

Regulatory and legal aspects of eldentity: New challenges and possible solutions

XXIV Jornad@s de Coordinación de Defensores del Pueblo
19 – 21 October , Andalucía



Presented by Claudio Feijóo

Based on a teamwork from Anssi Hoikkanen, Wainer Lusoli, Ramón Compañó, Ioannis Maghiros, Margherita Bacigalupo

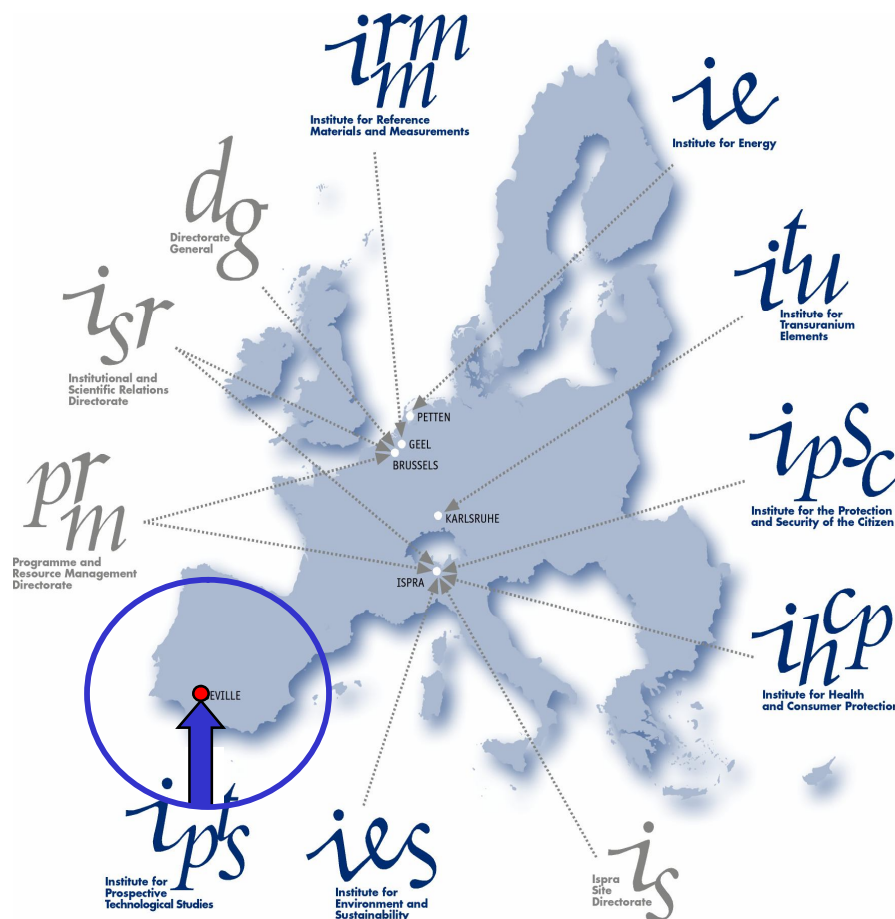
Institute for Prospective Technological Studies - IPTS
Joint Research Centre - European Commission
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- Who we are**
- Why? Policy relevance of eldentity**
- Recent developments in eldentity**
- Challenges for policymakers**
- Potential policy responses**
- Conclusions**

European Commission – Joint Research Centre Institute for Prospective Technological Studies (IPTS)



