TALLINN UNIVERSITY OF TECHNOLOGY
School of Information Technologies

Kaisa Lõhmus 163061IVGM

E-GOVERNMENT: THE PRIVATE SECTOR'S ROLE FROM A LEGAL PERSPECTIVE

Master's thesis

Supervisor: Katrin Merike Nyman-Metcalf PhD

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Kaisa Lõhmus 163061IVGM

E-VALITSEMINE: ERASEKTORI ROLL JURIIDILISEST PERSPEKTIIVIST

Magistritöö

Juhendaja: Katrin Merike Nyman-Metcalf PhD

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Author’s declaration of originality

I hereby certify that I am the sole author of this thesis and this thesis has not been presented for examination or submitted for defence anywhere else. All used materials, references to the literature and work of others have been cited.

Author: Kaisa Lõhmus

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Abstract

Private sector is constantly developing new innovative technologies and Governments are more eager to adopt emerging technological possibilities, in order to respond better to citizen's needs. While this presents benefits, it can also bring uncertainty from a legal perspective. The implications of emerging technologies and how these can be regulated effectively are of great importance. The aim of the current research is to analyze how should the legal framework to be see up in order to ensure private sector's role and responsibilities in the context of an e-Government. Qualitative analysis is conducted based on expert knowledge and relevant public documentation. The analysis showed that public procurement laws, which are the main regulatory framework followed, do not state any precise role for private sector in a context of an e-State. Private sector's role could be further stated in development plans and when it comes to public procurement, public sector orders from private sector, leaving them the know-how and the certain product or service. Private sector is on a running basis responsible for the quality of the product or the service, but also is free to export the product and hence gain more international competitiveness. Therefore, public sector's procurement enhances competence and competitiveness of private sector. Responsibilities of a procuring authority and a supplier are in a broader context regulated with procurement laws and more specifically determined in a written contract. While procuring, public sector's mentality is sharing risks and responsibilities, as contractual relations are based on co-operation and partnership, so that sharing risks is balanced.

Keywords: e-Government, private sector, responsibility, competition, innovation

This thesis is written in English and is 77 pages long, including six chapters and one figure.

Annotatsioon

E-VALITSEMINE: ERASEKTORI ROLL JURIIDILISEST PERSPEKTIIVIST

Erasektor arendab järjepidevalt uusi innovaatilisi tehnoloogiaid ning Valitsused on aina enam altid kasutama esile kerkivaid tehnoloogilisi võimalusi vastamaks paremini kodanike vajadustele. Antud nähtus toob endaga kaasa mitmeid hüvesid, ent juriidilisest perspektiivist kaasaneb sellega ka teatav ebamäärasus. Uute tehnoloogiate mõju hindamisel ning vajadusel efektiivsel reguleerimisel on suur tähtsus. Käesoleva uurimistöö eesmärk on analüüsida e-Valitsemine kontekstis, kuidas peaks olema seatud juriidiline raamistik erasektori rolli ning vastutuse määratlemisel. Probleemküsimuse uurimiseks viiakse läbi kvalitatiivne analüüs, mis põhineb ekspertteadmistel ning asjakohastel avalikel dokumentidel.

Analüüs näitas, et avaliku hanke seadused, mis on peamine regulatiivne raamistik, ei sätesta erasektorile e-riigi kontekstis kindlat rolli. Erasektori rolli konkreetseks määratlemiseks kasutatakse valdkondlikke strateegilisi arengukavasid. Avaliku hanke korral hangib riik erasektorilt, jättes neile oskusteabe ning arendatud toote või teenuse omanikurolli. Erasektor on jooksvalt vastutav toote või teenuse kvaliteedi eest ning rahvusvahelise konkurentsivõime tõstmiseks on erasektor vaba eksportimaks teadmist välismaale. Seega suurendab avalik hange erasektori kompetentsi ja konkurentsivõimet. Vastus tellija ja tarnija vahel on laiemas kontekstis reguleeritud avaliku hanke seadustega, ent kitsamalt kindlaks määratud kirjalikus lepingus. Avaliku sektori mentaliteet hankimisel on riskide ja vastutuse täielik jagamine, kuna kirjalik leping baseerub koostööl ja partnerlusel, mis tasakaalustab riskide jagamist.

Märksõnad: e-Valitsemine, erasektor, vastutus, konkurents, innovatsioon

Lõputöö on kirjutatud inglise keeles ning sisaldab teksti 77 leheküljel, kuute peatükki, ühte joonist.

List of abbreviations and terms

eID	Electronic identity
eIDAS	Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC
EU	European Union
ICT	Information and communication technology
ITL	Estonian Association of Information Technology and Telecommunications
PPP	Public-private-partnership
SME	Small and medium-sized enterprise
UN	United Nations

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1 Introduction

1.1 Problem Statement and Research Objective

As new technologies make connectivity, information gathering and information processing more widely spread, the implications of emerging technologies and how these can be regulated effectively are of great importance. When it comes to services of general interest, the citizen wants a high quality and affordable supply of public services, which makes States to shift more and more towards a concept of e-Government, meaning they rely on databases, software and devices, to provide services more efficiently and to respond better to the needs of citizens. Often, such e-services are designed, developed and maintained together with the private sector. Companies have an intermediary role and ability to influence new technologies. However, there is no certain understanding from a legal point of view on what actually is the role of private sector in an e-Government and if the States should regulate such co-operation. As we live in a globalized world, private enterprises can just leave the State if they don't approve its regulations. But if private companies do not provide internet access at reasonable conditions, e-Government cannot function. Thus we need the private companies to provide at least essential services.

There are also more fundamental questions related to inclusion of the private sector. Co-operation means sharing of responsibility, which as a principle is typically regulated. Furthermore, State's have laws that seek to safeguard and foster market competition. As a citizen wants public services witch are high quality and affordable and private companies often want to engage in fair competition to provide such services of general interest, hence in a context of e-State competition is indispensable. The problem is how can competition be viewed as a reason for including or excluding co-operation with the private sector in the context of an e-State?

The research objective of the current thesis is to analyze how should the legal framework be set up in order to ensure private sector's role and responsibilities in a context of e-Government. Relevant public documentation and interviews are used and the patterns from the data collection are compared to the theoretical framework. The motivation behind this thesis is to gain more insight on how efficient are today's norms and

regulations while including private sector in an e-State. When today's system's flaws are detected, suggestions of improvement for the future will be possible.

In order to fulfill the research objective and drive the research, main research question, along with two sub-questions were composed based on existing literature. The rationale behind main research question and sub-questions is further explained in the methodological chapter of current thesis.

Main research question: what is currently considered to be the private sectors' role in an e-State and how should it be regulated from a legal perspective?
Sub-question: How should the responsibility between a State and a private enterprise be divided in the context of an e-State?
Sub-question: How can competition be viewed as a reason for including or excluding private sector in the context of an e-State?

The author of current thesis uses a qualitative research method to collect relevant data. Triangulation of expert interviews and thematic analysis of public documentation was used in order to conduct the analysis.

Current thesis begins with giving an overview of relevant theoretical framework in Chapter two. Theoretical framework starts with setting the concept of regulation and regulatory activities. Chapter two also looks more closely at theories of normative intervention vis-à-vis the market forces. Competition law theory and its various strands, such as classical and neo-classical perspectives of competition and the Chicago School, are also relevant. Chapter three presents current dissertation's methodology, including research design and method, and collection of data. Chapter four analyzes collected data and compares it with presented theoretical framework. Chapter five includes discussion and results of collected data, and presents answers to the research questions. Chapter six provides a conclusion of the thesis.

1.2 Context

With the practice of regulation, government makes efforts to identify and intervene in social, environmental, and economic issues in an interactive way and it is becoming an

increasingly important aspect of the present day (Baldwin et al, 2012). Similarly to many other public or private organizations, regulators are adopting ICT more and more, and while this brings benefits, it also can have unexpected consequences (Kennedy & Scholl, 2016). It is inevitable that as new technologies that make connectivity, information gathering and information processing more widely spread, the implications of emerging technologies and how these can be regulated effectively are of great importance.

Bekkers and Homburg (2005) interpreted smart government or e-Government as:

> The use of modern information and communication technologies, especially Internet and web technology, by a public organization to support or redefine the existing and/or future (information, communication and transaction) relations with 'stakeholders' in the internal and external environment in order to create added value. (Bekkers & Homburg, 2005, pp. 6)

Certain is that an e-government is a policy tool, which calls for greater responsibility and accountability in the public sector. Relying on databases, software and devices also means more and more interactions between ICT and the fundamentals of legal theory. Often the providers of ICT are private sector entities, such as large or medium sized companies. Clark (1988) has stated that in such case, from the technical and economic perspective, self-regulation and minimal state involvement is most efficient. This has proven to be relevant even today, but at the same time, from the legal policy perspective, such self-regulation lacks constitutional checks and balances (Diebert 2010, Marsden 2011). One solution would be multi-stakeholder co-regulation, which means including both state and citizen. Mueller (2010) and Kleinwachter (2011) have stated this to be the approach that has the best chance to adjust the market failures and constitutional legitimacy failures in self-regulation.

Furthermore, there are non-state actors, e.g. companies, who have intermediary role and ability to influence new technologies. Laidlaw (2015) has found that ICT enterprises, which play intermediary role, such as Internet Service Providers or search engines, become proxy regulators for the interests of others. Even further, supranational organizations, such as EU or UN, who have the global reach, often take the lead in areas like privacy and data privacy in particular. This is an important aspect to consider, as

markets for new technologies are worldwide, therefore, the ability for nation states to effectively regulate new technologies is limited.

2 Theory

Mainly there are four theories of regulation, which are considered to be relevant in a context of current thesis: public interest, private interest, interest groups and institutional. (Hertog, 1999; Baldwin & Cave, 1999) Public interest theories are market failures and efficient government intervention and according to those, regulation should increase social welfare. Private interest theories explain regulation from interest group (such as consumers, companies etc.) behavior, stating that when wealth moves to the more effective interest group, it often decreases social welfare.

The current dissertation looks more closely at theories of normative intervention *vis-à-vis* the market forces. Competition law theory and its various strands, such as classical and neo-classical perspectives of competition and the Chicago School. Given theories were chosen based on the relevance with the topic of current thesis. Theoretical framework sets law in a broader context, gives economic perspective and explains what are the necessary aspects to consider when stating a norm or a regulation.

2.1 Concept of regulation

In legal literature, there is no fixed definition of the term ”regulation.“ (Hertog, 1999) A prevalent starting point is that the concept of ”regulation“ implies the attempt to modify the behaviour of others with the intention of producing an outcome, which may involve aspects of information-gathering and behaviour-modification. (Brownsword, 2015) Furthermore, OECD (2012) has defined regulation as rules or norms adopted by government and backed up by some threat of consequences, usually negative ones in the form of penalties. OECD also complies with Brownsword’s definition that the aim of regulatory policy, as with any regulation, is to change behaviour to improve outcomes. Although often directed at businesses, regulations can also target non-profit organizations, other governmental entities, and individuals.

Baldwin and Cave (1999) have classified regulation with three levels. The narrowest meaning explains regulation as a special form of governance, which consists of a set of rules and usually an administrative body for supervision. A wider meaning explains that regulation is a governments’ actions as a whole. Finally, regulation in the widest meaning,

consists of all mechanism of social control, including unwanted and non-governmental processes. Regulation could also be divided as economic, social or administrative. (Wienert, 1997). It means, that there are various forms and classifications of regulation. In the theories of economic regulation, a distinction can be made between positive and normative dimension. The normative dimension deals with theoretical and policy considerations determining the design of regulatory systems. (Vermeule, 2008) The positive dimension is less abstract and deals with the implementation of normative policy choices by translating them into positive legal norms. (Sheehy & Feaver, 2015) Mainstream regulatory theorists conceive of regulation as starting with the setting of standards and, thus, as normative. (Brownsword, 2015)

In order to understand better regulatory activities, OECD (2014) has proposed the concept of a cycle, which describes a standardized regulation-making process.

Figure 1. The cycle of regulatory activities.

The process of regulation-making has been categorized into three steps, which include making regulation, operating regulation and reviewing regulation. The first step, making regulation, is described as a process of developing government policy into legislation or other regulatory instruments. Among other things, this includes identifying the objectives of intervention, considering alternatives for meeting identified objectives, evaluating effectiveness and turning the option which was chosen into a legal instrument. Second step, operating regulation, is described as a process of applying the regulation to the regulated entities in order to achieve the objectives set by the regulator. This includes informing and registering or licensing regulated entities, authorizing anti-competitive activities, promoting and enforcing compliance with the rules. Third step, reviewing regulation, considers whether rules in force are continuing to meet their specified

objectives. In a situation, where the objectives are not being met, changes to the regulation, or alternative measures, are considered. Among other things, reviewing regulation could also mean performance assessment of the regulator, a review of regulatory objectives or consideration of a possibility to improve a policy. Although steps have a definite order, in many cases, these phases occur simultaneously.

2.2 Normative intervention theory of regulation

Normative theory of regulation was appealing among economists until the 1960s and even today it is still often the starting assumption. Legal normativity can be conceptualized as law's claim to authority. (Besson, 2010, pp. 173) The normative dimension deals with theoretical and policy considerations determining the design of regulatory systems (Vermeule, 2008), whereas the normative theory investigates which type of regulation is the most efficient. (Hertog, 1999) The essence of normative analysis as a positive theory is that one begins an analysis of a regulatory process with the assumption that its purpose is to maximize some universal measure of economic welfare. Under observation are also expenses, which are connected with formulating and implementing regulation. As the current thesis is analyzing whether and how should States regulate private sectors' role in a context of an e-State, a normative theory of regulation gives an insight of what must be considered ahead of creating norms or regulations.

Regulating is usually viewed as a political decision. If a social problem is important enough, there comes a political response to warrant a coordinated response. (Sheehy & Feaver, 2015) Therefore, un-supportive or vice-versa, supportive political–legal environment has the power to push through or put a lid on a potential norm. In addition to being political, decisions about regulating behaviour are usually ideological decisions as well. Also, law needs to be set in a broader context that takes full account of the variety of norms that influence human behaviour. (Brownsword, 2015) The need for regulation comes from problems or issues requiring public attention, which arise as a result of the behaviour of people, their interactions with others or their physical environment. (Sheehy & Feaver, 2015) Therefore, the first aspect to consider in the regulatory process is whether the social effects or social practices are somewhat a social problem that requires public response, hence some sort of regulation. Social practices that have no social effects of concern do not attract regulatory attention. Hence, there is no need to regulate them.

Alternatively, regulation could also be used to create a new social practice which generates the desired social effect. That happens in a situation where a social effect is wanted but there is no social practice to produce those effects. When it comes to what is to be the focus of regulation, the social practice or the social effects, it is the meaning attached to practice and effect that provides the justification for regulation. (Sheehy & Feaver, 2015) The actions related with the social practice are regulated with the purpose of achieving a different effect. Therefore, the purpose of regulation is to alter social practices to achieve a different social effect and ensure that people behave in a desired way.

The rationalist approach criticizes the normative theory of regulation and states that individuals have objectives, such as constitutional freedoms, and pleasant human relations, that are affected by the actions of regulatory institutions but are not yet accounted for in applied welfare economics. (Joskow & Noll, 1981) Dan M. Kahan and Donald Braman (2006) have also argued, that at basic level it is inconsistent with research into human cognition and decision-making, as it is known that humans often reject scientifically sound information inconsistent with their beliefs. In that sense, people will reject scientific opinion in favour of an opinion that supports their own world view.

