EUROPEAN COMMITTEE ON DEMOCRACY AND GOVERNANCE (CDDG)

WORKING GROUP ON E-DEMOCRACY (GT-ED)

WORKING PAPER

Secretariat Memorandum
prepared by the
Directorate General of Democracy
Democratic Governance Department

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Introduction

The terms of reference of the CDDG for the biennium 2018-2019 include specific task iv (see document GT-ED(2018)1):

"*In the field of e-democracy,*
- *in accordance with Recommendation CM/Rec(2017)5 on standards for e-voting, hold a review meeting on its implementation in 2019;*
- *develop guidelines on e-democracy as a toolkit;*
- *oversee the implementation of the priority "building democracy online" of the Internet Governance – Council of Europe Strategy 2016-2019*."

As indicated in the terms of reference for the working group on e-democracy, the review meeting on implementation of Recommendation CM/Rec(2017)5 on standards for e-voting, in cooperation with the expert working group from the Division of Electoral Assistance, will take place in the course of 2019.

The present meeting of the CDDG working group on e-democracy should therefore focus on developing the guidelines on e-democracy in the form of a toolkit.

Context for e-democracy

"*New information technologies offer tremendous opportunities, but they are not, in themselves, a miracle cure for the democratic challenges. The fact is that high tech is no antidote to low trust*". (Then Secretary General of the Council of Europe, Mr Terry Davis, 17 October 2008, Madrid).

The Council of Europe Internet Governance Strategy (2016-2019) stresses the critical value of the Internet for democracy, underlining its "capacity to allow people to impart and exchange their ideas, knowledge and opinions" and "to share and store vast amounts of information". In addition, the strategy draws attention to the need to further develop the Internet's public service value. It also clearly states that "Everyone must be able to exercise their human rights and fundamental freedoms online as well as offline, including the right to private life and the protection of personal data" and presents a number of prerequisites for building democracy online.

In this context, it is recalled that the Committee of Ministers of the Council of Europe also adopted the Recommendation protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality (CM/Rec(2016)1) as well as a Guide to human rights for internet users (CM/Rec(2014)6).

In relation to e-democracy, already in 2008, the 4th Council of Europe Forum for the Future of Democracy (Madrid, 15-17 October), addressed the opportunities and challenges of the use of Information and Communication Technologies (ICT) in democratic life under the theme of "*E-democracy: who dares?*"

The Forum concluded that e-democracy "*can significantly contribute to achieving more transparency, accountability and responsiveness of democratic institutions, to facilitating people's democratic engagement and deliberation, and to increasing the accessibility and inclusiveness of the democratic process.*"

However, while it also considered that "*E-democracy therefore presents a tremendous opportunity for people and public authorities alike, it being understood that all stakeholders join together to harness its benefits and control its potential risks.*", it underlined that "*…it is essential to build people's trust in e-democracy in order to achieve its full potential*".

The importance of new technologies, e-governance and e-democracy, was also recognised by the Council of Europe in two specific recommendations adopted in 2004 and in 2009 respectively:
- Rec (2004)15 on electronic governance ("e-governance"), and
- CM/Rec(2009)1 on electronic democracy (e-democracy).

Since then, citizens and authorities have become increasingly reliant on electronic tools and much of daily life may involve digital technology. People are using new technologies, various targeted applications and social media platforms. This applies to the private sphere as well as to public life as regards the way services are delivered and the manner in which people interact with public administration and democratic institutions. Increasingly also, such electronic tools and software include a range of applications that are often internet-based, can involve cloud-based applications, and rely on complex sets of algorithms that may or may not include machine learning capabilities.

Simultaneously, over the same decade, one observes that societies continue to face significant challenges for democracy, some of which had been clearly identified already in 2007[1]. Such challenges include for example
- Responding to the changing ways in which citizens engage in public life and, in some cases, the decreasing willingness to do so;
- Addressing the low-level of electoral turnout in elections.

Other challenges have come to the fore much more clearly since the financial and economic crisis and comprise[2]:
- Discontent with democratic and political processes and political disaffection;
- Signs of growing intolerance, radicalisation, extremism and terrorism;
- Deepening inequalities within countries, endangering democracy and political freedom.

