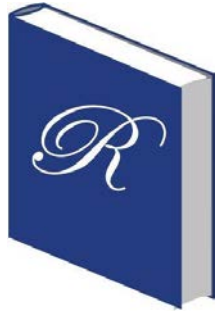




# Round Table discussion 2: Legal issues

Round Table on Single Window Interoperability

18-19 February 2015

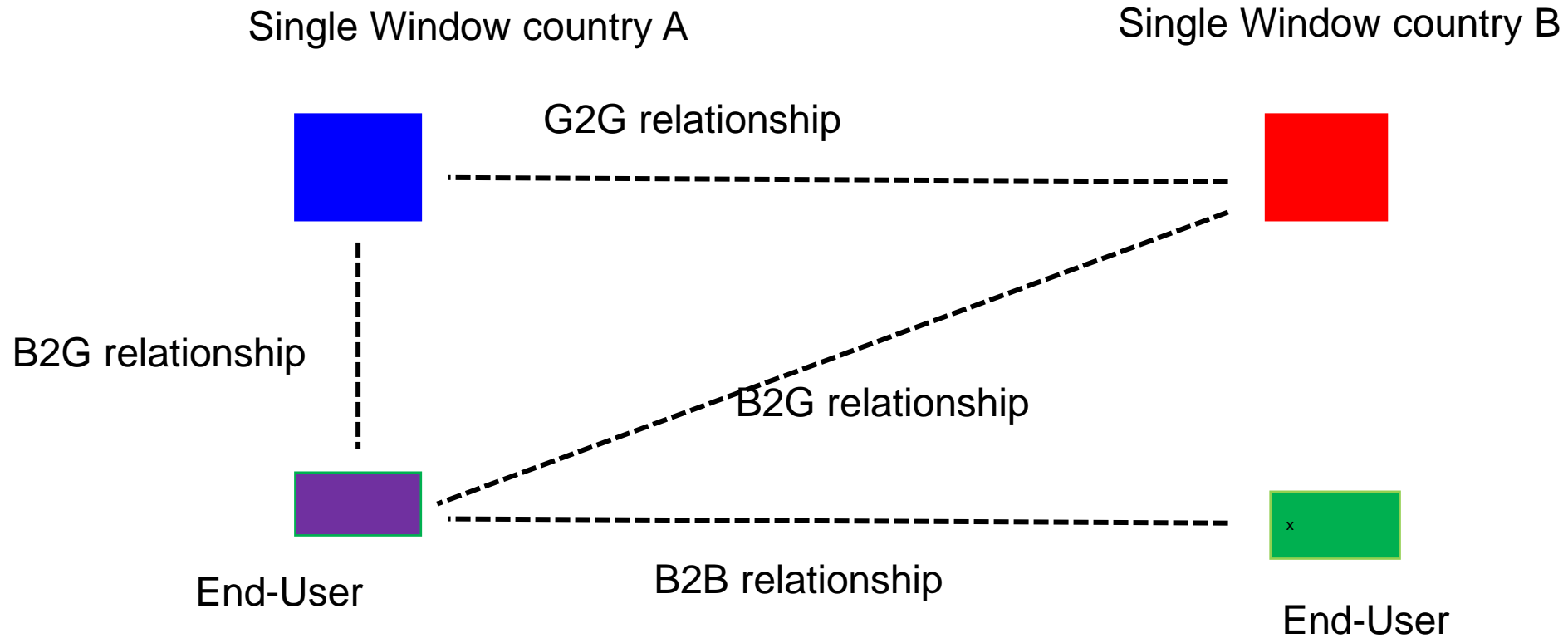


# What is our objective?

- What administrative and legal conditions need to be in place to support and facilitate interconnectivity and interoperability of Single Window systems across borders
- The legal and technical approaches to Single Window development often intersect. The legal issues are not defined in a vacuum.
- Recommendation 35 deals with the legal aspects of national SWs, the cross-border legal aspects are not quite a mirror-image of national ones
- Chosen approach:
  - ✓ cross-border including regional Single Window systems
  - ✓ regulatory issues (government control), mainly G2G, to some extent B2G
  - ✓ no contractual issues addressed



# Illustration of the legal relationships





# The core legal issues of SWI

- Legal basis of SWI
- Authentication and authorization
- Privacy and data protection
- Access to information
- Integrity of data
- Data retention, archiving, audit trails
- IPR and other property rights
- Competition
- Dispute resolution



# The legal basis of SWI

- As Single Window systems perform regulatory functions, public law is involved and, in a cross-border relationship, the cooperation of two or more states in the regulatory field falls under the domain of public international law
- States coordinate their actions through treaties, which create binding obligations. In the absence of formal treaties, the authorities of different states may still recognize each other's actions. Usually, however, reciprocity is required by governments which leads to the requirement of mutual recognition. The technicalities of SWI are so complex that some form of mutual assent is required anyhow.
- The legal basis issue is close to the governance issues



# Authentication and authorization

- Identification, authentication and authorisation are probably the most discussed issues in the cross-border legal cooperation between governments; in essence the issue is B2G rather than G2G.
- States define their own policies by making a risk assessment. There are international tools for defining the policies.
- UN/CEFACT has recently revised Recommendation 14, which lays down an authentication standard which is case-specific: "...as reliable as appropriate for the transaction". The EU eIDAS goes the same way.
- States should agree on a common ground, in the absence of which they have to consider whether they are able to recognize the standards of



# Data-related issues

- Privacy and data protection including the protection of commercial secrets: there are legal frameworks in place laying down basic standards
- Access to information: In the Nordic countries, every citizen has a constitutional access to public documents, unless there is a legal exception. Is the information in the Single Window databases public information in this sense?
- Integrity of data: This matter relates to authentication, which implies the origin and reliability of the data, and whether the data is corrupted, which is an information security issue. Some experts raise the problem of fraud and criminal jurisdiction (a B2G issue)
- Data retention, archiving, audit trails are defined by states, often through operating regulations



# Liability issues

- System malfunction causing economic damage by way of delay or leakage of information is the most imaginable example
- We should focus on civil liability rather than criminal liability. The ordinary rules of civil liability apply. We may distinguish between contractual vs. delictual (tort) liability as well as strict liability and liability based on negligence
- In End-User Agreements, governments usually use exculpatory clauses to exonerate themselves from liability. Are these valid?
- The G2G approach makes the liability issues even more theoretical.





# IPR, Competition and Dispute Resolution

- Intellectual property rights are protected by international conventions and the GATT TRIPS Agreement. It is assumed that this is less important in the context of SWI
- Competition laws are national by nature (except in the EU). There is an interface between standardization and anti-trust laws but it is assumed that SWI would not normally cause problems in this regard
- Dispute resolution may relate to 1) administrative, 2) civil or 3) criminal issues. Dispute resolution mechanisms may be created especially for civil law issues such as the performance of the system



# Could we define general principles for G2G?

- Mutual interest and benefit of the parties
- Accessibility and availability of data
- Accuracy and completeness of information
- Timely submission of the required information
- Information submitted should be used only to limited specified purposes taking into account confidentiality and country submitting information
- Exchange is based on international standards and recommendations
- Exchange is free of charge



# Thank you for your attention!

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