

PRINCIPLES OF UPCOMING E-GOVERNMENT REGULATION IN THE REPUBLIC OF SERBIA

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1. Abstract

There is no commonly used practice (scheme) in the EU on the regulation of the e-Government, at the moment the majority of the countries do not have specific and uniform regulation on the e-Government. However, there are particular topics, areas, which are regulated in different forms of regulatory documents in most of countries.

On the other hand, the Republic of Serbia is in the process to compile and enact such complex, nevertheless basic regulation, which should regulate the most important elements of the e-Government related regulatory topics in one comprehensive law. This regulation will be only the first step of a long journey, the first building block to a regulatory environment, effectively serving the needs of citizens and public servants in Serbia.

This paper should try to present general regulatory scheme which should be covered by this Law which comprises of three main areas:

1. The general requirements for the provision of the electronic services including the requirements for the portals, for the communication and authenticity;
2. The basic requirements on the keeping of registers in electronic form;
3. The basic requirements concerning the identification, authentication, and authorization in electronic form.

The paper should explain the existing e-Government framework, regulatory environment, principles underlined in a proposed regulation and recommendations for future.

2. E-Government Environment in the Republic of Serbia

Separate projects for development of e-Government in the Republic of Serbia have been initiated some twelve years ago primarily in certain local administrations, however the overall strategy has been missing for long period of time. In recent years the e-Government development in Serbia has been manly influenced by the "*Support to e-Government development*" project whose overall objective was to improve the Public Administration system in the Republic of Serbia in accordance with the needs of citizens and businesses, requirements of the EU integration, for the better competitiveness of the country, and to contribute to the extended use of e-Government as part of the Public Administration Reform.

The project has been divided into 4 components:

1. Legislation;
2. e-Government infrastructure;
3. Institutional and capacity building;
4. e-Government services.

The objective of the "Legislation component" project component was to improve existing regulatory framework by providing clearer rules of electronic administrative procedures by preparing Draft law on general rules of electronic administrative procedures and their environment (the Law) which would be a backbone for implementation of other project components. The goal of the Law is to support the further development of public services to the citizens using e-Government technology and improve the quality of public service with use of electronic data.

Considering that e-Government can be defined as "*the use of information and communication technologies in public administration combined with organizational change and new skills in order to improve public services and democratic processes and to strengthen support to public policies*"¹ the role of the project was to integrate different disciplines and sectors such as public administration sciences, information and communication technologies, economics and public governance, jurisprudence, social and socio-technological sciences, into socio-technical systems. The project has been lead by the idea that socio-technical system, in the context of e-Government, has been referred as public administration made up of people (the social system) using tools, techniques and knowledge (the technical system), to produce public services valued by the governments' constituency (external to the public administration). Therefore, for effective modernization and improvement of administrative activities in the Republic of Serbia application of technological improvements has to be followed, in some cases even initiated, with reformation of traditional legal approach and with necessary simplification of administrative procedures. Otherwise, technological improvements can even present barriers and obstacles for effective provision of services.

Improvement in the penetration of broadband in the Republic of Serbia has also made access to e-services more economically affordable enabling the state to take advantage of technology and further improve their e-government services (e.g. making them more interactive and transaction-oriented). Over the last 10-15 years, government of Serbia have seen the adoption and use of information and communication technology (ICT) as the "silver bullet" that could improve coherency in public service delivery and at the same time free up resources through efficiency and effectiveness gains. Unfortunately, the technology itself did not change the quality of service provision, did not improve the satisfaction of the clients (citizens, businesses and other entities). The adoption and use of e-government services (also known as user take-up of e-government services) have been low and they remain far from satisfactory level.

