

ARTIGOS

E-GOVERNMENT AND DEMOCRATIC LEGITIMACY IN THE PARTNERSHIP-BASED EUROPEAN CONSTITUTIONAL STATE

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Electronic government as a new stage of development of the civil society

“Information society” and the change of state functions

In the present social development that is characterised mainly by scientific technical progress, “information” proves to be the significant raw material for the production of knowledge and the change of order of knowledge.¹

Therefore, it has been rightly pointed out, that the availability of information of all kinds leads to a new “processing of knowledge” in state, administration and society without considering the emphasis or truth of the information content or the growing combination of information (Spinner, 1994: 24-27).

As a result, the *structure of reality* changes in society: data-centred processing of information, which is characterised by international data exchange across the borders and immediate communication, comes to the fore. Forms of virtual socialisation become apparent. As a consequence, a new quality of absorption and processing of information within the civil society develops. The influence of tele-work and tele-shopping, of information and communication services of all kinds verge on the understanding of space, time and privacy: marriage ceremonies are conducted on television, nights of passion are discussed in talk shows. What is actually still a private sphere? At any rate, the obvious conclusion is, to characterise these and other occurrences as “informatisation” of society (Pitschas, 1998: 140).

Information responsibility of the state

As a consequence the context of market-economical productivity, globalisation and information on one hand moulds information necessity in the national states or their communicative requirements in supranational communities. With this the innovative information and communication technology (IT) in connection with the “new media” is promoted to a key technology of social progress. It enables information processing developed with regard to quantity and quality, as well as a more intense proliferation of person-related data (Traunmüller, 1999: 23-54).

This knowledge results in consequences for the public sector. New information and communication technology changes the relationship between

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citizens and the state. Free flow of information becomes as indispensable for the formation of global markets and the effective competition, as for unlimited communication, unrestricted flow of data and open markets which are inseparably connected with the functioning of democracy. Within a civil society democracy survives on citizens taking an active part in administrative and political decision-making processes. Citizens do not just want to be confronted with the results of decisions, moreover, they want to be included in advance in the processes that eventually lead to the decisions. Only participation of citizens in the variety and transparency of information and communication ensures a civil society. This means *with regard to information* that from now on the state has to inform its citizens more increasingly and differently, in order to actually enable them to exercise their right of self-responsibility which has in principal been granted to them in the developing civil society (Schoch, 2002: 83-96).

This view within the Federal Republic of Germany is not widely held. The discussion takes, on one hand, absurdly the course of arguing about a “perceptual state” and concentrates erroneously on the problem of legal reservations for so-called information interventions (Murswiek, 2003: 1-8). On the other hand, the focus of the discussion mostly narrows down to the use of new technologies in order to create more efficient business processes in public administrations, i. e. the administrative organisational structures. In this way, the Internet becomes already today the engine of administrative modernisation; information systems for citizens, that already exist, are — by means of the concept of the “citizens’ portal” — given a new dimension (Lucke, 2003: 41-62).

The outlined dynamical development perspectives of the information society entrust a specific *information function* to the state. In the 21st century the supply of information to society belongs to the core tasks of the modern state and has to fulfil this task within the context of an *information responsibility of the state*. What this is first and foremost all about, is to enable the citizens to gain information of the private sector and the sector of the state. State and administration are faced with an increasing responsibility for the supply of information to the civil society. To enable decision-making, citizens and institutions of the state have to be supplied with specific information as a guideline, and they have to be able to chose concepts of action in case of uncertainty. Conversely, the citizen will want to make his own decisions in the communicative context of self-regulation and self-responsibility in decision-making. But in order to enable the citizen to do this, he firstly has to be informed about the backgrounds and basics of the decisions, he is supposed to make. This requires the *informing state*. Governmental and administrative communication become prerequisites of informational self-determination within the civil society and for appropriate citizens’ involvement in an “activating state” (Pitschas, 2002: 327-336; Trute, 1998: 216-268).