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[1] Valencia Declaration, 15th Conference of European Ministers responsible for local and regional government, Valencia, 15-16 October 2007.
[2] "Enabling democracy" - Ms Claudia Luciani, Director , Directorate of Human Dignity, Equality and Governance, CDDG thematic workshop Budapest, 7-8 May 2015.

Potential avenues for action

In relation to the activities of the working group, the Bureau, at its meeting on 19 October considered as follows:

As regards developing guidelines on e-democracy in the form of a toolkit
Given the rapid evolution of technology, its potential and uses, and its impact on the functioning of society and democracy, the working group, on the basis of a working document and relevant Council of Europe and additional reference documents is invited to present and discuss:
- Developments in the field of e-democracy, in particular since the adoption of Committee of Ministers' Recommendation CM/Rec(2009)1 on electronic democracy;
- Benefits and advantages in relation to building trust, inclusiveness, transparency, provision of information, communication, consultation, deliberation, citizen empowerment, participation and decision-making.

In line with the CDDG's terms of reference, members of the working group are also invited to exchange information, views and experience and good practices in the design and implementation of e-democracy in their member state in order to contribute to the guidelines in the form of a toolkit by presenting best practice and guidelines in their country.

The Bureau further considered that the toolkit may also include suggestions and steps how member states might address and mitigate challenges in relation to e-democracy such as:
- Challenges in terms of citizen expectations; social discontent, disaffection among citizens and political disengagement;
- Risks and pitfalls including: propaganda and hate speech (including trolls), disinformation and misinformation;
- The increasing difficulty for lawmakers to adapt to the speed at which science and technologies evolve and to draw up the required regulations and standards;
- Technological issues, opportunities and challenges: use of open source data, algorithms, various types of bots, etcetera.

The Appendix to Recommendation CM/Rec(2009)1 on electronic democracy sets out a range of principles (P1 through P80) and guidelines (G1–G102). The working group may wish to take the Recommendation as a starting point for its reflections and to examine it in conjunction with other relevant Council of Europe instruments as set out in the section 'Reference Texts' below. It is asked to then identify those elements that are most important and best suited for formulating practical steps and measures for the implementation of e-democracy and could constitute the foundation for the guidelines on e-democracy in the form of a toolkit.

Role of e-democracy
Recommendation CM/Rec(2009)1 encourages member states to:
1.   "consider making use of the opportunities afforded by e-democracy to strengthen democracy, democratic institutions and democratic processes;

2.   consider and implement e-democracy as the support and enhancement of democracy, democratic institutions and democratic processes by means of ICT, and linked to the engagement and re-engagement of citizens in democracy;

3.   introduce, develop or review e-democracy policies and practice and, where it is deemed appropriate, legislation, in the light of the principles and guidelines appended to, and constituting an integral part of, this recommendation;

4.   consider, when introducing and expanding e-democracy, making use of the set of indicative guides, as further suggestions for possible action;

5.   take steps, in co-operation with the appropriate local, regional, national and international partners and stakeholders, to develop concepts of, and standards for, e-democracy that uphold human rights, democracy and the rule of law;"

the sixth recommendation then goes on to define a series number of conditions that should be met when introducing, implementing and reviewing e-democracy while Principle 27 (P-27) sets out a number of democratic concepts on which the design of e-democracy should be based.

The guidelines on e-democracy in the form of a toolkit to be elaborated should assist member states in achieving the above.

What does e-democracy aim to achieve?
The conclusions of the Forum for the Future of Democracy, "*E-democracy who dares?*" (Madrid 2008) underlined e-democracy's potential contributions to "*transparency, accountability and responsiveness of democratic institutions, to facilitating democratic engagement and deliberation, and to increasing the accessibility and inclusiveness of the democratic process.*".

The recommendation CM/Rec(2009)1 on electronic democracy extends the aforementioned aims for e-democracy to deliberation, inclusiveness, accessibility, participation and subsidiarity. It includes trust along with social cohesion among the aims.

What does e-democracy encompass?
In the section on 'Principles of e-democracy' (P35-P47), the recommendation defines the domain of democracy and the various fields that could be considered constituent elements of electronic democracy. These include: e-parliament, e-legislation, e-justice, e-mediation, e-environment, e-elections, e-voting, e-consultation, e-initiatives, e-petitioning, e-campaigning.

What are the opportunities?

