

Teaching on E-government: aspects of legal environment

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The multiplicity of e-Government issues formulate the need to identify key areas to be addressed for successfully implementing e-Government initiatives. For this reason a holistic framework must be elaborated, which could identify and address all relevant issues impacting e-Government development – among them – different user groups with diverging service needs and interaction requirements, distinct government processes, internal and external transformation of governance, legal and processes reform, etc. Legal reform aimed at creating of favourable legal environment is very important part of development of e-government, since governmental activities are strongly regulated and driven by legal framework including national constitutions, laws and other regulations. With the use of modern IT and communication facilities, electronic public service provision and delivery require the adaptation of laws to make e-Government solutions legally binding and sound. In particular this refers to the questions of electronic signatures and electronic documentation, electronic communication among governmental agencies and citizens, data protection and data security, access to public information, networking of authorities and databases, among other legal issues of e-government.

During the last years the European Union has introduced important new legislation in this area and a high number of new regulatory texts are still in the stage of preparation. Because the initiatives in this area are so numerous and divergent, it is not always easy to see clearly the overall policy behind all this activity, hence national laws enacted by the European Union members and accession countries are rather incoherent and sporadic [1].

At the moment, most of the European countries do not have any special law, which would regulate the development of e-government and its processes. Nevertheless, some laws contain provisions, which refer to the e-government or the regulation of it development: these may be laws on Telecommunications, laws on Electronic Signature, laws on Provision of Information to the Public, laws on Legal Protection of Personal Data, laws on Consumer Protection and similar.

The above described state of legal system in addressing the regulation of e-government, naturally predetermines the ways of teaching on these issues:

Thus, one of the ways of teaching of legal issues of e-government is to teach separate issues covering the questions pertaining to e-government and in most cases unified under the umbrella of the legal informatics.

This way is already known and clear for universities, participated in EULISP (European Universities Legal Informatics Programme), EULISP-CDA and LIACTES (Legal Informatics and Communications Technologies Studies) projects [2,3]. The curricula, common view to all these legal subjects, the methodology of teaching was discussed and elaborated in these projects.

However, this way suffers from the common disadvantages of the fragmentary regulation of the development of e-government and e-democracy [4]. Likewise the fragmentary regulation, which in many cases has been drafted not in accordance with uniform principles, it covers only separate aspects (for instance, utilisation of electronic signature, main problems of data protection and data security, the fundamentals of regulation of telecommunications sector, etc.), thus missing the global picture and coherence of the subject.

Second way to regulate and hence to teach legal issues of e-government is to generalize and formalise fundamental legal principles, needs and requirements for development of e-government and its processes [5, P. 190-191; 6].

Legal acts of European countries that regulate the area of e-government are relatively new; therefore it is still difficult to evaluate the practical problems of their application [7]. Also it is not always the case that they follow the same framework of principles, needs and requirements for development of e-government and its processes.

Legal research which may provide the base for coherent principles for legal environment of the e-government is also relatively new, and limited to the specialists of the field. Jurisprudence of the knowledge society is also only taking its first steps, especially in countries which somewhat lag in e-government regulation.

The application of information communication technologies to government may encounter legal or policy barriers. Legislatures must ensure that laws are updated to recognize electronic documents and transactions. They must take proactive steps to ensure that policies support rather than impede e-government. Policymakers implementing e-government must consider the impact of law and public policy. Otherwise, any initiative will encounter significant problems. The effort must incorporate a holistic view, one that is not just focused on technology. Archaic laws, old regulatory regimes, overlapping and conflicting authorities can all greatly complicate or altogether halt the e-government undertakings. As already shown by the limited examples, the legal reforms and new policy directives based on uniform principles, may have to be adopted before the online world can function smoothly [8].

