

The development of E-Governance and the issue of digital inclusion in Greece with particular regard to the constitutional right of e-participation

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ABSTRACT:

The roll-out of e-Government services is currently advancing well in Greece, which is a slow starter in the field of e-Government, but moves now with fast steps ahead. The development of e-Governance presents many chances and also risks for the society. One issue deserving attention is the issue of the digital gap between “information haves” and “information have nots”. Bridging the digital divide would need a great amount of financial resources and a strategic plan aiming at increasing access to information and building knowledge infrastructure. Although there is presently no specific programme to promote digital inclusion in Greece, the Government seems to take into account the need to address this issue.

The imperative to promote digital inclusion is enshrined in the Greek Constitution, which provides for a right to e-participation. However, this right is not directly actionable, and therefore, it does not provide the means to judicial recourse. Policies with regard to digital inclusion could be included in the definition of the Universal Service, and also in legislative programmes having this objective.

Keywords: E-Government, E-democracy, Greece, digital divide, digital inclusion, e-participation.

1. General Introduction

E-Government in the information age shows the way towards the transformation of public administration to an efficient and citizen-friendly service provider. In more specifically, if implemented properly, it can improve government services, increase accountability, result in more accurate and efficient delivery of services, reduce administrative costs and time spent, facilitate transparency in the administration of government, allowing thereby greater access to services due to the openness and constant availability of the Internet (Jaeger, 2003, p.324; Sendes, 2006, p.33; Asghari, 2003, pp.17-33).

Furthermore, ICTs can be implemented to enhance political processes and promote participation of citizens. Governments are able to provide interactive services involving liaisons of citizens with government institutions, such as information provision, e-mail

communication, online meetings and forums for voicing opinions, participation of citizens in consultation and planning procedures and electronic voting (Jaeger, op. cit.; Holznagel & Hanssmann, 2001, pp.55-72). The many ways in which ICTs are employed in this direction fall within the particular field of e-democracy, which is a novel concept, aiming at refreshing the interest of citizens in the democratic processes (Smith; Damodaran, 2005; Kleinstauber, pp.7-27; Winkel, pp.2843). E-democracy is treated as a particular subject matter that falls under the heading of e-Government for many reasons, but mainly because it is another facet of the application of ICT to public sector.

The development of e-Government on national level is dependent on state funds and maybe hindered by lack of financial resources, legal obstacles, technical and security issues, and the slow adaptation of bureaucratic mechanisms. Nevertheless, initiatives to promote the introduction of ICTs in the public sector are getting more intense with the coordination of international and supranational organizations, such as the EU, which is actively promoting initiatives in this area (Strejcek & Theil, 2002, pp.305-313).

However, not everybody is able to benefit from e-Government and e-Democracy and this is particularly manifested in south-European countries like Greece, where a large part of the population makes no use of ICT and has no Internet access. More specifically, according to recent statistics, 27.4% of the population has an Internet access, where 42 % have a desktop computer and 16% a notebook. Moreover, ADSL connections reach up to 7% of the population, lagging behind the average percentage in the EU countries (Annual Indexes of the Projects eEurope and i2010 for the year 2006 <www.observatory.gr>. The divide between those people who make use of ICT and have Internet access, that is, between the 'information haves' and 'information have nots', is the so-called 'digital divide' (Bertot, 2003, pp.185-191), and this is quite acute in Greece. The digital divide touches upon particular population groups, such as the elderly, people living in rural areas, disabled persons and those with low-income and low level of education, and represents a big obstacle in the implementation of e-Government projects (Sendes, op. cit., p.45; Jaeger, op. cit., p.323).

The Greek Government is currently implementing a strategy for e-Government in the context of overall strategy for the development of information society in the country, i.e. the so-called digital strategy (2006-2013) that follows the new European policy for the Information Society "i2010" and the action plan "Jobs & Growth". E-Government is also a component of

the project “Politeia 2005-2007” for the ‘re-establishment of Public Administration’. In this context and in the context of previous programmes and projects, certain e-Government services have been implemented and others are in preparation (Iglezakis, 2007, pp.92-93).

Digital inclusion policies, which are essential to the advancement of e-Government, are addressed by the EU in the framework of the “e-Inclusion” initiative <www.eInclusion-EU.org>. Greece has not developed a particular strategy for digital inclusion, but it introduced specific projects having this objective, mainly in telemedicine, homecare etc <<http://www.einclusion-eu.org/ShowCase.asp?CaseTitleID=1657>>. Furthermore, it launched initiatives concerning the development of ADSL and Wi-Fi networks and co-financing of purchase of ICT equipment for businesses, professionals and students (see infra, 3). It is also noteworthy that one suggestion of the digital strategy 2006-2013 is the familiarisation of all citizens including disadvantaged groups with e-services.

