



Legal Aspects of e-Governance

12 October 2022

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How do laws and regulations enable, promote or hinder digital (e-) government?

Do laws play such a role?

How to deal with it?

What legal and regulatory issues arise and when?



What is different without paper?

- The need for technology including access to internet for use of (public) services
 - *ICT /Telecom legislation*
- The possibility of *real* access to information
 - *Access to (public) information legislation*
- The necessity to accept digital data in all contexts (until as evidence in court) – the data and not its representation holds the value
 - *In one law for all situations or in various laws*
- The need to provide a possibility to identify oneself digitally
 - *Digital ID and digital signature legislation*
- The need to analyse whether form requirements make sense (original and copy, blue paper, red ink, “raise your right hand”, etc.)
 - *All laws*

Legal work for digital transformation

- There should not be too many specialised laws: (mainly) legal analysis rather than legal drafting!
- Organisational issues: clear legal competence for organisations to make the rules and requirements that are needed for interoperability
- Laws should be technology neutral
- The legal issues are largely horizontal
 - *Digital Identity*
 - *Data protection*



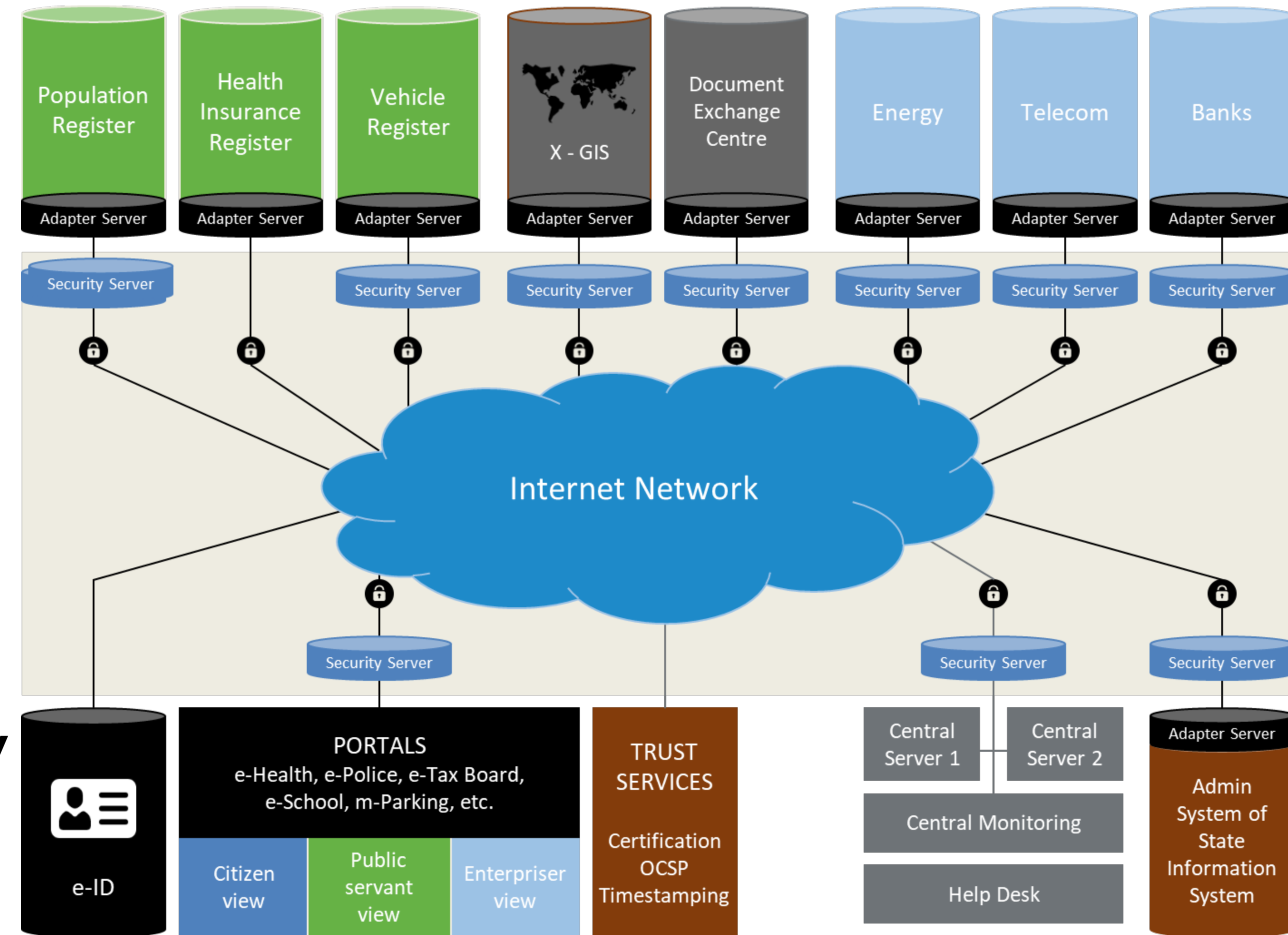
Digital identity and signature

- One of the key legal issues, a prerequisite to proceed past a certain point with e-governance: legally binding transactions cannot be made without a secure digital identity!
- Population registry (or similar) is essential – the basis for issuing digital identities
- Signatures are expressions of identity
- What is the (legal) role of a signature (identification)?
 - Different roles in different contexts: When this is understood, it can be recreated electronically
- What are the key elements?
 - Ensure that the person is who he/she claims
 - Possibility to identify one individual (only)
 - Durability of identification
 - Ease of use



Interoperability

- Not greater access to data than what is needed, security and privacy (data protection)
- Not one centralized database – permission to share data is necessary
- Subsidiarity (most suitable level), proportionality
- Clear responsibility: for gathering data, for deciding what is in databases (in each institution) +
- Sufficient rules for interoperability
- Conditions for joining (agreements)



Databases and access to information

- Once-only principle: Citizens never have to provide the same information twice. No duplicated data
- Transparent catalogue of databases
- Rules are needed on who is responsible for the data? (collect, verify, share, etc.) How to create/terminate a database?
- The question regarding who can access data and under what conditions should be dealt with separately from technical and practical questions of access
- When authorities access data, it leaves a footprint (transparency)

Should data be publicly available?

- Public data or non-public data? This makes all the difference! (And it is not a technology issue)
 - Is it personal data? (If yes – specific legal considerations)
 - Is it restricted for other reasons? (Business secrets, state secrets etc.)
 - If the answer is no to the above questions, it should be available
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- Proactively or on request
 - Simple procedure, no or minimal cost
 - No need to give reasons for wanting access
 - Deadlines for quick access



Data protection

- The digital society must not undermine people's sense of security
- The law should focus on content of data rather than its form.
- Personal data use needs a basis in law, a clear purpose why the data is required and use of the data in proportion to that purpose (which an system such as X-road can help to provide)
- GDPR – General Data Protection Regulation, in force May 2018. Global relevance.
- Importance of implementing structures (Data Protection Authority or similar).

Lawful processing

- Processing is lawful only if and to the extent that at least one of these applies:
 - consent - for specific purposes
 - necessary for the performance of a contract
 - compliance with a legal obligation
 - necessary in order to protect vital interests of the data subject or of another natural person
 - necessary for the performance of a task in the public interest or exercise of official authority
 - other legitimate interests if not overridden by fundamental rights and freedoms

Thank you!



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