Transition to electronic democracy

Before this background it seems necessary to combine the governmental and administrative political meaning of information technology within the framework

of the “electronic government” (Street, 2001: 4397-4399) over and above the reference to the structural change of forms of administration — leading into the connection of electronic administrative service provision and governmental supplies of information by the state — with participating elements of electronic democracy and citizen involvement (Lucke, 2003: 63-76). Democracy in a social constitutional state of the Basic Law and citizen participation thus obtain new impulses. They may lead to the vision of a “virtual democracy”, as projects like, for example, “electronic town meetings” in the USA show (Perritt, 1997: 413-482). Independent of these results, it is true, though, that also in Germany of today there is no longer a doubt that electronic governing will have to see its future in the area of this electronic field between administrative efficiency and a democracy that keeps a close relationship with the people: this close relationship with the people via “electronic democracy” is no longer a vision of the future. The Internet has long been functioning as a medium of political communication. Civil society has, in this way, entered a new phase of development (Palmer, 2002: 260-264).

Governmental and administrative communication as elements of electronic democracy

In order to contemplate electronic democracy within an inter-linked society (Grossmann, 1995; Lenk, 1999: 248-259), one first and foremost has to closely distinguish between state and administration in the 21st century. Over and above this and on the other hand, one firstly has to ask which prerequisites — understood as the use of new media to strengthen political participation and to exchange political information — have to be in existence for the use of the people, so that during the search for the political citizen one does not get stuck in the digital haystack (Hoecker, 2002). After all, the informing state has to aim its supply of communication towards the demand within the civil society.

Forms of governmental and administrative communication

During the discussion about an integrated e-government — which not only entails the potential for change of information technology for public administration, but also the breadth of models of future public actions — the understanding of “electronic democracy” very quickly and very often narrows itself down to participating elements (Mehlich, 2002: 281-283). Nevertheless, it has to be kept in mind, that electronic governmental and administrative communication with the citizen go beyond traditional forms of political participation: because it is also about finding the answer to a wide-spread participation of the citizen, that enables the individual to actively and virtually take part in decision-making processes. Apart from mere participation, it is all about *virtual participation of the citizen* (Bieber, 2002: 70). Thirdly, however, the state with its administrative system has to take into account the widespread uncertainty of supply of information within the “risk society”. In this respect, it is about the governmental management of risky

information by means of recommendations, warnings or similar advice by the state (Pitschas, 1997: 215-263). It is clear, that for all three dimensions of governmental and administrative communication, the *access to information* is of outstanding importance. Therefore, regional authorities — with regard to their partnership with the information society — are challenged to take care that all citizens have the broadest possible access to sources and technologies of information. Unrestricted and equal access to electronic information (“e-accessibility”) is a fundamental element of the *partnership-based constitutional state* in the era of e-government (Trute, 1998: 242-244; 249-257).

Citizens' expectations

The possibilities of supply of information, interaction and transparency, however, also lead to a changed level of expectation of the individual within the civil society in respect of state and administration. This not only concerns passive, but also active possibilities of participation in information. As far as the active possibilities are concerned, information technology offers, like never before, the opportunity to immediately and directly contact public institutions and political representatives. Included in this is the political communication with parties, e-mail trafficking with members of parliament and as far reaching as Internet questionnaires, the setting up of chat-rooms and virtual party conferences (Rogg, 2001: 38-44). An informing democracy requires digital political information (“e-politics”).

The electronically informed citizen is also not an abstract ideal, as it might seem. He is reality, as far as he is able to obtain a variety of background-information for politically important issues or party-political opinions. Communication supported by the Internet should not be overestimated; its existence does not necessarily mean an increase in democracy, but, nevertheless, the chance exists for a virtual enrichment of democratic processes of the formulation of political demands and objectives and decision-making (Philippson, 2002: 138-150; Cranor, 2001: 1-8).

A balanced e-government

These processes obviously have to be *balanced*, as far as access, supply of information and usability are concerned. E-democracy does not only mean virtual inter-linking of party-political advertising with civil interest or the lack of it. The individual will only participate in politically strategic concepts of civil-governmental developments and decision-making processes of the parliamentary democracy — also on a local level —, when the communicated contents are also geared towards the individual's own requirements or expectations. The readiness of the citizen to participate politically, therefore, requires, on the part of politics, that the citizen is included in political decision-making processes; the participation of citizens on the Internet requires the transparency of these processes. An active participation of the citizen also requires the possibility of one's own participation in decision-making. It is, therefore, not

only about the supply of information, but also about imparting (limited) ad-hoc activities to the citizens with regard to involving them (von Ameln, 2001: 381-391).