Assuming the above premises, the governments of some countries, which according to the indicators of the development of information society are the leaders in the field (e.g. in UK, Germany, Sweden and Finland, etc.), state initiatives for the development of e-government, which are usually implemented by means of special programmes or plans (e.g. the U.K. E-Government programme, German BundOnline 2005 programme, which is aimed at creating electronic government in Germany by 2005 utilising the Internet etc.). Such all-embracing programmes or plans may be considered a first step into the direction of developing coherent e-government legal principles framework. Below some examples are reviewed.

Declaring Internet access a human right with programme “Tiger leap”, Estonia was moving to provide Internet access to all its 1.5 million inhabitants by establishing local community Internet centers that provide free email and Internet access [9]. This legal decision created good precondition for next steps of development of e- government.

It is noteworthy that common e-government legal principles framework may greatly benefit countries, which to date do not have all-embracing programmes or plans for development of e-government ad processes, also may facilitate the unification and improvement of existing programmes and plans, also assist in the process of practical implementation thereof [5, P. 225-227].

Some non-European countries – in particular the United States have already moved to more advanced stage of e-government regulation by adopting a specialised uniform e-government legislation.

One possible approach to implement such coherent legal framework and specialised uniform e-government legislation may be adoption of the law on the fundamentals of the development of e-government. Such law should be the basic legal act that would regulate the development of e-government in the state. The main objective of the law must be to define and specify the basis for necessary for the successful development of e-government legal regulation in order to ensure legal stability and continuous state policy on the process of creating the e-government [8, 10, 11].

This law should also identify the key tasks of the state and the main implementation measures thereof, the law also must provide for the state administration bodies responsible for the development of e-government and their competence, the procedure for drafting and approval of the documents on legal regulation and the financial sources of the development of e-government. Issues such as facilitation of e-commerce, protection of intellectual property rights, open source solutions may also be addressed through such legislation.

The main principles of legal regulation of the law will be the creation of equal opportunities for everyone to participate in the processes of e-governance, stimulation of cooperation between state institutions and society, strategic planning and coordination of the bodies that take part in the development of e-government and effective management thereof, move from paper based documentation and legal sources to electronic documentation and sources, and finally improvement of the quality of governmental services through electronic means.

The law must provide that the aim of the state is to create equal opportunities for all members of society to take part in the processes of development of e-government, irrespective of their social or financial status, age or place of residence, and to support the initiatives of non-governmental organisations and other legal and natural persons in this process. The law should contain a principle that the state policy on the development of e-government direct public and private interests to the acceleration of the creation of information society, encourage society to look for the ways and means of cooperation between state institutions and society in the field.

The law would specify, what functions of state administration will be carried out by which governmental institutions, defining their competence, rights and obligations. as well as the principles of strategic planning.

General background principles of this law in our opinion could be:

- **Acknowledging of fundamental rights and freedoms in the cyberspace.** The commonly recognised rights and freedoms shall be unambiguously extended to the cyberspace, along with new extensions, which are made available by emergence of cyberspace and e-government (e.g. access to internet, electronic information and knowledge).
- **New level of political commitment.** A clear and predictable legal framework is key for successful development of e-government. Policy action should also aim at setting up an appropriate open and competitive environment.
- **Coordinated approach.** Legal and regulatory issues are **part of a wider, "holistic" approach** - a set of complementary initiatives in the legal, technological, business and other areas.
- **Minimalist regulation.** The one of general principles of e-government regulations is: "No regulation for regulations sake!"
- **Technological neutrality** of e-government initiatives and processes. No discrimination of any of communication channels between government and society shall be tolerated.
- **Promoting universal access at affordable cost.** Community-led development is a critical element in the strategy for achieving universal access to information and knowledge. Community access centers and public services (such as post offices, libraries, schools) can provide effective means for promoting universal access in particular in remote areas, as an important factor of their development.
- **Relevance to all group of users - G2C, G2B, G2G as well as minorities (disabled, elderly, etc.).** Any framework shall be universally accessible, trustworthy and non-discriminatory.
- **Powerful liberalizing influence.** The various instruments adopted represent a powerful liberalizing influence.
- **Transparency and access to information.** Notably, information in the public domain should be easily accessible. Information is the basis of a well-functioning and transparent

decision-making process and a prerequisite for any democracy. Knowledge is the key agent for transforming both our global society and local communities.