While recommendation CM/Rec(2009)1 indicates the wide range of areas in which e-democracy can play a role, the discussions on developments, initiatives and the experience in member States during thematic workshops on « Electronic tools of Local Democracy: collection, decision-making and transmission» and « The current state of use of electronic tools in the context of citizens' participation in public affairs» (held in Brussels, 1 April 2015, and Budapest, 7-8 May 2015 respectively) illustrated that, in practical terms, e-governance is a key area of concern and a priority in a number of member countries.

While the terms of reference invite the CDDG and its working group to focus on the specific role of e-democracy, it may therefore also wish to pay attention to those fields of e-democracy that overlap with e-governance applications (see also Recommendation Rec(2004)15 on "e-governance").

> *E-governance* "comprises the use of Information and Communication Technologies (ICTs) to support public services, government administration, democratic processes and relationships among citizens, civil society, the private sector and the State". It frequently refers to e-administration and e-services, and usually encompasses the development of strategies and of organisational and management frameworks, creating legal regulations, selecting and budgeting ICT solutions and promoting interoperability.

> *E-democracy*, focuses on two distinctive areas, the digitisation of existing democratic practices, aiming to improve the transparency of representative democracy, and the straightforward introduction of more direct participation models using digital channels, such as e-voting and digitally mediated "direct representation" inspired by the web 2.0 and social networking sites. [3]

Specific opportunities in terms of <u>e-democracy</u> identified by member States during these thematic CDDG workshops included:
- strengthening participative democracy through co-determination and establishing a 'permanent' process and methodology to consult with citizens and civil society, and to involve them in decision-making processes;
- bridging the gap between citizens' expectations, their needs and the responses delivered by "traditional" democratic institutions and processes;
- reversing current trends in public engagement and participation.

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[3] Discussion paper on "Strengthening e-Governance in Member-States" presented at the 6th plenary meeting of the CDDG on 14-15 November 2016.

Other opportunities generally cited in relation to new (digital) technologies, include the possibilities they offer in respect of:
- Access to and dissemination of vast amounts of news, academic research, etcetera, thus stimulating and nurturing the public debate;
- facilitating the involvement of groups who would otherwise have greater difficulty in participating in democratic processes, such as for example the elderly and people with disabilities;
- consultation, involvement and participation in democratic processes in new and creative ways;
- engaging with people in virtual communities on political, social and economic issues as well as wider issues relating to democracy;
- strengthening awareness of social inequality or improving intercultural dialogue;
- the creation of new disclosure systems to improve the integrity and transparency of political institutions;
- the promotion of a wide range of initiatives for the promotion of rights of children, women, minorities.

What are the challenges, barriers and risks?
In contrast to the advantages and opportunities new technologies offer, for many of them a correlation exists with a range of challenges:
- confidence and trust in e-platforms and applications;
- different understanding of democracy and differing interests of stakeholders
- views and practices that pose a threat to our values with regard to democracy, human rights and the role of law can be easily spread and promoted;
- hate speech (including trolling), forms of extremist views and behaviour and the recruiting of people into organisations promoting violence;
- disseminating false or misleading information, also through micro-targeting, thus hampering opportunities to freely form an opinion on correct and factual information;
- echo-chambers, digital exclusion, and the risk of virtual isolation;
- absence of transparency in terms of algorithms, the collection, processing and use of data, or how information is presented (e.g. Net Neutrality);
- E-literacy, digital exclusion and a growing digital divide, especially in terms of being able to understand, use and fully exploit the potential of digital media;
- Social exclusion which may be exacerbated by illiteracy or low-levels of literacy and thus reducing also access to digital applications in every aspect of daily life.

Considerations

In elaborating the guidelines on e-democracy in the form of a toolkit, the working group should in particular take into account previous findings that e-democracy:
- is above all about democracy; it is complementary to traditional democratic processes and needs to enhance the effectiveness of democracy, democratic institutions and processes (as well as of governance);
- needs to be in full compliance with human rights and fundamental freedoms: including the respect for privacy, protection of personal information from mismanagement or misuse, freedom of expression and information;
- will need to take into account the need "to build a people-centred, inclusive and development oriented information society" (CM/Rec(2009)1) and respect "the core values of democracy, human rights and the rule of law". (Council of Europe Internet Governance Strategy 2016-2019;
- should respect other relevant Council of Europe standards and instruments;
- should meet the pre-requisites for building democracy online; i.e. access to public documents and data, new approaches to public administration and service delivery and innovative methods of engaging and participating in the democratic process.

