

Section 1: Executive Summary

1. Rationale for the project

The delivery of improved public services and support for active democratic engagement can be enhanced through eGovernment:

The use in public administrations of information and communication technologies (ICTs), such as the Internet, together with relevant associated organizational change and skills development
(European Commission 2003)

When developed and implemented appropriately, eGovernment has a number of benefits for EU member states. The adoption and implementation of appropriate eGovernment policies and practice in Europe is making a significant contribution to fulfilling the Lisbon Strategy for making the EU 'the most competitive and dynamic knowledge-based economy with improved employment and social cohesion by 2010' (European Commission 2002). eGovernment can lead to improvements in customer satisfaction, improvements in the service level (e.g. a seamless and customized service, more flexibility of access in terms of time and channel options, and greater transparency both for customers and governments), greater efficiency, improved quality and supply of information and reductions in costs and process times (CapGemini and TNO 2004). It may also reduce obstacles to the internal market and enhance mobility across Europe (European Commission 2003). In sum, apt use of eGovernment can benefit governments, citizens and businesses in a number of inter-related ways; improving public policies and services at the regional, national and Pan-European level, despite the budgetary and other challenges modern governments are facing.

There are however numerous obstacles that can hinder progress towards realizing the promise of eGovernment. This has been recognized within the EU through various related Directives, communications and research initiatives (see, for example, IPTS 2004; Australian Government Information Management Office 2003; European Commission 2003; and OECD 2003). Substantial legal, political, administrative, social, institutional and cultural differences between Member States and regions in the EU make such understanding of the main impediments to eGovernment of particular relevance to the growing number of important public services in the EU that seek to span national and regional boundaries (Leitner 2003; Graafland-Essers and Etedgui 2003). New initiatives are also often needed when rapid technologically enabled change creates problems by outpacing the evolution of legal and organizational arrangements. Thus this study aims to identify and explore key issues that can constrain eGovernment growth and define possible initiatives at a European level to overcome them.

Project aims:

- identify potential barriers to eGovernment within the EU and its Member States and create awareness of these barriers
- explore the legal-institutional foundations of these barriers, with a particular focus on aspects relevant at the European level
- build a rich and informative online inventory of issues that are, or can become, significant to eGovernment take-up
- define and develop clear views on possible productive initiatives and solutions with a European dimension to overcome barriers to eGovernment growth
- collect relevant eGovernment cases and use them to assess and develop a set of recommendations for overcoming barriers

- engage a broad group of legal experts and eGovernment practitioners through a comprehensive outreach and consultation programme.

2. Five EU-level eGovernment objectives

This project defines 'successful eGovernment' as the achievement of five prime EU-level objectives as set out in the European Commission's (2006) i2010 eGovernment Action Plan:

No citizen left behind

All citizens, including socially disadvantaged groups, should be major beneficiaries of eGovernment. To meet this aim, European public administrations need to make public information and services more easily and cost-effectively accessible through innovative uses of ICT. Achieving this goal crucially requires greater public awareness of, and trust in, eGovernment services and their benefits, together with the development of appropriate skills among all citizens.

Making efficiency and effectiveness in public services a reality

High user satisfaction with public services should be established by using ICT innovations appropriately to reduce the administrative burden on citizens and businesses and by ensuring that these eGovernment systems meet their users' needs, as well as increasing administrative transparency and accountability wherever possible.

Implementing high impact key services

Public administrations should create a variety of eGovernment services with a strong and visible impact in meeting social and economic needs, including major projects delivering Pan-European benefits to citizens and businesses. A fair and transparent market, including electronic procurement processes should be established to enable a range of companies to help administrations achieve this goal.

Strengthening participation and democratic decision making

The use of effectively designed and managed ICT-enabled communication, interaction and knowledge building should enhance citizens' engagement in democratic processes that affect outcomes in diverse social, cultural and economic activities at all levels in the EU.

Putting key enablers in place

Appropriate technical, standards and other operational support is required to facilitate progress in eGovernment in the EU, for instance to promote smooth interoperability between eGovernment systems (e.g. in the use of eSignatures and for other aspects of electronic identification management).