Normative theory of regulation is relevant, as the current thesis analyzes how co-operation with private sector should be regulated in a context of e-Government. Given theory analyzes the need for regulation and presents the question of whether and when to regulate. All above-mentioned is important to consider when reckoning legal norms for private sectors' role in a context of e-Government.

2.3 Competition Law theory

Competition laws (also referred to as antitrust laws) are traditionally conceived as regulation of the marketplace to ensure private conduct does not suppress free trade. (Huffman, 2010) Such laws prohibit business behaviour which has the objective or the effect of preventing or restricting competition. As the current thesis is analyzing private sector's role from a legal perspective, competition as such has an important part to play. Fundamentally, smart governments are relying on databases, software and devices, which are often a competence of private sector. The citizen wants a high quality and affordable

supply of public services and private companies often want to engage in fair competition to provide such services of general interest. Therefore, inclusion of competition in such case is indispensable. States have laws that seek to safeguard and foster market competition and for that it is possible to establish competition policies that urge regulatory bodies to achieve public policy objectives in ways that are compatible with keeping markets competitive. (Aydin & Büthe, 2016)

General theories of regulation tend to be either legislative or bureaucratic, in that they select either the electoral process and the incentives operating on politicians or the bureaucratic process and the incentives operating on regulators as the focus of analysis. (Joskow & Noll, 1981) In the first category is the "Chicago School" of regulatory theory, the outstanding proponents of which are Stigler (1971), Posner (1971, 1974), and Peltzman (1976). That is why Chicago school is relevant in the context of current thesis as well.

2.3.1 Classical and neo-classical perspectives of competition

Classical perspective of competition was initially developed in the writings of Smith (1776), Ricardo (1821) and J.S. Mill (1848). Classical economists viewed competition as the mechanism that coordinates the self-interests of independent individuals and directs them to the achieving of balance. (Tsoulfidis, 2011) That is a process of removing any excess profits and the establishment of natural prices as the centres of market prices. That is why one of the founders of classical perspective, Smith, initially has noted that despite the fact that each individual is pursuing the satisfaction of his own self-interest, they are still led by an invisible hand to promote an end which was no part of their intention. Classical economists described competition as an endless rivalrous balancing process, which essentially directs the actions of each individual pursuing his own self-interest to promote society's welfare, even though this is not part of his intentions. That idea brought in a concept of the "invisible hand":

> Every individual is continually exerting himself to find out the most advantageous employment for whatever capital he can command. It is his own advantage, indeed, and not that of the society which he has in view. But the study of his own advantage naturally, or rather necessarily, leads him to prefer that employment which is most advantageous to the society. (Smith, 1776, pp. 338)

Therefore, in a context of regulating, a regulation should only be created if it is expected to improve society's economic and social welfare (OECD, 2008), meaning that if the total benefits of the regulation, for all members of society, are larger than the total costs.
Classical perspective of competition is opposed by the neo-classical theory, which is contained in the model of perfect competition and describes the ideal conditions that must hold in the market so as to ensure the existence of perfectly competitive behaviour. (Tsoulfidis, 2011) An idealized situation is where production is instantaneous and individuals are equal participants in the market. (Plummer & Sheppard, 1998) Furthermore, a neo-classical model of competition states that production and distribution of goods and services in competitive free markets promotes rationality, harmony, stability, and equal welfare among and between regions. (Plummer & Sheppard, 1998) Both movements, classical and neo-classical, give important perspectives in the context of the current thesis. Nevertheless, again, political factors affect the ability of competition law and policy to achieve many of its possible goals.

The theory of regulatory competition assumes a world where private actors can make choices with affecting which regulatory regime will apply to their transactions. (Stephan, 2013) As an example, EU competition law applies to all companies and individuals doing business within the Member States or which may affect trade between the Member States of the European Economic Area (EEA) regardless of whether these companies are established in one of these countries or not. Also, national competition laws need to be considered when doing business in the corresponding country.

2.3.2 "Chicago school" theory of regulation

A start on the development of the Chicago theory of regulation was made in 1971. The essence of Stigler's (1971), Posner's (1971, 1974), and Peltzman's (1976) theory is that regulation is a device for transferring income to well-organized groups (Joskow & Noll, 1981). The theory predicts that regulators will use their power to transfer income from those with less political power to those with more. Chicago school economists also argued that capitalism works and gives rise to results that are approximately those predicted by the neo-classical perspective of competition. (Tsoulfidis, 2011) Therefore, given theory

claims that maximizing consumer welfare must become the predominant goal of competition law and policy.

Stigler's (1971) central proposition was that as a rule, regulation is shaped by the industry and is designed and operated primarily for its benefit. The government can grant subsidies or ban the entry of competitors to the branch directly so that the level of prices rise. (Hertog, 1999) The government can also maintain minimum prices more easily or the government can suppress the use of substitutes. Nevertheless, the political decision-making process also makes it possible for branches of industry to exploit politics for its own ends. (Hertog, 1999) In the political decision-making process, interest groups will exercise political influence, but individuals will not participate because forming an opinion about political questions is expensive in terms of time, energy and money. A representative democracy would more readily honor the strongly felt preferences of majorities and minorities than the less passionately expressed preferences. As in small groups the preferences will be more homogeneous than in large groups, they have an advantage in that for the yield per member of the group is greater. The fact that large branches could still be well organized is explained by Stigler through concentration and asymmetry (Stigler, 1974). The large companies in a concentrated branch will see themselves as a small group. In the case of asymmetry in the branch, separate companies will wish to prevent unfavorable regulation and will participate in the organization.

In politics, organizations matter because they affect voter information. Therefore, a legislative theory of regulation must have some theoretical connections to the political process. (Hertog, 1999) Once that connection is made, the door is opened to political entrepreneurs who seek power rather than economic payoff. This possibility limits the extent to which regulation can impose costs on the general population, but does not completely offset it because the costs would have to exceed some minimum amount before voters could be induced to make them a primary motive for political participation.

Posner (1971) opposites to Stigler stating that in many cases regulation strongly advantaged certain consumer groups. For instance, uniform prices were prescribed for such things as rail transport, the supply of gas, water and electricity, telecommunications traffic and mail distribution. (Hertog, 1999) The costs of the services supplied differ considerably between consumer groups, among other factors, depending on their

geographical spread. This phenomenon of subsidization does not fit in with Stigler's theory of regulation. Even if other consumer groups are obliged to pay higher than marginal costs for their goods and services to compensate, subsidization works against the aim of maximum profit. In a context of e-Government, it means that regulating co-operation between State and private sector could give advantages to certain included parties. Even if there is necessity to pay higher than marginal costs to compensate, it undermines the concept of maximum benefit.

2.4 Market forces

In 1980, Porter stated that external market forces, such as demand uncertainty, technological turbulence, and competitive intensity, primarily drive competitive advantage and therefore have significant influence on technology. Li and Calantone (1998) had a similar understanding as they pointed out that demand uncertainty, technological turbulence, and competitive intensity are the three most fundamental characteristics of market forces, as they show the influences of customers, technology, and competition in the market. Whereas, demand uncertainty refers to the instability of consumer preferences and expectations (Zheng Zhou, Yim & Tse 2005, pp. 47), technological turbulence refers to the rate of technological advances within an industry, and competitive intensity refers to the degree of competition that a firm faces within its industry.

Hence, Voss and Voss (2000) categorized market forces as follows:

- demand (e.g., demand uncertainty, market growth);
- competition (e.g., competitive intensity, hostility);
- supply (e.g., technological turbulence, supply power) characteristics.

So far, e-Government has shown many examples of public-private cooperation, whether through public-private-partnership or in other ways. The governance system often relies on infrastructure usually provided by the private sector. While the State as a force remains important for making sure the availability of critical frameworks, market forces are increasingly exerting influence over infrastructure. Inglehart & Welzel (2010) have associated this to linking free markets to self-expression, but an important difference is that the market should set the rules in keeping control. Furthermore, Lessig (2006) has

created a model of regulation where he identified four regulatory modalities - law, social norms, architecture or design and markets. He states that market forces encourage to facilitate online commerce and as it develops, it fundamentally transforms its regulability. There definitely has been a desire to control the State in order to minimize its ability to apply control that is not consistent with market-based principles. OECD (2008) has given guidelines to States that when citizens can satisfy their needs in well functioning markets, in example for the supply e-services, the involvement of the government is not generally required, beyond setting the rules of the market. Anyhow, Lessig (2006) points out, that the government itself is a player in the market, which affects the market both by creating rules and by purchasing products. Therefore, it influences technology providers who exist to provide what the market demands.

3 Methodology

The background and relevant literature state that there are several different approaches to determine the role of private sector. Mueller (2010) has pointed out that new technologies distribute control and together with liberalization of the telecommunications sector, technology decentralizes participation and ensures that decision-making processes are no longer too closely aligned with State authorities. In addition, Brownsword (2015) states that many of the initiatives emanate from the private sector, therefore, private sector might be the one to lead the innovation. Certain is that e-Government, which supports administrative processes, improves the quality of public services and increases efficiency of public sector, is one of the priorities of the EU and one way to advance the modernization of public administration.

In order to fulfill the aims and drive the research, main research question, along with two sub-questions were composed based on existing literature.

Main Research Question: *what is currently considered to be the private sectors' role in an e-State and how should it be regulated from a legal perspective?* The theoretical framework, based on several authors, describes different views related to setting norms and legal limitations on various domains. Therefore, it helps to understand what must be considered while defining and setting private sectors' role in an e-State. The theoretical framework will be compared to gathered data, to evaluate what is currently considered to be the private sectors' role and what should be considered when defining and developing such role from a legal perspective.

Sub-question: *How should the responsibility between a State and a private enterprise be divided in the context of an e-State?* Responsibility between a procuring authority and a supplier are typically determined in a written contract, which states, among other things, the roles of contractual parties. Current research will determine in a context of e-State the best practice to lay down the framework for dividing responsibility.

Sub-question: How can competition be viewed as a reason for including or excluding private sector in the context of an e-State? State's procurement policy has an important role on stimulating private sector's competitiveness, as public sector directly affects

competence and competitiveness of private sector. The current research will determine in a context of e-State how competition and competition policy affect including or excluding private sector.

3.1 Research design and methods

As the private sectors's role in an e-State is still a rather new and unexplored area, in which there is little knowledge about the phenomenon of interest, a qualitative approach is suggested to understand the phenomenon more thoroughly. Glaser and Strauss (1967) have noted the importance of qualitative research, as the crucial elements of sociological theory are often found best with a qualitative method, that is, from data on consequences, norms, processes, patterns, and systems. Qualitative research relies on excerpts to describe and support the identified themes. Most commonly used methods to generate data in qualitative research is an interview, group discussions or focus groups, observations, public and official documents or personal documents (Savin-Baden & Major, 2013), but also the studies of photographs, reflective field notes and historical items and images in the media and literature fields are used often (Taylor & Bogdan, 1984). Conducted interviews may be structured, semi-structured or unstructured. Qualitative research is often the most adequate and efficient way to obtain the type of information required, as it provides an opportunity to generate and explain models and theories inductively (Tavakol & Sandars, 2014). The process of the inductive approach begins with exploring the specific details of participants' experience and then gradually moves to more general principles of the phenomenon being investigated (Liehr & Smith, 2002). The current thesis generates data from public documents combined with semi-structured interviews with experts. Each expert has their own specific experiences but interviewing several experts from the field will identify several common themes across the experts. Thematic analysis is used for analyzing documents. Based on the knowledge gathered from the experts and relevant documentation, it is possible to investigate how or why the phenomena vary.

A theory is a set of interrelated concepts, definitions, and propositions that present a systematic view of phenomena by specifying relations among variables, with the purpose of explaining and predicting the phenomena (Kerlinger, 1970). The usage of qualitative method is relevant, as the current thesis examines the role of law and regulation, while

looking at theories of normative intervention and competition law theory vis-à-vis the market forces.

3.2 Sampling and collection of data

The collection of data for a qualitative research can be done from different types of sources. As mentioned above, most commonly used methods to generate data in qualitative research is an interview, group discussions or focus groups, observations, public and official documents or personal documents. For the current thesis, thematic analysis of relevant public documentation and interviews were used and the patterns from the interviews and documentation analysis will be compared to relevant theories, to see which results are found. In order to avoid the potential of having biased sources, a triangulation by using multiple sources of evidence have been made (Yin, 2003). In the current thesis, the triangulation of expert interviews and thematic analysis of public documentation was used in order to conduct the analysis.

Documentation was publicly available and the sample of documents were chosen in order to examine how private sector's role is currently stated in main strategic documents and regulations. The Digital Single Market strategy, in which in among other things, the European Commission aims for a digital society, including smarter cities, improving access to e-Government and digital skills and EU eGovernment Action Plan 2016-2020, which supports the Member States on availability and take-up of e-Government services at European Union level, were chosen to give an insight on how inclusion and role of private sector is seen on an international level. As regulations are legal acts that apply automatically and uniformly to all EU countries and they are binding in their entirety on all EU countries (European Commission, 2017), Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC was chosen to examine how Member States are expected to approach on electronic identification, authentication and trust services. EU's Public procurement strategy was chosen to examine how private sector's role is stated in today's public procurement development documents on an international level. The main reason on choosing Digital Agenda 2020 for Estonia was to have further data about how nation state has approached on the role of private sector. Estonia, being named the most advanced

digital society in the world (Hammersley, 2017), also leads the way in the take-up of eID and the use of e-voting (at the general elections of 2011, 24.3% of voters cast their votes electronically). Hence, the State is one of the pathfinders in e-Government and therefore a suitable sample to examine.

The desk study of documentation was supplemented by interviews with the relevant experts. The sample of experts was chosen based on the professional background and experience. Furthermore, it was necessary that the sample would include actors from different areas which are related to the e-State and legal field. Therefore, the sample was composed by two policy makers from Estonian Ministry of Economic Affairs and Communications; representative of ITL; a lawyer with previous experience in competition law, public procurement law and IT law; and representatives from two IT enterprises, Tieto Estonia AS and AS Datel.

Respondent 1 was the representative of ITL and business development manager of Tieto Estonia AS. The respondent 1 was interviewed for both, to understand better the viewpoint of a non-profit association uniting ICT companies and organizations and an IT enterprise, which has an experience being a partner for the State during developing an e-State. Respondent 2, director of Software Development and Software Development Technology in AS Datel, was also interviewed to understand better enterprises' view while co-operating with States in a context of e-Government. Respondent 3, a former Legal Advisor at the Department of State Information Systems at Estonian Ministry of Economic Affairs and Communications, was interviewed as one of the policy makers, in order to understand better the State's rationale to include private sector while planning, designing, implementing and developing an e-State. Respondent 4, as Head of Department of Information Society Services Development in Ministry of Economic Affairs and Communications, was also interviewed as one of the representatives of the State, in order to have a wider picture about State's views regarding co-operation with private sector. Respondent 5, Junior researcher, PhD student and lecturer at Tallinn University of Technology, has more than 20 years of international legal consultancy experience, specialized on EU law, especially competition law, public procurement law, intellectual property law and IT law. Therefore, respondent 5 was interviewed to know more about the legal preparations and possibilities when researching private sectors's role. Respondent 6, one of the founders of Estonian e-Governance Academy and

Programme Director of the Central e-Government, who also has experience at several mobile communications, broadband and software companies like Skype and Fortumo, was interviewed to gain knowledge about building an e-State and what is the general practice for including private sector.

