

Transitioning from e-Government to e-Governance in the Knowledge Society: The Role of the Legal Framework for Enabling the Process in the European Union's Countries

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ABSTRACT

In modern European participatory democracies, government business and services not only rely on the trust of the business partners but moreover on the trust of the citizens. To be credible, transactions, services and interactions must be legally sound, provide value and be fair to all. In the Knowledge Society, traditional contract arrangements, in the context of e-Government, e-Business and e-Democracy are being redefined to reflect the complexity of the e-Governance ambiance, as the collective mindset changes towards citizen-centered service provision and institutional re-engineering. The legal frameworks, which underpin these changes, are undergoing reforms on international, state, regional and municipal levels. Continuous legislative change is considered essential to the success of e-Governance in context of the Knowledge Society and Sustainable Development. Yet, crafting new regulations imposes significant information and coordination demands among the agencies involved. This paper examines the role of law for European e-Governance, justifying the need of a cohesive legal framework as a common platform for effective electronic government ensuring democratic advance, transparent decision-making and inclusive policies in the local communities. It identifies key challenges that national and local governments face in coordinating and integrating European, national and regional legislation in the spirit of the main principles of Good Governance and Knowledge and Networked Society.

Categories and Subject Descriptors

K.5 [LEGAL ASPECTS OF COMPUTING]: K.5.2 Governmental Issues - *Regulation*

General Terms

Legal aspects

Keywords

E-Governance, Legal and regulatory framework, Public policy

1. INTRODUCTION

E-Governance is an ambitious challenge for a variety of stakeholders in the Information and Knowledge Society. Its potential, however, to modernize, transform and improve public management and policy is specifically acknowledged by the countries of the European Union. Its progressive advance depends, among other factors, on the legal and regulatory frameworks enabling its implementation across the European nations and localities.[1] Identifying the legal aspects of e-Governance, the key issues and categories (such as 'Legal Validity', 'Trust and Confidence' or 'Available Remedies'), the administrative structures, organs and players, the gaps, the barriers and the challenges to finding the best solutions is becoming a strategic pursuit in the Union.[2] A cohesive Legal Framework of e-Governance, however, is just now starting to evolve. The current paper responds to this need and aims to support progress towards a better understanding of the legal aspects of e-Governance by identifying, analyzing, and assessing the specific legal aspects of e-Governance, the core laws and legal changes in the main areas that form the framework of e-Governance, the driving factors and conditions enabling the process on national and local levels, and the main challenges, key issues and barriers to the progress of transition from e-Government to e-Governance in the European Union. The key potentials of the Legal Framework as enabler of e-Governance are identified and endorsed with respect to four main legal areas: Personal data protection laws; Privacy and security laws; Administrative laws; and Information (provision) laws.

2. E-GOVERNANCE AND THE INFORMATION/KNOWLEDGE SOCIETY

2.1 The European Union's Trust

E-Government¹ has emerged as a significant challenge in the Information and Knowledge Society, globally and specifically in the countries of the European Union (EU) where current policy trusts are comprehensive and focus on providing citizens centred

¹ E-Government has been mostly used for the services government agencies provide to the citizens using information technology. Despite emerging changes in its context and scope involving governance objectives and processes, the term continuous to be in use, yet with a new meaning.

effective services, improving doings of government, advancing the democratic processes and promoting inclusive decision-making processes for better public policies and management. Several strategic documents have outlined the process. In September 2003 the European Commission adopted a Communication, outlining the importance of e-Government as ‘a means of achieving world-class public administration in Europe’ [3]. Earlier, in 2000 the EU’s Lisbon Strategy reinforced e-Government as a ‘potential provider of major economic boost by facilitating new and better services for all citizens and companies’ [4]. Equally important, e-Government is being granted the task to further ‘reinforce democratic development in Europe’ [5]. These new missions of e-Government provide a turning point for transitioning to e-Governance where governing is inclusive of the other stakeholders of the civil society, participating and/or impacted by its processes and activities. Implementing e-Governance on various levels however requires a cohesive legal framework that will facilitate the meeting of its objectives aimed overall to generate a new public value for each of the European nations and the numerous local communities. Yet, discussing the legal aspects and challenges of e-Governance requires setting up the concept of e-Governance in its European contexts along with the opportunities, the barriers, and the challenges involved.

2.2 Definition of E-Governance

The case for e-Governance has been already effectively made by a large range of international and regional stakeholders, including the United Nations, the European Union, the OECD, the World Bank, at the countries level, by private organizations and academic institutions. As a result, the existing studies and findings on the issues are abundant. Similarly are the views, the approaches, the definitions, and the legal aspects considered? Because of its multi-dimensional aspects, e-Governance poses serious challenges to conceptualizations. Many organizations and players have already attempted to define it based on their approaches. Some, like the OECD, centre on its functions (functional definitions), others focus on the processes (descriptive definitions), third (such as the European Union) refer to its essence (conceptual definitions). Few define e-Governance in reference to e-Business, while the World Bank, for example, combine multiple elements and offer a rather complex definition [6]. In spite of the different approaches and perspectives, however, there is often a convergence in the approaches and the definitions. A common consensus has emerged on the challenges of e-Governance for the Information society along with some key words - ‘public administration’, ‘efficiency’, ‘information infrastructure’, ‘quality service’, ‘governance’, etc. Establishing the right definition of e-Governance is a pre-requisite for any serious work, analysis and decision that carry legal consequences.