3. Regulatory Environment in the Republic of Serbia

After an extensive analysis of regulatory framework it has been concluded that one regulation should fill the existing gaps necessary for further development of e-Government. Therefore, the Draft law on general rules of electronic administrative procedures and their environment (Law) had as a main goal to provide missing rules and institution for successful execution of administrative procedures in digital environment. Although, it has been prepared as a new and separate legislation which has been based on Law on Administrative Procedures (LAP), on mid-term period the rules contained in this Law should be merged in LAP and the Law should cease to exist. At the moment such implementation is not feasible due to the necessary extensive debate in this matter which would endanger ongoing reform of LAP and potentially postpone it.

¹European Commission, COM(2003) 567 The Role of eGovernment for Europe's Future
http://ec.europa.eu/information_society/eeurope/2005/doc/all_about/egov_communication_en.pdf

The concept of the Law has a goal to provide general legal framework which would enable fundamental reform of public sector and its transformation into service to citizens. Therefore the scope of the law has been limited to three following areas:

1. The general requirements for the provision of the electronic services including the requirements for the portals, for the communication and authenticity;
2. The basic requirements on the keeping of registers in electronic form;
3. The basic requirements concerning the identification, authentication, and authorization in electronic form.

The Law should, from one side, establish main principles of administrative procedures and other administrative activities in digital environment but also principles for a system of interchange of data and interoperability between different authorities. At the same time, the Law should provide guaranties for human rights, primarily right to privacy, right to be informed, help in respect to access and other personality rights. Finally, the Law should provide a model of precise identification and authentication of all parties in order to enable implementation of administrative procedures in digital environment.

The arguments behind the rationale for the creation of described legal framework are numerous and the main one could be find bellow:

- **Financial reasons:** If IT system of public administration is developed in accordance with the coherent strategy on the principles which are ongoing, significant funds could be saved and used for other purposes. On the other hand absence of the strategy would cause additional cost in future because of necessary harmonization.
- **Benefits for citizens and businesses:** Establishment of one unique system of identification and authentication would improve trust in digital environment and communication between authorities and citizens. Also provision of administrative services in electronic way would result into development of new services such are fast answer points, or other services which would improve activities of public bodies and citizens while also businesses could receive better and faster services.
- **Benefits for authorities:** Described legal framework would cause better communication and information flow between public authorities and would also establish the mechanism to resolve existing conflicts of competences.
- **Transparency:** The best way to fight the corruption is through open and transparent work of public authorities. This Law also enables better evaluation of performances of public sector employees. Consequently it will provide citizens and businesses better control of work of public authorities.

4. Principles of the Law

Establishment of principle of provision of public services in electronic way in a way that providing public electronic services requires no stricter requirements from service users, than conditions required for services that are provided traditional way². Additionally, the provision of public services in electronic should become partly an obligation of the authorities and partly an option which is dependent on capabilities and needs of parties and public bodies. In the cases of suspending or ceasing public electronic service, authorities are obliged to otherwise provide services that do not in any way affect the rights, obligations and legal interests of the clients. Finally, authorities are obliged to provide point of single contact for all public electronic services that are well organized and easy to understand for service users³.

² Article 10 of the Draft law on general rules of electronic administrative procedures and their environment

³ Article 6 of the Draft law on general rules of electronic administrative procedures and their environment

All public registries which are kept in electronic way has to be organized and regulated in accordance with unified principles provided by the Law and technically organized (interoperable) in a way which enables access and authorization to other authorities⁴. Authorities are obliged to provide electronic coherence of public electronic registers they keep with other registers, records and databases that are kept in Republic of Serbia and outside of Republic of Serbia, and also coherence with other service users as well as to cooperate in all mutual issues, and to share data and information necessary for their operations⁵. On the other side, the clients are entitled to, instead of submitting data and documents that are kept in public electronic registers, give access to authorities on this data and documents.

All existing public registries should comply with the Law in the next period in accordance with the time framework which should be established by the Action plan which should be adopted after the Law.

In order to prevent any jurisdictional dispute which have been determined as a longstanding obstacle for development of e-Government, the Law provides obligation that all electronic public services as well as electronic public registries has to be registered within the competent body which coordinates external coordination of their work. Additionally, the Law establishes mechanisms which enable fast and efficient resolution of competence disputes⁶.

