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(SNSPA)

2016

Online at <https://mpra.ub.uni-muenchen.de/77703/>
MPRA Paper No. 77703, posted 18 Apr 2017 13:40 UTC

The technology legal framework issues and challenges in Romania

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Abstract

The evolution of humanity is not synchronized with the one on technology. A similar technological process like the one we have already been through during the whole last century, happen between 2001 and 2015. If we are to look further, same process will happen starting from now till 2021, from 2021 to 2025... We will face, around the year 2025 such a great technological advance, that in just one single year it will equalize the whole technological advance of the 20th century. The technology advances exponentially. In the near future we will speak about: virtual monetary systems, editing the human genome, network neutrality, drones, artificial intelligence, robotics, biotechnology, neuronal implants, virtual reality and things that are not yet invented. As Ray Kurzweil (an American author, computer scientist, inventor and futurist) said *in the 21 century we won't experience just 100 years of progress but, 20.000 years if we are to take into consideration the today's speed of the technological advance*. So we have to adapt to this new era, to change the regulatory system, and to do it fast. In this article we will present shortly the evolution of Romanian e-government legal framework over time, showing how slow the whole process is and offering some examples of laws that are completely improper for what is going to happen in the future.

Keywords: e-government, legal framework, electronic, regulations, laws

The beginning

The first mention in the Romanian legislation of elements belonging to the concept of e-government can be found within Law 455/2001¹ on electronic signature. In Article 4 of the Act, it is said that "data is in an electronic form if it is attached to or logically associated with other electronic data which serve as a means of identification".

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¹ Law no. 455/2001 on electronic signature, published in Official Gazette no. 429 of July 31, 2001

Also in 2001 the Government released the Government Strategy for Computerization. In it, we can find the following statements:

1. Information is designated to increase operational efficiency in the central and local government bodies; [therefore the government should provide a suitable framework – *personal add*];
2. Computerization of services for citizens and businesses often involve the integration of services provided by central and local government; [therefore the legal system should be properly adapted – *personal add*];
3. [The government] should provide access to information through IT services to end users.

"The Government Strategy for Computerization consists in a series of actions designed, coordinated and directed towards achieving [the above] objectives. Strategy is not limited to design information systems and telecommunications, but at the same time, perfecting the legal framework required to make such actions possible and, especially, the creation of more appropriate organizational structures for both strategy and implementation projects, including a large number of units of the central government will also carry responsibility for the results."²

Government by GD 1007/2001³ establishes the methodology for implementing the above strategy and means of funding.

Next, on 12 October 2001, the Romanian Parliament passed Law 544/2001⁴ on free access to public information (updated in 26 February 2002).

So far we can see that all these laws are behind the first pillar of interaction between IT and PA (Baltac 2011, Vrabie 2016) – one way communication, the simplest form of interaction, posting

² http://www.gov.ro/strategia-guvernului-privind-informatizarea-administratiei-publice__11a100007.html

³ Government Decision no. 1007 of 4 October 2001 to approve Government strategy on computerizing public administration published in: Official Gazette no. 705 of November 6, 2001

⁴ Law no. 544 of 12 October 2001 on free access to public information, published in Official Gazette no. 663 of October 23, 2001

information on official Website of the institution in order to inform citizens. With these first initiatives Romania has launched itself into the electronic world.

On July 5, 2002 the Parliament adopted Law 365⁵ on electronic commerce. Websites must be publicly accessible offering the possibility to fully provide public services, including the decision to use the service and being effective.

In April 2003 the Law 161⁶ is adopted. Its purpose is to ensure transparency and to measure it in exercising public dignities, public functions and business as well as those to prevent and combat corruption.

In 2004 (November 17) is adopted Law 506/2004⁷; the processing of personal data and privacy in electronic communications sector. Here there are established specific conditions guaranteeing the right to privacy in the processing of personal data. It is defined electronic mail (e-mail) as: "this service allows transmission, through a public electronic communications network, of text messages, voice, sound or image, information that can be stored on network equipment recipient's terminal."

Basically, this law is to help strengthen the second pillar – two way communications (Baltac 2011, Vrabie 2016). By this method public administration may collect data from the environment, either by e-mail, or by more advanced systems of data transfer using intranets and / or extranet sites).

