



### Legal Aspects in German E-Government Developments



#### **Agenda**

- Point of departure
- Specific E-Government Acts
- Further legal foundations for E-Government developments in Germany

## Public Sector Acting in Western / European Democracies substantially impacted by legal foundations



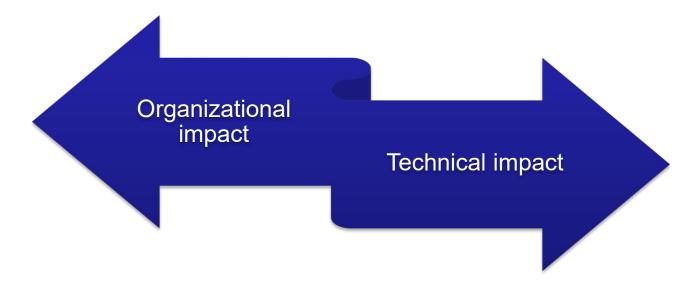
- Principles of administrative action in public service
- Principles of Rule of Law and of Legal Compliance
- Principles of Traceability and of Transparency
- Principles of Democracy
- Principles of Welfare State
- Principles of Efficiency and of Cost Effectiveness

(Schuppert 2000, S. 788 – 793; Alpert, 1999, S. 9-19)

### **Legal preconditions**



Legal foundations impact / shape the design and implementation of e-government solutions



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  - E-Government Acts of the Federal States in Germany
  - E-Government Act in Austria
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## Point of departure and aims of "Act to promote electronic government" - E-Government Act - EGovG



- Point of departure: Agreement of the Coalition treaty of 2009 to further the realization of e-government in Germany
  - Incl. Adjustment of other legal foundations, where and insofar necessary
- Aims of "Act to promote electronic government" E-Government Act therefore
  - > To simplify the electronic communication with public administrations
  - ➤ To enable the State, the Federal States and the Municipalities to offer simpler, user friendlier and more efficient electronic communication to its constituencies

https://www.gesetze-im-internet.de/englisch\_egovg/index.html

### "Act to promote electronic government" (EGovG)



- Published in the Federal Gazette (Bundesgesetzblatt (BGBI.) I p. 2749 on 25.07.2013, enacted on 01.08.2013
- Legal Act implied a number of adjustments to other acts and resulted in several change acts
- Federal Parliament approved the EGovG on 17.04.2013
- Federal Council confirmed the EGovG on 06.06.2013
- To get to the EGovG, several years of discussion and consolidating of the draft act was necessary (see next slide)

https://www.gesetze-im-internet.de/englisch\_egovg/index.html

### Several years of discussion and consolidating of the draft act ... (1/2)



Milestone	Comments on achievement of milestones
4. Quarter 2010: Issuance of a Position Paper with main aspects and framing conditions as well as potential areas of action for an e-government act	Consultations of Associations, Business sector, Academia, Federal Government (Ministries) and Federal States Governments; Areas of action identified No position paper, as it was not seen to be necessary
<b>2011:</b> Decision on the further steps to develop and approve the act; drafting the Act; initializing the legal procedure for the act	After identification of the legal requirements for e-government implementation, the draft act was initialized early 2011.  A so-called "Referentenentwurf" (draft of the Government ministerial subordinate departments) was developed
1. Quarter 2012: Consolidation and agreement process among the different Ministries is initiated, including the involvement of Federal States and large Associations	

### Several years of discussion and consolidating of the draft act ... (1/2)



Milestone	Comments on achievement of milestones
2. Quarter 2012:	The consultation among the Ministerial subordinate
Cabinet consultation	departments in the 1. Quarter 2012 was extensive and lasted longer than foreseen - completed only in the third quarter of
Neuer Termin:	2012. Hence, the consultation within the Cabinet could only be
3. Quartal 2012	started in the 4th Quarter 2012
4. Quarter 2012 to 1. Quarter 2013:	
Federal Council and Federal Parliament	Delays emerged from extensive consultations among the
New deadlines due to delays:	Ministerial subordinate departments
4. Quarter 2012 till 2. Quarter 2013	
Publication of the E-Government Act of the Federal	25.07.2013 – BGBI. I p. 2749
Government	

### Table of Contents of the "Act to promote electronic government" – EGovG (1/2)



Section 1 Scope of application

Section 2 Electronic access to government

Section 3 Information on authorities and their procedures in publicly accessible

networks

Section 4 Electronic means of payment

Section 5 Required documentation

Section 6 Electronic record-keeping

Section 7 Conversion and destruction of the original paper document

Section 8 Access to files

Section 9 Optimization of administrative procedures and information on the status of progress

https://www.gesetze-im-internet.de/englisch\_egovg/index.html

### Table of Contents of the "Act to promote electronic government" – EGovG (2/2)



Section 10 Implementation of standardization resolutions of the IT Planning Council