In more general, it could be mentioned that although there is no strategic approach towards digital inclusion in Greece, the Government takes into account the need to introduce e-services for all citizens and achieve participation in e-Governance. It is questionable, however, in which degree is the current development of e-Government empowering the stakeholders to become informed users of the technology and of the e-services offered.

2. The national e-Government Infrastructure

2.1 E-Government Strategy

The national strategy for the development of e-Government was initially defined in the White Paper ‘Greece in the Information Society: Strategies and Actions’, which was published in 1999 and updated in 2002 (e-Government Fact sheet-Greece-Actors, p.10 <<http://www.eupractice.eu>>). The White Paper stressed out the need to enhance the quality of public services in order to ensure social cohesion and raise living standards. Furthermore, a lot of attention was drawn in the development of electronic services that should present characteristics of broad availability, accessibility through one single point of reference (‘one stop-shop’), quality and cost-effectiveness.

A noteworthy big-scale project implementing the Information Society strategy was the Operational Programme for the Information Society (OPIS), which was adopted in 2000 and covered the period 2000-2006. This programme was supported by the EU as part of the Community Support Framework and had a horizontal character, comprising various activities falling under the responsibility of different government bodies. Subsequently, the OPIS was followed by a new strategic plan, i.e., the ‘Digital Strategy 2006-2013’, which follows the principles of the EC “i2010” Information Society Plan <<http://www.infosoc.gr/NR/rdonlyres/41CB3A72-8C7A-47D6-B21C-5FC8786DEA6F/3070/DIGITALSTRATEGY.pdf>>. The aim of this strategy is to promote ICT in order to achieve higher productivity in the economy sector and improve citizens’ quality of life, realizing thus a ‘digital leap’. The objectives of the Digital Strategy are implemented through the OPIS and the operational programmes of the period 2007-2013, in particular the project “Digital Convergence”.

2.2 Institutions responsible for e-Government

Policy making and strategic planning in the area of e-Government in Greece fall mainly within the responsibility of the Information Technology Committee and the Ministry of Interior, Public Administration (e-Government Fact sheet, op. cit., p.16; Iglezakis, 2007, p.92). The latter has recently instituted a specific department for e-Government, whereas sector specific e-Government projects are implemented by individual government bodies.

The Information Technology Committee was established in 2004 by the Ministerial Council and is operating as a common platform for planning and development of Information Technology. Its task is to coordinate and monitor the initiatives of public institutions aiming to promote the use of new technologies and e-Government. While it was responsible initially for strategic planning and IT development, it became the common platform for political planning, coordination, monitoring and developing the Information Technology and in more particular, monitoring the implementation of the ‘digital strategy 2006-2013’ by public institutions.

The Ministry of the Interior, Public Administration and Decentralization is formally assigned with the responsibility for the development of e-Government in Greece. The ministry has a long experience in managing e-Government projects in the past and manages national and

European funds within the Operational Programme for the Information Society (OPIS). Within the Ministry, the General Secretariat for Public Administration and e-Government <www.gspa.gr> was established, with main responsibility to tackle e-Government issues. The role of this body is central for the development of e-Government in Greece.

In more general, the responsibility for the development of the Information Society lies with the Special Secretariat of Digital Planning in the Ministry of Economy and Finance.

Since there is a clear need for the coordination of e-Government policies, this task is assigned to the General Secretariat for Public Administration and e-Government and to the Special Secretariat of Digital Planning of the Ministry of Economy and Finance <http://www.infosoc.gr/infosoc/en-UK/sthnellada/operators/Special_secretariat/default.htm> (renamed from the former Special Secretariat for the Information Society). Another institution which has been recently established by the Ministry of the Interior, Public Administration and Decentralization, is the e-Government Forum. The role of the forum is clearly consultative. The forum aims at establishing links with the business community, at submitting proposals for the use of ICT in the public sector, and also at fruitfully exploit theoretical knowledge and experience in e-Government. The forum could evidently promote coordinated action between the public sector bodies offering e-Government services.

The implementation of e-Government projects is carried out by the Information Society S.A. and by individual government bodies, as well as regional and local government bodies. The former was established in 2001 and is a state-owned company, which has a task to support the implementation of the OPIS. To achieve this goal, the company implements and utilizes the national e-Government infrastructure, e.g. the Syzefxis network.

The national bodies implementing e-Government actions are supported by a number of institutions, i.e., i) the General Secretariat for Public Administration and e-Government, ii) the Managing Authority of the OPIS, iii) the Information Society S.A. and iv) the Observatory for the Greek Information Society <www.observatory.gr>, which is an independent Private Law Body Corporate¹.

