



eEnviPer White Paper #5

Access to Information, Privacy Protection and Freedom of Speech

January 2014
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Executive summary

eEnviPer is an integrated web-based platform for the application, administration and consultation of environmental permits. Its aim is to make the environmental permitting process more transparent, more accessible and more efficient. The platform will be available commercially in early 2014, after intensive pilot tests in five European countries which have taken place as part of an EU-funded project.

eEnviPer uses a layered service-oriented and cloud-based architecture to take advantage of existing data sources and complementary environment-related permit systems. Cloud-based e-government services raise concerns among many users and public authorities about the legal and ethical implications of the use of such services. eEnviPer, being a cloud-based e-government service that handles environmental permitting procedures, must face and address issues related to both environmental protection and e-government.

eEnviPer has analysed the relevant legal texts and recommendations to ensure that they are all addressed in every phase of eEnviPer's support to e-government permitting procedures.

This paper presents the implications of **access to information, privacy protection** (including data security) and **freedom of speech** for eEnviPer, and demonstrates how the platform complies with applicable European and national legal acts that regulate ethical and legal issues regarding both e-government and environmental protection.

Introduction

The European Commission recognizes the importance of cloud computing and the benefits it brings: the strategy for “Unleashing the Potential of Cloud Computing in Europe”¹ was adopted in September 2012. The strategy outlines the benefits of cloud computing for businesses (especially small- and medium-sized enterprises) and public authorities, both of which are expected to benefit substantially from cloud adoption both in terms of efficiency savings and more flexible services tuned to the needs of citizens and business.

However, many users and public authorities in particular are concerned about the legal and ethical challenges of using cloud-based e-government tools. Various aspects of eEnviPer present potential ethical and legal issues:

- It is an e-Government service and involves citizen interaction;
- It is related to environmental issues and provides access to information;
- It provides GIS tools to allow users to access the relevant spatial data/information; and
- Human subjects are involved in the testing and exploitation phase and need to know that their data is safe.

In this paper, we will review the following cross-cutting ethical and legal issues:

1. **Access to information** (which includes access to environmental information, intellectual property rights issues and accessibility of the system);
2. **Privacy protection** (including data security and privacy issues); and
3. **Freedom of speech.**

Each of these issues is described in more detail the following sections. eEnviPer has analysed the relevant legal texts and recommendations to ensure that these issues are all addressed in every phase of eEnviPer's support to e-government permitting procedures. The analysis of the relevant national legislation² in the eEnviPer pilot countries has revealed a high degree of harmonization with the EU legislation, which allows a relatively general approach to ethical issues the in pilot countries and other European countries.

¹Available at <http://ec.europa.eu/digital-agenda/en/european-cloud-computing-strategy>.

² Protic et al., Ethical and Legal Analysis Report, CIP-297358, Deliverable D6.1-V1.1, November 2012.

2. Access to information

The framework for access to information related to the environment is outlined in the Convention on access to information, public participation in decision-making and access to justice in Environmental Matters (**Aarhus Convention**) signed in 1998 and ratified by most of the European countries and the European Union (decision 2005/370/EC). This Convention contains three groups of principles:

- **The right of citizens to access information:** *“Any environmental information held by a public authority must be provided when requested by a member of the public, unless it can be shown to fall within a finite list of exempt categories”;*
- **The right of citizens to participate in decisions about the environment:** *“The Convention sets out minimum requirements for public participation in various categories of environmental decision-making”;*
- **The right to access the justice when the previous two rights are violated:** *“The third pillar of the Convention (article 9) aims to provide access to justice in three contexts:*
 - *review procedures with respect to information requests*
 - *review procedures with respect to specific (project-type) decisions which are subject to public participation requirements, and*
 - *challenges to breaches of environmental law in general.*

Thus the inclusion of an 'access to justice' pillar not only underpins the first two pillars; it also points the way to empowering citizens and NGOs to assist in the enforcement of the law” (source: UNECE³).

2.1 Legal foundation

The principles of the Aarhus Convention mentioned above form the foundation for the relevant European Union legislation.

The Directive 2007/2/EC of the European Parliament (**INSPIRE Directive**) aims to establish an infrastructure for spatial information in the European Union for the policies and activities that may have an impact on the environment. According to the INSPIRE Directive, **spatial data relevant for the environment** have to be available to everybody for viewing purpose free of charge. Both spatial data (relevant for the environment) and spatial data services bring benefits of better environmental

³www.unece.org

assessment and also benefits for the society: increased efficiency or effectiveness of the public sector organizations, greater business opportunities for private sector⁴.

The INSPIRE Directive provides a reference to other directives that can be applied to geographic data sets and services, such as Directive 2003/4/EC on public access to environmental information and Directive 2003/98/EC on re-use of public sector information (**PSI Directive**).

The **2003/4/EC Directive** on public access to environmental information regulates the rules that ensure free access to and dissemination of environmental information held by public authorities, and defines the basic terms and conditions under which such information should be made available. The 2003/4/EC Directive aims to guarantee that environmental information is systematically available and disseminated to the public, including:

- International, national, regional and local agreements on the environment;
- Policies, plans and programmes on the environment;
- Reporting on the state of the environment; and
- Study of environmental impact and risk assessment.