Section 11 Joint procedures

Section 12 Requirements pertaining to the provision of data, authorization to issue

statutory instruments

Section 13 Electronic forms

Section 14 Georeferencing

Section 15 Official gazettes and journals

Section 16 Barrier-free accessibility

https://www.gesetze-im-internet.de/englisch\_egovg/index.html

### Looking into the "Act to promote electronic government" – EGovG



https://www.gesetze-im-internet.de/englisch\_egovg/index.html

Act to promote electronic government

(E-Government Act - EgovG)

Full citation: E-Government Act of 25 July 2013 (Federal Law Gazette [BGBI.] Part I p. 2749)

The Act was adopted by the Bundestag with the consent of the Bundesrat as Article 1 of the Act of 25 July 2013, I 2749. It entered into force on 1 August 2013 in line with Article 31 (1) of the latter Act. Section 2 (1) shall enter into force on 1 July 2014 in line with Article 31 (2) of the Act. Section 2 (3) and Section 14 shall enter into force on 1 July 2015 in line with Article 31 (3) of the Act. Pursuant to Article 31 (4), Section 2 (2) shall enter into force one calendar year after the launch of the central IT process for the federal administration to provide De-Mail services for federal authorities. Section 6 first sentence shall enter into force on 1 January 2020 in line with Article 31 (5) of the Act.

table of contents

#### Section 1 Scope of application

- (1) This Act shall apply to the administrative activities under public law of the federal authorities, including bodies, institutions and foundations under public law which are directly accountable to the Federal Government.
- (2) This Act shall further apply to the administrative activities of authorities of the Länder, local authorities, local authority associations and other legal entities under public law which are subject to Land supervision in executing federal law.
- (3) This Act shall apply to the activities of court administrations and administrative bodies of the judiciary, including public law entities under their supervision only where such activities are subject to review by the courts of administrative jurisdiction or review by the courts competent in cases concerning the activities of lawyers, patent lawyers and notaries under administrative law.
- (4) This Act shall apply insofar as no federal law or regulation contains identical or conflicting provisions.
- (5) This Act shall not apply to
  - 1. criminal prosecution or the prosecution of and imposition of punishments for administrative offences, judicial proceedings carried out on behalf of foreign legal authorities in criminal and civil matters, tax and customs investigations (Section 208 of the Federal Fiscal Code) or measures relating to the legal status of the judiciary,
  - 2. proceedings at the German Patent and Trade Mark Office or before its appointed arbitrators,
  - 3. administrative activities pursuant to Book Two of the Social Code.

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### E-Government Acts at the level of Federal States (1/4)



Federal State	Link	Entered into force
Radon Wurttomborg	http://www.landesrecht- bw.de/jportal/?quelle=jlink&query=EGovG+BW&psml=bsbawueprod. psml&max=true&aiz=true	1.1.2016
Baden-Wurttemberg	https://www.gesetze-bayern.de/Content/Document/BayDiG	08.11.2016
Bavaria (1)		New: 22.07.2022
Berlin	http://gesetze.berlin.de/jportal/?quelle=jlink&query=EGovG+BE&ps ml=bsbeprod.psml&max=true	30.5.2016
Nordrhine- Westphalia	https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=2&gld_nr=2&ugl_n r=2006&bes_id=34925&aufgehoben=N&menu=0&sg=0	16.7.2016

### E-Government Acts at the level of Federal States (2/4)



Federal State	Link	Entered into force
Mecklenburg- Vorpommern	https://www.landesrecht-mv.de/bsmv/document/jlr-EGovGMVV7IVZ	25.04.2016
Saarland	https://recht.saarland.de/bssl/document/jlr-EGovGSLV4IVZ	15.11.2017
Sachsen	https://www.revosax.sachsen.de/vorschrift/14070-Saechsisches-E- Government-Gesetz	08.11.2019
Schleswig- Holstein	https://www.gesetze-rechtsprechung.sh.juris.de/bssh/document/jlr- EGovGSH2009V4P3	31.07.2009
	https://www.landesrecht.sachsen-anhalt.de/bsst/document/jlr- EGovGSTrahmen	27.07.2019
SACHSEN-ANHALT		