Distributional constraints on e-government

I have already pointed out, that for an essential e-democracy within a constitutional state that is based on partnership, adequate prerequisites have to be created. Belonging to these are, on the one hand, the opening of the *access to information and the Net*; no section of the population should be excluded from the information society, when Europe develops into an economy, based on knowledge. Secondly and on the other hand, participation in e-government on demand requires a sufficiently available *media competence*.

Access to information

All three prerequisites are not readily acceptable. Even the safeguarding of the access to information means a far-reaching and lengthy re-organisation of the appropriate structures and processes of information in Germany. Access obstacles exist first of all in the *degree of Internet use*. It is not evenly distributed amongst the different sections of the population. Only approximately 38,9% of the population make use of the Internet regularly. Only a meagre third of these users are women. Moreover, in Germany mainly young sections of the population, well-educated people and high-income groups make use of the Internet. Excluded from online-trafficking are mainly older people and those with lower education (Emmer, 2001: 1-12).

A special example for such a “structural digital divide” is the information exclusion of handicapped people. According to conservative estimates, there are 37 million people within the European Union — that is approximately 10% of the EU population — who are suffering in one form or another from a handicap, for example problems with mobility, hearing, speech, eyesight or a mental handicap. An equally important group is the ageing population in the EU, especially as cognitive and functional handicaps increase at an older age. By the year 2020 — according to estimations — 25% of the population will be over 60 years of age. In the “greying Europe”, therefore, means of access to new technologies will have to be created for older people and those with handicaps in order to integrate them into the information society (European Union, 2002).

The EU has thus developed a co-ordinated approach to achieve e-accessibility that is aimed at technology and standards and includes not only legislation, but also education and other governmental and institutional persons involved (Koch, 2003: 333-349). A recommendation has been made by circles of the EU commission to improve e-accessibility within the framework of EU politics in order to realise human rights and social integration (Spalek, 2002: 5-6).

Apart from these, additional problems are not only the responsibility of the state to act, but also the chance to promote new media and increase the competency

to use them. As many ways of distribution as possible have to be created to reach all sectors of the population and include them in the political process. In all states of the EU, therefore, the so-called “multi-channel (media)-campaigning” and digital television has repeatedly and rightly been pointed out (Hagen and Wind, 2002: 349-353). It is, therefore, to be suspected that the fear of communicating via the new media is for many people far greater than dealing with the familiar medium “television”.

Media competence

A further prerequisite for the transition to e-government and e-democracy is sufficient media competency. The citizens within the information society, for whom an appropriate governmental and administrative communication is indispensable, have to be able — with the increasing flood of information — to examine the reliability of information. It would be misleading to assume that communicating information via the Internet could do without “filtering” communicated data. As far as this is concerned, there is no difference to the traditional media society. Computer-communicated participation, therefore, requires, as well as active virtual citizen participation, the capability to use and evaluate information (Kloepfer, 2002: 124-132). In this lie “countervailing powers” to the growing customer-relationship-management of the political persons involved within the framework of a present promotion of e-democracy.

Demand and supply of information

Those who take virtual democracy of the information society seriously, have — as a state and administration — to exhaust the possibilities of interaction that are contained in the “new media”. In order to communicate political information it is, nevertheless, not sufficient to trust the citizens to use the supply of information or to develop their own initiative to achieve the desired citizen participation. Nowadays, citizen participation on a local level in the traditional sense, only reaches small, well-organised groups or their representatives, and this obviously does not represent a raised public opinion and participation. Therefore, it has to be ensured that the use of specialist and political information *online* is aimed at the demands and requirements of the users. In this respect, it might be possible, in deed, that an appropriate information management could do wonders (Lenk, 1999: 263).