Government Ordinance 34 of 2006⁸ Romania consolidates the construction of the third pillar regarding Web transactions (not necessarily financial, but we refer here mostly to those), begun by Law 365/2002⁹ on electronic commerce. This ordinance is to award public procurement contracts, assignment of contracts for public works and services concession contracts. It is

⁵ Law no. 365/2002 on Electronic Commerce, published in Official Gazette no. 483 dated July 5, 2002

⁶ Law no. 161 of April 19, 2003, on measures to ensure transparency in the exercise of public dignities, public functions and in business, preventing and sanctioning corruption published in Official Gazette no. 279/21 approx. 2003

⁷ Law no. 506 of 17 November 2004 concerning the processing of personal data and privacy in electronic communications sector, published in Official Gazette no. 1101/25 us. 2004

⁸ Ordinance no.34/2006 - Emergency Ordinance regarding the awarding of public procurement contracts, public works and services concession contracts, published in Official Gazette no. 418/15 May. 2006

⁹ Law no. 365/2002 on Electronic Commerce, published in Official Gazette no. 483 dated July 5, 2002

followed immediately by Law 337/2006¹⁰ for approval, then the GD 925/2006¹¹ approving the application of rules on public procurement contracts in the ordinance.

After that there were released five ordinances (Ordinance nr.94/2007¹², ORDINANCE nr.143/2008¹³, ORDINANCE nr.19/2009¹⁴, ORDINANCE no.34/2006¹⁵, ORDINANCE nr.72/2009¹⁶), six decision of the Government (Government Decision no. 942/2006¹⁷, Government Decision no. 1660/2006¹⁸, DECISION no. 198/2008¹⁹, DECISION no. 370/2009²⁰, DECISION no. 834/2009²¹, Government Decision no. 167/2010²²), two Order of Ministers

¹⁰ Law approving Government Emergency Ordinance no. 34/2006 on awarding public procurement contracts, public works and services concession contracts, published in Official Gazette no. 625/20 jul. 2006

¹¹ Decision on approval of the application of provisions relating to public procurement contracts in the Government Emergency Ordinance no. 34/2006 on awarding public procurement contracts, public works and services concession contracts, published in Official Gazette no. 625/20 jul. 2006

¹² Emergency Ordinance amending and supplementing Government Emergency Ordinance no.34/2006 regarding the award of public procurement contracts, public works and services concession contracts, Published in Official Gazette 676 of October 4, 2007

¹³ Emergency Ordinance amending and supplementing Government Emergency Ordinance no.34/2006 regarding the award of public procurement contracts, public works and services concession contracts, published in Official Gazette no. 805 of 02.12.2008

¹⁴ Emergency Ordinance on some measures in the public procurement legislation; Published in Official Gazette 122 of 27 February 2009

¹⁵ Ordinance no.34/2006 updated until March 12, 2009 - Emergency Ordinance amending and supplementing Government Emergency Ordinance no.34/2006 regarding the award of public procurement contracts, public works concession contracts and concession services, published in Official Gazette, part I, no. 453 of 02.07.2010

¹⁶ Emergency Ordinance amending and supplementing Government Emergency Ordinance no. 34/2006 on awarding public procurement contracts, public works and services concession contracts published in the Official Gazette, Part I, no. 426, of June 23, 2009

¹⁷ Decision on approval of the application of Government Emergency Ordinance no. 30/2006 regarding the function of checking the procedural issues related to the award of public procurement contracts, published in Official Gazette no. 661/1 Aug. 2006;

¹⁸ Decision on approval of the application of provisions relating to public procurement contracts by electronic means of Government Emergency Ordinance no. 34/2006 on awarding public procurement contracts, public works and services concession contracts, published Official Gazette no. 215 of April 3, 2009;

¹⁹ Decision amending and supplementing Norms for applying the provisions relating to public procurement contracts by electronic means of Government Emergency Ordinance no. 34/2006 on awarding public procurement contracts, public works and services concession contracts, approved by Government Decision no. 1660/2006, published in Official Gazette no. 165/4 apple. 2008

²⁰ Decision amending and supplementing Norms for applying the provisions relating to public procurement contracts by electronic means of Government Emergency Ordinance no. 34/2006 on awarding public procurement contracts, public works and services concession contracts, approved by Government Decision no. 1.660/2006, published in Official Gazette no. 215 of April 3, 2009

²¹ Decision amending and supplementing Government Decision nr.925/2006 for approval of the application of provisions relating to public procurement contracts in the Government Emergency Ordinance no.34/2006 regarding the award of public procurement, the works concession contracts and public services concession contracts, published in Official Gazette, Part I, no. 515, of July 27, 2009

²² Decision amending Regulations to implement the provisions relating to public procurement contracts by electronic means of Government Emergency Ordinance no.34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession approved by Government nr.1.660/2006, published in Official Gazette no. 154/10.03.2010

(ORDER no. 1679/2006²³, Order no. 175/2007²⁴) and a law (Law no. 228/2007²⁵) all having the role to complete and modify the earlier ones.