¹ The Observatory for the Information Society was founded by Law 3059/2002 (Government Gazette A 241/11.10.2002) and is supervised by the Ministers of National Economy and Finance, of Internal

Furthermore, auditing of e-Government projects and activities is carried out by the Hellenic Court of Audit. This court is generally responsible for auditing expenditure and monitoring the revenue of the state, of local administrative bodies and other public corporate bodies. In addition, control of personal data processing from national administrative bodies is exercised by the Hellenic Data Protection Authority, which is an independent administrative body, established by Law Nr. 2472 of 1997 (transposing Directive 95/46/EC) <www.dpa.gr>.

2.3 Specific e-Government Services

The development of e-Government services is currently characterized by the multitude of services provided, while not long ago only the services of the tax authorities were accessible online². This concerns only electronic services of governmental bodies, whereas at local level efficient e-services are lacking (Hahamis, Iles & Healy, 2005, pp.185-192)³. It is also irrefutable that no initiative towards the introduction of e-democracy schemes has been undertaken so far. This runs in contradiction with the civil society, for there is already a participative spirit developed among cybercitizens, as it is evident from the increased number of Greek bloggers presenting their views on current social and political issues and the emergence of sites hosting NGOs and other political organisations.

It follows a brief description of the e-Government services offered by the central administration, which is fully interactive, and of those under development.

Affairs, Public Administration and Decentralization. See <http://www.infosoc.gr/infosoc/en-UK/sthnellada/operators/observation/> (visited 3/8/2007).

² However, Greece still holds a low ranking compared with other countries; in particular, it ranks 91th in the Seventh Global E-Government Study of the Brown University, as regards the overall e-Government performance; http://www.brown.edu/Administration/News_Bureau/2007-08/07-011.html

³ Where it is stated that: “a content study of Greek government websites reveals that local level e-Government has generally not progressed beyond the information presentation stage”.

2.3.1 Government-to-Government

2.3.1.1 The Syzefxis Project

The Syzefxis network is a very significant project aiming at establishing an electronic communications infrastructure in the public sector. In more particular, this would establish a network infrastructure that will be used for e-Government and electronic signatures (PKI) in the Greek public sector <www.syzefxis.gr>. It extends over the entire country, connecting over 2000 public sector bodies through four virtual private networks. The advantages of the introduction of this network are the simplification of procedures, better cooperation and coordination, and the saving of financial resources.

The Syzefxis project provides data exchange and voice over IP services, broadband and e-mail services, offers an e-Learning platform that would be used to provide guided instruction to civil servants, and operates an Internet portal <www.syzefxis.gr> that offers value-added services, e.g. directory, tele-cooperation, teleconference and helpdesk services. It also provides PKI infrastructure services, i.e. electronic signatures and digital certificates that will be used for cross-agency transactions, introducing thus an electronic identity management scheme. In particular, 50000 smart cards and 10000 pertinent card readers will be distributed to civil servants. These smart cards contain two digital certificates employed for electronic signing and ciphering of documents.

Regarding the management of the digital certificates it should be noted that a Root Certification Authority has been established in 2006, with responsibility to define certification policy and standards, and coordinate other public services offering certification services. This Authority issued consequently a Certification Practices Statement (Government Gazette 1654/B/10-11-2006). The PKI system of the Syzefxis Project is further based upon five certification authorities (CAs), which will be established once the relevant ministerial decisions are signed: i) Ministry of Interior, Public Administration and Decentralization CA, ii) Ministry of National Economy and Finance CA, iii) Ministry of Health and Social Solidarity CA, iv) Ministry of Public Order CA and v) Ministry of National Defense CA.

In May 2007, the Minister of the Interior, Public Administration and Decentralization signed a circular for the initiation of the distribution of digital signatures to civil servants. The first certificates will be provided to high-level officials employed in the various Ministries. Thus, the PKI infrastructure is about to become operational, while other parts of the project, such as the training module, are also functioning.

2.3.1.2 The Hermes Project

The Hermes project is planned to publicly diffuse electronic signatures and digital certificates through a government portal ('Hermes portal'). It aims to provide 300,000 smart cards to citizens and businesses for their transactions with public sector. However, there is no progress with this project, so far.

2.3.2 Government-to-Citizen

2.3.2.1 TAXISnet

The TAXISnet system <<http://www.taxisnet.gr> - see Figure 1> is one of the first e-Government applications - it was introduced in May 2000 as a web-based extension of an existing internal information system - and one with high acceptance by users (Tsiavos, Smithson & Kotyvos, 2002, pp.53-62; Stamoulis et. al., 2001, pp.146-153; Gouscos, Mentzas & Georgiadis, 2001; Metaxiotis & Psarras, 2004, pp.141-151). It provides services to individual and corporate taxpayers, including electronic submission of income tax forms, personalised electronic notification of the results of the tax return clearance process, electronic issuing of certificates by fax, electronic submission of VAT forms, and payment via banking system services. Notably, a number of these services are also offered via a telephone call centre.