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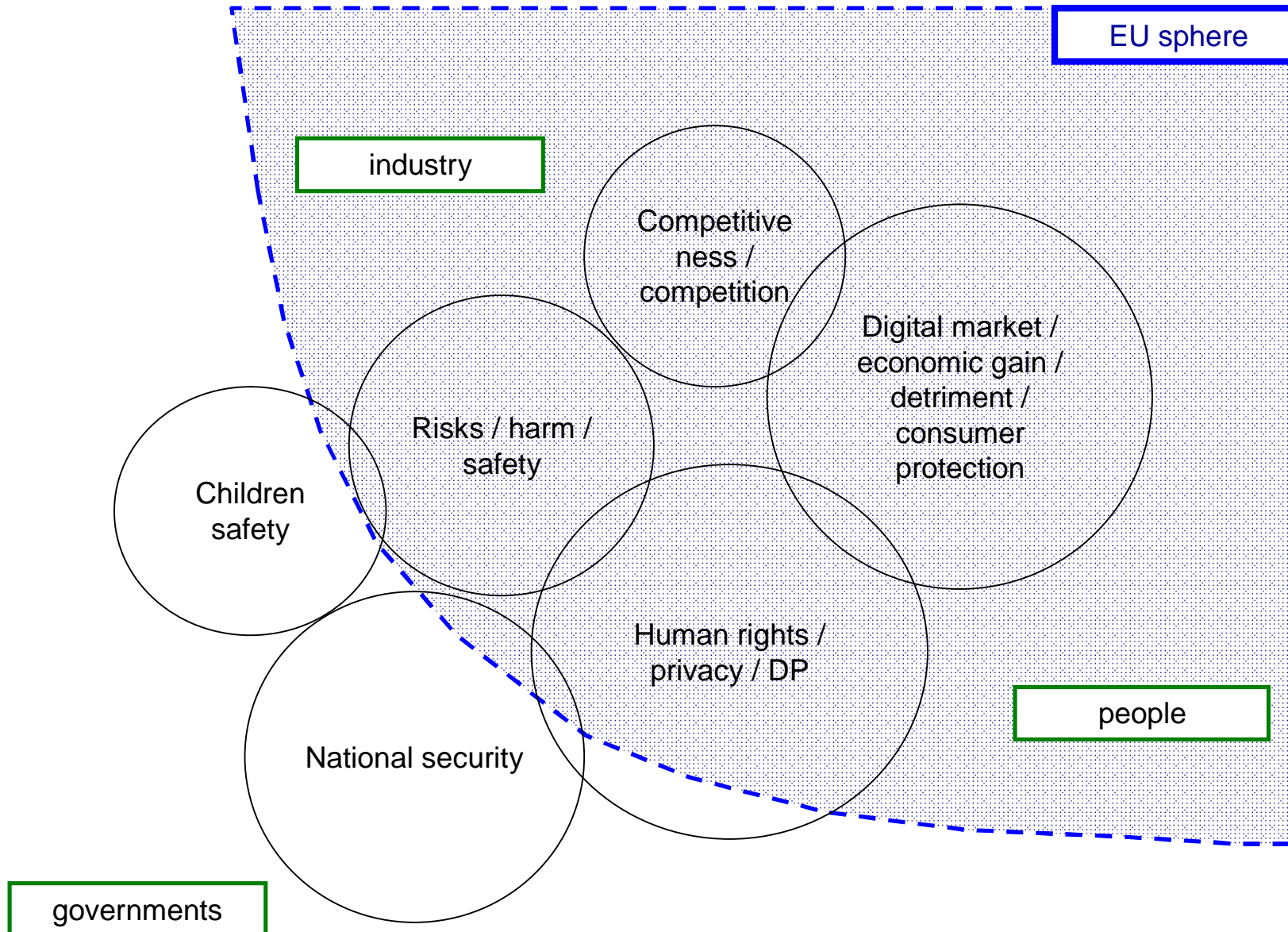
Mission:
“to provide customer-driven support to the EU policy-making process by researching science-based responses to policy challenges that have both a socio-economic as well as a scientific/technological dimension”

□ Digital identities are of vital importance to citizens, governments and businesses

- ↘ Growth of content and services over digital infrastructure
- ↘ People moving in and out of analogue and digital spaces
- ↘ Maximising the benefits to society and economy

□ EC has repeatedly expressed the importance of regulation in maximising the potential and minimising the risks of eldentity

