

Workshop Report
Legal Barriers to e-Government
www.egovbarriers.org

1. Introduction

The project, *Breaking Barriers to e-Government: overcoming obstacles to improving European public services* held its second workshop on the 29th of September 2005 at the European Commission, Brussels, Belgium.

The workshop provided an overview of the project and focused on the legal barriers to e-government that are being explored as part of the research. Representatives from each partner institution introduced key issues that can constrain e-government growth, and outlined the research designed to address them. Feedback from the audience on the selection of the barriers, and on good cases that might address each barrier was an important part of each session. The sessions were as follows:

- **"Breaking barriers to e-government: a project overview"** Dr Rebecca Eynon, Oxford Internet Institute, University of Oxford, Oxford, UK
- **"Legal barriers to e-government: public administration transparency, re-use of public sector information, data protection/privacy and e-procurement"** Florence de Villenfagne, CRID (Research Centre for Computer and Law), University of Namur, Namur, Belgium
- **"Legal barriers to e-government: liability law, intellectual property rights, e-signatures and e-commerce"** Dr Sjaak Nouwt, Tilburg Institute for Law, Technology, and Society, University of Tilburg, Tilburg, Netherlands
- **"Legal barriers to e-government: administrative law and the relationships between public administrations, citizens, and other ICT actors"** Dr Julián Valero, University of Murcia, Spain
- **Parallel small group sessions**
 - o Re-use of public sector information
 - o Liability
 - o Administrative law

Each of the sessions was chaired by Chris Parker from Gov3. Further details about each presentation is provided in the section below.

In total, 16 people attended the event from academia, industry and government from a variety of countries including Austria, Belgium, Croatia, France, Latvia and the UK.

2. Presentations

The workshop was introduced by Nick Batey from the e-government unit at the European Commission. Nick provided the overall context for the project, discussing the aims of the e-government unit and the MODINIS programme.

Session 1 Breaking barriers to e-government: a project overview

Rebecca Eynon provided an overview of the project, outlining the background to the study and the aims, objectives and methodology. The research team have chosen a

number of issues that may be – or could become – barriers to e-government. The barriers are:

Legal Barriers (10)

- Privacy / data protection;
- Identification and authentication;
- Liability;
- Intellectual property rights;
- Public administration transparency;
- Relationships between public administrations, citizens and other ICT actors;
- Re-use of public sector information;
- Administrative law;
- E-procurement;
- E-commerce;

Organisational Barriers (3)

- Organisational culture;
- Co-ordination;
- Channel rivalry.

Rebecca clarified the term “barrier.” That is, the implication of a “barrier” is that if one removes the barrier all will be fine; yet barriers cannot always be removed and there are positive aspects to some of the barriers outlined in the research. For example, one cannot do away with privacy, it is fundamental as it is there to protect, nor will organisational culture ever not exist. Thus the barriers selected are areas that need to be addressed in order to facilitate progress in e-government; eradication of the issue is not the object of the study.

Definitions for each barrier have been developed and are available for comment on the project web site at <http://www.egovbarriers.org>. Each research partner is now taking 2-4 barriers forward, refining the definition, analyzing links with other barriers, evaluating existing studies in the area and cataloguing appropriate examples.

Feedback

Members of the workshop agreed that the term “barrier” is problematic. As a participant noted, when someone from industry visits the website and sees “data protection” as a barrier then this implies the European Commission sees data protection as a barrier to e-government. Workshop participants suggested that the term barrier needed more clarification on the website; and it was suggested that the project explore “issues” and leave discussion of specific “barriers” to the end of the study.

Throughout the workshop members of the group suggested other barriers that could be explored:

- e-rule making. Some countries are introducing IT systems that automate the process of decision making about income support and other benefits. An interesting question is what right does the citizen have to know how these decisions are made? A significant report on this issue has just been published in the US but in Europe decisions still need to be made about e-rule making.
- Archiving

Workshop participants also suggested ways that the research team could identify the barriers that they should focus on in the project:

- Think about different legal, commercial and social drivers to e-government. For example, public re-use could be based on a rights principle that people have a right to good administration.
- Look at specific cases or examples within each of the areas that may be a precedent e.g. environment / public health issues in public administration transparency.
- Make more links with other projects that have been completed or currently underway at the European Commission.
- Categorize the relative importance of legal barriers/issues to determine the areas the study should address. For example, “high impact”, “quick-fix” and “high profile” barriers.
- The way barriers are being addressed in this framework are not those specific to e-government; they are more general to government. What is changing is that these issues are being raised in different contexts.