Interviews were semi-structured or informal and the interviewer used verbal interchange with experts to bring forward information by asking questions (Longhurst, 2016). Although there were predetermined questions, informal interviews unfold in a free manner, which means that experts could openly explore issues they feel are important. The questionnaire was divided in three main thematic blocks, which were chosen based on the theoretical framework and relevant literature. In February and March 2018, six interviews were conducted and audio recorded by face-to-face meetings. The main reason for the face-to-face interviews was based on the preferences of the author and of the interviewees. Interviews were conducted in Estonian, and the main reason for that was again the preferences of the interviewees, as all experts included were native speakers of Estonian. All respondents were asked same questions but the order of questions was informal, meaning that different thematic blocks were asked as it was fit for the conversation. The data collected with semi-structured interviews was coded thematically. Mason (2002) also suggests using and types of data. Hence, technical possibilities, such as NVIVO computer software, were used in current thesis, in order to to build links between documentation and data collected with semi-structured interviews.

As introductory questions, respondents were given a short introduction how States are often co-operating with private sector in a context of e-Government, for example in development of IT systems, maintenance, accommodation etc. Therefore, private sector has declarable role in an e-State. Respondents then described what is current regulatory framework in such so-operation (mainly based on a practice in Estonia) and what they see as an ideal how States should regulate inclusion of private sector from a legal perspective. Secondly, experts gave their opinion whether States should redirect resources to enhance their own IT competence in a sense that co-operation with private sector is secondary and States themselves have capability to develop IT systems, maintain etc. and what are the legal possibilities for this. Thirdly, experts discussed from a legal point of view, whether and how should the policy makers interfere when new technologies radically change existing business or governance models. Second thematic block included

questions related to competition and competition legislation. Experts were asked to explain whether in addition to existing competition regulations, is there a need to create any other specific regulation for a concrete field, e.g. e-Government. Also, whether and how should competition regulations be implemented on companies that are important form a perspective of e-State and how do SME-s fit in that context. Finally, experts discussed about competition regulations and the role of international organizations, whether and how should international organizations in a wider context regulate competition. Third thematic block dealt with responsibility and experts were asked to analyze in a context of e-Government, what is current practice for sharing responsibility and whether there should be a specific regulation directed on responsibility.

4 Research findings and analysis

The analysis is conducted based on the theoretical framework, interviews and relevant documents. The analysis is divided in thematic parts, which are looking for answers for the main research question and sub-questions.

4.1 Private sectors' role and regulatory framework

This thematic block compares gathered data with theoretical framework in order to analyze and evaluate what is currently considered to be private sectors' role in a context of an e-State and what should be considered when defining and developing such role from a legal perspective.

4.1.1 Current framework for private sector's inclusion

Normative theory expects that any regulatory process starts with the assumption that its purpose is to maximize economic welfare. When examining private sector's role from a legal perspective, experts pointed out that the main regulatory framework followed is public procurement laws, hence they set the limits and commands on co-operation with the private sector. Public procurement is a process where public authorities purchase goods or services from private sector.

Member States of the EU are bound to follow directives or act according to proposals and in recent years, the EU has taken a stronger approach on the IT field as well. In 2014 the EU took steps for public authorities to procure in a more flexible way and for that reason the new generation of public procurement directives (Directive 2014/23/EU, Directive 2014/24/EU, and Directive 2014/25/EU) were adopted. In 2016, EU also launched a Public procurement package, which aims at sustainable and balanced public procurement in Member States of the Union. There are different types of procurement procedures which States can follow. In an open procedure, any interested party is allowed to submit a tender. Restricted procedure allows only invited parties to submit a tender and in a competitive procedure with negotiation, any interested party is allowed to submit a request to participate, but only invited ones can make a tender. Rather new concept is a innovation partnership, which procures an innovative solution that is not currently

available in the market. Innovation partnership procedure allows several partners to conduct research and submit a tender. Experts interviewed pointed out that the most common form is an open procurement, which allows in among other things to rent workforce, procure technology development components or to buy in full service. Therefore, today's legal norms do not directly restrict nor guide to include private sector. It is more about what role public or private sector sees for each other. An example comes from Estonia, where so far most of the development has gone through private sector. Estonian Digital Agenda 2020 states that the existence of a competent and innovative partner and service provider, e.g. a competitive ICT sector, is important for the development of public sector ICT solutions and economy in general. Experts explained that the rationale behind such structure is that small states are not capable to compete with private sector over competence. Also, private sector has a capacity to export the knowledge, however, when public sector has procured a product or a service, private sector is not allowed to directly sell the products which have been developed for public sector, but there is a possibility to exploit the know-how. To ensure such approach, so far the practice has been that a State does not pile up specialists in order to develop something from the beginning by themselves, but the development has been mostly done together with private sector. However, every field does hold its own development team mostly for maintaining systems.

Market force theory states that State as a force will continue to be important for ensuring the availability of critical frameworks, but market forces are increasingly exerting influence over infrastructure. (Inglehart & Welzel, 2010) Theorists from Chicago school have similar idea, as they propose that regulation is shaped by the market and is designed and operated primarily for its benefit. Such phenomenon also apply in a context of current thesis, as private sector is a carrier of market force and it is also a driver of innovation. Thus, private sector has a strong influence, although States are often ensuring the availability of services. Market forces theorists also state that there has been a desire to control the State in order to minimize its power to control that is not consistent with market-based principles and the main reason for that is the market should set the rules in keeping control (Lessig, 2006). However, as it was mentioned by the experts, States often have their own development teams and a willingness to gain competence. States are also the ones to procure and hence set the direction of innovation, which is also an important point made in the EU's Public procurement strategy. Hence, if public purchase remain

conservative, private sector enterprises are not encouraged, or even allowed, to innovate. Pre-mentioned phenomenon is in disagreement with market forces theory, as the position of States according to data of research rather increases not decreases. Thus, in Estonia, private sector is an innovative partner and a service provider for public sector and also as an exporter of knowledge, it has an immense role as a developer of public sector and economy in general.

As mentioned, the rule of law does not state what exactly is an inclusion of private sector. Experts from public sector stated that in addition to developing or maintaining IT systems, inclusion could also mean policy making, participating in an community collaboration or including private sector to creation of a strategy. On an European level, eIDAS regulation states that Member States are free to decide whether to involve the private sector in the provision of means of e-Government. Estonian Digital Agenda 2020 also points out that information society should be developed in cooperation with the public, private and third sector as well as all other relevant parties, but it is not clarified what exactly counts as inclusion. Therefore, including private sector in a provision of e-State is rather a suggestion, not a rule, even though good legislation process requires including stakeholders. However, more often than not, it is merely a community's wish and initiative to be included. Therefore, this raises a place for consideration, whether procurement laws are sufficient, as they do not strictly give any precise role for private sector, or should there be any other regulation put in place. If so, would the purpose of such regulation maximize economic welfare as is assumed in the normative theory or would it be put in place only in order to fix inclusion of private sector, which in would not justify creating any new legislation.

In addition to regulations, there are non-legal frameworks for private sector's inclusion, such as a community co-operation, which was highly approved by experts. As an example, Estonian IT enterprises and public sector representatives have formed an organizing body, which also covers working groups. Working groups are directed to solve any matters raised by participating parties. Organizing body and its working groups gather on a regular basis in order to discuss and find solutions to problems concerning both sectors and the ICT field. Among other things, working groups are also developing good customs and instructions on how to establish better procurement frameworks and inclusion policies. Both experts from public sector and from private sector emphasized

the importance of community co-operation. As mentioned before, current legislation do not insist including private sector, and community co-operation is also not regulated in any way. All parties make an effort to carry out ideas developed in an organizing body, but as a principle, decisions are not legally binding nor can they be in contradiction with any other existing regulations. Nevertheless, such co-operation form has become the main gateway for public and private sector to collaborate.

4.1.2 Alternatives for creating or modifying regulation

Market forces encourage to use ICT possibilities and as those possibilities develop, they fundamentally also transform ICT regulability. There comes a necessity to look over existing regulation and if needed, modify norms and/or create new legislation.

Normative theory of regulation states that law needs to be set in a broader context that takes full account of the variety of norms. (Brownsword, 2015) Therefore, while regulating new technologies, e-Government or private sector's role, there must be clear understanding how different legislation exist together. Experts emphasized that while creating regulation, there comes a possibility to legally corner ourselves and therefore hinder the innovation as well. However, if regulation is too loose, there is no certain way to ensure transparency and competition, which are vital elements of public money. Experts interviewed did not favour creating any new regulation, which would be addressed directly on e-Government and inclusion of private sector. As a possible risk it was pointed out that creating or modifying regulation always entail expenses. That is in accordance with the Normative theory of regulation, which emphasizes observation of expenses, which result from creating and implementing new regulation. (Hertog, 1999) Not regulating at all was also mentioned to be as too idealistic idea, but experts from public sector stated that at the end of the day, if there is a common understanding of the end result and shared responsibility, the roles of public and private sector become clear as well. However, experts from both, private and public sector, pointed out that in practice, when contractual relationship between public and private sector occur, there comes an understanding that public sector is pursuing some goal and private sector is only there for help. That creates a wrong conception from the beginning. The end-value or goal should be mutual, service provider and contracting authority should be partners, forming one chain. That should be taken account while modifying existing (procurement) regulation.

Experts pointed out that such practices (legislation created only for a purpose of e-Government) do exist in various countries, especially in Asian regions, but more commonly presented view is that regulation must not be changed according to technology, but vice-versa. Regulations must not exclude the usage of e-solutions and law cannot in any sense compete with technology, but it must be technology neutral, without any distinctions. States tend to put IT in a context that it is something unprecedented, but it should be the other way around. There should not be a separate legal area for IT, but in a very wide sense there should be a specific regulation from business point of view. It means that there is no concrete regulation on how public sector should communicate with private sector regarding IT, but such norm would include how public management should be regulated through a context of IT. As an example, e-Government not being a concept on itself was also a thought emphasized in the Estonian Digital Agenda 2020. Such principle helps public sector to become better customer and private sector to be a better provider.

Whereas the goal is to create more co-operation between private and public sector, it is policy, which needs to adapt, not norms or regulations. The EU's eGovernment Action Plan 2016-2020 also states that stepping up the involvement of private sector's businesses in service delivery leads to reducing red tape, easing use and lowering delivery costs. Experts interviewed suggested as a compromise for not creating any specific regulation that a role of private sector could be clearly stated in sectoral development plans. Every domain should be prepared to develop its own digital subjects and how private sector fits in it, bind them into one development plan and ultimately they would be concluded in one whole information society development plan which would therefore clearly state how private sector is included. This point made clear by the experts is somewhat agreed on the Digital Agenda 2020 for Estonia, which states that sectoral ICT strategies are elaborated and updated in all areas of government, as they serve as a basis for planning ICT development projects. Nevertheless, legal status, goal setting and substantive structure of development plans in different domains varies. It means that even though a role of private sector is clearly stated in a sectoral development plan, from a legal perspective it might have no status, hence it is not binding. Even further, when it comes to domain's development plan, they are often incomplete or do not exist at all and even if it is stated in domain's development plan that private sector must be included and co-operation is necessary, practice shows that in reality development plans are interpreted differently. As

a solution, community co-operation was again mentioned for a lack of integral strategic vision.

In addition to stating private sector's role in sectoral development plans, public sector experts visualized a situation where public sector is procuring development service from private sector, leaving them the know-how and the certain product. Public sector could procure full service, which means that private sector develops a service, a State purchases it and leaves private sector free to export the product. Private sector would be responsible for the quality of the service and public sector would be free to choose the provider. Such approach would also be more sustainable, since only one State as a customer is not enough for a private sector. Another point stated by private sector experts was the total life cycle cost of purchases. Public sector is using public money, therefore all expenses must be cost-efficient and well throughout. Unfortunately it also means that while procuring a service, public authorities often choose to go with the offer cheapest of short-term. Hence, development of an e-service might include saving, but in a long-term maintenance and modification expenses are much higher than initially proposed. Therefore, the total life cycle cost of purchases should be considered from the beginning and also stated in procurement legislation. Same principle is emphasized at the EU level, where in order to enhance innovation in public procurement, all procurement procedures should take into account the total life cycle cost of purchases and therefore know the long-term financial benefits. However, both pre-mentioned scenarios, procuring full service and taking account of total life cycle costs, are only possible when a State is not dependent on external financing, i.e. European funds. External financing have eligible costs and rules which States must follow, hence it is not sustainable and do not support long-term procurement process. Ideally, State is allowed to use national budget, which allows to choose more flexible ways how or what to obtain.

The goal of public and private sectors co-operations should be towards how private companies co-operate within private sector, in a sense that co-operation should be flexible, there even might not be a written contract right from the beginning and co-operation evolves on a running basis. It is clear that a State cannot fully copy private sector's co-operation model, as when it comes to public money, there has to be a way to ensure transparency and the procurement has to meet certain rules. Nevertheless, being more flexible with norms and regulations would help to define a role of private sector.

4.2 Impact on competition

This thematic block is analyzing how can competition be viewed as a reason for including or excluding private sector in a context of e-State and in such case, what is the impact on competition.

As mentioned in a concept of Competition law theory, such competition regulations seek to safeguard and foster market competition and for that it is also feasible to establish competition policies that urge regulatory bodies to achieve public policy objectives in ways that are compatible with keeping markets competitive. (Aydin & Büthe, 2016) Based on the interviews, there was a clear understanding of not establishing any strict competition regulations directed specifically on a certain field, such as e-Government. What was encouraged was a mandatory promotion and development of e-Government and that kind of commitment must be put on a State. Theorists from Chicago school, at the forefront with Stigler (1971), also state that the government has a certain power over competition, meaning that it can grant subsidies or ban the entry of competitors to the market directly. In a context of e-Government, a State can make a decision to develop and promote competition, for example by making procurement legislation more flexible and hence including private sector even further. As mentioned before, public sector is the force that drives innovation and private sector is producing solutions which are ordered by a State. Therefore, State must show its willingness to buy and to phrase exactly what it wants. That excludes the necessity to create any other competition regulations, but still allows to establish competition policies that help to achieve public policy objectives in ways that are compatible with keeping markets competitive.

State's procurement policy has an important role on stimulating private sector's competitiveness. State being a "smart customer" was a concept emphasized by most of the experts. The principle is also mentioned in the Estonian Digital Agenda 2020, which states that public sector should be a smart customer, ensuring that in public procurements as much freedom as possible is left for offering innovative solutions, thereby contributing to the development of the ICT sector. Similar concept was also emphasized in a context of market forces, where it was pointed out that the government itself is an important player in the market and hence it affects the market both by creating rules and by purchasing products. (Lessig, 2006) Public sector's IT procurement, as a purchase with

important market power, directly affects competence and competitiveness of private sector. Estonian Digital Agenda 2020 also states that the existence of competent and innovative ICT sector is vital for the development of public sector ICT solutions and the economy in general. When public sector orders yesterday's solutions, private sector is also forced to offer outdated ideas. It works vice-versa as well, when a State is innovatory, private sector strives for delivering innovative solutions. Also, States that procure innovation also support private sector's competitiveness in an international level. Therefore, public sector directly influences technology providers who exist to offer what the market demands. That is also a reason why the role of a state in Estonia as a "smart customer" is considered worth to be strengthened and guidelines for good practices in public sector ICT development advised to be implemented.

The theory of regulatory competition assumes a situation where private sector can make choices with a consideration of which regulatory regime will apply to them. (Stephan, 2013) Today's procurement regulations and competition laws are flexible, in a sense that they allow to rent workforce, procure technology development components or to buy in full service. However, experts pointed out that it is often dependent on how smart of a customer a State is, but unfortunately the level of knowledge among public sector is not homogeneous. Therefore, experts are more after on guidance, mainly through secondary legislation and guidance notes, on how to apply existing regulation. In that sense (competition) regulations should be more specific and in detail, meaning that they should be more widely communicated and promoted, in order to ensure consistent know-how though-out public sector.

