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Chapter IV

Confidence in E-Government: The Outlook for a Legal Framework for Personal Data and Privacy

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ABSTRACT

Since the 1990s, governments have been exploring, and in many cases implementing, e-government in an effort to expand their budgeted services and efficiency. However, the desire to address these needs has often been offset with a basic lack of experience in the field of e-government, forcing governments to act relatively slowly and cautiously to migrate some of the services traditionally offered by paper-based government to e-government. In this new phase of government creation, new rules are being applied, major investments are being made, and the government agencies involved are reorganizing — not without difficulty. This chapter examines the cases of France, Belgium, Canada, the United States and Ireland and how each of these countries is extremely attentive to an important aspect of the successful acceptance of e-government — the protection of personal data — through new regulations, policies and creative, legal innovations.

INTRODUCTION

The practical need for e-government has been emerging slowly but surely since the 1990s in response to certain needs that have been expressed emphatically by users of government services (to save time and money, to get more for their taxes in the form of truly integrated government services, to do business with the government whenever they choose, to obtain information or advice, and conduct simulations). These needs, which are already long-standing, could not be met fully by "p-government" (paper-based government) and have shifted to e-government with hopes renewed by the promises of computerization and the Internet. Wishing to fulfill these needs but lacking experience in the field of e-government, governments are acting relatively slowly and cautiously to migrate some of the services traditionally offered by p-government to e-government, and to renew the content of those services. After making certain administrative forms available online, governments are instituting integrated services provided via "one-stop shops" and comprising customer request processing methods based on front-office and back-office government technology. To this end, new rules are being applied, major investments are being made, and the government agencies involved are re-organizing — not without difficulty.

In recent years, countless experiments have been attempted, successfully, by governments, despite hasty planning for lack of time and experience. Along the way, citizens have become increasingly aware of the new problems posed by e-government, using the experience acquired — sometimes the hard way — with e-businesses' online sales of products and services, and transposing it. E-customers have learned to be wary of certain e-business practices: unfair use of their personal data, and problems involving proof, merchant identity and online contracts. Many Internet users have become mistrustful of online commercial services and are projecting their fears onto e-government.

Legal solutions for the protection of personal data and privacy must be found in order to bolster citizens' faith in e-government. Regulations must take both the public's needs and those of government agencies into consideration. The rules should be different for e-services and p-services.

The cases of France, Belgium, Canada, the United States and Ireland will be examined. Each of these countries is extremely attentive to the protection of personal data. The regulatory provisions already instituted or being developed offer citizens the legal means for protecting their data, and they propose solutions that are relatively different, depending on four factors: the respective roles attributed to the State and to citizens; the prevalence of electronic commerce; the political determination to deliver public services electronically; and the type of law in force — civil law, common law, or both, as in Canada.

France and Ireland are both unitary States, whereas Belgium, Canada and the United States of America have federal structures. But the legal systems are different: France and Belgium are governed by civil law, which gives pre-eminence to the legislature; Ireland and the United States of America are governed by common law, which gives the courts the leading role; and Canada is governed by civil law and common law alike.

In each of these countries, however, and more generally across all of the OECD area, legislation to protect personal data and privacy is new and recent. Everywhere, there is a need for legal innovations. Clearly then, the central lawmaking body is the source of