Session 2 Legal barriers in the field of public administration transparency, re-use of public sector information, data protection/privacy and e-procurement

Florence de Villenfagne presented an overview of four issues that may encompass legal barriers for e-government: public administration transparency, re-use of public sector information, data protection/privacy and e-procurement.

The first issue, **public administration transparency**, relates to the right to access public information and the transparency of democratic processes. While there has been some legal harmonisation regarding access to information at the European level; barriers still remain due to restrictions to the right of access via a number of exemptions (e.g. in the interest of the state or third parties); and other barriers, including cultural and organisational issues need to be considered.

The second issue, **re-use of public sector information**, can be described as “*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.*” There are various legal instruments employed by member states to support re-use. For example, Freedom of Information Acts in France, Belgium, Lithuania, Slovenia; Re-Use of Public Sector Information Regulations in the UK; and PSI laws in Denmark. There has also been some harmonisation at the European level that came into effect earlier this year. Despite this there are still some barriers that need to be resolved. For example, the European level directive is mediated by member states.

The third issue, **data protection/privacy** is a very important area for e-government. Indeed, the protection of personal data and privacy are fundamental right(s) which is 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. There has been some harmonisation at European level regarding data protection acts. However, differences between the rules of the Member States can

hinder the development of e-government more than the data protection rules as such; a further consideration is the balance between e-government and business efficiency, and the protection of data.

The fourth issue, **e-procurement**, can be defined as the dematerialisation of procedures linked to contracting and executing public procurement. ICT may be valuable for two particular aspects of procurement: 1) publicity and 2) formalism. There have been some directives at the European level that members states need to implement before the end of January 2006. However, there are difficulties, for example, the directives are limited as they contain very few rules about e-procurement and contain little detail about formalities and procedures. Other issues that also need to be resolved include the different characteristics of contracting authorities and the need for greater investment in terms of time and money.

Feedback

A workshop participant asked for more evidence about the format of a document being a potential barrier to e-government. Florence explained that, for example, in e-procurement, there is no obligation to provide information in an electronic form but this makes exchanging or re-using documents difficult. She suggested that perhaps the issue was more about the availability of information electronically as opposed to the format of the information.

A workshop participant asked if, within the area of public administration transparency, the project could look at a specific area where action is more likely to have been taken and may act as a precedent. For example, public health information that would need to be made public as it is an issue for public safety. Florence agreed that there was more of a public obligation issue in areas such as the environment so it could be a potential case study / area for further work.

There was also some discussion by the workshop participants about e-procurement. In France, it is not mandatory for procurement to be electronic, but they cannot refuse to see anything that has been submitted in electronic form.

Session 3 Legal barriers to electronic government in the field of liability law, intellectual property rights, electronic signatures and electronic commerce.

Dr. Sjaak Nouwt gave an overview of some of the legal issues for e-government, including real life cases, which are studied by TILT. The issues are: liability, intellectual property rights, electronic signatures, and electronic commerce.

Liability issues are at stake when government delivers information electronically, when communication takes place between public bodies and citizens or businesses / other organizations, when transactions take place between these parties, and when citizens are interacting with, or participating in, government.

Intellectual property rights are rights given to people over the creations of their minds. Liability issues exist when IPR protected information is disseminated to the public, when the public is asked for information, or when government information is commercialized.

Electronic signatures are meant to ensure the authenticity of the parties involved, the integrity of the information and the indisputableness of receiving a message. In a recent study, Dumortier concluded that a danger exists for national barriers, fragmentation and interoperability. Therefore, a more detailed study is necessary on the Internal Market consequences for e-government programmes.

Electronic commerce is not a legal barrier for e-government. However, electronic commerce is an issue in this research project because experiences with e-commerce might lead to potential solutions to legal barriers for e-government, and it might be a reason to advance e-government in Europe. Referring to e-commerce, e-government will have no customers when there is no trust.