The European Commission defines e-Government as: *“The use of ICT in public administrations combined with organisational change and new skills in order to improve public services and democratic processes and strengthen support to public policies.”* [7] The definition refers to the fundamental essence of e-Governance as ICT-based applications, government-related actions, and government role in steering participation and societal advance. The main idea behind this definition, however, is that e-Government is more about ‘Government’ than ‘e’, a reforming

and innovative government involving citizens and businesses in the decision-making processes and acts. In the next sections we attempt to define the specific elements of e-Governance, as in the above context, identify their legal aspects and areas of concern, and map out the challenges in establishing a cohesive legal and regulatory framework of e-Governance in line with EU’s strategic objectives.

2.3 Europe’s e-Governance Policy Agenda

Within both central and local governments in Europe there is a strategic agenda to radically transform the delivery of public services through the adoption of advanced ICTs. Likewise, as information technologies increasingly penetrate the public sphere, governments contemplate the use of these tools to remodel democratic practice and transform relations between citizens and public services. E-Government now becomes an issue of not solely technology – it is also about reinventing the way in which service providers and customers interact and transform government processes, providing leadership, enable economic development, and reinvent the role of government itself in society [8]. Integrated public services and an innovative organizational change in government to citizen relationships, including citizen-centric services, participation and open interoperable frameworks are therefore necessary to address the challenges of the Networked Knowledge society. The EU seeks a high level of integration of policies and laws. As far as e-Governance is concerned, a range of initiatives have driven the process. In 1999, the “eEurope: An Information Society for All” Initiative set an ambitious objective to ‘bring the benefits of the Information Society within the reach of all Europeans in an inclusive, trustworthy and secure fashion’. Promoting Digital Government that ensures all citizens’ easy access to government information, services and decision-making procedures is now a key trust of the Commission, the Member States, industry and the European citizens in the Knowledge Society [9]. The eEurope 2005 Action Plan and the 2003 Commission’s Communication on ‘e-Government for Europe’s future’ further affirm ‘facilitating modern on-line public services’ is a key European strategic challenge. The 2004 eEurope Advisory Group Recommendations on e-Government Beyond 2005 reinforces the need of progress in implementation - ‘e-Government is the way forward and a catalyst for innovation, therefore should now deliver its promise’ [10]. The challenges, however, are diverse and comprehensive. Identifying the true essence of e-Governance, setting up a strategic e-Governance structure, promoting regulatory and policy innovation and coordination, seeking cooperation in implementation, transformation and finance are some of the issues that still need to be addressed.

2.4 Elements of e-Governance

To establish the main legal issues raised by e-Governance and the barriers to their implementation, the focus of this paper, requires identifying the main aspects and objectives of e-Governance with view of the European normative, value and policy systems. To begin with, it is important to set up the framework of e-Governance. A general parallel with e-Commerce, for example,

might be necessary. Indeed, the paradigms are fundamentally different. While e-Commerce is business-driven, e-Governance is, or should be citizens or people centred.² Efficiency and quality services, however, are too fundamental to e-Governance. The core idea of ‘public service’ or ‘public administration’ is therefore central to delivering successful e-Governance. The 2003 Commission’s Communication on e-Government makes a particularly important statement with regard to the core role of Public Administration:

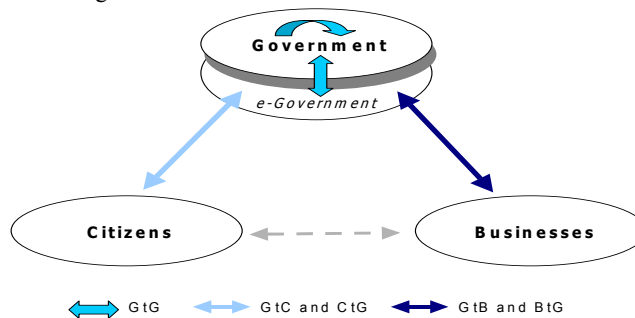
“Within the public sector, public administrations are facing the challenge of improving the efficiency, productivity and quality of their services. All these challenges, however, have to be made with unchanged or even reduced budgets... ICTs can help administrations to cope with the many challenges/ however the focus should not be on the ICTs itself. Instead, it should be on the use of ICT combined with organizational change, and new skills in order to improve public services. Democratic processes and public policies. This is what e-Government is about”.

