E-Signatures
and
E-Procurement

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Part 1:

Electronic Signatures

Part 1: Electronic Signatures (Overview)

I) What are Electronic Signatures?

II) State of Play

III) Existing Barriers

IV) Proposed Strategies

V) Our Recommendations

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What are electronic signatures?

Broad definition in Art. 2.1 eSignature Directive:

➔ **data in electronic form**

➔ **which are attached to or logically associated with other electronic data**

➔ **and which serve as a method of authentication**

3 levels of electronic signatures:

(1) Simple electronic signature (e.g. name at the bottom of an e-mail)

(2) Advanced electronic signature

→ requirements in Art. 2.2 of the eSignature Directive, inter alia:

- capable of identifying the signatory
- guarantees the integrity of the signed document

(3) Qualified electronic signature

- „Advanced electronic signature" +
- based on a qualified certificate +
- created with a Secure Signature Creation Device

→ **Legal presumption of equivalence with handwritten signature**

→ **Admissible as evidence in legal proceedings**

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State of play

We have:

- eSignature Directive (1999/93/EC)
- A great number of technical standards
- A basic trust infrastructure for qualified electronic signatures:

  →„Trusted Lists" of providers issuing qualified certificates

Main current application fields of electronic signatures:

➔ eGovernment, eInvoicing, eBanking

- Positive example eGovernment: Austrian Citizen Card („Bürgerkarte")
- Positive example: Estonia

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Existing barriers (Overview 1)

Existing diversity of national systems

Evolvement of isolated electronic signature applications

Fragmentation of markets

Lack of cross-border recognition of electronic signatures

Lack of interoperability and (cross-border) use of electronic signatures

Existing barriers (Overview 2)

The existing barriers can be subdivided into:

(1) Barriers at the **legal level**

(2) Barriers at the **technical level**

(3) Barriers at the **trust level**

(4) Practical issues

(1) Barriers at the legal level

- **Discrepancies in the implementation and interpretation of the eSignature Directive**

- **Scope of eSignature Directive too narrow:**
  - → focus on <u>qualified</u> electronic signatures and the issuance of <u>qualified</u> certificates
  - → but <u>does not regulate </u>the provision of <u>other</u> certification services, such as

    - **services <u>ancillary</u> to electronic signatures** (e.g. time-stamping, long-term archiving, signature validation, signature policy services),

    - **services <u>using</u> electronic signatures** (e.g. electronic registered mail services)

    - **identification and authentication services.**

- **Additional barriers for advanced electronic signatures and for eGovernment applications**

(2/3) Barriers at the technical and trust level

(2) <u>Barriers at the **technical level**</u>:

➔ **Great number of existing standards for electronic signatures, but**

- **too complex to use;**
- **no business orientation;**
- **no helpful guidelines;**
- **lack of standards for certification services ancillary to electronic signatures.**

(3) <u>Barriers at the **trust level:**</u>

➔ **Lack of trust in electronic signatures originating from other member states**

(4) Practical issues

➔ Low use of electronic signatures in practice. Why?

- **Electronic signatures are not accepted by all contractors;**

- **Lack of dissemination of the necessary infrastructure;**

- **Too high / disproportionate costs compared to benefit;**

- **Lack of sufficient attractive electronic signature applications.**

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How to improve the interoperability of electronic signatures and facilitate their (cross-border) use? (1)

Two main strategies:

(1)„Large-scale approach" **(Crobies/EFVS Studies)**

➔ Creation of an enhanced, comprehensive and consistent <u>legal</u>, <u>technical</u> and <u>trust</u> framework for electronic signatures

➔ Comprehensive revision/enhancement of the eSignature Directive

(2) „Small-scale approach" **(Study on Standardisation Aspects of eSignature / EIsign Study)**

➔ Improvements on the basis of the existing legal framework without amending the eSignature Directive

How to improve the interoperability of electronic signatures and facilitate their (cross-border) use? (2)

(1) <u>Legal Level</u>

„Large-scale approach"	„Small-scale approach"
Comprehensive revision and extension of the eSignature Directive	**No revision of the eSignature Directive**
The Directive should regulate ➔ all types of electronic signatures and related products ➔ **all types of certification services**: • services ancillary to electronic signatures *(e.g. time-stamping, archiving, signature validation, signature policy services)* • services using electronic signatures • identification and authentication services.	Otherwise risk of a ➔ **long and cumbersome revision process and market perturbation** Instead: **Issuance of a non-binding Commission document** • to support a common interpretation of the eSignature Directive • to clarify specific issues