In support of the third pillar, were issued in 2003 an order (Order no. 1842 of 04.12.2001²⁶) and a Government Decision (Decision no. 1173 of 02.10.2003²⁷) on electronic assignment and distribution for international freight authorizations. Here is the first time when EAIS acronym, referring for Electronic Assignment Information System permits, has appeared (available at www.autorizatiiauto.ro).

What is to come?

Among the things we already face is globalization (Stiglitz, 2008) with all its implications. We will be able to send and receive goods (all kind of) and services all over the world. The lack of a proper legal framework in one particular country might have consequences all over the world.

Around the year 2050 computer intelligence will overpass the overall intelligence of the humankind therefore we can ask ourselves: if a bunch of smart people invented the legislation, what will computers do?

In the past, the human interactions defined the legislation. In the future, technology will reshape the interaction between people. The already known framework will be way more complex and complicated. The Internet will put under a heavy pressure the today's legal framework. Nowadays we speak about: Big data, Internet of Things, Humans against the Machines [Kasparov vs. Deep blue] and so on.

²³ Order to fill the Order of State, Minister of Finance, no. 1.801/1995, as amended and supplemented, published in Official Gazette no. 871 of 24/10/2006

²⁴ Order approving the Operational Manual for the activity of observation and verification of public procurement contracts are awarded, the public works concession contracts and services concession contracts - the forms and documents used, published in Official Gazette 436 of 28 June 2007

²⁵ Law approving Government Emergency Ordinance no. 30/2006 regarding the function of checking the procedural issues related to the award of public procurement contracts, published in Official Gazette 471 of 12 July 2007

²⁶ Order no. 1842 of 12.04.2001 approving the methodological norms for the authorization and making road transport and related activities, published in Official Gazette 58 of 28 January 2002;

²⁷ Case no. 1173 of 02.10.2003 on the allocation and distribution of electronic authorizations for international road transportation of goods, published in Official Gazette no. 722 of October 16, 2003

Today's examples of maladjusted Romanian law initiatives

“There is a need to identify the consumer – should be compulsory for him / her to be above 18 years old. When someone below eighteen is accessing the Web site, we should be able to see and act. When he / she is accessing the Web site, the system should ask for the Personal Identification Number (CNP in original)”. This is a law initiative against pornography in June 2014 (avocatnet.ro). In the initiative, those who had the idea went even deeper with the calculus. They even said that “the state is losing almost 15 million every year because it does not tax those Web sites”. To make it mandatory, by law, to provide the CNP for register to a pornographic Web site is similar in a way to be a party to identity theft.

The article no. 2 from the Government Decision 490/2011²⁸, changed by the Government Decision 1180/2014²⁹ - therefore we can accept that till the end of 2014 it produced effects, sais “in order to preserve the specificity of the urban space, it is forbidden the above-ground installation of any technical equipment that are part of water supply systems, electrical systems, telecommunications, public transportation, heating systems, traffic lightning systems and any of this kind”. In a country were almost half of the population is living in rural areas (INSSE 2016), facing major issues on all those kinds of services, the legislation system is forcing the companies to build below-ground networks everywhere. What are we going to do with the trams and trolleys? What about the traffic lightning, are we going to put all the existing ones below-ground? What about the antennas for the radio and telecommunication systems, they should go below-ground either?

What should be done?

As we can see, some of the initiatives (and not only initiatives) don't rely on anything scientific like an impact study, or a strong research. If we look at the sixth paragraph of the law 24/2000³⁰ regarding the norms on developing the laws with impact on technology, we will see that “the provisions of paragraphs 1-5, [they speak about the fact that it is compulsory to have an

²⁸ Government Decision no. 490/2011 regarding the urban plan published in Official Gazette 361, May 24, 2011.

²⁹ Government Decision no. 1180/2014 regarding the urban plan published in Official Gazette 965, December 30, 2014.

³⁰ Law 24/2000 regarding the norms on developing the laws with impact on technology re published in 2010, Official Gazette 260, April 21, 2010.

impact study for any legislative initiative] is not mandatory for initiatives that comes from the deputies and senators, as well as those that came from the citizens”. This paragraph, the sixth one, should be removed from the law in light.

It is a good idea to have a Technological Council like the Fiscal one, and for it to have the same amount of power in its field as the Fiscal Council.

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