Clearly, e-Governance is not simply the process of moving existing government functions to an electronic platform. Rather, e-Governance is more about ‘government transformation and modernization’ than just ‘e’. It is also about ‘democratic processes’ and ‘public policies’. E-Governance reflects the capacity and ability of government to reform and improve to better serve its citizens. It also means engaging with the stakeholders to share the risks, opportunities and benefits of collaboration in steering the nation’s and community affairs [11]. It offers potential solutions to leaders to better assume their responsibilities. Finally, it invites people to participate in making the decisions of the nations and the local communities. With respect to policies, e-Governance offers a tool for government agencies to facilitate effective decision making and improved public policies by transforming relations with citizens, businesses, and other arms of government. To fulfil its mission, however, e-Governance has to reflect the principles and objectives of ‘Good Governance’, which include government efficiency, transparency, openness, accountability, and inclusiveness.

2.5 Relationships and Interactions

From the user perspective, within the area of Public Administrations, e-Governance has three main components: Government to citizens (G2C); Government to government (G2G); and Government to businesses (G2B). In all cases, the relationship is two-fold between the two parties with the government steering the cooperation (Figure 1).

Figure 1: e-Governance and Stakeholder Interactions



2.6 Obstacles and Challenges

Despite the merits, e-Governance can be hampered by a variety of impediments, among which are legislative and regulatory barriers, policy inconsistencies, budgetary frameworks, digital divide, institutional traditionalism, bureaucracy and lack of action. Successful implementation is said to require addressing a set of key challenges: Reorganizing government organizational capacity; Strengthening ICT structural capacity; Strengthening stakeholder participation capacities; Positioning the nation or the locality in context of the EU, the World [12]. Leadership and long-term commitment are necessary from policy-decision-makers, public administrations senior managers and companies to drive the process. Yet, the legal framework is considered critical to effective implementation and to the success of e-Governance in the Knowledge society [13]. World-wide, the large-scale use of e-Governance has been attributed primarily to ‘legislative professionalism and professional networks’ as a recent study that evaluated trends in the adoption of e-Government across the USA conclude [14]. By and large, promoting legal changes hand in hand with service and technology innovation and government reform is considered essential to the success of e-Governance across nations and municipal communities.

3. E-GOVERNANCE LEGAL ASPECTS

3.1 The Enabling Framework

Implementing e-Governance, as OECD recently confirms, ‘can be risky, expensive and difficult’ [15]. To get it right, necessary is to establish its legitimacy, secure the efficiency and the trust between government and citizens, and the legal aspects become part of its roadmap, strategies, and long-term objectives. Yet, the e-Governance legal frameworks are still in infancy [16]. A cohesive legal framework may help facilitate a better progress. The present section draws attention on some of the legal challenges of e-Governance aiming to promote a further discussion on the issues and the potential solutions involved. Success of e-Governance in the EU is strongly attributed to the institutional, legal and regulatory structures that underpin it [17]. Back office integration and cooperation based on clear regulatory frameworks is considered critical to the process. User confidence and trust in government electronic information, transaction and interactions is another ‘must’ prerequisite [18]. Yet, legal and regulatory frameworks can be both enabler and/or impediment to e-Governance. The European Commission’s e-Governance

² An UN based principle approach supported by the OECD, Rand Europe and other world organizations. For more information on the discussion see Paskaleva, K. 2004. ‘The regulatory conditions and legal framework as an e-Governance enabler’, in Ásta Þorleifsdóttir (et al), ‘City e-Governance: Best Practice Report’, EU IST 6FP IP INTELCITIES Report, Deliverable 11.2.2, www.intelcitiesproject.com.

approach highlights the political and policy dimension of e-Governance which implies institutional and legal reforms. The key words used indicate the areas of concern of the Legal Aspects of e-Governance - 'better public services', 'efficient delivery' 'enhanced democracy', 'improved policies, 'better government', 'effective government management', and 'public participation'. Both, the role of Government and the impacts of e-Governance on Public Administrations (and Society) from the perspectives of legitimacy, transparency, accountability, integrity, efficiency, participation and the rule of law are inherent. Adding ICTs to Government is not sufficient to reach these objectives. All layers of e-Governance must undergo fundamental transformations, including the legal aspects. As noted, e-Governance is more about Government than 'e'. Identifying its legal aspects therefore requires a good understanding of Government. Political science defines 'Government' as a series of Acts of political, legislative, administrative, and authoritative nature performed by the State, State entities or Administrations which affect citizens' life [19]. Government is also about 'Governance', i.e. the interactive and participatory process by which government is exercised and shared by a public authority in the country. Government Acts include, among others, Law making, Justice, and Provision of services, Administration, Health care, Education, Utility Management, Planning, and Transportation. Traditionally processed on paper, with the help of the ICTs citizens can access, receive, contest or claim Government Acts electronically. E-Governance provides the possibility to establish a more open, inclusive, productive and trustworthy public sector. In the context of e-Governance, 'Good Governance' can be achieved by adequate combination of information technologies, organizational innovation and improved capacities and skills.