All three prerequisites of the e-government have to be fulfilled jointly. A guaranteed access to the Net would be unsuccessful, if participation in the information democracy did not consider the interests of the citizens. Electronic democracy, therefore, requires a *balanced e-government* (Bertelsmann, 2002: 10).

Problems of democratic legitimacy of an unbalanced e-government

An indispensable prerequisite for the legitimacy of the e-government is an equal and unlimited access of all groups of the population and of all citizens to information technology. An “information exclusion” of any kind of citizens is not allowed to exist in a society that is based on freedom and equality. Otherwise, politics and the state, which rely on information, transparency and interactions while developing a citizens’ society, would lose their legitimacy (Kloepfer, 2002: 127-128).

The danger of political institutions losing legitimacy also occurs, when the citizen gets swamped with a flood of information that he is not able to cope with without a minimal degree of media competence. This entails mainly the capability to evaluate information according to its meaning and to categorise its context. It is, therefore, a matter of legitimisation of e-democracy to achieve this capability. An educational and media policy is required which imparts the maximal level of media competence and thus is able to ensure participation in the e-government (Beck, 1998: 131-136). Part of this also is, nevertheless, that the meaning of so-called *political portals* has to be analysed ever closer and, if needed, has to be changed during the development and strengthening of e-democracy concepts. After all, the informing state has to demand a specific online-responsibility of the persons involved. Origin, authenticity and, at the same time, reliability of information has to be guaranteed as well as a relevant representation of opposing positions in political portals (Reinermann, 2002: 127-137).

Finally, the relationship between demand and supply of information has to be taken into consideration. Virtual participation of the citizen requires adequate information. This has to consider the development of an individualized society, the changing of political habits of participation and the appropriate introductory resistance against e-democracy. In this sense, expectations and legitimate demands by the citizen have to be integrated into an e-government (“integrated e-government”).

Distributional constraints on a balanced e-government and the way to overcome them

Safeguarding legitimacy

The *legitimacy of electronic democracy* will be formed in a lengthy and differentiated process within the civil society. A variety of concepts, ideas and suggestions are required for a direct citizen participation in political decisions via the use of new media. A component of these and focussing on e-accessibility, are mainly strategies that give unlimited access to the products of information technology and, in this way, help people with special needs to improve their capabilities and work qualifications and thus strengthen their integration into a knowledge-based society. The EU is, as far as handicapped people and other groups of the population are concerned, well on its way.

Another way is the development of so-called *citizen portals*. Via these, citizens are enabled to participate in local political decisions about the development of districts, towns and cities and municipalities. Over and above, suggestions can be worked out, that make differing means of active participation of groups of the population in local representation or political self-determination possible for honorary and similar activities (Lucke, 2003: 60, 87-89).

A third way could be to develop local citizen panels as a means and vehicle of online-communication in the sense of an e-democracy. Such ways formulate simultaneously some distributional constraints for a legitimate e-government. If these are not observed, illegitimacy of e-democracy becomes a threat.

Safeguarding legitimacy via a right to information

Part of the prerequisites of the legitimacy of an e-government is the observance of the *constitutional framework* in Germany, especially in view of the users' access to information. The informational basis of the right to live one's life contains within this and beyond, the resulting judicial claim to oppose the right to information. Following this, the central component of every information order is the *freedom to information* that is at the same time closely connected to the informational right of self-determination, as far as it develops, and objective and legal dimensions (Kloepfer, 2002: 64-117; Scholz and Pitschas, 1984).

As a result of its impact, the use of a basic informational supply in a wider sense has to be secured by the state. This does not only have consequences for the transparency and openness of administration, but also and at the same time for the safeguarding of access to the information infrastructure and the access to the Net. In this way the state is faced with a constitutionally based responsibility to provide information. It includes on the other hand the governmental duty to provide access to the information that is necessary for individual and governmental communication, to enforce appropriate structures for a certain minimal standard of information and altogether to create a governmental supply of information. Furthermore, the observance of these legal duties of politics, state and administration, contribute significantly to the legitimacy of e-government and e-democracy.