4.2.1 Position of small and medium-sized IT enterprises

Theorists from the Chicago school claim that maximizing consumer welfare must be the goal of competition law, but in many cases regulation strongly gives advantage to certain groups. (Tsoulfidis, 2011; Stigler, 1974) In a context of e-Government and competition, it means that regulating could also give advantages to some parties included, e.g. certain IT enterprises. According to experts and based on EU's Public procurement strategy, competition regulation often leaves small and medium-sized enterprises (SMEs) in disadvantage. EU's Public procurement strategy points out that currently SMEs win only 45 percent of the value of public contracts, as often they simply do not have a capacity to

offer. That is not consistent with Chicago school theory, which explain that politics honor passionately expressed preferences. (Hertog, 1999) In case of SME-s, the preferences are more homogeneous than in larger IT enterprises, hence they have an advantage in that for the yield per member of the group is greater. However, experts pointed out that the procurement laws, as the main regulatory framework followed, do not favour SME-s, as they are said to be too strict and also entailing too heavy administrative burden. Generally, big IT enterprises, also named as IT factories by some experts, have adequate amount of resources to deal with with bureaucracy. As mentioned in previous paragraph, today's legal norms do not directly state the role of private sector, but it is more about what role public or private sector sees for each other. That itself might be interpreted as an disadvantage for all IT enterprises, no matter the size. But in a context of SMEs, they are hence in even more difficult situation. Following all regulatory norms is not executable for small IT enterprises, but any competitive advantages are mainly discouraged by the experts and the same was pointed out in a context of e-State. Therefore, it should be the accountability of public authorities to foster an environment where SME's can compete successfully in the market. There are various solutions on how small IT companies could be included more. Not all procurements are large, there are also smaller ones and it is also an international good custom that bigger procurements are divided in parts.

Currently, the main solution for including small IT companies is collaboration with bigger IT enterprises. Experts from private sector stated that often SMEs have very specific niche, which is not offered by big IT enterprises. Therefore, two companies can co-operate to match a procurement. SMEs are behind one specific niche and partner IT company is the main provider, who also bears most of the administrative burden as well. Co-operation is important also from international point of view. In order for IT companies to grow on international level they have to be willing to collaborate. Partnership is a direction supported by the EU as well, the Union's public procurement rules encourage innovation partnerships, which allow the combination of research and public requirements, with specific rules in competition and research and development. Estonia also has examples where procurements are made with a prerequisite supply consortium. It means that there might be the main provider, but procurement conditions state that at least two or three other companies must be included. Furthermore, current practice also includes situations where small sized companies come up with an idea, present it to policy makers and if it's approved, the idea becomes alive. Estonian Digital Agenda 2020 also

points out pilot projects to test and implement innovative solutions and technologies, including in the private sector in the case of services of general interest, as one of the action lines.

Another interesting idea proposed by private sector experts, in order to help SME-s, would be prioritizing IT systems and registers. There are IT systems and registers with various sizes and with different importance. Hence, there is a tremendous difference between the responsibility and impact on society, but for IT enterprises it means different ways to obtain experience. If a State makes a decision to distinguish registers and divide them on categories, based on their impact for example, it would give small IT companies a chance to learn. IT systems and registers with large effect on society means strict procurement laws and heavy administrative burden, which is manageable for big IT companies. IT systems and registers with little impact and responsibility entails more room to learn, therefore smaller IT enterprises have a chance to get experience. A compromise would be establishing so called IT test lab, which allows to make concessions within procurement regulations, specifically from the procurement point of view. There would be development projects that every IT company is allowed to try. If necessary, benefits would be included, but only the best companies would receive a long-term contract. As a result, the amount of bureaucracy would reduce and all companies would equally be allowed to show their competence.

4.2.2 Greater role of State owned IT centers

According to neo-classical perspective of competition, the ideal conditions that must hold in the market are where production is instantaneous and different parties are equal participants in the market. (Plummer & Sheppard, 1998) In a context of public procurement, where public authorities purchase goods or services, there has been a good custom that public sector is procuring such goods or services from private sector. That is mainly due to States not having relevant competence, they do not export the knowledge nor have competent specialists. Nevertheless, experts pointed out that recently there has been a shift towards State owned IT centers being not only administrators of IT systems, but they also involve interior development units. Hence, services that could be promoted by private sector are now developed internally by public State owned IT centers. Trend is also that State owned IT centers buy specialists over from private sector and give them

a specific work assignment. After finishing the task, specialist might or might not return to private sector. It means that a State is actively participating on labor market competition. Traditionally, there has been a doctrine that a State itself is not recruiting specialists, which was mainly in order to stimulate private entrepreneurship. Neo-classical perspective of competition would say that according to the ideal conditions, different parties are equal participants in the market. Importance of Government's role has been emphasized by the market forces theorists, stating that the government itself is an important player in the market, as it affects the market both by creating rules and by purchasing products. A situation where a State creates the rules, drives innovation and also is a supplier is in contradiction with neo-classical perspective of competition, as it leaves private sector out from competition and makes different parties un-equal participants in the market. Therefore the conditions in the market are not ideal nor equal. Also, as is stated in OECD (2008) guidelines, if citizens can satisfy their needs in well functioning markets, in example for the supply of e-services, the involvement of the government is not generally required, beyond setting the rules of the market. Therefore, a State should ensure an environment, which supports the supply of good quality e-services, without straightly interfering in a well functioning market.

Experts from private sector emphasized private sector and ICT companies are strongly against such practice, as it restricts sectors' own development competence and keeps the knowledge within public sector, making it extremely difficult to export. A neo-classical model of competition states that production and distribution of services in competitive free markets promotes rationality, stability, and equal welfare. (Plummer & Sheppard, 1998) Therefore, State being a player in the free market would be tolerated. However, experts claimed that it is killing competition when a State is interfering to service offering and it was pointed out that there should be a regulation stating that a State itself cannot offer a product or a service in a situation where private sector has capability to provide those services. Hence, banning the state from doing some things would be an innovative solution in many countries and an interesting thing that legislation can actually do.

Experts from private sector pointed out that if there is a (political) will to offer a service by a State, in any case, financial resources are found. Similar idea has been brought up by the normative intervention theory of regulation, which point out political willingness and a political decision-making as a powerful tool. (Sheehy & Feaver, 2015) The theory

states that the question of whether to regulate competition more is also usually viewed as a political decision and supportive political–legal environment has the power to push through or put a lid on a potential norm. However, experts mentioned that when it comes to the private sector, they have to offer services which are in demand. Private sector is not willing to take a risk and spend resources if there is no certainty that there comes a possibility to make profit. Classical perspective of competition, initially proposed by Smith (1776), states a concept of "invisible hand", meaning that competition will anyhow direct the actions of each private company pursuing its own self-interest to promote society's welfare, even though this is not part of his intentions. However, private sector has to constantly compete with other providers while continuously adapting with the needs of end-user. State offered services do not have to compete, nor do they have to be constantly modified and adjusted, which is a normal situation when competing with other suppliers. Estonian Digital Agenda 2020 also emphasizes constantly redesigning information systems, otherwise their administration costs will soar. Continuous modification and adjustment are important aspects, but when a State is a supplier itself, whose main priority is not exporting the know-how nor constantly developing competence, there is a strong possibility pointed out by the experts that State offered services might not be with as good quality and as cost effective like services offered by private sector.

As a solution, experts suggested State owned IT centers to be intermediary force, they do have ICT competence and they also have the knowledge on what and how to procure. IT centers should be a link between a contracting authority and a provider. However, as mentioned before, current situation is State owned IT centers compete against private sector, while recruiting specialists and developing themselves. Therefore, they have become from intermediary force to provider of services. As a results, State owned IT centers also compete with each other, lowering the price of the service even more. Experts from private sector emphasized that private companies are not capable to offer a service with similar price as public IT centers, thus again, competition is killed.

4.3 Division of responsibility

This thematic block is analyzing how the responsibility should be divided between a State and a supplier. Responsibilities of a procuring authority and a supplier are typically determined in a written contract and in a broader context regulated with procurement laws. In some States it is stated in the procurement law that a responsibility must be divided between a contracting authority and a supplier. However, in practice, current practice is often that it is stated in a written contract that the private sector carries most of the risks. Contractual penalties are often used as a tool to for security.

Public procurement contracts demand guarantees for objectivity and responsibility. Experts interviewed emphasized how in practice the only necessary legal tool can be something as legally simple as contracts, meaning that there is no need to create any new legal framework for responsibility. However, more emphasis should be put on sharing risks and responsibility. It was highlighted by the experts that contractual penalties are definitely not the way to go forward, as they do not improve co-operation between sectors, but rather hinder it. Contractual penalties also create a risk that private sector deliberately refrains from co-operation with public sector. That is even though public procurement policy has a vital role in stimulating private sector's competitiveness. Another important factor is that a general risk tolerance, especially from public sector's point of view, must be higher. A low risk tolerance, especially from public sector's point of view, is wider than just e-Government, as it is closely connected with public opinion. Experts emphasized that with an e-Government, there is always a possibility that risks become reality. The question is, whether the wider public is willing to accept it. Therefore, it is necessary to say it publicly from the beginning that a procured project might not work out, but there is a cross-sectorial common vision to develop a service which would benefit citizens. Hence, there is a possibility and a will to experiment and when it is transparent, wider public is also more indulgent when it comes to failing.

Political responsibility is another question. Experts emphasized, that responsibility for the existence of a service cannot be delegated from a State to private sector. According to Normative intervention theory of regulation, regulating is usually viewed as a political and ideological decisions. (Sheehy & Feaver, 2015) If a social problem is important enough, there comes a political response to warrant a coordinated response. Un-

supportive or supportive political–legal environment has the ability to push through or vice-versa, put a lid on a potential norm. However, political environment is closely linked with political culture and citizen's voting behaviour. Theorists from Chicago School state that in politics, regulation costs on the general population would have to exceed some minimum amount before voters make them a primary motive for political participation. (Hertog, 1999) Hence, if an existence of a regulation seems to be costing too much for the general population, it creates an un-supportive political environment and has the power to dominate over decisions to regulate.

4.3.1 Alternatives for regulating responsibility

The more transparent and prepared procurements and contracts are, the better is the end-result. Responsibility as such could be regulated through written contracts, but there must be a definite guarantee that responsibilities and risks are shared in practice as well, not only on paper. Experts emphasized that public sector must have a vision and a willingness to finance innovation and at the same time take risks. Even further, State's mentality should be spreading of risks (rather than creating regulation), meaning that if there are two parties in a contractual relation, it should be based on co-operation and partnership, so that sharing risks is also balanced.

Some experts pointed out that public sector should take responsibility on behalf of society and that the scope of this cannot be defined without a written legal norm. Public procurement can also promote social responsibility. As stated by the theorists of market forces, government itself is a player in the market, which affects the market both by creating rules and by purchasing products. When public sector links social responsibility to public procurement processes, socially responsible procuring becomes a rule, not exception. As a suggestion, experts mentioned community responsibility as an idea to follow. Another way to better enhance responsibility, experts suggested to promote wider sharing of good practices, meaning that successful e-Government practices, which have been created in public-private co-operation, should be gathered in one database. Public procurement contracts demand confidentiality, however, know-how about which practices are successful and which mistakes not to make is relevant to all parties included in e-Government.

4.4 Regulating new technologies

Technology, user habits and legislation are in a constant state of change. Market forces theorists state that demand uncertainty, rate of technological change, and competitiveness have an important influence on technology. (Porter, 1980) It means that it is impossible to predict emerging new technologies, due to constant change of user habits, digitalization and competitive behaviour. Therefore, the ability to anticipate and to be flexible in order to adapt to these changes, is increasingly vital.

Markets for new technologies are worldwide, therefore, the ability for nation states to effectively regulate emerging technologies is limited. Thus, as mentioned before, supranational organizations, such as EU, often take the lead in giving instructions on how to regulate. In the context of current thesis, how new technologies are welcomed and regulated is a relevant question, because private sector plays a vital role in developing new technologies. When a State decides to take action to endorse or not to support new technologies, it automatically sets limits to private sectors' innovation and role. An expert from public sector pointed out that when a State is dealing with emerging technology, there is no rush to regulate something, but there has to be a strict position on how new technologies are dealt with. The expert made an example from cloud computing, and how legal framework can be a driver or an obstacle. States have different opinions about restoring data outside the country. If a State takes direction to own server resources outside of its own territory, in order to use it not only for data backup, but also to operate services, it is important that such resources would still be under State's control. However, government level cloud computing is an innovative idea and some would say risky as well. Also, legal framework for this kind of concept is still lacking and therefore, there should be a certain position made by the State, how such technology is to be treated and whether there is a need to regulate. Estonian Digital Agenda 2020 states that innovative technologies should constantly be analyzed and piloted. Hence, cloud computing, as well as any other unprecedented technological innovation, should be analyzed and piloted on a State's level, not regulated immediately.

Normative theory of regulation states that the need for regulation comes from problems or issues requiring public attention. (Sheehy & Feaver, 2015) In this context, an important point was made by an expert with a long-term legal background - with emerging new

technologies, it is important to agree on what is technologically feasible, but also socially acceptable. It means that technology might enable something, but is it also right to allow it? Hence, if a new technology radically changes existing some social norm, would there automatically be need to regulate. As an example, e-State has potential to evolve into a condition where there is no privacy at all, but the question is whether this is also a State citizens want to live in. The rationalist approach supports the point made by the expert that individuals have objectives, such as personal freedom, that are affected by regulations and technology. (Joskow & Noll, 1981) With emerging new technologies, the world and also the mentality of individuals change, hence there might be a need to revisit traditional social norms every once in a while. However, when a State has taken a strict position about some innovative technical solution, norms and regulations should set boundaries. State can be a driver of innovation, but it also has the power to restrict it. However, as is stated by Normative theory of regulation, the purpose of regulation is to achieve a different social effect or to ensure that people behave in the desired way. (Sheehy & Feaver, 2015) Thus, it could be that regulating new technological solutions, in order to set boundaries, would keep people behaving in familiar manner. Boundaries must be well justified, as wanting to protect some social norms, technical innovation has been hindered.

5 Discussion

Main research question of current thesis was to examine what is considered to be the private sectors' role in an e-State and how should it be regulated from a legal perspective. Public procurement laws, which are the main regulatory framework followed, nor relevant strategic documents do not state Private sector's role in a context of an e-Government. However, the suppliers for public sector are often private sector companies, who also export the knowledge. From a legal perspective, while considering that if there are no legally established guarantees for continuous public-private co-operation, companies don't have any certainty. If message is sent out that private sector's role is not clear and there might be no need for their participation, there is also no certainty over private sector's competitiveness and their constant collaboration with public sector as service providers. Furthermore, if private sector's competitiveness is hindered, economic situation in general is jeopardized.

The goal is to create more defined co-operation between private and public sector and determine the roles and responsibilities of both parties. The end-value or goal should be mutual, service provider and contracting authority should be partners, forming one chain. For that, policy, not norms or regulations, need to adapt. The direction should not be to create any new legislation, which would be addressed directly on e-Government and inclusion of private sector. While creating new regulations, there comes a possibility to legally corner ourselves and therefore hinder the innovation as well. States, as contracting authorities, set the direction of innovation. When a State is a smart customer, it is capable to phrase exactly what is wants and ideally, procurements aim to order something innovative. When public sector do not order innovative solutions, private sector is also forced to offer outdated ideas, which in turn ends up restraining private sector's competence and competitiveness as well.