3.2 European e-Governance Regulation

E-governance and, in general, the trend towards general use of ICT requires adequate regulation of aspects such as human rights protection with regard to the processing of personal information, protection against ICT crime, ICT security, probative value of electronic information, electronic signatures, equal access to public services, transparency of administration, etc. In a globalized world, where many processes aren't confined to one country's territory, many of these rules need to be co-ordinated internationally. However, each country has an obligation to implement the principles established internationally into its own legal system. The EU has been much active in working out co-ordinated rules in a set of domains mentioned above. Generally, this is done by promulgating directives. The following directives are relevant in this respect:

- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [20];
- Directive 97/66/EC of the European Parliament and Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector [21];
- Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures[22];

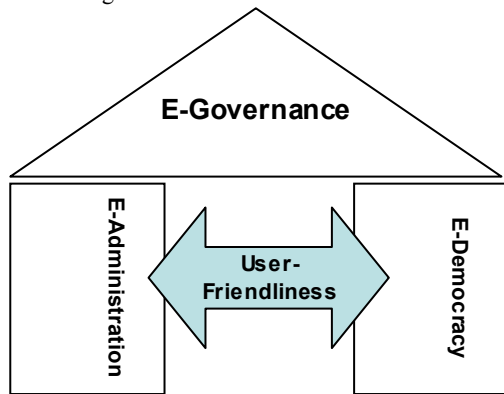
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [23];
- Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [24].

4. GOVERNANCE ISSUES

4.1 Synergy of e-Administration and e-Democracy and their Legal Systems

In line with the 'Good Governance' principles, e-Governance combines elements of both e-Administration and e-Democracy linked by key values of e-Business. (Figure 2). In the current European legal discourse, three main sets of legal issues are being considered as relevant to e-Governance: Legal validity, Trust and confidence, and Available remedies [25]. In regard to the *e-Governance Legal Validity*, core is the process of dematerialization of government activities by electronic means and open network communication and migration of paper based documents to electronic documents. Examples of legal validity issues are Law enforcement and Establishment of rights and titles. Adoption of laws recognizing e-Governance is the first step, however. Defining the e-Governance main principles, the objectives and the responsibilities of Government to achieving these objectives is the central point. Key areas for concern in the domain include document handling, data mining, and use of electronic signatures. With respect to *Trust and Confidence*, it is clear that public services can be delivered only in an environment where trust and confidence are secured and sustainable. The requirements concerned refer to the protection of personal data, identity management, authentication, privacy, network and information security and the fight against cyber crime. The range of issues to be addressed is here wide. Most of them are already covered by provisions of current Laws and regulations in the countries of the EU. Yet, practices indicate multiple problems of implementation, discussed earlier in this paper. Finally, how much *Remedies* does e-Governance offer to the citizens? Or does it observe the rights and obligations of citizens and governments endorsed by International and European Conventions - is another area of legal concerns. The specific legal aspects of e-Governance here refer to the process and interaction, both fundamental to ICTs based applications and government actions. Processes are fundamental to defining obligations, protect legal rights and determine liabilities. The legal issues to be addressed refer to the remedies available to citizens in e-Governance. Establishing and providing access to e-State Justice Systems and creating alternative to State Justice such as Online Dispute Resolution Mechanism have been acknowledged as central to providing effective remedies to citizens to seek expeditious and fair justice against the liabilities of the administrator [26].

Figure 2. Elements of e-Governance



4.2 The E-Governance Legal Framework

The regulatory and legal framework of e-Governance is broad and complex, due to the wide variety of laws and regulatory agencies involved. Another element of complexity derives from the variations in the ways that national regulatory systems are organized in different countries, with varying mixes in terms of public and/or private provision and utilization, and whether or not general practitioners play a gatekeeper role in determining access to other services. There are significant variations in the ways that services are delivered and in what is deemed acceptable or good practice. For this paper, the e-Governance Legal Framework is defined as: *'The combined set of laws, decrees, regulations and programs which facilitate e-Governance implementation in the spirit of the Good Governance principles and objectives.'*

The main domains of concerns are therefore defined as: Back office re-organization; Inclusive access; Trust and confidence; and Better use of public sector information. Four main sets of legislation are considered relevant: Personal data protection laws; Privacy and security laws; Information (provision) laws; Administrative laws

Regarding interactions and participation, the legislative issues of concern refer to three main schemes of relationships identified earlier (G2G, G2C, G2B). As argued earlier, the regulatory issues of e-Governance cross cut areas of the e-Government, e-Democracy and e-Business legislative frameworks. Continuous and coordinated change in all three areas is therefore essential to facilitate the establishment of an effective e-Governance legal framework. The latter can provide an opportunity to re-think the whole process of government organization in back and front office and a reorganization of the whole public service supply chain [27].

4.3 Levels of Legal Compliance

The legal aspects of e-Governance in Europe can be referred to several layers of compliance: International frameworks and guidelines (UN, OECD); European Union's laws and regulations; National and/or regional legislative frameworks; and Local policies and regulations providing implementation. The legislative frameworks relevant to e-Governance are, however, generally a national priority. They provide the legal grounds for national,

regional and local policies relevant to ICT and government organisation.

