Communication rights, democracy & legitimacy : the European Union
Hoffmann, J.

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: http://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
# Table of Contents

## Introduction  
1

### Communication as a Human Right: Picking up the Challenge?  
17

1. Introduction  
18

2. Arguments for a broader “right to communicate”  
20

3. The political history of the “right to communicate”  
22
   
   3.1. The Call for a New World Information and Communication Order  
   3.2. WSIS and CRIS: Picking up the Thread?  
   3.3. WSIS: No Reference in the Official Final Declaration  

4. Open questions and challenges  
33
   
   4.1. What kind of right?  
   4.2. Positive obligations  
   4.3. Substance  
   4.4. Should the right to silence also be accepted outside judicial proceedings?  
   4.5. Whose right?  
   4.6. Against whom?  
   4.7. Codification  

5. Concluding remarks  
43
   
   5.1. Where to move from here?  

### Transition I  
59

### The Role of Communication Rights in the Democratization of the European Union  
67

1. Introduction  
68

2. Locating the democratic deficit  
69
   
   2.1. International Relations and the EU  
   2.2. The Babylonian problem and the “no demos” critique  

3. Legitimacy as an issue of Communication  
73
   
   3.1. Deliberative democracy and the legitimacy of European governance  

4. Communication Rights as Citizenship Rights  
89

5. Conclusion  
95

### Transition II  
109
THE IMPACT OF EUROPEAN LAW AND POLICY ON COMMUNICATION RIGHTS

1. Introduction
   1.1. Assessing Communication Rights
   1.2. An operational definition

2. Locating Communication Rights in EU governance structures

3. Infrastructure
   3.1. The EU approach to a European public sphere
   3.2. e-Inclusion and e-Accessibility

4. Content
   4.1. Freedom of Expression
   4.2. Privacy, the confidentiality of communication and personal data
   4.3. The Right to Access to Information
   4.4. Regulatory Framework for Media Governance
   4.5. Media pluralism and ownership concentration
   4.6. Public Service Broadcasting

5. Process
   5.1. Information and Communication Policy

6. Conclusion

TRANSITION III

THE EVOLUTION OF A PUBLIC RIGHT TO ACCESS TO DOCUMENTS

1. Introduction

2. The structure of the Code of Conduct
   2.1. Laying the ground for access: case law of the European Courts

3. Regulation 1049/2001
   3.1. The process
   3.2. The proposed revision
   3.2. What is a document?
   3.3. Third Party documents
   3.4. Member State documents
   3.5. The case of “sensitive documents”
   3.6. Partial access
   3.7. Procedural rules

4. The new exceptions regime
   4.1. Absolute grounds of refusal
   4.2. Exceptions with Public Interest Override
   4.3. Concluding remarks on exceptions with public interest override

5. The public registers

6. Concluding remarks

List of cases

TRANSITION IV
1. Introduction 282
2. Legal Framework of the smart sanctions regime 285
   2.1. The Interplay of legal systems
   2.2. Ways of communitarization
   2.3. The lists and access to court
3. How to become listed: Information in the political process 289
   3.1. The UN Committee
   3.2. The Council procedure
   3.3. A lack of information at all stages
4. Information in the legal process 294
   4.1. Human rights guarantees within the European Union
   4.2. European Community Courts case law
5. Concluding remarks 303
List of cases 319

CONCLUSION 321

SAMENVATTING 335
SUMMARY 337

ACKNOWLEDGEMENTS 339