### E-Government Acts at the level of Federal States (3/4)



Federal State	Link	Entered into force
Rhineland Palatinate	https://landesrecht.rlp.de/bsrp/document/jlr-EGovGRPrahmen	15.10.2020
Hessen	https://www.rv.hessenrecht.hessen.de/bshe/document/jlr- EGovGHEpP7	12.09.2018
Freie Hansestadt Bremen	https://www.transparenz.bremen.de/metainformationen/gesetz-zur- foerderung-der-elektronischen-verwaltung-in-bremen-vom-20-maerz- 2018-112242?template=20 gp ifg meta detail d	21.03.2018
Brandenburg	https://bravors.brandenburg.de/gesetze/bbgegovg/2	23.11.2018
Thüringen	https://landesrecht.thueringen.de/bsth/document/jlr-EGovGTHpP1	10.05.2018

### E-Government Acts at the level of Federal States (4/4)



Federal States with no E-Government Acts but similar regulations

Hamburg: Transparency act established on 19.06.2012: https://www.landesrecht-hamburg.de/bsha/document/jlr-TranspGHArahmen

Niedersachsen: Act on Digital Administration and Information Security (NDIG) approved on 02.11.2019: <a href="https://voris.wolterskluwer-">https://voris.wolterskluwer-</a> online.de/browse/document/cite/ed67901d-0ff4-361c-a60b-873e37b77fb2

## E-Government Act (EGovG) in Schleswig-Holstein (SH) (1/2)



- Act for the digital administration in the Federal State Schleswig-Holstein (SH) of 08.07.2009, GVOBI. 398 of 30.07.2009
- SH first Federal State in Germany with E-Government Act
  - Established with respect to the EU-Services Directive of 2006
- Legal frame for modern ICT use to achieve
  - > A modern and performant public administration in SH
    - By simplifying IT services for public sector
    - By improving the performance of the public administration in SH
    - By improving efficiency of public sector action
  - Embedding the Federal State's public administration in the federal structures of the Federal Republic of Germany and the Network of public administrations in the European Union

https://www.gesetze-rechtsprechung.sh.juris.de/bssh/document/jlr-EGovGSH2009V4P3

## E-Government Act (EGovG) in Schleswig-Holstein (SH) (2/2)



- Part I: General Frame for E-Government
  - § 3: Principles of Data protection
  - ➤ § 4: Cooperative electronic communication among all Actors of public sector (incl. fundamental avoidance of discrimination, i.e. everybody must have the same right of access to public service)
- Part II: Measures for E-Government
  - § 5: Cross-organizational procedures among public administrations
  - § 6: Cross-organizational collaboration among public administrations in digital public service provisioning
  - § 7: Use of open standards and open software, sustainable IT
  - > § 8: Automatising public administration procedures
  - § 9: Implementing of policy decisions on standardization of the IT- Planning Council
  - > § 10: Electronic forms
  - § 11: Cross-organizational electronic communication

https://www.gesetze-rechtsprechung.sh.juris.de/bssh/document/jlr-EGovGSH2009V4P3

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### E-Government Act in Austria in the context of fundamental legislation for digitalization



- Signature Act (SigG)
- ❖ Data protection act 2000 (DSG2000)
- E-Government act (E-GovG 2004)
- Delivery act (ZustellG)

- General Public Administration Procedural Act 1991 (AVG) – amendments for digitalization
- A number of Ordinances

(see Austrian official online gazette for legislation (freely available) <a href="http://ris.bka.gv.at/bundesrecht/">http://ris.bka.gv.at/bundesrecht/</a>)

#### E-Government Act in Austria since 2004



- Entered into force on 01.03.2004
- Amendments since 2008
  - > BGBI. I Nr. 7/2008
  - > BGBI. I Nr. 111/2010
  - > BGBI, I Nr. 50/2016
  - > BGBl. I Nr. 40/2017
  - > BGBl. I Nr. 121/2017
  - ➤ BGBI. I Nr. 32/2018
  - > BGBI. I Nr. 104/2018
  - > BGBI. I Nr. 169/2020
  - > BGBI. I Nr. 119/2022

English Version with last amendment of 104/2018, 1 January 2020 <a href="https://www.ris.bka.gv.at/Dokumente/Erv/ERV">https://www.ris.bka.gv.at/Dokumente/Erv/ERV</a> 2004 1 10/ERV 20 04 1 10.html

https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003230

#### **Table of Contents of Austrian EGovG (1/3)**



https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003230

- Part 1. Scope and objectives of the Act
- **♦** § 1.
  - § 1a. Right to electronic interaction
  - § 1b. Participation in electronic delivery by businesses
- **Part 2.** Unique Identification and E-ID function
- § 2. Definition of terms (incl. eIDAS definitions being valid)
- ❖ § 3. Identity and Authenticity
- ❖ § 4. E-ID function
  - § 4a. Registering and revocation of E-ID
  - § 4b. Registration data