4.3.1 European level

Increasing participation in democratic activities is a priority governmental issue in the countries of the EU; therefore developing tools for this purpose is to be bound by a legal framework. It is the responsibility of all governments to ensure that products of the information society delivered electronically are products for all people. This responsibility is based on ethical obligations as well as on national, European and international legislation. General codes can be found in international human rights agreements and in various recommendations on equality, entailing non-discrimination. The UN's Universal Declaration of Human Rights [28] recognizes that 'all human beings are born free and equal in dignity and rights'. There are also relevant, non-binding documents, such as the United Nations' Standard Rules on the Equalization of Opportunities for Persons with Disability and the EU's Amsterdam Treaty prohibiting discrimination, for example, on the grounds of disability [29]. Article 8 of the European Council's Convention for the protection of human rights and fundamental freedoms affords the right to 'respect for private and family life to every EU citizen'. In the European security and privacy measures, integration of national and international laws are observed – notably the OECD Privacy Guidelines [29], the new European Electronic Regulatory Framework, and the National Acts. The EU member states have adopted various regulations impacting the development of e-government. The analysis of main laws and acts in several countries highlights common tendencies but also national specifics in building national legal frameworks for action. Most EU member states have adopted legal texts covering key the themes such as freedom of information, access to public information, use of public sector information, data protection and privacy, e-Commerce, Communications and e-Signatures. Through the electronic signatures Directive and the data protection legislation, the EU provides the rules to secure electronic communications. The privacy Directive constitutes a vital element in the new 2003 European Electronic Regulatory Framework [30]. It is designed to protect the fundamental interest of the end-users' and requires national transposition measures of draft laws. In the Community legislation, 'access' is a generic concept covering all forms of access to publicly available networks and services, whereas 'interconnection' refers to the physical and logical linking of networks. The Commission recognises the fundamental importance of the provision of access and interconnection services.

4.3.2 National level

Cultural, institutional, and legal conditions influence success of e-Governance in the states of the EU [31]. National Legal Frameworks include both general and specific elements, along with the administrative bodies involved. Some countries, such as France, have specifically defined the role of e-Governance on line in their Information Technology Programmes and e-Administration is boosted by a series of measures. Austria has adopted its first e-Government law in March 1, 2005 which is expected to greatly enable the introduction of a new Smart Card

[32]. Laws and regulations are often a result of national debates and consultations, as in the case of France where as early as 1960s issues as access to information and diffusion were put forward for public discussion, particularly with regard to the rights and protection of citizens in regard to their relations with Government. E-Business legislation often covers e-Governance activities too. A web of administrative structures and organs at the national and local levels enforce e-Governance policies. Some of them are related to sectoral ministries, others are directly linked to the Cabinet or the Prime Ministers Office. Main players include e-Governance agencies, Committees on Information Society Services, or Inter-ministerial committees on territorial access to information technologies or modernization of public administration. A number of Member States are undertaking legislative changes to facilitate e-Governance enhancement, among which leading are the Netherlands, Spain, Portugal, and Finland [33].

5. LEGAL CONSTRAINTS AND SOLUTIONS TO E-GOVERNANCE

E-Governance implementation in the EU countries depends mostly on national and local legal frameworks. Understanding their specifics and the potentials is central to its implementation.

5.1 The National Experience

A January 2004 EU Report [34] on 'European good practices in reorganising government back-offices for better electronic public services' affirms there is a clear and strong link between reorganizing government back-offices and the electronic public services available to the people, in other words, between the front and the back-office. Centralization of back-office and /or of data sources and decentralization of front-office functions is an important strategy in e-Governance driven by the need to increase efficiency and provide more effective, higher quality services. Yet, legal (along with political or legacy) barriers may hinder these processes. Legal restrictions, for example on data sharing between agencies, can pose difficulties to data integration between administrative and regional entities. Yet, countries like Austria, Spain and Denmark have shown that this could be done on various levels if there is indeed a sufficient will to do so. Federal structures and multiple levels of government can also impede the process of integration (for example Germany). Laws and regulations relating to government interactions with citizens (such as the legal validity of the interactions between the citizens and the agencies, or the amount of information on citizen that a public office is allowed to integrate in their dealing with the citizen) can be major obstacles for services that are feasible and logical from technical, organisational, and citizen's' point of view. Administrative laws too often allow institutional and cultural frameworks which prevent government back-office integration and centralization. Indeed, setting up adequate legal and regulatory conditions for back office reorganization have bared some positive results. In the 'Bremen Personal Documents' case in Germany for sharing of birth and marriage certificates a close cooperation was established between the city (a small 'city-state') and the Bremen federal authorities to overcome

complexities of different levels of e-Governance jurisdiction (federal and local government). The 'Citizens Portal' in Denmark, on the other hand, is experimenting with a system to enable the citizens to directly access and combine their own data located in different sector agencies, though the latter themselves are legally barred from doing so because of data privacy restrictions – this despite the fact that existing laws and legislation relating to interactions between the public and citizens practically hinder services that are feasible and logical from an organisational, technical, and citizens' perspective. All member states have transposed the EU Community framework for *electronic signatures* (1999/93/EC) between 1997 and 2003; most countries have also transposed the European Directive 2000/31/CE on Electronic Commerce, except Greece, Slovakia and the Netherlands. Good practice example are the Spanish 'Citizen's Income Tax' case, where legal changes opened the opportunity for on-line services overcoming problems of identification, authentication, and privacy. These changes have accompanied the development of the service and have led to an actual tax declaration system proving the possibility of an intermediary presenting the declaration on behalf of the tax payer. In the 'Esslingen Building Permission' case of Germany a change in the regional law was necessary to legally bind building plans on-line without requiring equivalent paper documentation. This has increased on-line applications and reduced administrative costs.

