

Legal barriers to eGovernment

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✓ Issues/fields :

- Public administration Transparency / access to public documents
- Re-use of public sector information
- Data protection/privacy
- Public procurement – e-procurement

Public administration Transparency / access to public documents



✓ What is it?

- relates to
 - the right to access public information and
 - the transparency of democratic processes
- access to public sector information can be split up in two categories:
 - passive publicity
 - active publicity
- Legal instruments : Freedom of Information Acts

Public administration Transparency / access to public documents



✓ Barriers (two main categories)

- restrictions to the right of access
 - (a) exemptions in the interest of State (national security, public order, economic interests, international relations, legislative procedures, secrecy, etc.);
 - (b) exemptions in the interest of third parties (Intellectual property rights, privacy, commercial secrets, judicial procedures, etc.);
 - (c) exemptions to protect the decision making process (preliminary or “internal use” information, etc.) and
 - (d) exemptions to avoid unreasonable workload in the administrations concerned (information already published, excessive requests, vague requests).
- other barriers
 - Cultural barriers (language)
 - Organisational barriers (find the information (active); avoid requests (passive) when already published)
 - Structural barriers (Member State national structure)
 - Format (access to electronic documents)
 - Prohibition of certain re-use

Public administration Transparency / access to public documents



✓ Harmonisation :

- General : Recommendation R (81) 19 of the Council of Europe of 25 November 1981 on the access to information held by public authorities
- Environment matters : Convention of Aarhus, European Directives 90/313 (freedom of access to information on the environment) and 2003/4 (public access to environmental information and repealing Council Directive 90/313/EEC)
- E-Procurement : Directive 2004/17 and Directive 2004/18/EC

✓ BARRIERS/STOPS :



- Administrative organisation (national, federal, local,...)
- interpretation

Re-use of public sector information legal framework



✓ What is it?

- *“The use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use.”*
- Legal instruments (examples) :
 - Freedom of Information Acts (France, Belgium, Lithuania, Slovenia)
 - re-use of public sector information Regulations (UK)
 - PSI laws (Denmark)
 - data protection law and Act on publication of data of public interest (Hungary)
 - secondary legislation (Ireland, Luxembourg),
 - law on state registers (Lithuania)

Re-use of public sector information legal framework



- ✓ **Harmonisation : PSI Directive (2003/98/EC)**
- ✓ **Status of implementation**
 - ➔ States should comply by 1 July 2005
 - Denmark, Estonia, Finland, France, Ireland, Poland, Slovakia, Sweden, UK have notified implementation
- ✓ **BARRIERS/STOPS :**
 - Based on Member States' access regimes (exceptions)
 - Choice : allow or not (+ commercial, non-commercial use)
 - Determination at national level of what is meant by 'administrative documents', and what is excluded from the possible documents that can be demanded
 - Pricing – profit making prices for the public services?
 - Competition rules

✓ What is it?

- The protection of personal data and of the privacy is (are) a fundamental right(s) which is (are) laid down in a wide range of legislation at European and Member State level, as well as in articles 7 and 8 of the European Charter of Fundamental Rights proclaimed in Nice on 7 December 2000
- Legal instruments
 - Data Protection Acts

✓ Harmonisation

- Directive 95/46
- Directive 2002/58
- European Charter on Human Rights (art. 7 and 8)
- (European Constitution Part II. Art. 67 and 68)

✓ BARRIERS

- Member States may “neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection of the right to privacy with respect to the processing of personal data”
- It can prevent or determine some conditions to the processing of information about individuals (sometimes legal persons) and the transfer to other public bodies, other entities.
- differences between the rules of the Member States can hinder the development of e-government more than the data protection rules as such

→ data protection rules affect the

- access to public documents
- re-use of public documents (can hinder the development of businesses)

→ Need to balance e-gov, business efficiency and protection

- ✓ **What is it?**
 - Dematerialisation of procedures linked to contracting and executing public procurement
- ✓ **Two characteristics, two issues :**
 - Publicity : the competition organised by the public authorities must allow to determine the most interesting bid (on a cost/quality basis). Publicity made before the start of the procedure is of the greatest importance
 - Formalism : an equal access to public offers is needed : this necessitates a quite heavy formalism
 - ➔ ICT of great interest

- ✓ **Harmonisation :**



- Directive 2004/17/EC
- Directive 2004/18/EC

(implementation before end January 2006)

✓ BARRIERS/STOPS :

- Administrative provisions of each of the Member States have also to be taken into account
- The Directives only mention very few rules about e-procurement. Other legal areas (not well-known by e-procurement specialists) implicated
- The Directives allow choice : use of electronic or paper-based means, or combination.
- The Directives are very scant about formalities and procedures

✓ Other obstacles:

- specific characteristics of contracting authorities
- Need for clear internal rules and procedures, as well as rules of good behaviour. Need for time and money.

Re-use of Public sector information

Concept

Barriers

Examples

Best practices

Your input

Thank you for your attention



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