- ↳ Importance of citizen confidence and trust
 - Only when European citizens are aware of, understand and fully enjoy the 'digital rights' granted to them by the current EU regulation, will consumer confidence and the single market for eldentity blossom
- ↳ Perceived need to revise and update the current EU regulation to reflect the new developments in eldentity
- ↳ Data Protection directive, ePrivacy directive, a range of related legislation, ... BUT, no single framework and still many gaps subject to interpretation



- ❑ States have long lost the near monopoly they once enjoyed on their citizens' identities
 - ↳ **ICT companies and identity assurance providers have all but supplanted public authorities as largest controllers of people's identity**
 - ↳ **Provision of credentials, identification, authentication, authorisation**

- ❑ More and more of personal space is being recorded in identity-related transactions
 - ↳ **Proliferation of identity management systems, no single technical framework for eID in Europe or elsewhere**

- ❑ State surveillance casting an increasingly wide net over citizen activities

- **Direction of development?**
 - ↳ **Fragmentation, decentralisation, user-chosen identity**
 - ↳ **Increased centralisation, more gov't and business control**

- **Consumers have increasing legal responsibility for their actions online**
 - ↳ **Importance of technical & legal literacy for citizens, businesses, developers, policymakers, lawyers and judges, ..., ombudsman ...**

We can distinguish five main challenges for policymakers

- ↘ eldentity as a new legal category
- ↘ Issues related to identity rights
- ↘ Market development related challenges
- ↘ Government as both friend and foe
- ↘ Proliferation of identity management systems

- ❑ No common terminology
- ❑ Limited awareness in policy circles
- ❑ Relation of eldentity and data protection is unclear
 - ↳ eldentity is a much wider concept
 - ↳ Data protection rules do not address the core challenges
 - Extension of identity by digital means
 - Increasing number of actors
 - Multiplication of identifiers
- ❑ Provider of identity: state, user, other means
=> further complexity for legislators

- ❑ Does identity exist as a human right?

- ❑ Two different understandings of identity rights
 - ↘ **The right to identity: the right to be able to identify oneself, and not to be forced to do so**

 - ↘ **The right not to be misrepresented: protection against fraud, unsafe storage of data, etc.**

- ❑ Companies operating in multiple markets may, in some instances, be inadequately covered by regulation
 - ↘ **Need for a common structure of incentives and disincentives, both financial and legal**
 - ↘ **Ensure application of Competition law on companies in dominant market positions**
- ❑ Need to more clearly distinguish between the EU market and the EU – non-EU transactions
- ❑ Infomediaries (gatekeepers such as Facebook, Google) have access to huge amounts of data
- ❑ Economics of eldentity are not properly understood at the moment

- ❑ Tension between user-chosen identity (eId) and government-provided identity (eID)
 - ↳ **Gov't faces increasing challenges in terms of ensuring personal data privacy**
 - ↳ **Long-term storage, appropriate use of data, eliminating data when no longer needed ...**
- ❑ Differing practices within governments
- ❑ Gov't as an actor, not just a regulator

- ❑ Numerous digital identification systems and techniques
 - ↳ Different identity attributes
 - ↳ Different standards and technical implementations
 - ↳ Different levels of assurance
- ❑ Need to provide guidance and improve awareness
 - ↳ Accountability and transparency of systems is crucial
- ❑ Difficulty of making *informed* choices

□ Four clusters of possible policy responses

- ↳ Create a single market for eidentity regulation
- ↳ Compliance and enforcement of existing regulation
- ↳ Identity by design
- ↳ Soft law and alternative regulatory mechanisms

- Best available techniques (BATs)**
 - ↘ **Guidelines for compliance**
 - ↘ **Recommendations**

- Compliance-inducing regulations**
 - ↘ **Codes of Conduct**

- Facilitate societal discussion**

- Much conceptual work to be done before any structured attempt to reform the legislation can begin
- Legal framework must define what is meant by identity-related rights
- Government must take an active role in providing an incentive structure to industry
- Gov't no longer the sole provider of identity; need to address resulting new challenges to data protection and privacy
- Need to establish an “eld observatory” and to compile a repository of who is doing what (private, public, 3rd sector)

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