

The Legislative and Regulatory Framework for E-Government

The Art of eServices

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Establishing a legal and regulatory framework for e-government

- OECD country experiences show that the success of e-government initiatives is dependent on a proper legal and regulatory framework.
- E-government programmes and activities require a legal framework – legislation, guidelines and standards – that enables online provision of services and information.
- Archaic laws, old regulatory regimes, and overlapping and conflicting responsibilities complicate the implementation of e-government projects.
- The development of a e-friendly regulatory framework should be seen as a priority.
- The new regulatory framework should include: (i) equitable and universal access to public services; (ii) e-procurement legislation; (iii) identity and digital signatures; (iv) online payments; (v) ownership of information and data; and (vi) ICT security and privacy.
- The implementation of the EU-directives on electronic signatures and the directives on protection of personal data and privacy are examples of instruments that can help establishing a proper framework.

Content of the presentation

- Why does a legal and regulatory framework matter?
- What is the best approach?
- The case for technology neutral legislations
- Some OECD Country experiences



Why does an adequate legal and regulatory framework matter?

A fragmented legal environment can create **important barriers** for the implementation of e-government. An adequate **legal and regulatory framework is needed** to:

1. Establish legal equivalence of e-government processes with paper-based ones: The introduction and uptake of e-government services and processes will remain minimal without a legal equivalence between digital and paper processes;

2. Provide a framework for collaboration among public agencies and across levels of government: Current public governance frameworks are often based on the assumption that agencies work alone and this can act as an inhibitor to collaboration and information sharing among and organisations;

Why does an adequate legal and regulatory framework matter?

- 3. Provide clear regulations and guidance to agencies:** Combining existing requirements with clear informal/regulatory guidance is a primary challenge to e-government co-ordinators. If agencies are unable to determine what is required of them – e.g. on data security and technical standards - they are likely to be unwilling to invest in new projects that may not conform with the requirements;
- 4. Protect individual privacy and security:** Ensuring that e-government initiatives are in step with society's expectations on privacy and security is crucial to building the trust needed to obtain the proper societal support to e-government implementation.

Removing the legal and regulatory barriers to e-government development and implementation

- An inadequate legal and regulatory framework can **hinder e-government implementation** because:
 - It obstructs the back office integration and the flow of information and services needed to provide integrated services through new channels of networked governance.
 - It poses challenges to user focused e-government.
- **Removing legislative and regulatory barriers, should be a priority** to support the uptake of e-government and the transformation of public service delivery.
- The key question remains the “**how**”, i.e. choosing the right approach.

How to approach the establishment of the E-Government Legal and Regulatory Framework

Which approach?

- E-Government is interdisciplinary in its nature as it involves issues pertaining to the traditional legal domain as well as modern social, political, economic and cultural dilemmas.
- A traditional law making approach to developing an e-government legal framework is facing challenges and a mixed-approach with emphasis on dialogue and co-operative relationships across government levels (e.g. the central government and prefectures) and on self-regulatory efforts is essential in the future.
- OECD experiences show that there is no “right” approach. Countries have adopted different approaches:
 - introducing new laws vs. modifying existing ones
 - a whole-of-government approach for the development of a cohesive legislative framework (e.g., A single ‘E-Government Act’ as in Denmark and Norway) vs. passing laws that support e-government goals on an as-needed basis (e.g., The Netherlands, Hungary and Portugal).

The case for technology neutral regulations

- Technology develops nowadays more quickly than laws. Changes in the subject matter may soon make the laws obsolete.
- The importance of the **sustainability of laws** that target technology.
- Technology-specific formulations that refer to the means of communication are undesirable in view of the rapid technological changes.
- The idea of having ICT regulations which are technology-neutral is supported from various perspectives:
 - The perspective of the **goal of the regulation**: The effects of ICT should be regulated, and not the technology itself
 - The perspective of **technology development**: Regulations should not have a negative effect on the development of technologies and should not unduly discriminate between technologies.
 - The purely **legalistic perspective**: Legislations should abstract away from concrete technologies to the extent that they are sufficiently sustainable and at the same time respect the requirements on the clarity and precision of the law.

The case for technology neutral regulations

Key points:

-With turbulent technologies – i.e. rapidly changing ones - it is probably better to choose lower-level forms of regulation, as these can be adapted more quickly than formal legislations; with more stable technologies, higher-level regulation is quite acceptable.

-Technology-independent legislation is to be preferred. This usually focuses on establishing equality between the ‘off-line world’ and the ‘on-line world’.

-A balance has to be struck when defining the level of legal certainty called for, i.e. laws should be sufficiently sustainable while providing adequate legal certainty.



The OECD experience in developing the legal and regulatory framework for e-government

The Danish example

The What

- Denmark opted for an all of government approach.
- Denmark focused on reducing regulatory barriers to e-government to promote online presence and to support outcome objectives such as the achievement of administrative simplification.

The How

To support such strategy Denmark established a process organised around a co-ordinated Secretariat with lead ministries: The responsibility for the management of the final implementation was centralised under the co-ordination of a temporary task force to ensure consistency.



The OECD experience in developing the legal and regulatory framework for e-government and in the adoption of technologically neutral regulations

The lessons learned

The Danish efforts to building a favourable legislative and regulatory environment have led to considerable achievements. Although successful, the Danish experience has highlighted the conclusions that:

- Sustain the progresses made in the establishment of a modern legal and regulatory framework requires continuous work to improve lawmakers' **ability to draft “e-friendly” laws and regulations** to ensure **consistent and easy interpretability**.
- The consistent application of the modernised legal environment should also be ensured through a **communication strategy** raising the officials' adequate **understanding and awareness** of the content and functionality of the revised legislation.



The OECD experience in developing the legal and regulatory framework for e-government and in the adoption of technologically neutral regulations

The example of the Netherlands

The What

The Netherlands adopted a sector approach to the modernisation of the legal and regulatory framework supporting e-government development and implementation.

The How

- The Government envisaged a **decentralised responsibility** based on building blocks owned by lead ministries.
- The approach chosen by the Dutch government reflects a **decentralised governance structure**, with policy and decision making processes characterised by **consensus and extensive engagement** of non-governmental groups.
- This special culture of decentralised political decision-making is an important prerequisite in understanding the Dutch strategic and tactical approach to the modernisation of the legal and regulatory framework for e-government.
- Preconditions for success of the Dutch approach is also the **availability of strong technical skills** in each implementing ministry, supplemented by legal drafting expertise and contracting and management advices provided by a shared services agency.



The OECD experience in developing the legal and regulatory framework for e-government and in the adoption of technologically neutral regulations

The Lessons learned

-Similarly to the Danish experience, the Dutch one reinforces the conclusion on the **need for continuous legislative change**, and for enhancing the **knowledge, interpretation and application** of the law.

-Perceived **barriers**, as well as existing ones, can **impede the reaping of the benefits of a modern legal and regulatory framework**.

- The Dutch approach seems to better fit in a context characterised by cultural dislike for a strong centralised approach and by the availability of strong in-house technical skills.

To sum up...

-The implementation of a e-friendly legal and regulatory framework should be seen as a priority in the definition of national e-government strategies.

-In order to establish an adequate regulatory framework countries can adopt different strategies and approaches.

-In terms of strategy: countries can adopt clear standards or flexible regulations to enable e-services.

-In terms of approach: countries can opt between a whole-of-government approach for the development of a cohesive legislative framework vs. passing laws that support e-government goals on an as-needed basis.

- Because technology changes rapidly, the legal and regulatory framework for e-government should be technologically neutral and instead specify the performance or results desired.

Thank you!