EU Member States must guarantee that public authorities make **environmental information in their jurisdiction available to any person** or legal entity upon request.

However, environmental impact studies often contain data/information to which various intellectual property rights (such as copyrights, database rights, patents, etc.) have to be applied. This calls for a delicate balance between the principles of data availability and a need to protect those rights. Therefore, in order to protect such rights, different limitations on the use and management of information have to be applied. The two most common scenarios are:

- Environmental consultants working on environmental impact studies can apply intellectual property rights to the data/information they produced; and
- Investors may want to protect confidential industrial information or a patent included in an EIA.

According to the Aarhus convention, if environmental impact studies contain confidential information (e.g., certain information on commercial and industrial aspects or intellectual property rights), disclosure of the information is not mandatory.

⁴Craglia M, Pavanello L, Smith R. 2010. The Use of Spatial Data for the Preparation of Environmental Reports in Europe. EUR 24327 EN. Luxembourg (Luxembourg): Publications Office of the European Union.

2.2 eEnviPer response

One of the core purposes of eEnviPer is to make the environmental permits process more **transparent**, giving citizens **access to relevant information** about current procedures and documents relating to the environment. To this end, the eEnviPer platform integrates existing systems that provide digital services for environmental permits procedures, including:

- Workflow systems that facilitate the issue and monitoring of environmental permits by providing digital services to enterprises.

At any given moment, interested citizens can use eEnviPer to search for active environmental permits processes, as well as to access the archives for past processes. They can also access: correspondence between an investor and the public authority; documents, forms, decisions sent by any one of the sides; information on the investor; location of the project; and other data that show the potential impact of the project on the environment.

- Knowledge management systems (KMS) that empower environmental engineers during the elaboration of environmental impact studies.

KMS contains legal acts related to environmental protection and permitting, former EIAs that should serve as an example for professionals working on new EIAs, different forms required during the procedure, manuals and metadata.

- Geographic Information System (GIS) decision support systems for public authorities.

The complex social, economic, physical, cultural, and ecological analysis contained in environmental impact studies can be difficult to understand for citizens, and as a result they do not often contribute to the expert-heavy formal procedures of the environmental permits process. This may lead to citizens feeling excluded or disempowered. Accessing environmental information through a GIS such as the **eEnviPer GIS platform** can make the results of an environmental impact study **more understandable to a broader community audience**, and enable citizens to contribute more meaningfully to the process⁵.

⁵Alagan, R., 2007, Participatory GIS Approaches to Environmental Impact Assessment: A Case study of the Appalachian Corridor H Transportation Project, PhD dissertation, College of Arts and Sciences at West Virginia University.

- Participatory Web 2.0 platforms that encourage public consultation in environmental issues.

Besides access to information, and insight into all active procedures that eEnviPer allows, citizens and interested groups can actively get involved in the decision-making process through the public consultation module. In this module, citizens can leave comments on the current environmental permits processes, and more easily express their opinion and communicate with the public authority.

3. Privacy protection (including data security)

E-government services allow people to perform different kinds of transactions through web browsers, no matter where they are or when they are performing the tasks. The use of an e-government service can raise ethical issues connected to government transactions, no matter what technology is used to execute them. At the same time, there are ethical issues that are specific to the electronic nature of the service. Considering the nature and the purpose of eEnviPer, the solution has to respect, among others, the principles of **privacy protection** and **data security**.

Privacy is ensured by the protection of personal data. According to the EC Data Protection Directive (95/46/EC), **personal data** “means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one of more factors specific to his physical, physiological, mental, economic, cultural or social identity”.

Data must therefore be secure from viruses, hacker attacks, forgery, etc. This security means protection of information and information systems by ensuring **confidentiality, availability, integrity, authentication, and non-repudiation**.

3.1 Legal foundation

There are several legal acts within the EU legislation that address and regulate the protection of privacy:

- **Charter of Fundamental Rights of the EU**

Article 7 states that “everyone has the right to respect for his or her private and family life, home and communications”.

Article 8 regulates that “everyone has the right to the protection of personal data concerning him or her” and that processing of such data must be “on the basis of the consent of the person concerned or some other legitimate basis laid down by law”.

- **Directive 95/46/EC (Data Protection Directive)**

The Directive regulates the processing of personal data regardless of whether such processing is automated or not. The principle is that personal data should not be processed at all, except when certain conditions are met.

- **Directive 2002/58/EC (Directive on privacy and electronic communications, also known as e-Privacy Directive)**

This Directive concerns the processing of personal data and the protection of privacy in the electronic communications sector and deals with the regulation

of a number of important issues such as confidentiality of information, treatment of traffic data, spam and cookies.

- **Directive 2009/136/EC (Cookie Directive)**

This Directive amended Directive 2002/58/EC, requiring end user consent to the storing of cookies on their computer. Cookies are hidden information exchanged between an Internet user and a web server stored in a file on the user's hard disc. They can be used to monitor internet activities of the user.