Right of parties to access and control personal data in possession of public registries is high priority for the Law. Namely, only authorized public authorities have right of access, only competent authority has a right to make a change while every access and change have to be based on a legal authority, recorded and access logs available to citizens. On the other hand the Law introduces the principle of re-use by persons or legal entities of data held by public sector bodies, for commercial or noncommercial purposes. Law establishes the obligation to Authorities to make available data in respect of which there is interest for re-use and this data must be in machine-readable format. Access to data must be simple and accessible to all while the authorities have the right to charge up to the actual costs incurred by providing documents to the applicant⁷.

Law introduces the principle of assumed liability of authority in charge, for damages incurred in connection with the provision of public electronic services, as well as the electronic databases and electronic registers. The authority will be exempted from liability if it is proved that provision of public services or keeping of electronic registers were not the cause of damage.⁸

Law have several provisions regarding inclusion such as that the access to public electronic services and data from public electronic registers should be provided for persons with disabilities without the technical, audio-visual, semantic and linguistic constraints or that in areas in which, according to the Law, national minority language is official language, delivering of public electronic services and keeping of public electronic registers is done in national minority language.⁹

Finally, the Law provides establishing of unique system of identification and authentication for whole public sector while each authority has a right to manage authorizations within its sub-system¹⁰. Principles incorporated provide that

4 Chapter 5 of the Draft law on general rules of electronic administrative procedures and their environment

5 Article 5 of the Draft law on general rules of electronic administrative procedures and their environment In accordance with the Articles 2. and 7. of Law on information system of the Republic of Serbia

6 Article 4 of the Draft law on general rules of electronic administrative procedures and their environment in accordance with Article 58. of Law on state administration and Article 45. of Draft law on general administrative procedures

7 Article 19 of the Draft law on general rules of electronic administrative procedures and their environment in accordance with Articles 1, 2, 3, 4, 5, 6, 8 i 11 of Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information as amended by draft Proposal for a Directive amending Directive 2003/98/EC

8 Article 24 and 30 of the Draft law on general rules of electronic administrative procedures and their environment In accordance with the Article 154, 172. and 184. of Law of contract and torts and Article 5. of Law on state administration

9 Article 9 of the Draft law on general rules of electronic administrative procedures and their environment in accordance with Article 21. of The Constitution of the Republic of Serbia and in accordance with the Article 16. of Draft law on general administrative procedures

10 These rules are mainly based on: IAS in the European policy context – Project Study on an electronic identification, authentication and signature policy, 17. August 2012

identification and authentication can be initiated only at the request of the entity (citizen or legal entity) while authorities may not require from the entity to identify and authenticate except when providing services related to administrative matter, as well as when providing access to personal data¹¹. In respect to the establishment of unique system of identification and authentication for whole public sector, which could be open and used by private entities in the later stage, the open issue is the body which would gain this competences. Naturally there are two logical solutions:

- Establishment of brand new independent body; and
- Providing these competences to existing body or institution.

Different technical requirements as well as financial and organizational aspects prefer different solutions. Proposed concept of the Law provides establishment of brand new independent body based on Fiscal Council which already exists in Republic of Serbia. This solution is subject to expert critique due to the technical and financial requirements needed for its implementation and therefore it should be discussed with special attention and resolved in accordance with current needs and capabilities.

5. Recommendation for Future

The successful implementation of the proposed solution raises a number of issues whose solution determines the success of the entire process. Appropriate response to these issues can be provided only by joint efforts of all stakeholders, and through the analysis of available resources and the needs of public administration.

Bearing in mind that the Law establishes obligations for wide range of authorities (state authorities, regional authorities, local government authorities and owners of public authority), it is questionable will all these authorities be required to meet its obligations at the same time or will some categories of authorities be a priority and others will be set aside for some period of time. The future Action plan should provide strategy for this process in accordance with technical capabilities.