It is rather interesting that dominating opinion among experts is skepticism towards the need to regulate private sector's role more. Internationally this is not always the attitude. Among other regulations, which are affecting technology and digital innovation, EU has put increasingly more emphasis on data protection regulation, cyber security laws and payment directives. However, raising EU standards might help the Union as a whole or States which are not digitalized enough. However, in States, which are already

successfully using technological possibilities in the context of an e-State, there is a risk that EU rules might hinder not favor digital innovation. It might have not happened yet, but in the future, the divide between highly innovative countries and rather conservative ones become more visible. ICT, as a horizontal field, affects other domains as well, therefore, any regression or stagnation carries over. Hence, Europe has given the direction that Member States should set more control over technology and how it affects everyday lives, but it is not always what everyday practice suggests.

As a compromise for not creating any specific regulation, sectoral development plans could be used as a form to communicate the role of private sector. Ideally, procurement regulation would be main legal framework and development plans would form a basis. When public procurement takes place, public sector prefers to procure from private sector, and not give advantage to State owned IT centers. Private sector gets to have the know-how and also keep the certain product, but private sector stays responsible for the quality of the service. Nevertheless, private sectors also would be free to export the product and hence gain more international competitiveness. Therefore, public ICT procurement enhances competence and competitiveness of private sector. In addition to a compromise of not creating any new regulation, there could be a norm, stating that out of all public sector procurements at least three percent should be directed to innovative solutions, which would ensure consistent development of an e-State.

Sub-question of current thesis examined how can competition be viewed as a reason for including or excluding private sector in the context of an e-State. Competition laws are in place in order to safeguard and foster market competition. Public sector's IT procurement is a purchase with an important market power, as it affects private sector's competence and competitiveness and also sets the direction of innovation. Regarding public procurement, State's should not establish any strict competition regulations directed specifically on an e-Government. Instead, mandatory promotion and development of e-Government must be set as a responsibility of a State. States, which make a decision to develop and promote competition, can gain even more when they are bound to procure innovative solutions. As mentioned before, there should be a norm, giving guidelines for States that out of all public sector procurements at least three percent should be directed to innovative solutions. State as a "smart customer" has an ability to buy and to phrase exactly what it wants and willingness to procure innovative solutions.

This allows to establish competition policies that help to achieve public policy objectives in ways that are consistent with keeping markets competitive. Hence, the necessity to create any other competition regulations is excluded. Ruling out any further regulation also excludes the possibility to give advantages to different parties. Existing procurement laws are for some SME-s too strict and entail heavy administrative burden, but any competitive advantages are mainly discouraged in a context of e-State. Therefore, public authorities should foster an environment where SME-s can compete successfully in the market. SME-s could be included more when collaborating with bigger ICT enterprises through innovation partnerships or procurements with prerequisite of supply consortium.

The good custom has been that public authorities itself is not the supplier in public procurement. However, State owned IT centers have shifted to become one of potential providers of public e-services. Hence, they are not only administrators of IT systems, but they also involve interior development units. At the same time, private sector is also capable to offer e-services which benefit citizens. Therefore, the involvement of State is not generally required, but rather government should be ensuring the availability of e-services. Public sector's main purpose is to respond better to the needs of citizens, and for that a State should ensure an environment, which supports the supply of good quality e-services, without straightly interfering in a well functioning market. The phenomenon, where State owned ICT centers participate in the market directly restricts private sector's development competence. Even further, the know-how is kept within public sector, making it difficult to export, because exporting knowledge is not the priority. Legally, radical solution would be banning State from being a provider and hence restricting its involvement in the market. State owned IT centers would be an intermediary force, as they do have ICT competence and also the knowledge about public procurement. Hence, they would be a link between a contracting authority and a provider from private sector.

Second sub-question of current thesis examined how should the responsibility between a State and a private enterprise be divided in the context of an e-State. Responsibilities of contractual parties are in a general context regulated with procurement laws and more specifically clarified in a written contract. As analysis showed, current way of regulating responsibility seems to be acceptable, meaning that there is no need to create any new legal framework. However, current legal landscape do not emphasize enough sharing risks and responsibilities. In some States, procurement laws may refer to sharing risks,

but in a written contract the reality is often different. Risk tolerance, especially among public sector, must be higher and the overall mentality should be spreading risks, meaning that contractual relations should be based on co-operation and partnership. E-projects are often with high market value and with a major impact on society. A great importance is to remember that in a context of e-Government, there is higher possibility that initial risks become reality and hence it affects large amount of citizens. In the long run, wider public's willingness to accept failed e-projects is crucial. Thus, it is necessary to emphasize from the start that an e-State itself is somehow a pilot project with an aim to bring greater good. In turn, States own a will to experiment and wider public is more indulgent when it comes to failing.

When it comes to emerging new technologies, the ability to anticipate technological changes and flexibility to adapt to these is vital. There definitely should not be a rush to regulate everything new. As analysis showed, when States start to regulate, there is always a possibility to corner themselves. However, a State has to create a strict position on how new technologies are dealt with, meaning that if a State is innovative and willing to take risks, new Technologies could be piloted and analyzed. When a State has taken a position to regulate and set boundaries on some innovative technical solution, it automatically sets limits to private sector's innovation. Therefore, boundaries must be well justified. With emerging new technologies it is also important to agree on what is technologically feasible and at the same time socially acceptable. Again, when there is a willingness to regulate quickly, there has to be a understanding that when wanting to protect some social norms, technical innovation is automatically hindered.

6 Conclusion

The research objective of current thesis is to analyze how should the legal framework to be set up in order to ensure private sector's role and responsibilities in a context of e-Government. Similarly to other public or private organizations, regulators are adopting technological possibilities more, and while this brings many benefits, it also can have unforeseen consequences. E-Government is a policy tool, which calls for greater flexibility, responsibility and risk sharing in the public sector.

Main research question of current thesis was to examine what is currently considered to be the private sectors' role in an e-State and how should it be regulated from a legal perspective. Analysis showed that public procurement laws, which are the main regulatory framework followed, nor relevant strategic documents do not give any precise role for private sector in a context of an e-State. Common understanding is that legal norms and regulations do not set the standards on how and whether private-public co-operation in a context of e-State is carried out. However, the direction should not be into creating new legislation, which would be addressed directly on e-Government and inclusion of private sector. As the aim of the current thesis was to increase the understanding of what actually is the role of the private sector in an e-Government and how should the States regulate such co-operation, solution would be using sectoral development plans as a form to communicate the role of private sector. Procurement regulation would be main legal framework, development plans would form a basis and when it comes to procuring, public sector procures from private sector, leaving them the know-how and a certain product. Private sector would be responsible for the quality of the service, but also would be free to export the product and hence gain more international competitiveness. Therefore, public sector's procurement enhances directly competence and competitiveness of private sector. In addition to not creating any new legal regulation, there could be a norm, stating that out of all public sector procurements at least three percent should be directed to innovative solutions, which help to develop e-State.

First sub-question of the current dissertation was to gain more knowledge on how should the responsibility between a State and a private enterprise be divided in the context of an e-State. As analysis showed, responsibilities of a procuring authority and a supplier are in a broader context regulated with procurement laws and more specifically determined

in a written contract. Such way of regulating seems to be suitable, meaning that from a legal perspective there is no need to create any new framework for stating responsibility. However, today's legal solutions do not put enough emphasis on sharing risks and responsibilities. Meaning that often it is stated in a written contract that one contractual party carries more risks and has more responsibility. Instead, State's mentality while procuring should be balancing risk-sharing, meaning that contractual relations base on partnership and shared risks.

Second sub-question of the current thesis was to examine how competition can be viewed as a reason for including or excluding private sector in the context of an e-State. As analysis showed, there has been a shift towards State owned IT centers being not only administrators of IT systems, but development units as well, meaning that they are also participators in the market. Hence, private sector's development competence is restricted and they also have to compete with public sector over work-force. Sharing the know-how internationally is one of the priorities of private sector, as it is profitable and helps to gain competence. However, it is difficult to export the knowledge, when State owned IT centers are gaining influence, and the knowledge is kept within public sector. Therefore, it is also hindering both, private and public sector's, international standing. As experts stated, a solution would be legally banning the State, or in a current context banning State owned IT centers, from being a supplier in a situation where market is capable to offer necessary service. State owned IT centers stay as a mediatory force, which has ICT competence and also the knowledge about public procurement.

The implications of emerging technologies and how these can be regulated effectively are of great importance. When a State is dealing with new technology, there is no rush to regulate something, but there has to be a certain position taken by State on how new technologies are dealt with. The ability to anticipate changes and flexibility to adapt to these is vital. With emerging technologies it is also important to agree on what is technologically feasible and at the same time socially acceptable. With new technologies, the world and also the mentality of individuals change, hence there might be a need to revisit traditional social norms every once in a while. As analysis showed, States are the ones to procure and hence set the direction of innovation. Thus, when a State has taken a position to regulate and set boundaries on some innovative technical solution, it

automatically sets limits to (private sector's) innovation. Boundaries must be well justified, as wanting to protect some social norm, technical innovation has been hindered.

Further research could be conducted on various directions. Firstly, State owned IT centers and their implications on competitiveness, economy and private sector's role. Secondly, a concrete legal framework model could be developed, which would work as a guideline for States on how legally ensure the inclusion of private sector in a context of an e-State.

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Annex 1 List of interviewed

Respondent 1 - Business Development Manager at Tieto Estonia AS and representator of ITL. (Interview, audio recorded). Conducted: 28.02.2018.

Respondent 2 – Director of Technology and Software Development at AS Datel. Representator of ITL. Former Head of Strategy division/ Deputy director at SMIT and former Head of IT department at Citizenship and Migration Board of Estonia. (Interview, audio recorded). Conducted: 22.03.2018.

Respondent 3 - Former Legal Advisor at the Department of State Information Systems at Estonian Ministry of Economic Affairs and Communications. (Interview, audio recorded). Conducted: 22.03.2018.

Respondent 4 - Head of Department of Information Society Services Development in Ministry of Economic Affairs and Communications. (Interview, audio recorded). Conducted: 13.02.2018.

Respondent 5 - Junior researcher, PhD student and lecturer at Tallinn Technical University (TUT). Over 20 years of international legal consultancy experience, specialised on EU law, especially competition law, public procurement law, intellectual property law and IT law. (Interview, audio recorded). Conducted: 27.02.2018.

Respondent 6 - One of the founders of Estonian e-Governance Academy and Programme Director of the Central e-Government. Innovation management lecturer at Tartu University. Former executive at several mobile communications, broadband and software companies like Skype and Fortumo, advisor at the Nordic Investment Bank, and Board Member of the European Institute for Innovation and Technology. Also a co-founder and member of the board of mobile services and software development company Mobi Solutions and start-up Pocopay. (Interview, audio recorded). Conducted: 19.02.2018.

Annex 2 Interview transcripts

1. Respondent 1

Interviewer: e-valitsemise kontekstis teevad riigid tihti koostööd erasektoriga, näiteks infosüsteemide arendamise, hoolduse, majutuse jms vallas. Seega saab öelda, et erasektoril on e-riigi loomises suur roll. Regulatsioonide kontekstis on aga e-riigindus küllaltki uudne kontsept, seega kas ja millisel määral peaksid riigid erasektori kaasamist reguleerima? Milline on täna Eesti praktika?

Respondent 1: kui projekte tehakse, regulatsioonid tulevad tellija poole pealt. Kui mõtled seda, et milline süsteem peab olema, siis teenuse pakkuja poolelt on esmane eeldus see, et tellija teab ja on pädev regulatsioonides. Seal on tehnilised nõuded, ärinõuded, regulatsioonid.

Interviewer: meil ei ole kuskil seaduses sees, et peab kaasama erasektorit, kas see äkki peaks olema?

Respondent 1: see ongi juba probleem turul, riik pakub jõrjest rohkem teenuseid iseendale – arendus, loomine, teenuse pakkumine, hooldus, haldus, majutus jms. Ja suund on sinna, et pakub järjest rohkem. ITL ja IT ettevõtted näevad seda probleemina. Ja sellega ka erinevates töögruppides igapäevaselt tegeletakse. Tegelikult oleks väga hea, kui kuskil oleks reguleeritud nii, et riik ei tohi ise teenust/toodet pakkuda, olukorras, kus on olemas erasektori poolt pakutavad teenused või võimekus neid pakkuda. Kui riik ise neid pakub, siis see tapab igasuguse konkurentsi. Riik ju ei vaata teenuse ärikasumlikust, vaid kui riik seda pakub, tuleb sellele ka raha leida. Vastupidiselt erasektorile, kus pakutakse teenuseid, mille järgi on nõudlus. Seega teenus ei pruugi olla nii hea, kuluefektiivselt pakutud ja tapab ka konkurentsi. Kui erasektor seda pakuks, siis tuleb tal võistelda teise või kolmanda pakkujaga ka ja seal tuleb kogu aeg kohaneda, vaadata, et pakud sellist teenust, mida lõpp-tarbija tahab. Kui riik seda teeb, siis tema ei pea selle pärast konkureerima, edasi arendama jne.

Riik võib olla teenuste vahendaja näiteks, SMIT/RIK/KEMIT jne - neil on IT kompetents, nad teavad mida/kuidas tellida ja on lüliks teenuse tellija, tegija ja pakkuja vahel. Aga riigi IT majad on nii suureks kasvanud, et nad järjest rohkem pakuvad ise teenuseid ja võtavad tööle turult tööjõudu. See roll vahendajast on muutunud ise teenuse pakkujaks. Ministeeriumite üleselt juba need IT majad konkureerivad omavahel ja see hind, mida

pakutakse ei sisalda kõiki kulusid, mida eraettevõte oma teenusesse sisse arvestab, sestap see on soodam ja jällegi tapab konkurentsi.

Interviewer: Kui vaatame tänaseid hanke regulatsioone, kas ettevõtjate jaoks need on piisavad?

Respondent 1: tark tellija on võtmesõna siinkohal, praegune hankeregulatsioon ja kuidas võiks olla – tänase regulatsiooni juures on isegi väge mõistlikult võimalik hankeid korraldada, aga see jällegi sõltub sellest, kui tark on tellija.

Kuidas see võiks olla reguleeritud, on arusaadav, et mõned tellijad ei ole targad, tase on erinev. Ja abiks oleks, kui regulatsioon oleks konkreetsem ja natukene detailsem. See küll seaks rohkem piire ette, kui praegu, aga teisest küljest see vähendaks seda, et vähem pädevatel IT hankijatel oleks ees paremad raamid. Ma ei ütle, et need raamid peaksid tulema kuskilt regulatsioonist või seadustest, aga kui ikkagi ei öelda konkreetselt, et peab tegema, siis alati on neid, kes ei tee. ITL ja riik koostöös on selliseid juhendeid palju koostanud, aga ühest küljest riigiga koos teed need hea tava põhimõtted ja kui tuleb mingi hange siis jälle näed, et ei järgita. Hea tava ja soovitused lähtuvad sellest, et hanked ja koostöö riigiga oleks partnerlus, mitte see, et mina tellin ja maksan ja teie vaid tehke. Kui tulla tagasi selleni, et kui mingit lahendust riigil pakutakse, kui palju siis eraettevõte sellele kaasa mõtleb, sõltub sellest, kui targasti on tellimus/hange tehtud. Eraettevõttele on huvitavad just need projektid, kus ta saab reaalselt kaasa mõelda. Ja veel riigi ja erasektori koostöö osas, suund on sinna, et kuidas tegelikult eraettevõtluses ettevõtted omavahel koostööd teevad. Riigis ei saa küll täpselt sama mudelit rakendada, näiteks eraettevõttes tehakse küll hankeid, aga kui mingi lahter jääb täitmata, kuigi lahendus on väga hea, sind ei jäeta kõrvale. Ühest küljest saan aru, et riigihange peab vastama konkreetsetele nõuetele ja kui hankija mingi koha pealt silma kinni pigistab, siis ta on ju seadust rikkunud. Nii ju ka ei saa. Näiteks töörühmas oli arutelu all olelusring (kogukulu), ehk põhimõte, mida eraettevõtluses rakendatakse. Sa pead hankima nii, et on mitu pakkujat ja sa ei hangi täna endale mingit lahendust, maksad ja pärast avastad, et lahendust on vaja igal aastal hooldada ja üleval hoida. Ja kõik see on lisahalduskulu. Teised pakkujad olid võib-olla kulukamad, aga halduskulu oleks olnud madalam. Seega kogumaksumus oleks olnud madalam. Üks soovitus seega, et kui hangid, siis vaata perioodi ja hinda perioodi tervikuna. See oli ka üks ITLi ettepanek, et see uude riigihangete seadusesse sisse läheks. See läks läbi, aga lõpuks seaduses sõnastus pandi ikka nii, et see ei täida oma eesmärki.