- **Increased role for self-regulation and co-regulation.** These instruments also confirm the **central role of self-regulation** in a number of key areas (content, liability of operators, notice and take down procedures, consumer protection, electronic media, etc.).

As it is already noted, one of the latest initiatives to implement the uniform legal framework approach is undertaken in the United States. It does not include all of the above suggested elements and principles of coherent e-government legislation, however may be considered more advanced step than above outlined e-government strategies and plans.

The 17 December 2002 Electronic Government Act of the United States focuses on getting more government information and services online, as well as streamlining of the executive branch in the United States [12].

The Act is designed to help the federal government of the United States to take full advantage of the Internet and use information technology to maximize efficiency. The act resulted from the 2001 pledges of the US Government to introduce a more corporate management style to government by focusing on results and ease of use for its "customers". Increasing the use of electronic government is one piece of that agenda.

The Act establishes a new Office of E-government within the White House's Office of Management and Budget to oversee government-wide efforts. It authorizes substantial and increasing funding for the initiative. The legislation codifies the competence and position of the new Office in law and makes it permanent.

In addition to the above institutional innovations the Act sets additional specific requirements for governmental agencies and institutions, which relate to several areas:

- **Performance Measures**, which require governmental agencies to develop performance measures that demonstrate how e-government enables progress towards agency objectives and strategic goals. Requires agencies to link their performance goals to key customer segments.
- **Disparities in Internet Access**, which requires, when implementing electronic government programs, to consider the impact on persons without access to the Internet, and to ensure that

the availability of Government services and information has not been diminished for individuals who lack access to the Internet.

- **Reporting Requirements**, which require each agency to submit an annual report on the status of the agency's implementation of e-government initiatives and its compliance with the provisions of the Act.

Other provisions of the Act include redesigns of one-stop federal Internet portals and web sites. The Act requires each federal court to establish a website that would include public information such as location and contact information for courthouses, local rules, docket information for each case, and access to written opinions issued by the court, in a text searchable format. Documents filed electronically, and those converted to electronic form, shall also be made available. Such court websites are required to be established no later than 2 years after the effective date of the Act, with access to documents filed electronically no later than within 4 years. Any court may elect to defer compliance with any requirement of this section, and the US Congress shall be notified of all such deferrals and the reasons for the deferrals. The Act also requires that other governmental agencies post on their websites all information about the agencies' regulatory proceedings that is required to be published in the Federal Register. Agencies must accept submissions in regulatory proceedings by electronic means (including e-mail and fax). Agencies shall also establish electronic dockets for online rulemaking. Electronic dockets shall make available all agency notices, publications, or statements related to each rulemaking, and all submissions made pursuant to the rulemaking.

Based on the provisions of the Act, the governmental portals such as FirstGov, an online gateway for Americans to federal services and information; Recreation.gov, which provides links to 1,900 federal parks; and GovBenefits, a site where people can search for the benefits to which they are entitled; are established.

The Act also requires involved governmental agencies to develop and establish a framework to allow efficient interoperability among all executive agencies when using electronic signatures.

Based on e-documents provisions in the act, starting with the 2003 tax year, some US citizens will be able to not only file, but also prepare their tax forms online for free. Other online

improvements in the works include a Regulations.gov website, which will make it easier to participate in the federal rulemaking process.

Important provisions of the Act refer to Accessibility, Usability and Preservation of Government Information, and substantially improve the way government information is organized, preserved, and made available to the public. The Act prescribed on uniform policy recommendations, after consultation with the public, in the following areas:

- **Categorizing of Information.** Existing technologies and cataloging methods could allow governmental agencies to keep better track of their own information holdings, and, where appropriate, to provide public access to information about those holdings, in a way that is searchable electronically and interoperable across agencies. Special standards to accomplish this goal, and categories of information, which should be classified according to the standards should be prepared based on the Act.

