Democracy and the Internet: The European Union in the Avant-garde?

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1. Introduction

The potential of the Internet for democratic theory and practice is both radical and under-explored to-date. It is however a truism that advanced information technology is changing the nature of the physical world we live in, a physical world in which borders are rapidly becoming irrelevant. Cyberspace has a clear relevance for democratic theory in several respects. Digital networks potentially transform the way we create, exchange and access information as well as the way we interact in private and in public. It is the facilitation of a genuine social dialogue among citizens by the new means of communication which can be of such significance to democratic theory. Digitisation opens up social dialogue to more people by enhancing the accessibility of means of creation and communication. It not only enhances the ability of individuals to access relevant information that may be crucial for will formation purposes but also enables individuals to access the deliberative process as active participators rather than as simply passive receivers of messages and information. Deliberative democracy stresses the formative nature of politics which it understands as an ongoing dialogue among citizens. It emphasises active dialogic participation rather than the sporadic passive procedural participation (voting) as the key for democratising decision-making processes. However one understands democracy access to information is a sine qua non of the crucial will formation processes. The public cannot participate in government decision-making unless it knows what the government (or the bureaucracy) is up to. And public participation necessarily renders government decision-making more transparent. Public access to information (or documents) has long been considered highly appropriate to ensure that a lively public debate took place with the possibility of participation and deliberation by the public and their associations on issues of public relevance and concern.

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1 See further, D. Curtin, Postnational Democracy. The European Union in Search of a Political Philosophy. (Kluwer, 1997)

Access to information about political and administrative decision-making processes has long been associated with an ideal of Nation-State democracy. What is new is the increasing awareness of the importance of the subject at the international level and the attempt to implement it in the context of several international organisations (for example, the World Bank, the United Nations, the Council of Europe et cetera). The point of interest for the current contribution is that it is the European Union which is slowly (and at times perhaps even hesitantly) emerging as a pioneer among international organisations in that regard. Moreover, the path it has embarked upon may force some Member States to reconsider the adequacy and appropriateness of their legal regulation in that regard. For other more advanced national systems the struggle is rather to ensure that the adoption of freedom of information provisions at the EU level does not undermine the achievements in that regard at the national level. Finally in the evolution of the principle of access to information as a key element of the democratisation process of the EU Internet has played at times a surprisingly pivotal role in forcing the pace of change. The digital phenomenon has in practice facilitated a rather active transnational social dialogue among citizens of the EU and their associations enabling unforeseen and informal access to the deliberative process. This effect will be briefly documented in section 3 of this contribution. First it is however necessary to understand the status quo and context governing the regulation of access to EU information by members of the public.

2. A bird’s eye view of EU access to information

Access to information is a relatively new topic for the EU. Its first appearance was in the aftermath of the Treaty of Maastricht in 1993 and the reality of much public disillusionment with the European integration process as well as the evident alienation of the public in various Member States from the political decision-makers. This led to the adoption on a purely voluntary basis of decisions by various institutions and organs granting the public access to their documents. These decisions were based on the respective institutions’ internal rules of procedure and were adopted in the absence of any general regulation of the subject at the level of the EU or any explicit Treaty provision. Nevertheless these decisions laid down a clear procedure to be followed in the event that a member of the public’s access to information was refused. The latter could either bring the matter before the EU Ombudsman who would investigate whether any maladministration had taken place and make recommendations to the institution in question or alternatively bring a case to the Court of First Instance in Luxembourg (and on appeal to the

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