The Law provides that the Point of single contact will be provided through the portal eUprava¹² and therefore it will be necessary to further harmonize and improve relations between portal eUprava and institutions so this important principle of the Law is could be fully implemented.

Furthermore, it would be recommended that the Government establish a special authority which would be responsible for coordination and the implementation of this Law and for coordination and the implementation of e-government in general. Additionally, in the context of successful implementation of new rules, it would be important to analyze which sanctions would be the most appropriate for the authorities which do not comply with the law and implement these mechanisms into the Law. Although the Law provides penalty provisions, it is necessary to determine which authority will be competent for supervision and monitoring of authorities in fulfillment their obligations. These decision is particularly demanding because of the fact that the Law should provide responsibilities for all levels of public administration.

In accordance with the principle of interoperability it is essential that National Framework of interoperability is adopted and implemented so authorities could meet its obligations anticipated by the Law such as: to provide electronic coherence of public electronic registers they keep with other registers, records and databases that are kept in Republic of Serbia and outside of Republic of Serbia, and also coherence with other service users as well as their obligation to align their actions with the National Framework of interoperability.

¹¹ Article 13 of the Draft law on general rules of electronic administrative procedures and their environment

¹² www.euprava.gov.rs

This Law regulates establishment of Center for identification and authentication as an independent state body. This body provides services of identification and authentication of persons by electronic means and all authorities are obliged to use the services of the Center for identification and authentication. This solution seems theoretically possible, however it could meet some problems, because the entity has to have a good coverage in the entire country, and it would take time to fully implement it. Some experts are of the opinion that it would be more expensive but because the Law is not followed with technological solution the cost is hard to estimate at the moment.

6. Conclusion

It is undisputable that this version of the Law is just general draft which will be improved and adjusted in different directions. However, it is really necessary to maintain serious and continuous work using multi-stakeholder approach and blending expertise of lawyers, engineers and public administration experts. At last, the strong political support is essential for implementation of the final solution because the substantial monetary funds have to be procured in this process. Still, the funds should not be considered as cost but as an investment into the infrastructure of tomorrow.

7. References

During preparation process of Draft law on general rules of electronic administrative procedures and their environment (Law) and this paper, following regulations, international documents, opinions and reports were taken into account:

1. The Constitution of the Republic of Serbia ("Sl. glasnik RS", no. 98/2006)
2. The Law of contract and torts ("Sl. list SFRJ", br. 29/78, 39/85, 45/89 - odluka USJ i 57/89, "Sl. list SRJ", no. 31/93 i "Sl. list SCG", no. 1/2003 - Ustavna povelja)
3. Draft law on general administrative procedures
4. Law on state administration ("Sl. glasnik RS", no. 79/2005, 101/2007 i 95/2010)
5. Law on information system of the Republic of Serbia ("Sl. glasnik RS", no. 12/1996)
6. Law on free access to information of public importance ("Sl. glasnik RS", no. 120/2004, 54/2007, 104/2009 i 36/2010)
7. Law on civil register ("Sl. glasnik RS", no. 20/2009)
8. Law on personal data protection ("Sl. glasnik RS", 97/2008, 104/2009 - dr. zakon, 68/2012 - odluka US i 107/2012)
9. Law on the Business Registers Agency ("Sl. glasnik RS", no. 55/2004, 111/2009 i 99/2011)
10. Law on Copyright and Related Rights ("Sl. glasnik RS", no. 104/2009 i 99/2011)
11. Law on unified register of voters ("Sl. glasnik RS", no. 104/2009 i 99/2011)
12. Draft Law on improving e-government and amending of other regulations of the German Federal Government
13. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market
14. Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information as amended by draft Proposal for a Directive amending Directive 2003/98/EC on the re-use of public sector information

15. Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases
16. IAS in the European policy context – Project Study on an electronic identification, authentication and signature policy, 17. August 2012.