Feedback

Workshop participants queried whether the issues of liability are changing in the e-dimension? That is, is e-government different to government across borders in this case? Sjaak replied that e-government gets people into more collaborative ventures in a way that didn't happen before. Such collaborations can become quite complex and liability issues can deter people from joining up.

A second workshop participant noted that, currently, there are a number of initiatives exploring public and private partnerships related to liability. An important question is not just about who is responsible but the impact in terms of what and who gains from such partnerships? This is an issue where recommendations could be made on a Pan European level. There is currently a project being conducted under the IDABC programme that is exploring some of these issues.

Session 4 Legal barriers to e-government: administrative law and the relationships between public administrations, citizens, and other ICT actors

Dr. Julián Valero presented two key issues for e-government: 1) Administrative Law and 2) the relationships between public administrations, citizens and other ICT actors.

In most European states, public administrations are governed by a specific regulation that is quite different from that which rules the relationships between individuals; **Administrative Law**, characterized by the attribution of significant powers to the public bodies and the recognition of relevant formal guarantees for the citizens. As a consequence, the existence of those rules may become an obstacle to the consolidation of public electronic services if harder requirements are fixed than those demanded by technology: instead of confidence among the citizens a new difficulty for the effective implementation of e-government would be added. On the other hand, if the legal adaptations are limited to the general regulation of private individuals and don't affect Administrative Law, the lack of juridical security for the use of ICT in the administrative activity can become a huge barrier to its modernisation.

One of the main conditions for the success of any initiative related to e-government is the guarantee of effective communication between all the parties concerned; that is, the **relationships between public administrations, citizens, and other ICT actors**. First of all, the promotion of electronic public services can't be focused on the compulsory use of ICT by the citizens because such measures may infringe the principle of equality in

the access of users to public services. Further, frequently citizens can only use ICT to contact public administration and address their application forms, get information or receive the notification of the administrative decisions when that possibility has been previously and expressly allowed by the administration concerned. This situation may lead to lack of confidence among citizens and hinder the demand and establishment of new electronic public services. Finally, in order to avoid technological restrictions member States must demand the use of open standards to the companies that design the programs used for providing access to electronic public services and modify their regulation on public contracts if necessary.

Feedback

Following on from the presentation there was a great deal of discussion regarding open source and open standards. In his presentation Dr. Valero had suggested that open source may be a potential enabler to some of the barriers for the relationships between public administrations, citizens and other ICT actors; arguing that when Public Administrations can control in some way how software works they have a higher chance of interoperability of services. Julián pointed out that, in his opinion, the solution is not that Public Administrations commit themselves to a policy of “only open source software” but a real technological neutrality based on public control of software and higher transparency of its functioning.

In France, for example, open source is used between administrations (that is, for collaborations between different offices) with the aim of reducing costs.

Workshop participants were concerned that open source was too big an issue to tackle as a whole within the project. Further, open source is not a barrier and the issues around open standards are more interesting.¹ The comment was made that open source is something that people get very passionate about whereas open standards is just a technical issue. It was noted that the project should just focus on the barriers it can overcome not focus on a general discussion about this area. One suggestion was to focus on access (including costs etc); another to focus on a specific case, such as, the consequences of adoption of open standards in procurement.

Session 5 Parallel sessions: re-use of public sector information; liability; and administrative law

The parallel sessions provided workshop participants with the opportunity to discuss specific issues in more detail. A summary of each session is provided below.

Re-use of public sector information

Participants in this session were from Latvia, Belgium, UK and Spain. Florence de Villenfagne gave an overview of issues related to re-use of public sector information for e-government. Florence provided a definition of re-use, the legal framework at the European Level and a summary of the legal instruments employed for re-use; examined some of the problems (e.g. member state differences – exemptions, pricing, and choice) and provided some examples (France, UK and Slovakia). Florence concluded by asking

¹ See, e.g. <http://www.eipa.nl/EPAN/EPAN.htm> > eGovernment Working Group > Key Principles of an Interoperability Architecture

for opinions and experiences from the participants. A number of topics arose as a result of the discussion:

