e-democracy" ?**
- **why regulate ?**
- **what to regulate ?**
- **who to regulate ?**
- **how to regulate ?**
- **lessons, models, int. approach ?**

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e-democracy

= the support and enhancement of democracy, democratic processes and institutions, and linked to the (re-) engagement of citizens in democracy and governance

- an issue of democracy
- other/more than e-government / e-administration
- e-participation is *part* of it

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if / why to regulate ?

- **e-regulation - not a common domain of e-democracy research**
- **generally requested, from different sides**
 - fears of the unknown by citizens
 - dangers "e": "virtuality", "big brother", uncontrollability
- **can you regulate democracy ?**
- **there ARE rules and frameworks**
- **to protect / balance the interests of the various stakeholders**
- **to create trust in (e-)democracy**
- **how much regulation needs democracy ?**
- **"the lack of legislation allows authorities to do what they want"**

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sectors of e-democracy

- eParliament
- eLegislation
- eJustice (eJudiciary)
- eMediation
- eInformation
incl. e(public service)Media and the Internet
- eEnvironment
- eHealth
- eElection (eVoting, eReferendum; eInitiative)
- eConsultation
- ePetitioning
- ePolling, eSurveying
- eActivism - incl. eCampaigning, eElectioneering
- eInclusion - incl. in *democracy*
- eGovernance
- eParticipation & eDeliberation

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what to regulate ?

i: the e-parts of democracy, democratic institutions and democratic processes, including:

- the use of ICT in democracy
- digital identification & authentication
- e-voting
- the e-media: traditional and new spaces
- misuse of e-democracy
- security issues
- terminology (standardisation)

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Blogging and Journalism

- *Blogs perceived as new form of “grass roots” or “citizens journalism”*
- ...
- *Blogging may or may not be journalism.*
- *Bloggers lack professional standards and ethics.*
- ...
- *Citizen journalism should be held to the same editorial standards as “mainstream media” journalists, especially if they hope to be taken seriously as a source of accurate information*

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- **... we have to rethink
Privacy & Publicit** © Peter Parycek 08

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We need ...

... new hurdles for access!



... a balance of transparency!

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what to regulate ?

ii: the traditional issues in democracy, including

- Fundamental, human and minority rights
- in particular: Freedom of speech
- Transparency
- Access to / Disclosure of [public] information
- Privacy & protection of personal data
- Processes (eg consultations)
- Education and training

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Access to information vs. privacy

Access to information

- "Freedom of information" acts
- Of special importance to e-democracy
- Prerequisite to participation in political decision making
- More than documents

Privacy

- Citizens need to know what information is used for.
- Recommendation: Privacy policy statements
- Data retention creates some specific problems for polling and e-voting
- Cookies and spyware

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Defamation

On June 21, 2006 a 36-year-old civic activist and blogger named Christophe Grébert was summoned to a Paris courtroom to face charges of defaming the municipal government in the suburb of Puteaux.

His offense: Posting excerpts of a newspaper article that alleged a municipal employee had been fired for whistleblowing.

The newspaper also has been charged with defamation.

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some examples of content

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Proposals to regulate citizens' rights in e-democracy

- 1. Rights to Access***
- 2. Rights to Education and Training***
- 3. Rights to Online Information***
- 4. Rights to Online Participation***

*EUROCITIES' 'European Charter of Rights of Citizens in the
Knowledge Society' / "Charter of e-Rights" of 7 July 2005*

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Charter of eRights

1) Rights to Access

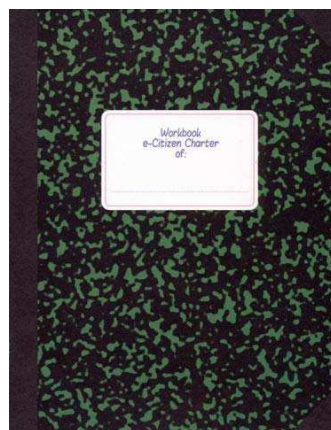
- Every citizen of the European Union will have access to the Internet through Public Internet Access Points, preferably via a broadband network.
- Every citizen of the European Union must be guaranteed the security and privacy of any personal data managed through online public services.



Citizenlink
e-Citizen Charter

10 expectations and obligations:

1. Choice of Channel
2. Transparency of the Public Sector
3. Overview of Rights and Duties
4. Personalised information
5. Convenient Services
6. Comprehensive Procedures
7. Trust & Reliability
8. Considerate Administration
9. Accountability & Benchmarking
10. Involvement & Empowerment



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The Act regulates democratic participation in decision-making and introduces relevant elements of e-democracy:

- *communication and information to citizens by ICT and telematics tools in order to render the citizen's right to democratic participation effective;*
- *on-line availability of training documents and research materials for every participation project;*
- *public authorities support to ICT applications proposed by public institutions and other bodies - in order to improve participation.*

The Authority has to evaluate participation projects with particular attention on:

- *the use of Telematics Network, i.e. the public infrastructure connecting the whole system of public bodies;*
- *the use of Public Access Points;*
- *on line availability of all documents (also in intermediate versions) regarding the participation process;*
- *modalities of communication and information to citizens about projects, events and initiatives of participation.*

Tuscany Act no. 69/2007

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**Bundesministerium für europäische
und internationale Angelegenheiten**

Proposals to regulate transparency

- ***Document transparency***
- ***Benchmarking transparency***
- ***Meeting transparency***
- ***Disclosure transparency***
- ***Decision maker transparency***

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who to regulate ?