Interviewer: kas ja kuidas võiks konkurentsi seadusi rakendada eri viisil ettevõtetele, mis on e-riigi jaoks olulised.

Respondent 1: mina olen alati olnud suurtes IT ettevõtetes. Aga seisukoht on alati olnud, et kui väikesed tahavad tulla, siis võivad suurtega koostööd teha. Pigem ikkagi riigil peab olema mingi väga konkreetne teenus, mida riik julgeks väikselt ettevõttelt üksi võtta. Hetkel hankenõuded on jah sellised, et väikesel ettevõttel on üldse raske pakkuda. Aga kas seda peaks rohkem soosima.. kuidagi ei kõla loomupäraselt selline suunamine. Pigem saavad väikesed oma jõu ja tugevuse, kui minnakse suurtega koos. Kui on suured projektid, siis see on risk ikkagi tellijale, et on ainult väike tegija seal taga.

Interviewer: Kui me räägime vastutusest, kas erasektoriga koostööl peaks olema lisaks tavapärasele vastutuse reguleerimisele ka reguleeritud konkreetsel viisil vastutus e-valitsemise korral?

Respondent 1: Jah, hetkel meil see vastutuse asi on paremaks läinud. Taustaks, kust need hea tava põhimõtted tulevad – korraldav kogu ja selle töörühmad. Riskide ja vastutuse pool baseerub suuretsi ikkagi sellel, kuidas see on lepingus sätestatud. Lepingute töörühmas me teeme soovitusi ja juhiseid, kui on kaks osapoolt lepingulistes suhtes, peaks suhe baseeruma koostööl ja partnerlusel. See peaks olema tasakaalus. Lepingute töörühm kutsuti ellu just sellel põhjusel, et varem oli alati vastutus ainult eraettevõttel ja sellega võisid kaasneda väga suured trahvid ettevõttele. Ja nüüd meil on välja töötatud nii-öelda tasakaalus lepingu põhimõtted. On näha, et see mõjub, aga ikkagi on probleeme. Soovituste võlu ja valu, kes tahab, see kasutab neid, aga mitte kõik hankijad ei tee seda.

Interviewer: Rahvusvaheliste juhtimisorganisatsioonide roll konkurentsi reguleerimises - kas riigiülesed juhtimisorganisatsioonid peaks laiemas kontekstis konkurentsi reguleerima?

Respondent 1: tegelikult need suunised, mis väljaspoolt tulevad ja soodustavad IT hankimist ja koostööd, seal on oluline see, et kui riik midagi väljaspoolt tulevatest regulatsioonidest rakendama hakkab, tuleb kindlasti kaasata erialaliitusid ja saada sisendit neilt, kes tajuvad IT mõttes seda suurt pilti.

2. **Respondent 2**

Interviewer: E-valitsemise kontekstis teevad riigid tihti koostööd erasektoriga, sh infosüsteemide arendamise või hooldamise osas. Seega võib öelda, et erasektoril on teatav roll e-valitsemise kontekstis. E-valitsemine regulatsioonide kontekstis on aga

küllaltki uus kontsept, seega kas ja millisel määral peaksid riigid erasektori kaasamist reguleerima? Milline on täna Eesti praktika?

Respondent 2: mitmekihiline küsimus, näiteks arendamisel on rinevad kangused – teha täiendusi olemasolevasse süsteemi või arendada mingit olemasolevat, aga uut ideed või kolmandaks mõelda välja mingi täiesti uus idee. Kas on olemas praktikaid, mis neid kõiki kanguseid kuidagi eristaks, siis vastus on, et kõiki neid asju lüüakse ühe vitsaga. Ametnik poeb riigihanke seaduse taha ja tavaliselt on lihthanked – renditakse tööjõudu, tehakse tehnilise tüki väljatöötamise hanget ja ostetakse sisse täisteenust, ehk antakse ette tingimused ja kogu vastutus on ka riigi pool. Hetkel tehakse kõiki mudeleid ja isegi kombineeritud teenuseid, sinnani, et on avalikke teenuseid, mida riik ostab sisse erasektorist. Kui küsida, kas täna meie seadusandlik ruum midagi piirab, siis pigem on ta seal taga, et mis rolli keegi kellelgi näeb.

Interviewer: aga kuskil eraldi välja toodud ei ole, et peaks erasektorit kaasama? Või äkki võikski riik võtta enda kätesse ja rohkem isehakata arvendamisega tegelema?

Respondent 2: ei ole olemas ühtegi selget poliitikat, üleüldse strateegiate osas meil läheb aina hõredamaks. Äriliselt mõtestatud strateegiaid on väga vähestel ametkondadel, mis igal ministeeriumil peaks olema. Selles kontekstis ei oma enam tähendust, kas on üldse mingi regulatsioon, mis käsib kaasata. Püütakse küll välja töötada, Siim Sikkut on püüdmas luua täiesti uutele algatustele mingit õiguslikku raamistikku. Ja täna parim meetod IT valdkonnas on riigi IT majade poolt ja teiste organisatsioonide poolt kokku lepitud vabakondlik formaat. Ja seal pannakse paika, millised oleks need parimad praktikad. Aga kuna inimesed vahetuvad ja liiguvad, siis osad teavad neid reegleid, aga kõik ei järgi, ei teagi neid. Ajaloos tagasi on väga palju parem olnud see kaasamine ja koos tegemine. Kuigi oli igasugustele X-teedele ja ID kaartidele vastuseid, sest ei teatud, mis need on. Alguses oli see ju ressursi sisse panemine, ilma tulemuseta. Meil õnnetus see tööle saada, sest üks põhimõte oli et tugevalt tehti koostöös asjad era- ja riigi vahel, alates mõttes kuni elluviimiseni. Näiteks ID kardi puhul füüsilise osa tootis riik, elektroonilise osa era. Identiteedi kinnitas riik, sertifikaadi tootis sertifitseerimiskeskus. Ja Sertifitseerimiskeskus sai alguse nii, et seal olid osalised pangad, telekom ettevõtted, riik. Kokkulepped olid kohe riigi ja erasektori ühised. Kui tehti X-teed, siis olid kaasatud ettevõtted, Cybernetica, Fujiju, MKM jne. Riik ei püüdnud teha kõike ise, loodi keskkond, seadusandlik ruum ja võimalused/platvormid, aga kuulati palju erasektorit. Üksikisikutele anti tegutsemisvabadus, usaldati! Asja jõustati ka poliitiliselt. Tollel ajal oli ka põhimõte, et kui riik on küsinud andmeid korra, siis ei tohi enam uuesti seda küsida,

hiljem sai selle põhimõtte nimeks once-only. Ja täna kehtivad seadusandluses seda enam ei eksisteeri, räägitakse, et erinevad seadused koosmõjus väidavad, et see on olemas, aga seda pole kuskil tegelikult. Probleem on see, et iga ametkond ei näe riiki tervikuna. Ei ole olemas ühtset mustrit, riiki. On häid tavasid, aga kuna inimesed vahetuvad, neid ei teata. Kui riik alguses nägi innovatsiooni juures seda, et üksi ei jaksa ja seda on vaja koos teha, siis see on asendunud viimase 5-10.a jooksul e-*arrogantsusega,* et riik on nii tark ja meil pole kelleltki midagi õppida.

Interviewer: Kas riigid peaksid pigem suunama ressursse enda pädevuste suurendamiseks? St kas koostöö erasektoriga võiks olla sekundaarne ning riikidel endal on suutlikkus süsteeme arendada, hooldada.

Respondent 2: seal on fundamentaalne probleem – inimesed tegutsevad püstakutes, nad ei näe riiki tervikuna. Teenuse saaja poolt, teda ei huvita bürokraatia struktuur, ehk siis puhtad avalikud teenused on sõltumatud struktuurist ja hea avalik teenus peaks selle struktuuri piire ületama. On vähe neid ametkondi, kes vaatavad probleemile struktuuriüleselt, parim näide Eestis on häirekeskus – kui on häireolukord, siis koordineeritakse täiesti sõltumatute struktuuridega see asi ära. Mõeldakse kliendi vaatest terviklikult. Kui riik ise hakkaks värbama, siis need inimesed jäävad jälle silotornidesse kinni. Erasektori inimene vaatab seda sõltumatuna + neil on olemas teiste valitsemisalade kogemus. Lisaks, erasektor pakub kogemust üle maailma ja seda riigis ei teki. Käiakse küll üle maailma vaatamas, aga siis vaadati ikkagi, et mis võiks olla see ülesandepüstitus, mis on tehniliselt võimalik, aga sa ei olnud ise see realiseerija.

Ja see jääb selle taha kinni jälle, et mis rolli üksteisel nähakse. Kui riik näeb erasektorit, et erasektor on tööjõurendi ettevõte, kus hangitakse näiteks lihtsalt tundide alusel või tükkide alusel. Aga täisprobleemilahendust ei osteta.

Interviewer: Kas ja kuidas võiks konkurentsi seadusi rakendada eri viisil ettevõtetele, mis on e-riigi jaoks olulised, näites väiksemate IT-ettevõtete kaasamine?

Respondent 2: see on kahe teraga mõõk, mis eeldab väga targaks tellijaks olemist. Regulatsiivsetest nõuetest läbinärimine väikesele ettevõttele ei ole jõukohane, kui tegemist on suure või keskmise registriga. Aga meil on erinevaid ülesandeid ja registreid on ka väikeseid. Ja see on suur vahe, see vastutus ja mõju ühiskonnale, seal saab ohutult kogemust koguda. Seega võiks riik anda nii võimaluse väiksematele, et harjutada. Aga see eeldab, et vaadataksegi riiki tervikuna, öeldakse, et see või see register on sellise tähtsusega. Ja see eeldab keskse arhitekti olemasolu, kes nö oleks valmis võitlema selle brükraatiaga. Ja siis saaksid need riigi turule sisenejad ka testima ja proovima hakata. Aga

kui räägime ülesannetest, mis ei ole defineeritud ja mida pole küsitud, see on veel huvitavam..

Interviewer: Kas lisaks konkurentsiregulatsioonidele oleks vajalik luua mõni muu, konkreetset sektorit, hõlmav regulatsioon?

Respondent 2: ei, regulatsiivse ruumiga ei ole probleemi hetkel. Meil on võistlev dialoog, mehhanismid on olemas. Mõtlemine, suhtumine ja tahe on piirang – meil on häirekeskus, EMTA, kuidas nemad said sellest üle. Mina ei saa aru, kus meil riigis see süsteem katki läheb, väärtusahelas IKT toote/spetsialistide juures on kõik korras, aga enne kliendini jõudmist, kuskil avaliku teenuse või IKT teenuse juures midagi juhtub.. Seadusloome valmistavad ette inimesed, ametnikud vastutavad. See ei ole tuumafüüsika, aga siiski see kaob ära, järelikult keegi ei hooli piisavalt.

Interviewer: Kui me räägime vastutusest, kas erasektoriga koostööl peaks olema lisaks tavapärasele vastutuse reguleerimisele ka reguleeritud konkreetsel viisil vastutus e-valitsemise korral?

Respondent 2: ei ole jälle ühte mustrit, igaüks käitub omamoodi. Meil võib olla vastutus kuskil lepingus reguleeritud, aga kui näiteks IT arendajal on asi valmis, siis ei võeta tööd vastu, sest kellelgi teisel (registrid on ju seotud), on töö veel tegemata. Ja siis ei võeta mingeid töid enne vastu.

Interviewer: Aga kas seda just ei peakski siis rangemalt reguleerima?

Respondent 2: regulatsioonid ei muuda inimeste käitumist. Me toodame tohutult uusi nõudeid, regulatsioone, aga see ei aita. Me ei muuda süsteemi. Iga nõu on tegelikult ressurss või raha, kellegi tööaeg. Me ei loo nii juurde väärtust ja selgust.

Interviewer: aga mis siis kõige mõistlikum oleks?

Respondent 2: riik oskab lepinguga vastutust panna küll. Aga kui riigis on õnnestunud näiteid, võtaks need näited ja küsiks, aga kuidas selleni jõuti, kuidas nad tegutsesid. Kes ei ole edukad olnud, peaksid uurima neilt, kes edukad olid. Ja me peaks pöörduma nende poole, kes teenuse disainisid, mitte nende poole, kes seal hetkel töötavad. Me ei saa panna reegleid *mindset*-le, aga peaks mõtlema kliendi vaatenurgast, kuidas saan aidata neid, kelle eest vastutan.

Interviewer: Kas ja kui palju peaksid poliitikakujundajad juriidilises mõttes sekkuma olukorda, kus uued tehnoloogiad kujundavad radikaalselt ümber juba olemasolevaid valitsemise ja ärimudeleid?

Respondent 2: avatust peaks olema, püstakuid peaks ära kaotama ja võrgustikke peaks looma. Täna on suurkorporatsioonidel kordades suurem mõju avaliku ruumi üle kui

avalikul haldusel. Ja kui ei hakata võrgustiku moodi mõtlevateks ja juhtivateks organisatsioonideks, võetakse lihtsalt avalikud teenused üle. Küsimus on selles, et kas avalik haldus saab aru, et väärtusahel läheb mujale, liiklusruumi ei reguleeri enam liiklusseadus vaid Tesla, kes programmeerib oma autod kuidagi käituma. Ja erasektori suurim väärtus on, et nad dsaaksid aru, kuidas iga päev konkurentsitingimustes peaks mõtlema väärtusahelatele. Riik ei pea oma olemasolu eest iga päev võitlema, aga erasektor peab seda tegema iga päev, mõtlema, kuidas ellu jääda. Ja riigil tekivad nii kunstlikud probleemid. Riigil on erasektoriga koostööl hakata mõtlema väärtusahelale, hakata probleemidele lähenema teistmoodi.

3. Respondent 3

Interviewer: E-valitsemise kontekstis teevad riigid tihti koostööd erasektoriga, sh infosüsteemide arendamise või hooldamise osas. Seega võib öelda, et erasektoril on teatav roll e-valitsemise kontekstis. E-valitsemine regulatsioonide kontekstis on aga küllaltki uus kontsept, seega kas ja millisel määral peaksid riigid erasektori kaasamist reguleerima? Milline on täna Eesti praktika?