- **Public Access to Electronic Information.** The Act prescribes for preserving of the federal records, either temporarily or permanently. The public has access to many of those preserved records pursuant to other laws, however the Act facilitates uniform standards for information posted on the Internet, and other electronic records.

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- **Educational Resource Materials.** The Act promotes policies and coordinated access to educational resource materials on the Internet.

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- **Availability of Government Information on the Internet.** After opportunities for public comment, agencies according to the Act shall determine what types of Government information they intend to post on the Internet, and develop timetables and schedules for doing so. This is intended to establish a more deliberative process for agencies as they make decisions about what information should be made publicly available.

- **Access to Federally Funded Research and Development.** The Act authorizes funds for a database and website that will contain information about research and development funded by the federal government. The database and website will provide agencies, scientists, policy makers and the public with access over the Internet to non-sensitive information about where federal funds for scientific research are spent, enhancing scientific coordination and

collaboration and improving oversight. Agencies will be required to furnish information for the database.

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- **Public Domain Directory of Federal Government Websites.** The Act requires the development, through interagency collaboration, of a public domain directory of federal government websites on the Internet. Such directory shall be based on a taxonomy of subjects used to categorize Federal Government websites, and will be linked to the Federal Internet portal. Organizing websites according to subject matter often allows the Internet user to find the desired information more easily than with a search engine.

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- **Standards for Agency Websites.** The Act sets forth guidances and includes requirements for the websites of the US federal agencies. Such websites are required to contain (1) descriptions of an agency's mission and statutory authority, (2) an agency's electronic reading room, (3) information about the organizational structure of the agency, and (4) an agency's strategic plan; (5) minimum requirements to aid in navigating websites, such as speed of retrieval of search results, the relevance of the results, and tools to aggregate and disaggregate data.

Privacy Provisions of the Act specify that an agency will conduct a privacy impact assessment before developing or procuring an information system, or initiating a new collection of personally identifiable information that will be processed electronically. The assessment shall include a description of:

???the information to be collected,

(2) the purpose for the collection,

(3) any notice that will be provided regarding what information will be collected and how it will be shared,

???the intended uses of the information, and

???security measures to protect the information.

The Act further requires to establish guidelines mandating the posting of privacy notices on agency websites, and lists information that must be included in privacy policies. The Director will also promulgate guidelines requiring agencies to translate privacy policies into a standardized machine readable format. P3P is the accepted protocol for standardized machine

readable formats. It enables an Internet user to set his or her browser to automatically retrieve and interpret a web site's privacy policy.

In addition to the single law approach, the attention should be put at encouraging jurisprudence of the knowledge society, focusing attention on migration and changes of legal sources, studies of alternative regulatory forms, such as self-regulation.

Surveyed legislative approaches to e-government regulation, also allows identification of the following most important features of holistic approach, which incorporate both legal and policy aspects:

- Consult with stakeholders and general public on all aspects of e-government, this is especially important in order to assess how suggested laws may impede the desired results.
- Give legal status to online publication of government information and maximise online presence of governmental information.
- Enable electronic filings with government agencies.
- Reform processes by simplifying regulations and procedures.

Conclusions

One of the ways of teaching of legal issues of e- government is to teach separate issues covering the questions pertaining to e-government and in most cases unified under the umbrella of the legal informatics.

Second way to regulate and hence to teach legal issues of e- government is to generalize and formalise fundamental legal principles, needs and requirements for development of e-government and its processes.

Practical benefits of the late coherent legislation initiatives in the United States, which to date are the most comprehensive undertaking of the holistic approach, remain to be seen, however the existence of the above identified two approaches for regulation of e-government, already now raises the need to discuss different teaching alternatives for e-government, as suggested herein. It may also be suggested that e-government teaching based on coherent framework approach in the long term may replace the existing legal informatics approach.

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