Public access to government information is considered an essential feature of advanced democracies [35]. In Europe, this principle is strongly endorsed, for example by the Dutch Government in regard to digital public service. Yet, openness to government information and transparency is not equally advanced all across the continent – only a few countries like Sweden, Denmark, Finland, Ireland and Portugal have legislation regulating access. In others, for example Germany, it is entirely unregulated.

The *protection of personal data* is at the centre of the trust question in e-Governance [36]. The Security and Privacy Laws (relevant to security of information, personal information protection, identity authentication, public safety, etc.) play a key role in this. In the context of e-Governance the main challenge is to ensure a balance between these two areas and create a climate of trust. Key challenges here are: To balance security, privacy and civil liberties, including those arising from the economic (e-commerce) dimension; The growing issues of identity theft and identity fraud; The state of the public opinion and; The concerns that arise from the privacy perspective in particular [37]. In the EU countries, texts on data protection and privacy were mostly adopted earlier than dispositions on freedom of information, except in countries such as Austria, Sweden, the Netherlands, Portugal, Italy, Denmark, the Czech Republic or Slovakia. In these countries, freedom of access to public information has constituted the basis on which to build the legal framework when in other countries, the framework was to a larger extent built on personal data protection and privacy laws. Personal data protection and privacy texts exist in all states. However, most countries adopted the texts after 1995, in application of the EU's Data Protection Directive (95/46/EC), except in Sweden (1973), France (1978), Hungary (1992) and Belgium (1992). In such

countries, as well as in Greece, no specific texts in relation to freedom of information were adopted but data protection was implemented for a longer time than other member states [38]. Existing legal frameworks, however, in many cases, are reported to impede e-Governance – a recent UK survey finds ‘E-governance progress is in danger of being held back by the current legal quagmire of data protection and freedom of information law [39]. Underlying many security-related technology applications is the issues of ‘data mining’. New technologies can facilitate collection, cross-referencing and sharing of enormous amounts of information. While this can be of considerable benefit to the security and law enforcement fields, regulations concerning the nature, purpose, and access to such information should be expanded and made more specific to protect the privacy of the citizens [40]. An important element is to lay out the ground rules for longer-term data retention and re-use. It is this latter element in particular, that provides the most pervasive point of intersection between security and privacy issues – and ultimately the most fundamental tension [41]. Yet, countries such as Canada [42] and Hong Kong [43] have demonstrated that legal changes can facilitate a balance between the privacy and security considerations in e-Governance. In Europe, in the Netherlands, legal work has been carried out to ensure that the fundamental rights of citizens are protected in the digital age [44]. In Iceland, the legal framework allows the citizens to make use of emails for formal communication with the government [45].

Providing information on its activities is a major responsibility to government in liberal democracies, relevant to the principles of open and accountable governing. ICTs have given public authorities an unprecedented power to achieve this objective effectively and on a massive scale. Across the world and Europe, however, practices vary in context of the amount and nature of information which governments opt to provide and share with its citizens. In some countries (for example Greece, Ireland, Hungary, Denmark or Italy), freedom of information and use of public sector information aspects are embedded in the same legal text for a long time, especially in Denmark (1985) and Italy (1990). In most countries however, there is no specific law or regulation regarding the use of public information, except in Lithuania (2000) and Poland (2001). A ‘good practice’ example of openness and inclusiveness is the national government of The Netherlands – an amendment to the Constitution is proposed to add a new fundamental right – a personal right to all members of the public to have access to government public information, an action strongly supported by Government [45]. A raft of legislation in Belgium resulting from the Copernicus Reform has supported the introduction of more transparent government with simplified access for citizens.

5.2 Local level Practices

National and EU relevant legislation for e-Governance set up the broad limits within which localities operate. The latter, however, hold the powers to promote local regulations and implementation guidelines of either national or regional legislation regulating IT structures and access, providing there is a will to do so. They may also formulate legislation regarding local ICTs content which can

advance governance processes in the community. Good practices in this regard are rare but examples are becoming more and more available. The introduction of e-Governance and a well-planned modernization programme to integrate and deliver the range of services available to citizens has changed the face of Catalan local government. The result is a simplified process for citizens and local businesses to access a wide range of information and services available within all tiers of government which are delivered through a unique interface [46]. In a recent ‘City e-Government European Survey’ of a current IntelCities IST Integrated project, part of which is the study presented in this paper, administered in 11 European cities in Europe [48], when asked about existing legislative frameworks supportive of urban e-Governance, majority of the city officials indicate a general lack of a true e-Governance context applicable to their communities in the emerging acts on the national level. Among the variety of issues raised, the problems encountered in facilitating communication with the citizens, for example, and the implementation of digital signatures for the city administrative processes, were scored as a major legal issue, that is yet to be resolved. To the question, however, how important is the e-Governance legal framework in regard to impacts in the city, ‘open government’ and ‘better local policies’ were singled out as the primary beneficiaries, while ‘advanced democracy’ and ‘transparent and effective decision-making’ were generally on the ‘losers’ side. All city officials’ state, however, that although technology is an effective mean to provide electronic services to local citizens, there is still a need for a concrete and improved legislative framework in e-Governance.