Respondent 3: Palju tehakse hankeid, hangete reeglistik seab piirid erasektori kaasamiseks. Samas on palju ka sellist vabakondlikku koostööd, näiteks korraldav kogu, kus luuakse selliseid hea tava kokkuleppeid ja juhendeid, näiteks tüüplepingute puhul, milline võiks olla reeglistiks, kuidas me asju hangime. Või siis kuidas üht või teist teenust hankida, milliseid komponente arvestada, kui e-teenuseid hankima hakkan, aga kõik on pigem hanke keskne. See peamine reeglistik on hange. Kui on alla piirmäära, siis selliseid koostöövorme on ka. Tehakse pilootprojekte, no näteks, kuidas sa innovatsiooni tellid või hangid kui sa ei teagi, mida sa saama hakkad. No näiteks uues hangete seaduses innovatsiooni hanked on, aga see pole päris see. Aga tehakse ka ühiseid projekte, kus palustavad nii ava-, kui ka erasektor, kumbki oma vahenditega ja otseselt kasu saamata. Aga üldiselt juriidiliselt on ikkagi hankereeglistik.

Interviewer: aga kuidagi me eraldi ei soosi, et erasektor oleks rohkem kaasatud?

Respondent 3: jah, see kaasamine on noh, õigusriigi puhul see erasektori kaasamine ei ole ainult tehniline progremine. See on ka poliitika kujundamine, strateegiatesse kaasamine. Meie võti ja tugevus on PPA ja igasuguste selliste dokumentide puhul erasektori kaasamine on tugev osa. Aga see on pigem kogukondlik soov ja initsiatiiv ja muidugi õigusloome puhul on oluline huvigruppe kaasata. Siis on muidugi õigus ka EIS-is arvamust avaldada jms. aga see on sellised protsessipõhised.

Interviewer: hetkel seda ohtu ei ole, et kui meil pole kohustus erasektorit kaasata, et riik nö ise võtab arendaja rolli?

Respondent 3: neid mudeleid on nii ja naa. On ka neid asutusi kes arendavad ise ja on neid, kes ostavad teenust sisse väljast. Ostetakse nii rätsepalahendusi kui ka töötunde ja neid mudeleid on laialt. Jah see suund, et riik saab ka tugevamaks ja teadlikumaks ja vütab suuremat rolli, kuigi see outsourcemine on mõistlikum ja hoiab ressurssi maksumaksja jaoks rohkem kokku.

Interviewer: Küllap ka konkurentsi koha pealt kui riik hakkab ise suuremat rolli võtma, siis kas peaks või võiks kuidagi soosida väiksemate IT ettevõtete kaasmaist?

Respondent 3: tõsi, et ega suurus alati ei tähenda kompetentsi. Ja nagu ma juba ütlesin, on võimalik mõelda teisi koostöövorme, aga väikeste ettevõtete osas teeme ju ITLga koostööd, kuidas seda teha. Praegu on pigem nii, et kui kellelgi on hea idee, siis räägitakse ja tehakse, aga puudub hea praktika.

Interviewer: seega hetkel pole plaanis seda seadusesse panna?

Respondent 3: hetkel need mõtted ei ole nii kaugel. Ja võib olla seda ei olegi vaja seadustada. Kui me midagi reguleerime, siis võime saada vastupidise efekti. Reguleerides võime ennast kinni kirjutada, me ei näe ette situatsioone, mis tulevad. Näiteks ID kaardi kriis – meil olid regulatsioonid, aga meil ei olnud midagi, mis oleks väga pidurdanud meid. Gemalto, SK, kõigi koostöös see lahendus sai loodud. Kui oleksime takerdunud reeglistesse, siis see poleks nii kiirelt juhtunud. E-riik on auasi, selle pinnalt turundatakse. See on kogukonna ühine asi ja see meid ongi edasi viinud.

Interviewer: Rahvusvaheliste juhtimisorganisatsioonide roll konkurentsi reguleerimises, kas riigiülesed juhtimisorganisatsioonid peaks laiemas kontekstis konkurentsi reguleerima?

Respondent 3: jällegi hankereeglid, aga kui 10.a tagasi me saime üsa iseseisvalt oma lahendusi arendada, siis nüüd järjest rohkem tuleb IT mõttes ELi regulatsioone. Näiteks eIDAS, mis reguleerib allkirju ja autentimist, varasemalt meil oli enda digitaalallkirja seadus ja nüüd oleme Euroopaga veidi kinni kirjutatud, mida saame teha ja mida ei saa. Küberturvalisuse seadus, veebide arendamine, need on ELi poolt reuleeritud ja järjest rohkem EL selles valdkonnas reguleerib. Aga katus on ikkagi hankeregulatsioon. Ekspordi mõttes meie riigivara seadus tuleks üle vaadata just selles mõttes, kuidas IT-d reguleerida, sest riigi vara taaskasutusse andmine on päris keerukas – riik justkui jääb sellest ise ilma, aga IT puhul ju seda ei juhtu.

Interviewer: kas ELi regulatsioonid meie puhul just pidurdada ei või?

Respondent 3: eks see on nii ja naa, me anname ju isegi sisendit sinna, aga jällegi iga õigusloome on kompromisside kompromiss. eIDAS ei pidurdanud meid, aga miski ei välista, et tulevikus ei pidurdaks.

Interviewer: ja konkurentsi mõttes samamoodi EL ei..?

Respondent 3: ei ole probleeme jah, eks muidugi mis võib olla on turgu valitsevad seisundid, seda ei ole küll kuskil vaieldud, aga SK kes pakub meile allkirjastamise teenust, on riigis turgu valitsevas seisundis. Seal võib midagi äkki olla.. mujal maailmas teenusepakkujaid on rohkem.

Interviewer: kas peaks tegema kuidagi konkurentsiregulatsioonis erisuse e-riigi kontekstis?

Respondent 3: mina usun, et regulatsioone ei ole vaja muuta tehnoloogia järgi vaid vastupidi. Õigus ei tohiks joosta tehnoloogiaga võidu, vaid see peab olema tehnoloogianeutraalne, et me ei peaks erisusi ette nägema. See sama pilve näide, kus me tahame luau väljapoole riigi piire pilve, ma mõtlen teise riiki lausa. Meil ei olnud veel juriidilist raamistikku sellele. Aga mida rohkem me asju reguleerime, seda rohkem me kirjutame ennast kinni ja pidurdame innovatsiooni. Kuigi reguleerimine võib ka innovatsioonile kaasa aidata.

Interviewer: Kui me räägime vastutusest, kas erasektoriga koostööl peaks olema lisaks tavapärasele vastutuse reguleerimisele ka reguleeritud konkreetsel viisil vastutus e-valitsemise korral?

Respondent 3: vastutuse küsimus on lepingust sõltuv, ka hankeelepingule kohalduvad võlaõiguse sätted. Riik peab olema tark selles osas, aga kui meil on suured leppetrahvid jms, siis see ka ei arenda koostööd. Varem oligi probleem sellega, erasektor ei tahtnudki tulla pakkuma. Aga ma loodan, et siinkohal see kogukondlik vastutus aitab, see et ma ei saagi lepingust välja tulla, sest muidu pensionärile jääbki pension maksmata. Aa seda sisemist vastutustunnet ju kuidagi ei reguleeri. Kui liialt reguleerida siis pigem lõhud sa koostööd.

Interviewer: aga ideaal?

Respondent 3: bilanssi on raske leida. Üldiselt meil laias laastus ju toimib.. eks see on projektipõhine ja asutusepõhine.

Interviewer: kui räägime üldiselt radikaalsetest muutustest tehnoloogias, kas poliitikakujundajad peaksid kuidagi sekkuma?

Respondent 3: riik ei tohi sabas sörkida. Ei tohi pead liiva alla peita, kui me ei tea asjast midagi, sest see on uus. Me ei pea tormama reguleerima, aga meil peab olema seisukoht,

kuidas me uue tehnoloogiaga tegeleme või ei tegele. Me ju suunduma sinna nii või naa. Aga selge on see, et me ei jõua oma ressursiga igale poole, me ei jõua ise ehitada robotit. Aga olla kursis, mis maailmas selles vallas toimub, see on vajalik.

4. Respondent 4

Interviewer: E-valitsemise kontekstis teevad riigid tihti koostööd erasektoriga, sh infosüsteemide arendamise või hooldamise osas. Seega võib öelda, et erasektoril on teatav roll e-valitsemise kontekstis. E-valitsemine regulatsioonide kontekstis on aga küllaltki uus kontsept, seega kas ja millisel määral peaksid riigid erasektori kaasamist reguleerima? Milline on täna Eesti praktika?

Respondent 4: Eestis on ju see eripära, et tegelikult kogu arendus käib ju sisuliselt erasektori abil. Meil on ju see loogika, et riik ei kuhja enda alla neid spetsialiste, et nullist teenuseid arendada. Jah, tõsi, iga valdkond omab oma arendustiimi, aga pigem selleks, et hoida üleval süsteemi. Erasektori roll on tegelikult see, et arendadagi neid uusi asju. Ja seal on kaks poolt, miks see täna nii tehtud, et erasektori poole. Esiteks, me oleme liiga väikesed, et riik veel endale kohmaks selle kompetentsi ja konkureeriks erasektoriga. Teiseks, nii avaldub erasektorile võimalus seda teadmist eksportida mujale. Ja see on see põhiline trikk seal vahel, et jah, küll aga ta ei saa otse nii-öelda müüa neid tooteid, mida on arendatud avaliku sektori jaoks. See on avaliku sektori omand. Aga seda teadmist, know-how'd, tegelikult no ütleme oskust, ta teha saab. Ja on häid näiteid. Mida nii-öelda poliitiliselt on täna laual, on tegelikult see, et tegelikult ITL'i vedamisel või siis kaaspanustamisel tegelikult käib selline kooslus koos nagu korraldav kogu. Kus on siis riigi ja avaliku sektori esindajad ja siis on erinevad teemad. Ja tegelikult üks alateemadeks on nn lepingute töörühm. Ja vot seal ka nagu klatiti nii-öelda seda et noh, mis oleks need tingimused, et üks saaks siis targalt tellida ja teine saaks nutikalt arendada. See on pidev on-going protsess. Et sealt nagu on häid näiteid ja tagasilööke, aga kuhu ma tahtsin jõuda on tegelikult täna laual kolme sorti probleem:

- aina enam on asutusi, kes tahab osta erasektorilt endalt seda inimest ja panna ta enda tiimi tööle, et ta teeks asja ära, omaks selle üle kontrolli ja kui see on tehtud, läheks tagasi. Mille vastu on kindlasti erasektor, sest et nii ju kaob ära erasektori enda arengukompetents, sest need üksikisikud ei loo erasektori jaoks väärtust. Ja tegelikult justkui ongi see, et see teadmine jääb meie avaliku sektori sisse ja seda on väga raske eksportida, sest avalik sektor tavaliselt ei ekspordi, aga samas teadmine jääb siia.

- Teine lähenemine on see, et on see sama mudel, et me ostame siis sisse seda arendustööd, teadmine on seal, aga ikkagi toode on meie juures. Ja see on nüüd järgmine läbirääkimiste koht - kuidas riik saaks teenust osta. On mõningaid näiteid, kus ongi tegelikult arendatud erasektori poolt full teenus, näiteks see sama piirijärjekorra teema. On erasektor, kes arendab ja riik ostab sisse ja siis ta (*erasektor*) seda sama piirijärjekorra asja saab müüa ükskõik, kuhu sihtriikidesse, sest ta müübki meile teenust. Aga seal ongi need keerulised mehhanismid, et seda saab teha ainult siis, kui me kasutame riigieelarvet, mitte struktuurfonde ja meie nõrk koht on see, et me arendame ainult struktuurfondide abil. Ta ei ole jätkusuutlik ja ta ei toeta seda teenuse hankimise meedet. Aga see ideaalpilt nüüd minu peas, kui küsimus oleks see, et mida eelistada – mina oleks selle teenusemudeli poolt. Seal saaks siis seda, et tegelikult vastutus selle teenuse kvaliteedi eest oleks teenusepakkujal, iga hetk ma (*avalik sektor*) saaks vahetada neid. Ja erasektor oleks selle mõttes seotud minuga, et see omand oleks tal. Ja ta saab ka tegelikult seda toodet müüa, mitte nagu mängida sellega, et ma müün know-how'd. Ja ta oleks ka selles mõttes jätkusuutlik, et Eesti riik ühe kliendina on tegelikult vähe. Sama näide on ülikooli sisseastumisteenus välitudengitele, mis on ka totaalselt outsource'tud teenus, ettevõte hoolitsebki selle eest, et ta müüb ülikoolidele välistudengite sisseastumisotsa, ülikoolid ei pea selle pärast muretsema.

Interviewer: sinu vastusest tuli palju välja seda, et riik ise sellist arendust ja hooldust jms midagi ei tee. Kas me võiksime sinnapoole tegelikult minna, seda erasektori rolli just nö kõrvale lükata?

Respondent 4: tegelikult tänane süsteem ongi sellest välja kasvanud, sest et alguses oligi nii, et iga asutus omas mingit oma IT üksust ja väikselt punus midagi. Niivõrd killustatud oli siis. See on nüüd see teine pool, kuhu liiguvad mõned asutused, kus ma ostangi endale just selle minu enda meeskonnas puuduoleva rolli, et treida endal mingisuguse tüki valmis ja siis majandan/haldan seda ja taasarendan. Aga veelkord minu seisukoht ongi see, et siin jääb kaduma just see mõte, et me jäämegi oma konnatiigis ägedad olema. Avaliku sektori huvi ei ole seda eksportida, avaliku sektori huvi on pakkuda mõistlikku teenust. Seega kõik see innovatsioon kaob ära. Minu seisukoht on see, et see võiks olla kuidagi mõistlik mudel, et kas ta on teenus või lihtsalt see arendus ja teenus jääb mulle, vahet ei ole. Kuidas ka see erasektor tänu sellele kogemusele, mis ta saab, ka siin saab kasvada. Miks see eestis on tegelikult väga õiges kohas, me oleme üks väheseid riike, kus IT arendamine ja planeerimine on Majandusministeeriumis, igal pool on see kas SIM või

RAM. Aga nende ülesanne on pigem kaitsta, meie huvi on just kasvatada. Ja seal ongi see iva, et IT on üks valdkond, mida riigi panusega saab kasvatada. Ei ole ainult nii, et avalik sektor saab kasu, vaid et valdkond ise ka saab laieneda ja müüa.

Interviewer: ma tulen korra selle ITL'i korraldava kogu juurde tagasi. Mis see roll täpselt sellel on?

Respondent 4: Seal ongi nagu pooleks, tipp telekom ja IT ettevõtete juhid ühelt poolt ja riigiasutuste IT majade juhid teiselt poolt vahetavadki platvormi tasandil infot. Sealt on välja kasvanud just needsamad töörühmad (*teemadele*), kus on näha, et on probleemi. Töörühmades üritatakse nö hea tava kokku leppida, kuidas edasi minna.

Interviewer: ja see, et me praegu lubame seda know-how'd erasektoril välja viia, sain ma õigesti aru?

Respondent 4: know-how'd lubame, koodi ta ei saa välja viia.

Interviewer: just, aga kuidas see on reguleeritud?

Respondent 4: ütleme niiviisi, et omand igal juhul jääb riiki just tänu nendele struktuurfondide reeglitele. Ei saa olla nii, et keegi arendaja teeb midagi ja see, mis ta teeb jääb talle ja sisuliselt mulle jääb ainult leping selle asja kasutamiseks, mille ma ise kinni maksin. Omand jääb ikka mulle, aga ITs kui ma millegi ära progren, siis mul see teadmine on ja keegi ei keela mul seda välja viia ja müüa.