TAXISnet services are available to Internet users that follow the registration procedure and receive electronic credentials (user name, password), which enable them to have access to the full range of these services. Users of TAXISnet are (a) individual citizens, (b) professional accountants and (c) private businesses, with emphasis on SMEs. TAXISnet offers round-

the-clock availability and real-time response for all transactions, online FAQ and email-based help desk services.

While in the past, the system has experienced technical difficulties, it has become more efficient and gained acceptance. The effects of its introduction are mainly the elimination of paper work and direct availability. All in all, it can be regarded as a success, for its use is constantly expanding among taxpayers, who recognise its efficacy.

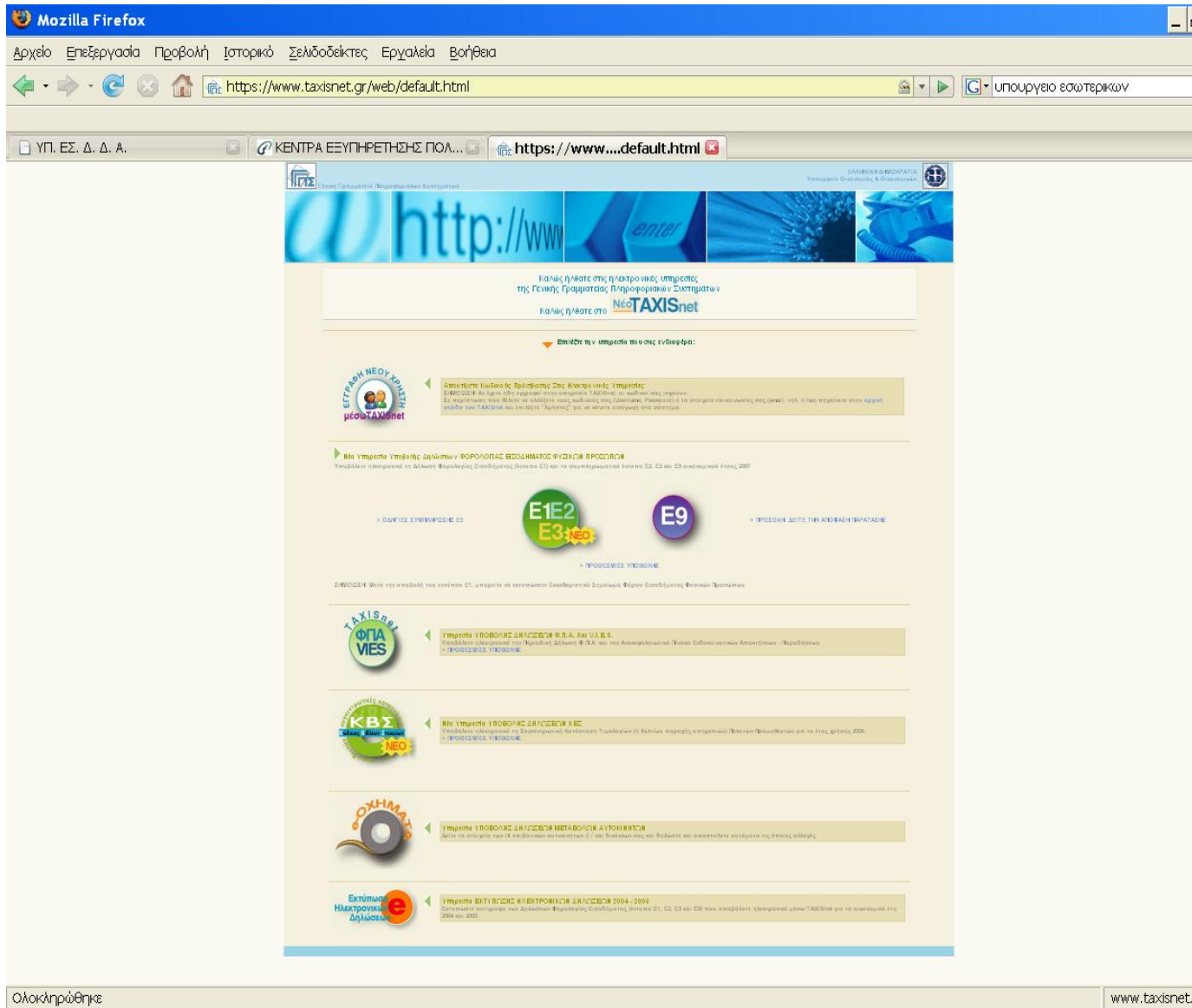


Figure 1. The Taxisnet system

2.3.2.2 The Social Insurance Institution's website

The Social Insurance Institution's <<http://www.ika.gr>> website provides employers the possibility to submit online declarations of social security contributions. Furthermore, it offers certificates for the compliance of employers with obligations under social law and the possibility to confirm online those electronic certificates. The website of the institution also provides information and FAQ on issues regarding the declaration of social contributions.