- An electronic version (e.g. an electronic document) is still considered to be a document.
- When discussing re-use of information it always seems to be focused on the re-use of data - not documents. However, while there are fewer examples, a document or data set is still considered the same in terms of re-use.
- When preparing or revising a document these documents are not publicly available; as documents that are not final are exempted and cannot be re-used.
- There are cultural barriers as all documents could be classified as internal and thus everything is protected.
- Technical advancements (e.g. the semantic web) may resolve some of the issues connected with re-use - though there are still likely to be legal, regulatory and cultural barriers.
- Different kinds of decisions can be made by member states. The member state level is key – it is not a European decision and cultural factors may well play a role. For example, in Belgium, re-use of documents is allowed but personal data is exempt. The group also discussed an example of an ex-presidents dinner party guest list in Slovenia which was made public.
- The question of whether a newspaper is commercial re-use is debateable as it depends on the point of view. From a newspapers perspective it is free access to information though from an individual's perspective it is commercial. This is an issue that needs to be resolved.
- Newspapers have much broader access under the data protection directive which is both a problem but also important in a democracy.

Liability

Participants in this session were from France, Belgium, Netherlands and the UK. Sjaak Nouwt gave an overview of issues, related to liability for e-government. These issues concern what government activities can be distinguished, which parties are involved, worst-case scenarios, a government's legal position, and how government could limit its liability. This overview resulted in the following statements made in the small group session:

- The ease of multiplying and forwarding electronic messages is also relevant for liability of e-government.
- There is a move towards liability for agents (e.g. accountants or immigration services who can also act on behalf of citizens) instead of ministries.
- There may also be information embedded in electronic documents. For example, a Word document contains general information about: the date it was created, modified, accessed, the author who wrote the document (and his company), statistical information, etc.
- Another example of a worst case scenario is when an electronic message damages the information infrastructure for e-government.
- It was suggested that using open source software could reduce costs for e-government.

- In France, liability fears exist, but they cannot be considered real 'barriers'. With regard to *Mon Service Public*, it is noticed that citizens fear for misuse of their personal data that are being stored on a large scale. In circumstances like these, liability for e-government can be an incentive for trust. This is also important for services like paying or receiving tax via the internet.
- It seemed that the tax department in France arranged the liability for the authentication service in their contract.
- Liability is not to be considered a 'barrier', but an issue to manage.
- Another example that was mentioned was the French electronic identity card. Based on the French E-signatures Act, liability is limited by the government when transactions take place with private parties.
- An issue that might be added to the area of liability is cross-border violations. Compare this with the chasing by the police across national borders: how does this work and what are the liability issues?
- The development of standards for the exchange of data, cards etc (or e-government in general) can be added to the list of government activities.

Administrative Law

Participants in this session were from Spain, Austria and Belgium. Dr. Julián Valero outlined the issue of Administrative Law for progress in e-government at European Level. The main discussion in this session was if the use of ICT by citizens can be imposed by Public Administrations; and if this measure may infringe some constitutional principle like equality in the access of users to public services.

Despite a detailed analysis in each national political and legal scene must be done in order to answer this question with precision, some of those present suggested the collaboration of third parties (e.g. civil servants, banks...) so as to allow the access to public services of those citizens that may find technical, social, cultural or economical difficulties to contact public administrations via ICTs. From the discussion, a general conclusion on this point was achieved: some barriers to e-government like this one should remain since they have an essential purpose that cannot be passed over because of technological reasons. So the use of several channels to gain access to public services should be guaranteed as a rule to avoid discrimination

The interchange of administrative documents between different administrations was also considered as a serious problem for the development of trans-national electronic public services regardless of data protection issues. On one hand, it is really difficult to develop agile systems to verify the content and validity of those documents; on the other hand, the same document (e.g. a birth certificate, a good-conduct certificate) may have different regulations and purposes, so that both formal and material requirements are fixed in each State. As a consequence, some of the information needed may not be included in the document already sent by another authority or addressed by the citizen, so that an additional request of information should be sent to the public administration that produced the original document.

Close of workshop: The research team then brought the workshop to a close and thanked everyone for such a productive and interesting event.

3. Value to the project

The workshop was a very valuable event for the project, advertising the project more widely and drawing in an excellent range of participants in terms of geographical spread and intellectual approach. The workshop has also informed thinking about the development of the research. The next step is to make clear what our areas and issues are and to begin to focus on specific “barriers”, prioritising the research in some of the ways suggested above. The numerous suggestions of examples and cases will be followed up by the most appropriate member of the research team.

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