The options:

- the "state" ?
- a soft law- regulator ?
- the users ?
- the provider ?
- a private club of self-appointed experts ?
- an *alius* ?

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how to regulate ? - 1

- In which form to regulate ?
 - within the Constitution
 - by Act of Parliament
 - by Regulation
 - by "soft law" (quasi-state regulation)
 - by self-regulation (provider, users)
 - by behavioural norms
 - within existing regulatory frameworks
 - separate e-Acts and/or e-rules
- At which level to regulate ?
 - national / regional / local – international ?

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examples: types of rules / 1

law

- The Spanish *Law on electronic access to public administration 2007*
- The Tuscany regional *Act on participation (L.R. 69/2007)*
- various countries' *Acts on electronic signatures and on e-voting*

soft law

- *The Public Participation Manual 'Shaping the future together', 2007*, by the Austrian Society for Environment and Technology (ÖGUT) and the Federal Ministry for Agriculture and Forestry, the Environment and Water Supply
- *The Geneva 11 Commandments on e-voting*
- *The Civic Leadership Blogging Guidebook, 2007*, International Centre of Excellence for Local eDemocracy (ICELE), UK

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examples: types of rules / 2

community-own rules

- EE political parties' *Principles of honest e-voting - Good e-Voting Practice*
- The *e-Citizen Charter 2005*, by Burgerlink (Citizenlink), Netherlands

service provider rules

- The *'BBC Have Your Say rules'* service provider rules

amongst various suggestions

- A *'Bill on digital rights'*
- *'eActs'*
- *'Guidelines for good (e-)democratic conduct'*

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how to regulate ? - 2

a regulation policy, including

- In which sequence to regulate ?
 - First: check applicability of existing norms
 - and: consider unregulated e-issues
 - Then: device revised / new rules
- How much (detail) to regulate ?

how to regulate ? - 3

- in which spirit and with which aims?
 - *empowerment* and *safeguards*
 - the rights of effective access & information t.b. balanced against the protection of rights
 - public participation t.b. balanced against criminal law cases
 - **anonymity and confidentiality t.b. balanced against identification and authentication**
 - **safeguards, adequate sanctions and redress against possible misuse of e-democracy**

access vs. safeguards

- Rights of effective access to e-democracy (information) and its tools,
- rights to adequate learning without any barriers,
- rights to communicate, and
- transparency

have to be balanced against the protection of rights, including (information) privacy, intellectual property, personal data, and others, and adequate and effective safeguards drawn up.

Further attention is necessary with regard to potential risks of

- presenting misleading information,
- making commitments that are not met,
- defamation,
- publishing obscene material,
- incitement to racial and religious hatred, and
- discrimination on ground of age, sex, race and disability.

Advantages and disadvantages of (full, external or temporary) anonymity on the one hand, and identity and authentication on the other, have to be taken into account as well as disclosure of public information on the one hand, and confidentiality on the other.

how to regulate ? - 3

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an international approach ?

- lessons, models ?
- first compilations by CoE (CAHDE)
- very different national approaches (culture)
- advantages of an international approach
- limits of an international approach
- the Council of Europe could take action, building upon the planned Recommendation on E-Democracy

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norms by international organisations

- 1998 UN Aarhus Convention on access to information, public participation in decision-making and access to justice on environmental matters
- 2003 UNESCO Charter on the Preservation of Digital Heritage
- 1999 EU Directive on digital signatures
- EC's spam and 2003 INSPIRE directives
- Council of Europe Recommendations
 - on e-governance (2004)
 - on legal, operational and technical standards for e-voting (2004)
 - on e-democracy (2008/09)
- *EUROCITIES' 'European Charter of Rights of Citizens in the Knowledge Society' / "Charter of e-Rights" of 7 July 2005*

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an international approach ?

- **lessons, models ?**
- **first compilation of practice by CoE (CAHDE)**
- **very different national approaches (culture)**
- **advantages of an international approach**
- **limits of an international approach**
- **the Council of Europe could take action, building upon the planned Recommendation on E-Democracy**

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conclusions / 1

- **E-democracy requires rules and regulatory frameworks.**
- **Regulation on e-democracy should encompass empowerment and safeguarding.**
- **Only a balance between rights of access and safeguards can guarantee and protect citizens' interests.**

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conclusions / 2

- some (early) regulation is necessary
- including on rights and their protection, on identity and security (technology)
- strict *and* soft law options to be used
- possibilities of separate acts / regulations *and* additional provisions
- at a regulatory level which can assure quality, coherence and interoperability
- international cooperation and coordination could help achieve the goals:
a CoE role for developing “model rules” ?!

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Thank you for your attention.

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