Recently, the IT Centre of Social Security Services has been transformed into a public share company, i.e. "E-Government for Social Security S.A.", which aims at providing E-Government Services to citizens. The operation of this company will contribute significantly to the growth of E-Government services in the area of social security.

2.3.2.3 Citizen Service Centres

The Citizen Service Centres have been established in 2002 in order to provide access to citizens to public sector information and carry out a great number of administrative procedures (over 1,000). They function as one-stop shops, in which citizens can address to, and they facilitate access to administrative procedures, which are time-consuming and complicated. Their services include a call centre (1502) and a telephone application system (1564) providing various certificates to citizens and enterprises.

The website of Citizen Service Centres <<http://www.kep.gov.gr> – see Figure 2> provides online availability to the services of the Centres. The website offers the possibility to registered users of submitting applications online, which are dealt with by individual centres. There are currently 1036 Centres spread around the country. The Citizen Service Centres use a specific network and software ("e-kep" platform), which supports the use of certified digital signature and enables real time on-line transactions between Citizens and Public Administration.

The Internet portal has recently become operational and can already be characterized as a success, for it provides a wide range of services, and has already become recognized, since

it receives over 9 million visits each month. The single drawback of the portal is that the delivery of certificates requires physical presence of the applicant before one of the Centres.



Figure 2: The Citizens' Centre Portal

2.3.2.4 Courts of Athens, Piraeus and Thessaloniki

The three major Courts of First Instance, i.e. Athens <<http://www.protodikeio-ath.gr>>, Piraeus <<http://www.protodikeio-pir.gr>> and Thessaloniki <<http://www.protodikeio-thes.gr>>, have created an information system for the electronic filing of lawsuits, provision of information on lawsuits and filing of applications for the issuance of certificates from Courts. Access is granted mainly to lawyers of the corresponding Bar Association, but also other persons could register and gain access to certain services.

2.3.2.5 Other e-services

A great number of information is offered to citizens by various websites. Notably, the website of the Labour Organization <www.oaed.gr> provides a job search online service, and also, information and forms for downloading concerning unemployment benefits and family allowances. The website of the Ministry of Health and Social Solidarity <<http://www.mohaw.gr>> provides information on medical cost and also interactive advice on the availability of services in different hospitals and appointments for hospitals. Information on student grants is provided by the State scholarship Foundation <<http://www.iky.gr>>. Information on passport is provided by the national passport centre <<http://www.passport.gov.gr>> and information on driving license is offered by the Citizen Service Centres website.

Furthermore, information and online registration of new, used and imported cars is provided by the General Secretariat for Information Systems of the Ministry of Economy and Finance <<http://www.e-oikonomia.gr>>. Information and forms for building and planning permission are provided by the Citizen Service Centres website, while information concerning declarations to the police is provided by the website of the Ministry of Public Order <<http://www.ydt.gr>>, and information concerning enrolment in higher education is provided by the website of the Ministry of Education and Religious Affairs <<http://www.ypepth.gr>>.

2.3.3 Government-to-Business

2.3.3.1 E-Procurement

Currently, there is no e-procurement platform developed in Greece. Nevertheless, information and public procurement forms are provided by the website of the General Secretariat for Commerce of the Ministry of Development <<http://www.gge.gr>>.

It is notable that the Procurement Directives 2004/17 and 2004/18 have been recently transposed into national law with two Presidential Decrees, i.e., P.D. 59/2007 and P.D. 60/2007. With these acts the provisions of the Procurement Directives are almost verbatim transposed and therefore, the legal framework is in full compliance with the EU-Directives on electronic procurement.

In practice, the electronic procurement will be fully operable once the National System for Electronic Procurement (NSEP) is created. The project for its implementation has been awarded, but its award has not yet been finalised.

The main goals to be achieved through this system are the following:

Computerization of procurement procedures in order to accelerate and simplify the whole, but also part of the procedures;

Introduction of new practices, such as framework agreements and electronic auctions;

Interconnection of contracting authorities and private businesses (suppliers) with the central offices of the General Secretary of Commerce (GSC);

Upgrade of IT infrastructure of the GSC;

Establishment of an open system accessible by employees of the GSC, public authorities and suppliers;

Provision of improved information and advanced electronic services; and

Provision of training of main actors (public institutions and suppliers).

The NSEP will be installed centrally in the General Secretary of Commerce and the Procurement Directorates of contracting authorities, and it will support local access. Actors

of public procurement will have access through a web portal, which will be structured so that different users could gain access to specific functions. It will support all main procedures applicable in public procurement, including the preparation and execution of the annual programme for procurement, publication and award of procedures, submission of request to participation (in restricted procedures) and submission of tenders, evaluation of tenders and selection of tenderers, award and execution of procurement contracts and finally, review of the APP. The broad objectives of the creation of NSEP is to save funds from the state budget and principally, to speed up procurement procedures and establish transparency.