Given that e-democracy is linked with the way in which citizens communicate with public authorities the working group may also wish to address the role of public administration in the guidelines on e-democracy as a toolkit.

Structure and format of the guidelines on e-democracy as a toolkit
With a view to make the toolkit as practical as possible, the working group may wish to give ample consideration to the structure and format of the guidelines and include all elements required for successful implementation of e-governance and e-democracy.

In function of the findings by the working group on e-democracy, specific chapters and questions the working group might wish to consider including in the toolkit could include:

The Background for e-democracy
Technical, social, and political background; Council of Europe standards and instruments; standards and guidelines at the level of the EU and in other international organisations.

General framework for e-democracy
Key concepts, principles, pre-conditions.

Legal framework for e-democracy
Existing legislation; 'More legislation or better legislation?'; legislating technology vs. safeguarding principles through legislation.

Target groups and e-democracy stakeholders
Various actors and their role may include: public authorities; citizens, NGOs, Civil Society at large; private companies; international organisations; the Internet Governance Forum (IGF).

Examples of e-democracy
E-democracy in practice: member states' experiences illustrated by examples and best practices.

Strategies and policies: preparing for e-democracy
a) Needs, goals/objectives; b) Stakeholders; c) Strategic, technological and economic benefits and priorities; d) Challenges, risks and constraints (technological, social, political), as well as e) Expected results;

E-democracy tools
Infrastructure and Security; IT-systems and components; Applications and user interfaces; Processing and management of data and input received.

Reference texts

At its meeting on 4-5 December 2017, in preparing the draft guidelines on e-democracy in the form of a toolkit, the CDDG considered that the working group should build on existing standards and achievements of the Council of Europe. These include:
- Committee of Ministers' Recommendation Rec(2004)15 on electronic governance ("e-governance");
- Committee of Ministers' Recommendation CM/Rec(2009)1 on electronic democracy (e-democracy);
- Committee of Ministers' Recommendation CM/Rec(2014)6 on a Guide to human rights for Internet users;
- CM/Rec(2016)1 on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality;
- Internet Governance - Council of Europe Strategy 2016-2019.

Additional Council of Europe documents which the working group should take into consideration include:
- The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its Protocols;
- Parliamentary Assembly Recommendation 2102 (2017) on technological convergence, artificial intelligence and human rights;
- Council of Europe's Comparative Study on blocking, filtering and take down of illegal Internet content;
- The conclusions concerning e-democracy of the Forum for the Future of Democracy (Madrid, 15-17 October 2008);

- The conclusions of the CDDG thematic workshops on « Electronic tools of Local Democracy: collection, decision-making and transmission» (Brussels, 1 April 2015) and « The current state of use of electronic tools in the context of citizens' participation in public affairs» (Budapest, 7-8 May 2015);
- Exchange of letters between the Council of Europe and Internet companies/representative associations in respect of co-operation with the private sector in order to promote an open and safe internet, where human rights, democracy, and the rule of law are respected in the online environment.

Several recent publications and activities by the Council of Europe may be helpful in examining recent developments in e-democracy. These include the study on Algorithms and Human Rights (by the Information Society Division of the Council of Europe) which covers human rights dimensions of automated data processing techniques and possible regulatory implications as well as the implications for seeking and accessing information. In addition, a legal report published by the European Audiovisual Observatory: "Media Reporting: Facts, nothing but the facts ?" underlines the need for information "to provide the full, unaltered unabridged picture".

Action required

Following examination of the standards and instruments set out above and of initiatives and practical experience in e-democracy, in member states as well as at a European level, the working group, at its first meeting on 27 November 2018, is invited to identify the fields and priorities inclusion in the guidelines on e-democracy in the form of a toolkit.

It is invited also to formulate general orientations in relation to the structure and format of the toolkit to be prepared by the expert(s), in cooperation with the Secretariat.

Preliminary draft guidelines on e-democracy in the form of a toolkit will then be presented to the working group at its second meeting in early 2019. A draft version of the toolkit would be envisaged for presentation to the CDDG at its meeting in 2019 (December).