6. LEGAL BARRIERS AND CHALLENGES TO E-GOVERNANCE IN THE EU

The issues here are as important as they are diverse. Here are some of the most pressing ones, split in four main categories which need further attention:

6.1 Defining the e-Governance Framework

Defining e-Governance is not an easy task. Different approaches of organizations, national laws and institutions have given e-Governance different meaning. Whether it’s the functions, the essence, the concept, or the processes that sit in the centre, however, the main idea should be that e-Governance is not just about ICTs. There should be a clear understanding about the importance of e-Governance for Government its self and the public it serves. Efforts should aim objectives and actions that best fit and further enhance existing structures and capacities. Setting up the conceptual and implementation framework of e-Governance by Government and citizens is the first step to successful e-Governance. External and internal factors are also to be considered. Important questions, yet to be addressed include: Which are the main factors that impede Governments to deal with e-Governance in a cohesive and people-centred framework? Who are the main players in this scheme? How can different levels of government work together to set up a common agenda that serves all citizens? What factors can promote better relationships between different levels of government that facilitate a common

agenda and strategies? What further policies must be promoted to support implementation?

6.2 Establishing and Enabling the Legal and Regulatory Foundation

One of the most evident conclusions emerging from the present discussion is that the legal and regulatory factors can be extremely important in determining the nature, the effectiveness and the success of e-Governance. Continuous improvement and coordination of e-Governance legislature is necessary to support implementation of the process. Much more importantly, there is sufficient evidence today that e-Governance relies on the development of a clear and comprehensive legal framework spanning across e-Administration, e-Business and e-Democracy which helps government improve its performance continuously and build public confidence and participation. Progress clearly requires consideration of both organizational and technological conditions which often reflect national and/or regulatory and institutional regimes and cultures. Promoting legal changes hand in hand with service and technology development is essential to the success. Cohesive legislative and regulatory frameworks are necessary to bolster government effectiveness in improving governing, advancing democracy and fostering transparent decision-making and inclusive policies in the nations and the local communities. The challenge is to promote legal changes and regulatory conditions, which provide for back office modernization, inclusive access, trust and confidence, and better public sector information to all. This, however, requires synchronized action in the administrative, data protection, privacy and security, and information provision laws involved. Coordination between the European, national and regional legislation is necessary to allow public administrations develop effective electronic services and policies in the spirit of the main principles of Good Governance. The challenge, however, is to encourage government to foster the regulations and the mechanisms ensuring an ICT infrastructure and Good Governance mechanisms that would best serve their citizens and the local communities. For this to succeed there needs to be the will to do so. These are some of the main challenges:

- *Legal changes facilitating fundamental human rights in the digital age.* Certain questions here need to be addressed: Are our fundamental rights sufficiently ICT-proof? Are these fundamental rights formulated in national constitutions, giving the legislature a firm enough basis in the Information Society? Do they give the public sufficient protection? Does development in ICT mean we need to develop new fundamental rights? Are the existing legal frameworks in general applicable to the Information Super highway, i.e. one set of standards for on-line and offline communications? The key point being here that fundamental rights have to be able to stand the test of time [49].
- *Legal framework acknowledging the right to informational self-determination* with the key question to be addressed being ‘Are national constitutions to provide for digital communications between Government and the public to be subject to the same principles as those governing other areas

of public life, including the general right to privacy of citizens?’

- *Providing access to all citizens* where nations have to decide whether to incorporate rights of access to government information in their constitutions. Other important questions include: Do governments act accordingly? How much easy must access be to allow use and participation? How much information must Government make available to the public? Are current legislation and court rulings available online free to the public? A core point here is the link of access to the principle of inclusive government and public involvement in decision-making and policy.
- *Protection of personal information* that has to respond to the core issues: Do national and regional legislature on data protection ensure the provision of the key principles of good information management, such as accountability; identifying purposes; consent; limiting collection; limiting uses; disclosure and retention; accuracy; safeguard; openness and individual access? Does current legislation provide the best for both good security and good privacy protection? [50] Is privacy legislation compatible with the international and national Charters of Rights and Freedoms [51], which interpret personal privacy in the context of the fundamental elements of Western democracy and therefore represent the greatest single safeguard to adoption of overly intrusive security legislature? Are human behaviour and knowledge of threats and remedies considered in privacy legislation? Are information security concerns considered in conjunction with other policy fields such as individual privacy, industrial policy, international trade, citizens’ rights, law enforcement, defence? Are holistic approaches at both European and global levels taken into a consideration in national Laws? [52] Are security and privacy issues addressed in conjunction – to find the right catalyst so as the final solution is a hybrid – dominated by neither privacy nor security issues? [53] Are institutional safeguards in place to make privacy meaningful? Do governments include in their legal definitions of privacy to account for the changes that ICTs have brought to the relationships between transparency and confidentiality? [54]