2.3.3.2 Other electronic services available to businesses

There are many websites offering information to businesses with variable level of interactivity. In more particular, the website of the General Secretariat for Commerce <<http://www.gge.gr>> offers information concerning the registration of a new company and forms to download. Furthermore, the General Secretariat of National Statistical Service <<http://www.statistics.gr>> provides the possibility of online submission of Intrastat declarations. Through the TAXISnet portal it is possible to submit custom declarations online and also, the website of the Ministry of Environment <<http://www.minenv.gr>> provides information and forms to download concerning environment-related permits (including reporting).

2.3.4 Further electronic services under development

2.3.4.1 National Population Register

Today each municipality and commune maintains population registers, which are locally held. The creation of an integrated National Register will unite all the relevant information and integrate it in a single database.

2.3.4.2 Specific Population Register

An information system that will include birth information of Greek citizens leaving abroad is to be created. This system will facilitate the issuance of certificates and increase the functionality of public services.

2.3.4.3 Electronic Information System for the Advocate of the Citizen

An information system will be introduced for the communication between the Advocate of the Citizen with other public sectors.

2.3.4.4 Information System for the Council for Appointing to the Public Sector

An information system will be established in the Council for Appointing to the Public Sector, which will contribute to fully computerization of internal procedures and the communication with the public interface.

2.3.4.5 Information systems for Regions, Prefectures and Local Administration

Information systems will be introduced in Regions, Prefectures and most notably, in local administrative bodies (municipalities and communes). Particularly, local administration will benefit from funds in order to introduce electronic services and portals for diffusion of information and provision of services to citizens.

3. Policies with regard to digital inclusion

It is a common belief that bridging the digital divide constitutes a major problem for the society as a whole, and this concerns also the development of e-Government in Greece. Indeed, information campaigns for the familiarization of Greek citizens with ICT and the promotion of its use have been largely introduced by the Government, the latest one being the “Digital Greece” campaign, which was launched in 2007.

As Internet penetration remains low, in order to overcome the digital divide it is essential to promote the introduction of Internet connections and more importantly to develop a broadband infrastructure. It is noteworthy that there has been an increased introduction of

broadband connections recently, but this was followed by the incentive of profit for Access Providers. ADSL connections reach up to 760,000, but still this number is relatively low.

It has been announced that funding will be targeted at the development of Metropolitan Area Broadband Networks in 75 cities, the creation of Wi-Fi connections in more than 120 Municipalities and 20 local Unions of Municipalities, the deployment of more than 700 wireless access points in 400 companies, and also at the national School network. Broadband connections will also be established in first and second grade education, as well as in Cultural and Sport centres, health centres etc. This activity is included in the digital strategy 2006-2013 and complements other projects for the creation of Wi-Fi Hotspots and Optical Fibre Networks in 68 Municipalities.

Another notable initiative was “See your life, digitally!” that was offered to first year University students, who were candidates of the 2006 National School Examinations and were included in the 20% of students achieving the highest entrance scores, the possibility to purchase a new laptop, by providing them a coupon of up to €500. In the next year, it is planned to introduce the project ‘one-notebook-per-kid’, which was aimed initially for third world countries, but its implementation in Greece will also promote ICT adoption.

Funding by the Government has helped to develop an e-Government infrastructure and a variety of e-services, which have been described above. However, at local level, with few exceptions, e-Government has not been developed beyond the information presentation stage; although this might change in the future with the implementation of EU-funded projects in this area (Hahamis, Iles & Healy, op. cit.). At present, this represents an obstacle in the procedure of bridging the digital divide, since digital inclusion can be attained more efficiently at local and community level (Sipior & Ward, 2005; Kuk, 2002).

It is notable that where electronic services become mandatory, for instance in the case of annual declaration of fiscal elements which can only be submitted online, taxpayers without Internet access can choose to submit manually their declarations to a Citizens Service Centre, which will consequently forward them via the Internet. This is an effective approach

towards the fact that not all citizens and enterprises⁴ have Internet access, but do not solve the digital divide issue.

In addition, it should be mentioned that no Community Centres provide free Internet access, as this is the case in other countries that have adopted policies to promote digital inclusion, and no broad ICT-education and training programme have been introduced, besides specific projects targeting professionals and businesses. It is questionable, therefore, whether the creation of Wi-Fi networks in municipalities and communes alone will have any result at all in promoting digital inclusion, even if wireless networks would make available free access to Internet for large parts of the population in regions and rural areas.

Consequently, it should be explored how the existing legal framework on e-Government copes with the issue of digital inclusion and, in more particular, whether this issue can be dealt with effectively by legal norms.

4. The legal framework on e-Government and digital inclusion

4.1 The general legal framework

Although there is no specific legislation for e-Government in Greece, the principles underlying e-Government, i.e. accessibility, transparency, security, data protection, cooperation and sustainability, derive from general principles of administrative law and legal regulations in specific acts.