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Resumo/ Abstract/ Résumé/ Resumen

Governo electrónico e legitimidade democrática no estado constitucional europeu baseado na parceria

Os actuais debates sobre o governo electrónico constituem o objecto deste artigo. Importa analisar, numa perspectiva realista, as necessidades dos cidadãos nesta fase de democracia, sendo igualmente interessante reflectir sobre a sua relação com a sociedade civil. Argumenta-se que o desenvolvimento do governo electrónico está baseado na “sociedade de informação”, o que implica uma especial responsabilidade da informação nas mudanças das formas de administração do estado moderno. Uma destas mudanças parece-nos dizer respeito, no futuro, à ligação entre o fornecimento electrónico de serviços e a oferta de informação por parte da administração, com determinados elementos da democracia electrónica e o envolvimento dos cidadãos. Em consequência deste fenómeno, o nível de expectativas dos indivíduos relativamente ao estado e à administração mudará. Assim, trata-se de reflectir sobre as estratégias adequadas para evitar os problemas, que podem resultar desta fase de governo electrónico, relativamente à legitimidade democrática.

Palavras-chave Europa, informação, comunicação, expectativas dos cidadãos.

E-government and democratic legitimacy in the partnership-based European constitutional state

This paper addresses recent debates in the European Union (EU) about electronic government in order to facilitate a realist view to needs of citizens in the coming age of an electronic democracy which will be some inter-linked with the civil society. It is argued that their development is founded on the base of an “information society”. That leads to a special information responsibility of the modern state with a structural change of forms of administration. One of them will be in future the connection of electronic service provision and governmental supplies of information with participating elements of electronic democracy and citizen involvement. As a consequence the level of expectation of the individual in respect of state and administration changes, what includes the political communication. Corresponding demands and activities in their course should be balanced as far as access, supply of information and usability are concerned. There also exist distributional constraints in the EU, especially for the access to information and the Net, for the demand and supply of information and the availability of media competence. In order to avoid resulting problems of democratic legitimacy the EU and their member states have to overcome them by adequate strategies.

Key-words Europe, information, communication, citizens' expectations.

Gouvernement électronique et légitimité démocratique au stade constitutionnel européen basé sur le partenariat

Cet article porte sur les débats actuels concernant le gouvernement électronique. Il y a lieu d'analyser, selon une perspective réaliste, les besoins des citoyens à ce stade de la démocratie, tout en réfléchissant à sa relation avec la société civile. Le développement du gouvernement électronique est fondé sur la "société de l'information", ce qui implique une responsabilité toute particulière de l'information dans les changements de modes d'administration de l'État moderne. L'un de ces changements pourrait concerner, dans l'avenir, le lien entre la fourniture électronique de services et l'offre d'information de l'administration, d'une part, et certains éléments de la démocratie électronique et l'engagement des citoyens, d'autre part. Ce phénomène ne manquera pas de modifier le niveau des attentes des individus vis-à-vis de l'État et de l'administration. Il faut donc réfléchir aux stratégies à mettre en œuvre pour éviter les problèmes qui pourraient résulter de cette phase de gouvernement électronique pour la légitimité démocratique.

Mots-clés Europe, information, communication, attentes des citoyens.

Gobierno electrónico y legitimidad democrática en el estado constitucional europeo basado en la asociatividad

Los actuales debates sobre el gobierno electrónico constituyen el objeto de este artículo. Importa analizar, en una perspectiva realista, las necesidades de los ciudadanos en esta fase de la democracia, siendo igualmente interesante reflejar su relación con la sociedad civil. Se argumenta que el desarrollo del gobierno electrónico está basado en la "sociedad de la información", lo que implica una especial responsabilidad de la información en los cambios de las formas de administración del estado moderno. Un de estos cambios informa sobre la futura relación entre la provisión electrónica de los servicios y la oferta de información por parte de la administración, con determinados elementos de la democracia electrónica y el involucramiento de los ciudadanos. Como consecuencia de este fenómeno, el nivel de expectativas de los individuos respecto al estado y la administración cambiará. Así, se trata de reflexionar sobre las estrategias adecuadas para evitar los problemas que pueden resultar de esta fase de gobierno electrónico, respecto a la legitimidad democrática.

Palabras-clave Europa, información, comunicación, expectativas de los ciudadanos.