- **Directive 2009/136/EC of the European Parliament and of the Council**

This directive amends the Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sectors, and Regulation (EC) No 2006/2004 on consumer protection cooperation.

3.2 eEnviPer response

eEnviPer respects the legal requirements for data security, and enables access to the same data that is otherwise available by in-person requests and through paper documents.

eEnviPer addresses data security (confidentiality, availability, integrity, authentication and non-repudiation) as follows:

- **No confidentiality** is required as environmental permitting is subject to the general principal of transparency applied to environmental issues. eEnviPer allows citizens to participate anonymously and does not store cookies on users' computer, to prevent any unauthorized tracking of their Internet activities.
- Data/information about a particular environmental permit has to remain **available** for use by authorities, environmental experts and investors; only authorized persons can remove it, in accordance with the law.
- **Integrity**: only authorized persons can modify the data/information, in accordance with the relevant national law.
- **Authentication** must be preserved (data/information must be authentic). eEnviPer stores which user submitted which information and can backtrack .
- No one that participated in the process should be able to **repudiate** with regards to the provided data/information. The trace of every transaction is preserved on the eEnviPer. If users submit comments, they cannot later say that they did not do it.

4. Freedom of speech

Modern environmental protection procedures rely on the Aarhus convention and adopt its principles as a foundation and mechanism that enable participation of citizens in decision-making. It states that citizens have the right to participate in decisions about the environment. That implies that citizens not only have access to the environmental information, but also have the opportunity to state their opinion on the subject. In this context, freedom of speech plays an important part in ensuring that mechanisms for environmental protection work by not only allowing interested citizens to access the information and submit opinions, but also by enabling them to share those opinions with others and raise alert in cases where environmental issues occur.

However, as citizens and interested groups can participate in the environmental permitting process, defamation and insults are possible. It could potentially be a significant problem especially when web based systems (such is the eEnviPer participatory system for citizens) are used for public participation, as the influence of the messages is highly increased. However, banning defamation can be seen as censorship and opposed to the freedom of expression.

4.1 Legal foundation

The Decision on conclusion of the Aarhus Convention by the EC was adopted on 17 February 2005 (2005/370/EC: Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters).

Public participation is covered in Article 6 of the Convention - Public Participation in Decisions on Specific Activities. Paragraph 5 states that “each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to **enter into discussions**, and to provide information regarding the objectives of their application before applying for a permit”. Paragraph 7 states that “procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

Whether comments, information, analyses or opinions are relevant, is determined in the first place by the citizen of the public submitting them. As long as the member of the public considers the matter to be relevant to the proposed activity, the public authority **must receive it**. The subsequent weight to be given during the decision-making to the particular comments, information, analyses or opinions submitted will be a matter for the decision maker, so long as due account of each comment is taken

in accordance with article 6, paragraph 8 (“each Party shall ensure that in the decision due account is taken of the outcome of the public participation”)⁶.

The context of the restriction of the freedom of expression is governed by the **European Convention of Human Rights**. Article 10 of the Convention allows restrictions of the freedom of expression right for the protection of the reputation or the rights of others.

In many European countries defamation is recognized as a crime. An overview of national legislations concerning defamation in European countries can be found on the website of the Council of Europe.

4.2 eEnviPer response

eEnviPer needed to find a balance between empowering citizens to express their opinion on environmental issues, but not allow itself to become a tool for exchange of insults or accusations.

Citizens can use the forms provided by eEnviPer to post comments during the phase when commenting is allowed by the public authority. By allowing citizens to leave comments regarding procedures, eEnviPer enables them to participate in decision-making in an easy, time-efficient way. In this way, eEnviPer directly supports the second pillar of the Aarhus convention, allowing for an easy way for public to submit comments, information, analyses or opinions during the public participation procedure.

The public authority cannot reject any comments, information, analyses or opinions on the ground that the particular member of the public is not a part of the public concerned.

However, citizens’ comments are not visible to other members of the public before the public authority legal and ethical expert has checked it and authorised its publication. In this way, eEnviPer protects others involved in the procedure from possible defamation. However, any censorship of messages is tracked in the system, so that decisions can be justified on request of the users to avoid any misuse of power.

⁶ The Aarhus Convention: An Implementation Guide, Second edition, 2013

5. Conclusions

As an e-government system that enables management in of environmental permits processes, eEnviPer addresses certain ethical and legal issues regarding both e-government and environmental protection. It must comply with a number of European and national legal acts that regulate these issues.

Privacy protection and data security are two of the major issues, and are thoroughly addressed in the EU legislation. Although the invasion of privacy is a problem that exists in offline systems as well, electronic environment brings an additional special dimension.

eEnviPer deals with the problem by allowing citizens to participate anonymously and not storing cookies on the users' computers. It also provides a sufficient level of security by ensuring confidentiality, availability, integrity and authentication.

However, anonymity opens the possibility for using the participatory system for defamation, without the possibility of being charged. To avoid this problem, eEnviPer makes the comments visible only after they have been approved by the relevant person within the public authority.

In conclusion, eEnviPer complies with all the requirements imposed by the relevant legislation and provides safe and reliable solution for the application, administration and consultation of environmental permits.