The transparency of administrative action is a general legal principle of administrative law, which is specified through the right of access to public documents (Article 5 of Administrative

⁴ ICT and Internet penetration depends upon the size of enterprises. In more particular, SMEs in rural areas are the ones with low penetration, while big and medium-sized enterprises make extensive use of ICT; see Iglezakis, I (2005a) 'The Information and Communications Technology Market', in Maniotis, D, Marinos, M-T, Anthimos, A, Iglezakis, I & Nouskalis, G, Cyberlaw (Hellas) 23

Procedure Code). This provision stipulates that every interested person has the right to access administrative documents, i.e. documents produced by public authorities such as reports, studies, minutes, statistics, administrative circulars, responses opinions and decisions. This right is, however, without prejudice of data protection and protection of secrecy provided for by specific laws, as well as of intellectual property rights. It is also noteworthy that the right of access to public information is enshrined in the Constitution⁵ and, therefore, the relevant provision cannot be abolished or its protection diminished.

Re-use of public sector information is foreseen by law 3448/2006, which transposed the provisions of Directive 3448/2006 (Iglezakis, 2006). This act established the conditions and means of facilitating the re-use of documents held by public sector bodies. The principal obligation of public sector bodies is to ensure that documents held by them can be re-used for commercial or non-commercial purposes, in accordance with the conditions set out in law 3448/2006, and where possible to make them available through electronic means (Art. 2). This law also provides safeguards for privacy, national security and intellectual rights.

Furthermore, the use of means of electronic communication is legally recognised and, therefore, there are no legal barriers to the use of e-Government services. Notably, Directive 1999/93 ('e-Signature Directive') was transposed through the P.D. 150/2001 of 2001, which established the legal recognition of electronic signatures and defines the legal consequences of advanced and simple electronic signatures (Iglezakis, 2005a, pp.176-184). In the public sector, Law 2672/1998 provides for the exchange of documents through facsimile and e-mail between public services, legal persons of public law and organisations of local administration and between them and private persons etc. It is also foreseen by Decree 342/2002 that administrative decisions and certificates can be communicated through e-mail, provided that they bear a digital signature, i.e. an advanced electronic signature as defined in the act transposing the e-Signature Directive. Furthermore, Law 3242/2004 (Article 8)

⁵ According to Article 5A (1) of the Greek Constitution, "all persons are entitled to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties".

provides that administrative procedures concerning the issuance of an individual administrative act from the public sector can be concluded by electronic means, and in particular by advanced information systems providing interconnectivity.

Privacy protection is afforded by Law 2472/1997, which transposed the legal rules and principles of the Data Protection Directive (45/96/EEC) into national law (Iglezakis, 2005a, pp.229-248). This act establishes the terms and conditions under which the processing of personal data is to be carried out so as to protect the fundamental rights and freedoms of natural persons and in particular their right to privacy. It also provides regulations on data security and established the right of the data subject to have access to its personal information. The control and supervision of personal data processing is entrusted with the Data Protection Authority, which is an independent administrative authority <<http://www.dpa.gr>>.

In the electronic communication sector the law 3471/2006 transposing Directive 2002/58 applies, providing specific rules to protect privacy from risks inherent to modern communication technology.

4.2 The Greek legislation pertaining to digital inclusion

Regarding the issue of the digital divide, since there is no law on e-Government, there is also no specific rule referring to digital inclusion. However, on constitutional level, the ‘right to e-participation’ includes the aspect of digital inclusion. In more particular, Article 5A (2) of the Constitution states that: “All persons are entitled to participate in the Information Society. Facilitation of access to electronically handled information, as well as of the production, exchange and diffusion thereof constitutes an obligation of the State”.

The provision of Article 5A (2) was introduced in the Constitution with the constitutional amendment in 2001, which aimed at reinforcing the social state of law in the Greek legal order. The social state principle is proclaimed in Article 25 (1), which states that ‘the rights of the human being as an individual and as a member of the society as well as the principle of social state are guaranteed by the State’. In addition to this principle, other aspects of individual rights gained importance, particularly those referred to technological development

and the risks created by new technologies. The constitutional right of participation in the information society is just a bright example of the ‘technological adaptation’ of the Constitution, whereas its counterpart is the provision of Article 9A establishing a right to data protection.

The right to participation in the information society derives from the general right of personality, established in Article 5 (1). Thus, it could be followed by the personality right and it is, therefore, argued that it was not necessary to introduce such a provision (Dagtolou, 2002, p.20). Nevertheless, its adoption in the Constitution as a specific right stresses its importance for the social dimension of the Constitution, which was reinforced in the constitutional amendment of 2001 (Papakonstantinou, 2006, p.233).