3. The approach to investigating eGovernment barriers

The project has a broad and diverse scope in terms of issues covered; including a wide spectrum of different national, regional, cultural and other contexts that can affect outcomes of relevant initiatives. The project team has therefore employed a number of approaches to identify, evaluate and address barriers to eGovernment:

- Extensive reviews and analyses of existing research in this field to identify and explore barriers to eGovernment and the legal foundations on which eGovernment systems are built.

- An online survey carried out by the Oxford Internet Institute (OII) to explore perceptions of the main barriers to eGovernment and their relative importance to key stakeholders.
- Five in depth case studies of eGovernment: Digital Citizen Rights, eConsultation, Employment Mobility, Public Registries and Cross Border eProcurement.
- Consultation with key stakeholders to draw on their knowledge and expertise as eGovernment policy makers, users, recipients of services and developers of related systems. This has involved workshops and meetings, and the establishment of an expert group.

More details are provided in the section on Research Methods.

4. The seven key barriers to eGovernment

Following an extensive review of existing eGovernment research - including the legal foundations to eGovernment - and analysis of the results of the online survey, the project team identified seven main categories of barriers that can block or constrain eGovernment progress. More details are provided in section two.

- (1) **Leadership failures.** Slow and patchy progress to eGovernment can result from a lack of adequate leadership during any stage in the initiation, implementation, promotion and ongoing support of developments.
- (2) **Financial inhibitors.** Concerns about the costs of implementing and developing eGovernment, together with inappropriate cost/benefit analysis approaches, can constrain or block the flow of investment at the levels necessary to support future eGovernment innovation.
- (3) **Digital divides and choices.** Inequalities in skills and access to ICTs can limit and fragment take-up of eGovernment. Failure to address the needs of potential eGovernment users who have different needs and motivations to use eGovernment services can also hamper take-up even when access and skills are no longer an issue.
- (4) **Poor coordination.** Lack of coordination and harmonization can put a brake on establishing appropriate eGovernment networks and services that cross governance, administrative and geographic boundaries.
- (5) **Workplace and organizational inflexibility.** The realization of eGovernment benefits can be constrained or blocked by inflexibilities in responding to the need to make necessary changes in public administration practices, processes and organizational structures to allow them to be better able to make appropriate effective use of electronic networking capabilities.
- (6) **Lack of trust.** Heightened fears about inadequate security and privacy safeguards in electronic networks and a general distrust of government can undermine confidence and take up of eGovernment.
- (7) **Poor technical design.** Interoperability issues caused by incompatibilities between ICT systems or difficult-to-use interfaces to eGovernment services exemplify the kinds of practical flaws that can become serious operational obstacles to take-up of what otherwise appear to be valuable eGovernment systems.

These categories have remained resilient for the duration of the project – the only category change (following the analysis of the online survey) was to expand the ‘digital divides’ barrier to ‘digital divides and choices’. This reflects the need to create and deliver ePublic Services that have sufficient appeal to attract and incentivize users encouraging eGovernment take up as people make ‘digital choices’ about whether or not to use electronic media (Dutton 2004).

These seven categories just represent the visible barrier peaks: they are tied to a multitude of more specific barriers that are relevant at different governance, institutional and jurisdictional levels, as presented in the project's case studies (see Deliverable 2).

5. The main legal dimensions of eGovernment barriers

A fundamental focus of the project is the legal dimensions that underpin the seven barrier categories. Eight key legal areas have been identified as the core foundations for building policies that affect eGovernment at all levels within the EU: more details are provided in the section on Legal Foundations.