- ❖ § 5. E-ID and Mandate
- ❖ § 6. Stammzahl (unique identifier)
  - § 6a. Complementary register for natural persons
- § 7. Authority for Register of Stammzahlen
- § 8. Unique identification in Data processing
- § 9. Domain specific person identifier (Personenkennzeichen - bPK)
- § 10. Issuance and requirements of bPK and Stammzahlen for non-natural persons

### **Table of Contents of Austrian EGovG (2/3)**



https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003230

- **Part 2.** Unique Identification and E-ID function (cont'd)
- § 11. Transparency of bPK in communication
- § 12. Protection of Stammzahl of natural persons
- § 13. Further guarantees to protect bPK
- Part 3. Use of the E-ID function in private areas or in use in other countries
- § 14. Issuance of bPK for use of E-ID for personal use / in private areas

- § 14a. E-ID-enabled applications in other countries
- § 15. Guaranties for the protection of Stammzahl and bPK along computation in private areas
- Part 4. Electronic data / evidences
- § 16. for person-related data about independent economic activity
- § 17. for person-related data from registers
- § 18. about person-related data from electronic registers of a responsible actor of the public or private sector





https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003230

### **Part 5.** Peculiarities of electronic records handling

- ❖ § 19. Amtssignatur (formal signature)
- ❖ § 20. Evidentiary value of printouts
- § 21. Presentation of electronic records

Part 5a. Liability regulations

❖ § 21a. Liability

Part 6. Sanctionary regulations

§ 22. Inappropriate / non-allowed computation of Stammzahl or bPK or inadmissible use of Amtssignatur

### **Part 7.** Transition regulations and closing clauses

- § 23. Equal treatment of language
- ❖ § 24. Entering into force of this act
- ❖ § 25. Transition regulations
- § 26. Entering into force of related bylaws
- ❖ § 27. Remittal
- ❖ § 28. Execution

#### **Looking into the Austrian E-Government Act**



https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003230

#### 1. Abschnitt

#### Gegenstand und Ziele des Gesetzes

- § 1. (1) Dieses Bundesgesetz dient der Förderung rechtserheblicher elektronischer Kommunikation. Der elektronische Verkehr mit öffentlichen Stellen soll unter Berücksichtigung grundsätzlicher Wahlfreiheit zwischen Kommunikationsarten für Anbringen an diese Stellen erleichtert werden.
- (2) Gegen Gefahren, die mit einem verstärkten Einsatz der automationsunterstützten Datenverarbeitung zur Erreichung der in Abs. 1 genannten Ziele verbunden sind, sollen zur Verbesserung des Rechtsschutzes besondere technische Mittel geschaffen werden, die dort einzusetzen sind, wo nicht durch andere Vorkehrungen bereits ausreichender Schutz bewirkt wird.

(Anm.: Abs. 3 aufgehoben durch Art. 1 Z 1, BGBl. I Nr. 104/2018)

#### Recht auf elektronischen Verkehr

- § 1a. (1) Jedermann hat in den Angelegenheiten, die in Gesetzgebung Bundessache sind, das Recht auf elektronischen Verkehr mit den Gerichten und Verwaltungsbehörden. Ausgenommen sind Angelegenheiten, die nicht geeignet sind, elektronisch besorgt zu werden. Personen in gerichtlich, finanzstrafbehördlich oder gemäß § 53d des Verwaltungsstrafgesetzes 1991, BGBI. Nr. 52/1991, verwaltungsbehördlich angeordnetem Freiheitsentzug können dieses Recht nur nach Maßgabe der diesbezüglich in den Vollzugseinrichtungen vorhandenen technischen und organisatorischen Gegebenheiten ausüben, sofern dies vollzugsrechtlich zulässig ist und dadurch keine Gefährdung der Sicherheit und Ordnung zu erwarten ist.
- (2) Etwaige technische Voraussetzungen oder organisatorische Beschränkungen des elektronischen Verkehrs sowie der Zeitpunkt der Aufnahme des elektronischen Verkehrs sind im Internet bekanntzumachen.