Clearly, an adequate consideration of these issues in the relevant laws and principles can assist the process of e-Governance in the EU. National as well as federal and local initiatives are here necessary. The latter in particular, being close to their social and business communities, can strike a balance between the diverse interests and the local autonomy and freedom responsive of the specific local needs. Different localities may develop their own paths reflective of their unique identities, legal and institutional structures and cultures while complying with national and international standards to ensure integration and interoperability.

6.3 Undertaking Organizational Changes

E-Governance progress often depends on whether or not there is a will and capacity of public administration to promote the regulations and framework to implement e-Governance. If there is one, it is relatively quicker and easier to achieve significant benefits of e-Governance. If not, this could be a relatively long

and complicated process to manage and coordinate change. Implementation of e-Governance must be based on cohesive e-Governance policies, based on the specific needs and the long-term integrated strategies in ICT and governance issues. While availability of funding and training capacities is core to the success of the former, legal validity, trust and confidence and available remedies are fundamental to the latter. A principle point of consideration is the coordination and complementarity of the different policy levels - EU, national, regional, and local – which together should provide standardization, harmonisation, integration, communication and participation in e-Governance. Most important, however, is the acknowledgement that a successful e-Governance strategy is based on of a strong political will, dedicated and capable institutions, and participation of the citizens and the civil society. The legality and e-Governance is a main starting point. A number of challenges are to be addressed here: How can public administrations make a radical shift to network, face integration and enhance local democracy in our nations and cities using the new technologies? What are the key conditions, policies, events and arenas of change? How can citizens and businesses have real benefits from on-line public services and participation? Where are we today in reengineering the government processes? How can e-Government be transformed to convey to the core principles of Good Governance? How can policies across the EU, nations and localities, highlight the key challenges of these topics, additional work is necessary in context of the legal frameworks involved?

6.3 Learning from Best Practices

Finally, in order to deepen and strengthen the eEurope approach for leveraging Good practices a reinforcement of exchange of these in e-Governance is necessary.[55] Good practices must encompass the technological, organisational, legal and training elements of successful e-Governance, this requires long-term commitment of all key actors involved and practice must illustrate tangible benefits and results. While demonstrating the state of the art, best practices must also point to new requirements for regulatory frameworks, change management, and organisation of work within administrations. They must help to identify research challenges and form a contribution to establishing a European Research Area in e-Governance [56]. With view of the legal aspects, the specific challenges refer to the core laws and legal changes in the key areas that form the framework of Good Practice e-Governance; the key characteristics of existing regulatory frameworks and their implementation; and the policy and legal challenges to national and local governments to help boost regulations' change for e-Governance success and support progress towards a better understanding of legal and regulatory issues and barriers in e-Governance.

7. CONCLUDING REMARKS

One of the clearest conclusions emerging from this study is that state structures, and institutional and legal factors, can be profoundly important in determining the nature, cost and success of e-Governance. Cohesive legislative and regulatory frameworks are necessary to bolster government effectiveness in improving governing, advancing democracy and fostering transparent

decision-making and inclusive polices in the local communities. The challenge is to promote legal changes and regulatory conditions, which provide for back office modernization, inclusive access, trust and confidence, and better public sector information to all. This, however, requires synchronized action in the administrative, data protection, privacy and security, and information provision laws involved. Coordination between the European, national and regional legislation is necessary to allow public administrations develop effective electronic services and development policies in the spirit of the main principles of Good Governance. The challenge, however, is to encourage governments to foster the regulations and the mechanisms ensuring the IT infrastructure, access and content that would best serve their citizens and the local communities. Much more importantly, there is sufficient evidence today that e-Governance development relies on the development of clear and comprehensive legal framework spanning across e-Government, e-Business and e-Democracy which helps government improve its performance continuously and build public confidence and participation. Progress clearly requires consideration of both organizational and technological conditions which often reflect national and/or regulatory and institutional regimes and cultures. Promoting legal changes hand in hand with service and technology innovation and government modernization is much essential to the success. Implementation of these laws and principles can assist the process of e-Governance in the European nations and the local communities. Though success in e-Governance can be often attributed to strong central leadership, consisting of an overall vision, strategies, roadmaps, resources and the specification of standards and frameworks, this needs to involve the local and regional initiatives, close to their social and business communities, who are able to strike a balance between the diverse interests and the local autonomy and freedom responsive of the specific local needs. Different localities may develop their own paths reflective of their unique identities, legal and institutional structures and cultures while, however, complying with national and international standards to ensure integration and interoperability. To succeed, national and regional legislative frameworks relevant to e-Governance must continue to improve and coordinate in the spirit and main principles of Good Governance to reach the objectives of the Knowledge and Networked society in the 21st century.

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