- (1) **Administrative law.** This relates to the approach adopted in European states other than those based on the common law 'Anglo-Saxon' legal model. Administrative Law recognizes certain formal guarantees for citizens in areas where public bodies have significant power, and therefore shape outcomes from the deployment of eGovernment services. However, it does not address relationships between individuals. This could lead to a lack of legal security if legal adaptations to accommodate eGovernment are limited to the general regulation of private individuals, and thus do not affect Administrative Law. (See paper by Valero Torrijos).
- (2) **Authentication and identification.** These are elements of 'identity management', a crucial eGovernment concept that arises when the provider of an online service (e.g. a government department) needs to check the identity of an online user. Authentication involves establishing or confirming whether a person or other entity, such as a business, is authentic; identification establishes or confirms the identity of a person. These processes can become barriers if they are too cumbersome, costly or insecure. (See paper by Nouwt).
- (3) **Intellectual Property Rights (IPR).** IPR and copyright laws that protect creative works can apply to many electronic services provided by governments, and in interactions between government and businesses and citizens. This can affect the exchange of eDocuments and digital multimedia (e.g. video) or the protection of databases, software and other eServices and eProducts. Directive 2001/29/EC notes that: 'copyrights and related rights protect and stimulate the development and marketing of new products and services and the creation and exploitation of their creative content'. However, these rights could also be used to constrain (e.g. through charges that exacerbate digital divides) or block the sharing of certain digital contents. (See paper by Cuijpers and Nouwt).
- (4) **Liability.** In two-way and interactive electronic relationships between government, businesses and citizens, there is a need for a considered division of responsibility regarding damages resulting from a malfunction in the process or from inaccuracies in the information involved. Liability law seeks to achieve this, typically on the basis of general tort law and contracts governed by general contract law. The special role of government in society requires particular consideration in addressing liability in relation to eGovernment. (See paper by Cuijpers).
- (5) **Privacy and data protection.** Rights relating to privacy and the protection of personal data are now included in a wide range of legislation at European and Member State levels, as well as in wider frameworks such as the European Convention on Human Rights. As these issues are at the heart of many types of eGovernment development, systematic and detailed consideration must be given to addressing them in ways that do not impair the achievement of eGovernment goals. (See paper by Dos Santos and de Terwangne).
- (6) **Public administration transparency.** The wide availability of public sector information and the openness of democratic processes (e.g. eConsultations, online forums) are key elements in promoting public administration transparency to help build trust in government in general, and eGovernment in particular. Freedom of Information (FOI) legislation is a key mechanism for giving the public more access to government

information. However, differences between FOI Acts at national or regional levels have created some significant divergences between Member States – but harmonization has so far applied only to a limited number of areas. (See paper by de Terwangne).

(7) Relationships between public administrations, citizens and other ICT actors.

Laws and regulation can play an important role in promoting effective communication between citizens, business and government. For example, a general right to use online services in all their relationships with a public administration could increase confidence in eGovernment among citizens. Relationships between public administrations and the ICT companies are able to provide the technical and financial resources required to help develop appropriate systems; yet public authorities need to ensure the public interest is clearly protected. (See paper by Valero Torrijos).

(8) Re-use of public sector information. Computerized public databases spread over different public services are being used for an ever increasing range of information, including data about citizens, business enterprises, land use, vehicles, health and most other areas of society. As exchanges between databases become more technically possible, issues of re-using data in different contexts are growing in significance, as recognized in EU Directive 2003/98/EC on the re-use of public sector information. (See paper by de Terwangne).

6. Prioritizing barriers and their legal dimensions

Table 1 shows a simplified rating of the significance of the eight legal dimensions with respect to the seven barrier categories: however, as an overview, it only offers broad indicators of what are complex and highly subjective assessments. It illustrates that there is no 'single-bullet' solution to the many obstacles to effective eGovernment across Europe, as each of the barriers has a number of different significant legal dimensions. The barriers are multiple, interrelated and frequently resistant to change. Coordinated action from across the EU is therefore necessary to help avoid potential blockages or to minimize the impacts of those that do occur.

Table 1. Relationships between barriers and legal areas: not significant to very significant

Legal areas:	Barriers:						
	Leadership failures	Financial inhibitors	Digital divides & choice	Poor coordination	Workplace and organizational inflexibility	Lack of trust	Poor technical design
Administrative law	Signif	Signif	Signif	Signif	Very Signif	Signif	Not Signif
Authentication and identification	Signif	Signif	Signif	Very Signif	Signif	Very Signif	Very Signif
IPR	Signif	Signif	Signif	Signif	Signif	Signif	Signif
Liability	Signif	Very Signif	Not Signif	Signif	Signif	Very Signif	Signif
Privacy and data protection	Signif	Signif	Signif	Very Signif	Very Signif	Very Signif	Very Signif
Public administration transparency	Signif	Signif	Very Signif	Signif	Signif	Signif	Signif
Relationships	Very Signif	Signif	Signif	Very Signif	Signif	Very Signif	Not Signif
Re-use of public sector information	Signif	Very Signif	Signif	Very Signif	Signif	Signif	Signif

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