How to improve the interoperability of electronic signatures and facilitate their (cross-border) use? (3)

(2) <u>Technical Level</u>

„Large-scale approach"	„Small-scale approach"
(1) Creation of a technical framework of rationalised, generally recognised European electronic signature standards	
→ **rationalised standards for <u>all</u> certification services regulated by the revised Directive**	
(2) Referencing + mapping of standards with legal requirements through Commission Decisions (based on Art. 3.5 of the Directive)	
→ **Extension** of Art. 3.5	→ **Wide interpretation** of Art. 3.5

How to improve the interoperability of electronic signatures and facilitate their (cross-border) use? (4)

(3) <u>Trust Level</u>

„Large-scale approach":
➔ Extension of existing supervision and voluntary accreditation regulations in the Directive to all types of certification services ➔ Creation of „Trusted Lists" covering all certification services

(4) <u>Other</u>

„Large-scale approach"	„Small-scale approach"
➔ Appropriate promotional and educational measures	

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Our recommendations (1):

➔ **„Large-scale approach" in our view the preferable strategy:**

- Creation of a sound legal basis for all certification services

- Creation of a rationalised technical framework of European Standards, accompanied by appropriate guidelines (through mandate M/460).

- Extension of Art. 3.5 to enable a broader referencing of standards and the creation of new legal presumptions

- Enhanced trust infrastructure for all types of certification services (supervision/accreditation/"Trusted Lists")

- Appropriate promotional measures.

Our recommendations (2):

In addition:

➔ Coordinated continuation of **pilot projects** (PEPPOL, SPOCS) and existing **harmonisation initiatives**

➔ Parallel initiatives in the field of **electronic identification**

➔ **Economic supportive measures for electronic signatures**:

- (financial) incentives for users to use electronic signatures

- (financial) incentives for providers

  ➔ to offer more economic electronic signature solutions and

  ➔ to create attractive electronic signature applications for the mass market.

Part 2:

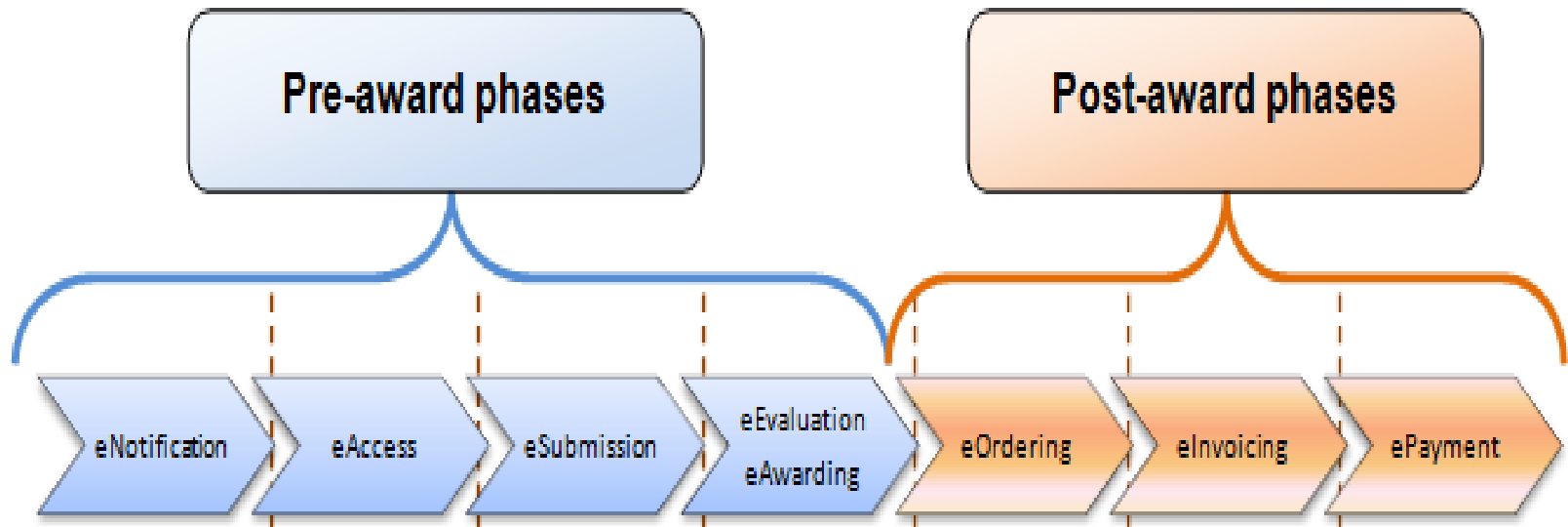# Electronic Procurement

E-Procurement

➢ Public Procurement: 19 % of GDP each year

    ➡ major interest to improve efficiency, transparency and competitiveness <u>and</u> to reduce costs

    ➡ digitilisation and automatisation hold enormous productivity improvement potential

➢2004: EC, Action Plan for EPP provisions in Dir 2004/17/EC and 2004/18 EC

What is E-Procurement ?

State of play

➤ 2010 green paper on E-procurement based on staff working Document on the Evaluation of the 2004 Action Plan

➤ Suspected by extensive study by Siemens-timelex

➤ general problem: no reliable figures

State of play

Advantages	Disadvantages
➤ Accessibility ➤ Transparency ➤ Efficiency ➤ Paperless ➤ better offers due to faster invoice/payment processing	➤ negative aspects due to inappropriate implementation and application: ▪ less competition caused by excessive use of framework agreements ▪ less value for money caused by inappropriate use of automated evaluation ▪ marginalisation of SMES

State of play

➢ existing legal infrastructure <u>at</u> national level

but: enormous differences with regard to the use in practice

Availability of phases	Countries (27 EU MS, 3 EEA MSt and 2 Accession countries)
Full pre-award	Belgium, Denmark, Germany, Ireland, Spain, France, Italy, Cyprus, Lithuania, Hungary, Malta, Austria, Portugal, Romania, Slovenia, Slovakia, Sweden, United Kingdom, Norway
Full pre-award except eEvaluation and e-Award	Czech Republic, Estonia, Latvia, Netherlands, Poland, Finland
Only eNotification and eAccess	Bulgaria, Luxembourg, Croatia, Turkey
No pre-award or very limited	Greece, Liechtenstein, Iceland
Full post-award	Finland, United Kingdom, Norway
Full post-award except e Payment	Czech Republic, Denmark, Spain, Sweden
No post-award or very limited	Bulgaria, Estonia, Greece, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovakia, Slovenia, Iceland, Liechtenstein, Croatia, Turkey

State of play

➢ at European level: EU is financing and / or supporting a member of initiatives

- PEPPOL
- CEN/iSSS
- open ePrior
- eCertis
- eTen Procure
- ePractice eu

Identified obstacles

Main obstacles: - lack of standards ➡️ **island solutions,**
- language barrier

➡️ access to tender documents:
- language barrier,
- technical accessibility barrier

➡️ submission:
- language barrier,
- bidder has to learn for each
solution how the submission tool works
- identification and authentication:
- username/password authentication after registration
- Authentication systems supported by cryptography
➡️ no acceptance of foreign solutions

State of play: Identified obstacles

➢ **eAttestation/eCertificates:**

  ➢ language barriers,
  ➢ legal uncertainty whether a foreign attestation actually matches the requirements imposed by law cross border validation

➢ **eInvoicing:**

  ➢ great number of available standards,
  ➢ legal uncertainty due to diversity between and within national legislations

eProcurement tools

➢ Framework agreements: strong relation between framework agreements and eProcurement Downside: closed systems ➡ improve efficiency at the expense of competition

➢ Dynamic Purchasing System: complex and costly to implement

Proportionate authentication and identification Solutions

➤ key element for eProcurement
➤ however: cross border use far from being achieved

Recommendation: username/password model, supplemented by security token to be downloaded from plattform

Further steps

➢ close coordination between different EU-financed projects

➢ common standards should be developed within the existing system of CEN/BII2

➢ mandatory eProcurement ? Only as long time concept

➢ Clarification / Modification of the Directives:
▪Clarification: eProcurement does not discriminate
▪focus on the use of self-declarations should be emphasized
▪Modification regarding use of DPS

➢ raise awareness and build capacity by users

Thank you very much for your attention!

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