In order to determine the normative content of the right to e-participation, one has to define the notion of ‘information society’. The concept of information society is subject to constant change and it thus has an open character. Its object is the Information and Communication Technology, but the concept of the information society is technologically neutral and cannot be limited to any particular and innovative technology (Mitrou, 2006, p.38). The epicenter of the information society is undoubtedly the Internet, but it also comprises other networks, which are used for the distribution and sharing of information, i.e. electronic communication networks, in the sense of Article 2(a) Directive 2002/21. Furthermore, it encompasses information which is disseminated through these networks and the modes of such dissemination. The right to e-participation mentioned in Article 5A (2) section 2 covers all aspects of electronic dissemination of information, i.e., the production, exchange and diffusion of information (Papakonstantinou, *op. cit.*, p.234). It should be noted, however, that the protected right under the aforementioned provision is neither ICT nor its applications, but the participation of the individual in the information society (Kofinis, 2007).

The provision of Article 5A (2) establishes, firstly, an individual right to participation in the Information Society. In particular, it is a defensive and participatory right, which cannot be restricted or inhibited by the state. Therefore, in case of restrictions of this right by legal or administrative acts, the right holder can bring a claim against such infringements (Papakonstantinou, *op. cit.*, p.234; Mitrou, *op. cit.*, p.42). This includes, in particular, free access to electronic communication networks and services; it also includes the right to

unrestricted electronic communication and to participation in various information society services, such as newsgroups, forums, chats and social media.

Furthermore, Article 5A(2) establishes a social right, which lays down the obligation of the Greek State to take positive action in order to make equal and active access to the Information Society for all (Mitrou, *op. cit.*, pp.35-36; Kontaidis, 2002, p.206). In this sense, it constitutes a legal basis for policies of digital inclusion, such as funding of purchase of equipment for low-income social groups, establishing community centres providing free use of ICT and access to Internet and implementing ICT education programmes. Generally speaking, this right is not actionable, for it does not provide the individual with a legal claim against the State, in case the latter fails to introduce digital inclusion policies. This lack of enforceability, however, is not a particular drawback of the right to e-participation, but a common characteristic of all social rights (Iglezakis, 2005b, pp.118-123).

Nevertheless, the right to e-participation has certain aspects of actionability. In particular, in case certain social groups are legally excluded from e-participation for reasons pertaining to geographical, age or racial factors, then a legal claim is recognized. And also, if this right is legally recognized through a legal act laying down specific measures, i.e. benefits, such benefits cannot be totally abolished or unjustifiably diminished (theory of co-called ‘social acquis’).

Beyond the implementation of specific projects aiming at the promotion of digital inclusion, the institutionalization of the right to e-participation raises many questions. The basic commitment of the State is to offer e-Government services and this means that it has to make available online public sector information and further, implement e-Government projects in order to cover all or a major part of administrative procedures. But what is more important, access to Internet should be made generally affordable to all citizens. This could be made possible with the inclusion of Internet in the universal service in the sense of Directive 2002/22/EC on universal service, i.e. the provision of a defined minimum set of services to all end-users at an affordable price.

In particular, under Article 46 of Law 3431/2006, universal service includes, *inter alia*, the provision of access at a fixed location to the public telephone network and access to publicly available telephone services at a fixed location, which should be met by at least one undertaking, in case the request is reasonable. It is also stated that the connection provided

must be capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility. This provision implements also verbatim the provision of Article 4 of Directive 2002/22 and does not include any measures purporting to digital inclusion.

It is noteworthy that a Legislative Draft titled ‘Participation in the Information Society’⁶ drafted by a group of researchers under the aegis of the Hellenic European Constitutional Centre, includes a provision for access in public electronic communications networks (Article 9) (Papachristou, Vidalis, Mitrou & Takis, op. cit., p.90). Under this act, the services and characteristics of the universal service as well as the cost principles are to be defined by the competent state authority. Particularly, Internet access for the elderly, low-income, unemployed and disable persons is to be made affordable in low prices, and the relevant charges are to be funded by the State. Such initiatives, however, are not able to gain political support and remain of purely academic nature.

5. Conclusion

The existence of a constitutional norm referring to digital inclusion is very positive, but this norm remains still unenforceable, as no legal act specifying it has been adopted yet. The value of this constitutional norm, however, should not be underestimated for this reason. On the contrary, the recognition on constitutional level of a right to participation in the Information Society is essential for the formulation of governmental policies with regard to digital inclusion.

The roll out of e-Government services in Greece is currently advancing well, but policies of digital inclusion should play an advanced role in this development, in order to encourage the

⁶ This Draft Law has not been submitted to the Hellenic Parliament.

bridging of the 'digital divide'. There are particular deficits in current policies, which should be taken into consideration, such as the lack of specific programmes for ICT education and the establishing of Centres providing Internet access at no cost for underprivileged citizens. A concise strategy towards digital inclusion should include the adoption of legislative programmes with this objective and also the facilitation of Internet access through its inclusion in the universal service.

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