#### Teilnahme an der elektronischen Zustellung durch Unternehmen

- **§ 1b.** (1) Unternehmen im Sinne des § 3 Z 20 des Bundesgesetzes über die Bundesstatistik (Bundesstatistikgesetz 2000), <u>BGBl. I</u> Nr. 163/1999, haben an der elektronischen Zustellung teilzunehmen.
- (2) Die Teilnahme an der elektronischen Zustellung ist dann unzumutbar, wenn das Unternehmen nicht über die dazu erforderlichen technischen Voraussetzungen oder über keinen Internet-Anschluss verfügt.
- (3) Die Teilnahme ist längstens bis 31. Dezember 2019 auch unzumutbar, wenn das Unternehmen noch nicht Teilnehmer des Unternehmensserviceportals ist sowie bei Fehlen elektronischer Adressen zur Verständigung im Sinne des Zustellgesetzes.
- (4) Unternehmen können der Teilnahme an der elektronischen Zustellung widersprechen. Dieser Widerspruch verliert mit 1. Jänner 2020 seine Wirksamkeit, ausgenommen für Unternehmen, die wegen Unterschreiten der Umsatzgrenze nicht zur Abgabe von Umsatzsteuervoranmeldungen verpflichtet sind.

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# Examples of regulations of the EU with strong implications on national e-government developments



- EU Service Directive
  - http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:32006L0123
- Public Procurement Directives
  - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014L0024-20240101
- elDAS Regulation
  - ➤ <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0910-20140917">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0910-20140917</a>
- General Data Protection Regulation
  - ➤ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R0679-20160504
- Single Digital Gateway Regulation
  - ➤ https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017PC0256

# Examples of regulations in Germany with strong implications on e-government implementations (besides the EGovG and OZG)



- Verwaltungsverfahrensgesetz (Public Administration Procedures Act) VwVfG
  - https://www.gesetze-im-internet.de/vwvfg/index.html
- DE-Mail Act
  - http://www.gesetze-im-internet.de/de-mail-g/
- Register Modernization Act (RegMoG)
  - https://www.onlinezugangsgesetz.de/SharedDocs/downloads/Webs/OZG/DE/Registerm odernisierungsgesetz.pdf? blob=publicationFile&v=1

#### **Transparency acts**



#### Overall aims

- Access to formal administrative information and to environmental information to improve transparency and openness of public administrations in federal States
- ➤ Furthering democratic opinion-building in society, enabling and improving the exertion of control and monitoring of public sector action and decision-making by citizens, improving traceability and accountability of political decision-making, improving the possibilities of democratic participation and of using the Internet for the dialogue between State and society
- Transparency and openness are constrained by contrasting areas where data has to be protected

### Transparency acts e.g. in ...



- Hamburg: <a href="http://www.hamburg.de/transparenzgesetz/">http://www.hamburg.de/transparenzgesetz/</a>
- Rhineland-Palatinate: <a href="https://transparenzgesetz.rlp.de/transparenzrlp/de/home">https://transparenzgesetz.rlp.de/transparenzrlp/de/home</a>
- Northrhine-Westphalia:
  <a href="https://recht.nrw.de/lmi/owa/br\_vbl\_detail\_text?anw\_nr=6&vd\_id=11866&menu=1&sg=0&keyword=Transparenzgesetz">https://recht.nrw.de/lmi/owa/br\_vbl\_detail\_text?anw\_nr=6&vd\_id=11866&menu=1&sg=0&keyword=Transparenzgesetz</a>
- Niedersachsen: Discussions <a href="https://transparenzgesetz-nds.de/">https://transparenzgesetz-nds.de/</a>
- Berlin: <a href="https://transparenzgesetz.de/">https://transparenzgesetz.de/</a>
- Sachsen: <a href="https://www.sms.sachsen.de/saechsisches-transparenzgesetz-8999.html">https://www.sms.sachsen.de/saechsisches-transparenzgesetz-8999.html</a>

# Ordinance to establish barrier-free Information Technology along Act on Non-discriminiation of people with disabilities (BITV 2.0)



- Ordinance of 12.09.2011 (BGBI. I S. 1843)
- Ordinance must be fulfilled by all Federal Government Agencies:
  - Internet presences and offers
  - Graphical user interfaces of programs which are accessible online
- Ordinance requires involvement of people with special needs in the design and it requires the use of technical standards that ensure barrier-free access to any public administration information and services on the Internet

https://www.gesetze-im-internet.de/bitv 2 0/BJNR184300011.html

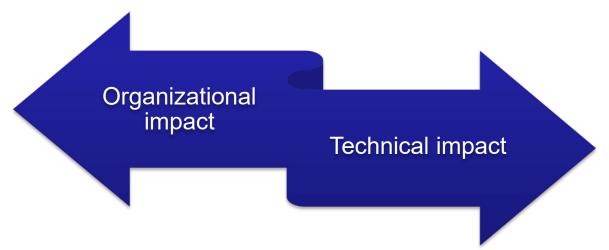


#### **Discussion** ...

## Discussion on Legal Foundations impacting the design and implementation of e-government solutions



What organizational impacts exist? Examples



What technical impacts exist? Examples ... ...