Interviewer: okei, selles suhtes ta ei ole konkreetselt reeglitega paika pandud

Respondent 4: minu tükk on minu käes, tal on kohustus seda üleval hoida. Aga see ei ole see, et seda sama tükki ta müüb. Aga selle teenuse mudeli puhul on see lähenemine just vastupidine, algul justkui ise investeerib (*erasektor*) ja kui tal on hea teenus, vot siis ma (*avalik sektor*) ostan teenust. Jah, see teenuse hind võib olla natukene kallim, aga jällegi ma vabanen kogu sellest peavalust, mis ongi näiteks see hooldus jne. Mul ei ole vaja seda ise teha või IT meeskonda endale, sest tema peab selle tagama, et see töötaks, oleks ajakohane ja mina siis ainult ostangi seda nii-öelda väärtust, mida ta pakub.

Interviewer: okei, kui ma tulen nüüd korra konkurentsi juurde, meil on ju teatud ettevõtted, keda me e-valitsemise/e-riigi kontekstis vajalikuks peame. Kas me peaksime või võiksime konkurentsiregulatsioone rakendada kuidagi eriviisil neile ettevõtetele?

Respondent 4: Tähendab, kui te ütleks mulle näite, mida eriviisi all mõeldakse?

Interviewer: teeme konkurentsieeliseid kuidagi või..

Respondent 4: Ma arvan, et meie see õigusruum on selles mõttes nagu okei konkurentsi mõistes, et noh nagu igasugused hankevormid eksole lubavad meil teha ju igasugused showd – valida ühtepidi, teistpidi. No juba seal (hankevormides) saab asja natukene

kohendada, seda et mitte-tegija sinna ei satuks, et tõesti saaks neid häid. Aga mida ma võib-olla teeks ja mis ei ole otse nagu konkurentsiseadusega seotud, aga kuidas tõesti need väiksemad, aga head tegijad saada pilti – see on küsimus. Sest et mitte keegi ei viitsi läbi närida läbi selle bürokraatia. Üldjuhul need *IT-tehased*, me nimetame neid suuri firmasid, neil on seal meeskond peal, et seda bürokraatiat läbida. Mis on tegelikult ka halb avaliku halduse mõistes, me tekitame justkui selle surve teisele poole, olles selle taga, et nõudeid ju tuleb täita. Aga tegelikult meil võiks olla selline katsetuslabor, kus on tehtud teatud mööndused selles hankeprotsessis, mitte nüüd konkurentsivaatevinklist, vaid just hankimise. Ongi ports arendusi, mida võib igaüks proovida teha, igaüks proovijatest saab mingi benefiti sealt, aga need parimad saaksid selle pikaajalise lepingu. Aga trikikoht on, et kuidas siis lasta nendel nö kõrvalolevatel inimestel mängida nt sotsiaalvaldkonna andmetega. See nö sandboxide loomine, nagu start-upidel on, on ka üks teema Korraldava Kogu laual – kuidas seda soosida. Kuidas lasta mitte ainult suuri tegijaid mängima, vaid ka neid start-upe. Ka suured on ju tegelikult headest ideedest huvitatud ja see oleks ka neile võimalus leida uusi tegijaid.

Interviewer: ja kuna mind just see juriidiline pool väga huvitab, siis hetkel me seda ju juriidiliselt kuidagi ei suuna?

Respondent 4: jah, ainukene suunamine on see, et kuna riik eraga suhtleb ju läbi hangete, siis hankevormid on väga paindlikud ja võimaldavad teha igasugust pulli. Lihtsalt kahjuks on see, et me kasutame selle pulli tegemiseks meie struktuurfonde, kus on omad reeglid. Ja millega me täna tegeleme väga jõuliselt, on see, et ka see arendusraha oleks riigieelarvest ja see oleks samamoodi ka väljumisstrateegia sellest ESF rahast. Riik peab ise olema suuteline oma raha eest arendama asju, mitte lootma Euroopa rahade peale. Ja siis me saaksime ka hankides valida paindlikumaid teid, kus oleks võimalik ka nö eksida või mängida, mida struktuurfondi skeemid ei toeta.

Interviewer: ja kui me juba ESFini ja struktuurfondideni, siis kui palju tegelikult rahvusvahelised juhtimisorganisatsioonid suunavad meie e-valitsemist? Ilmselgelt kuna me kasutame struktuurfondide rahasid, on seal omad reeglid. Aga kas on veel mingeid kohti, kus rahv. orgid. Suunavad?

Respondent 4: ei ole, olgu see IT või sotsiaal, nõuded on kehtestatud ainult sellele, et kuidas see keskne süsteem toimub, aga tegelikult sekkuda sellesse, kuidas see kohalik IT vms areneb, seal otsenõudeid küll ei tule. Pigem on alati üks ots väljundina ELi, et see ots areneks, aga kõik muu on tegelikult vabad käed. Meie enda valitsus saab otsustada, mis on prioriteedid. Aga ka meie, luues nt uut infoühiskonna arengukava, see on meie

põhidokument, millest me lähtume e-riigi arendamisel. Aga meie eripära ongi see, et MKM-is on need kaks osakonda, minu ja siis riigi infosüsteemide osakond, millel on asutusteülene mandaat. Ja ka MKM on tegelikult meie klient. Me ei ole MKMi oma, me oleme lihtsalt sinna paigutatud. Me ei seisa ainult ühe valdkonna eest, nt majandus. Mida me muidugi väga toetame, aga sama on ka sotsiaal, tervis, haridus jms.

Interviewer: ja kui ma sealt jõuan vastutuseni, siis vastutus kui selline on ju alati reguleeritud. Aga tavapärasele vastutuse reguleerimisele, kas e-valitsemises on kuidagi konkreetsemalt see sisse toodud? Kust see vastutuse piir seal võiks joosta?

Respondent 4: eks päeva lõpuks see kukub sinna juriidilisse valdkonda ja meil on toimiv õigusriik. Muidugi poliitiline vastutus on teine küsimus.

Interviewer: jah ma ei küsi otseselt seda, ma mõtlen, et kas e-valitsemise korral see peaks olema kuidagi teistmoodi sätestatud?

Respondent 4: alati on hea tunne IT-le anda nagu midagi teistsugust, aga minu jaoks IT on nagu kirjaoskus, me ju kirjaoskamatutele ei tee erilist õigusruumi. See kehtib samamoodi. Ja mida me õnneks ei ole teinud, on see, et IT-ga lahendatavad asjad on teistsugused, kui meie füüsiline maailm. Probleem on pigem seal, et me üritame IT'd reguleerida meie anloogmaailma seadustega – seda ei tohi teha! Erisused peavad olema selles, et kuidas see sama asi, mida me teeme pärismaailmas, tegelikult töötab seal. Seda meelt ma küll olen, et väga laialt öeldes e-kanali jaoks peab olema oma spetsiifiline regulatsioon ärivaatest lähtuvalt. Meil on väga palju seaduseid (teabeseadus, ..isiku kaitseseadus) ja need oma eriosades reguleerivad mh ka IT maailma. Mis ongi loogiline, sest IT on osa meie tavaelust. Kus on jäädud toppama on see, et avalik haldus kui institutsioon, sinna pole jõudnud see tehnoloogia poolt lahendatavate võimaluste aktsepteerimine. Üks ei oska mõelda uutmoodi, teine tahab teha, aga tal ei ole seda tarka tellijat. Jõuame jälle sinna, et probleem on fundamentaalsem. Aga küsimuse juurde tagasi tulles, ma ei reguleeriks eraldi seda, et kuidas peab avalik sektor suhtlema erasektoriga kui jutt on IT'st, vaid kuidas avalikku haldust reguleerida teistmoodi läbi IT konteksti. Sellisel juhul ühed oskaksid paremini pakkuda ja teised oleksid paremad tellijad. Täna on nii, et seal kus on seda transformatsiooni läbi IT soosivad juhid, ei ole neid lepingulisi probleeme. Seal kus ei ole, seal on ka probleemid. Jällegi, see ei ole sellepärast, et nad on lollid või pahatahtlikud, vaid nad on saanud oma teadmuse avalikust haldusest läbi ühe vaate. Ja see on probleem. Juristid ka pigem kalduvad minema sinna vana moodi avaliku halduse vaate toetajaks, üritades tehnoloogiat sinna suruda. Aga võimalused on suuremad. Piirangud ei saa olla samad.

Interviewer: kui palju peaksid pol kujundajad sekkuma olukorda, kus uued tehnoloogiad nii radikaalselt muudavad meie olemaolevaid äri- ja valitsemismudeleid? Aga su vastus oli väga hea, et võib-olla me peaksimegi hoopis vaatama seda valiku halduse poolt üle. Mina omalt poolt sain päris palju infot, kas oskad midagi veel lisada?

Respondent 4: tulen Kogu juurde tagasi, kuhu tahame jõuda, et nii era- kui ka avalik sektor tajuks, et me oleme väljas ühe ja sama väärtuse eest. Miskipärast kui me läheme lepingulistesse suhetesse ja justkui me ajame oma avaliku huvi asja ja nemad justkui aitavaid meid. Eos juba on konflikt sisse kirjutatud. Tegelikult me peame enda jaoks sõnastama lõpp-väärtuse ja siis kui vaatame, et keegi on teenusepakkuja, partner jne, see kõik on üks ahel. Ja see tuleb meil mõistlikult enda jaoks suuta ära selgitada. Täna me ikkagi lepinguga ütleme, et me oleme targemad kui teie, andke meile nüüd see töötav tükk ja minge ära. Ühtsed väärtuspunktid tuleb sõnastada ja öelda, et mina tahan seda probleemi lahendada, kuidas sina nüüd ITga saad mind aidata. Ja mõtleme koos. Aga see ka sunniks seda õiget koostööd tegema lepingutega. Vb liiga sinisilmne.

Interviewer: just, et kas see nüüd tähendab, et põhinemegi parem ühistel väärtustel ja usaldusel ja koostööl, mitte juriidiliselt ärme reguleeri seda asja?

Respondent 4: no mina ütlen nii, õnnestunud asja eraelus on tavaliselt nii, et tuttav oskab vannitoa kappi paigaldada, kas sõlmid temaga ulmelepinguid? Kõik tegelikult on usalduse peal. Aga meie maandades riski, et pekki ei läheks, hakkad teenusepakkujaid profileerima. Ja see ajab neid närvi. Ma ei ütle, et ei pea olema vastutus jagatud, just see sama vastutuse jagamine lepingus – ühise eesmärgi saavutamine – on minu meelest võti. Ma ei taha ütelda, et me ei pea mitte kuidagi reguleerima, see on liiga ideaalne maailm, aga päeva lõpuks kui me saame aru, mille nimel koostööd teeme ja suudame rollid kirja saada, siis see ühispanus oleks kasulikum. Minult ei eeldata midagi, mida ma ei saa anda, teiselt ma ka ei küsi, mida ta ei saa anda. Eeldatakse liiga palju. See on kontseptsioon, kuhu liikuda ja see on iva. Kui ma tavaelus olen kuidagi teistmoodi kui see, mis ma ehitan – miks ma arvan, et see õnnestub? Kõige suuremad diilid on tehtud tavakäepigistusega! Tasub küll mõelda, kuidas ma riske maandame, aga kas me ei ole ainult selle peal väljas, et maandada? Kui me teame, et meil on võimalus koos midagi luua, millest kõik võidavad, siis äkki ei olegi vaja ülereguleerida, piisab nö normaalsest kokkuleppest.

5. Respondent 5

Interviewer: E-valitsemise kontekstis teevad riigid tihti koostööd erasektoriga, sh infosüsteemide arendamise või hooldamise osas. Seega võib öelda, et erasektoril on

teatav roll e-valitsemise kontekstis. E-valitsemine regulatsioonide kontekstis on aga küllaltki uus kontsept, seega kas ja millisel määral peaksid riigid erasektori kaasamist reguleerima? Milline on täna Eesti praktika?

Respondent 5: mina vaataks seda erinevate vaatenurkade pealt. Kui me räägime e-riigist ja sellest, kuidas riik võiks kaasat erasektorit, siis üks asi, et tehnoloogiliste lahenduste väljatöötamisel võiks riik kaasata, aga kas meil on piiavalt regulatsioone, mis võimaldavad seda PPP-d? ELi õigusest lähtuvalt ja ka riigihanke reeglitest, konkurentsiseadustest jms – nad kõik on kooskõlas ja sellest lähtuvalt meil kaasatakse erasektorit küll. Aga ometi meil on olukord, kus ei ole väga palju PPP-d, kuigi jah, nt Nortal on e-riigi jaoks igasugu lahendusi loonud. Samas meil on nüüd uus innovatsioonihangete regulatsioon, kus me võiks küsida, et palju rohkem võiks riik tellida erasektorilt. Aga miks see siis ei tööta? Kas sellepärast, et meil norme (seaduseid) ei ole? Ma ei usu seda. Pigem on seal muud põhjused.

Aga kui küsida, kas meil on piisavalt norme? Jah ma vaataks puhtalt riigihangete, riigiabi, konkurentsi seisukohast, et normid on kõik olemas, praktikat on vähe. Kui vaatame, et kuidas võiks olla, seal on palju kasutamata potentsiaali. Just innovatsioonihangete osas.

Interviewer: aga kui meil ongi erinevad regulatsioonid, mis reguleerivad, kas ei võiks olla konkreetselt e-riigile suunatud regulatsiooni?

Respondent 5: ei, seda ma ei arva. Ma arvan, et riik peaks reguleerima nii vähe kui võimalik. Regulatsioonidega, kui sa tahad käitumist muuta, siis reguleeri, aga poliitikad peavad adapteeruma. E-riigiga ka, kui meil on konkreetne poliitika mida me ajame ja kui tahame saavutada seda, et erasektor ja avalik sektor teeksid koostööd rohkem – see on poliitika, mis peab adapteeruma, mitte normid. Normide puhul me raamista ta ära. Pigem küsimus on, miks me ei jõua nii kaugele, kas meie tänased normid piiravad seda (innovatsiooni)? Et erasektori suurepärased ideed jõuaksid avalikku sektorisse?

Interviewer: seega veelgi vabamaks peaks laskma?

Respondent 5: kui on liiga vaba, siis avaliku raha puhul peab olema läbipaistvus, konkurents jms. me ei saa neid reegleid kõrvale panna. Aga kuidas poliitikat nii kujundada, et era- ja avalik tahaksid koostööd teha.

Interviewer: kas konkurentsiseadust peaks kuidagi e-riigi kontekstis kohandama nii, et need ettevõtted, kes on e-valitsemise seisukohast olulised, saaksid kas konkurentsieelise vms? Et nad ikka kaasa tuleksid, sest riik partnerina ei pruugi alati olla nö kõige tahetum kaaslane.

Respondent 5: Ei arva ma seda ka, et oleks eelist vaja. Ja lisaks, Eesti oma väiksuselt tulenevalt ei ole tegelikult see aeglane partner. Mulle väga meeldib president Ilvese mõte, et Eesti on suur ime. Suhteliselt väike bürokraatia, turu väiksus jms mängivad väga meie kasuks, seega konkurentsieelist ma ei näe, et vaja oleks. Küll ma aga mõtlen, et mida vaja oleks, siis riigil võiks olla kohustus oma e-riiki arendada. Innovatsioonihangete seisukohast, avalik sektor on see, mis innovatsiooni tõmbab – ettevõtted töötavad välja lahendusi, anna ainult idee. Riik peab näitama, et on valmis ostma. Riik peab olema ettevõtetega vähemalt sama kaugel, peab olema valmis sõnastama, mida tal vaja on. Riigi mentaliteet, kui hangime midagi, peaks olema see, et jagame riske. Mitte et riik tahab midagi ja ettevõtja võtab kõik riskid. See on laiem kui ainult e-riik, see on avaliku arvamuse küsimus. Mõnikord lähevadki e-riigi lahendused pekki, ID-kaardi teema näiteks. Sellised asjad tulevad ja juhtuvad – kas avalikkus on valmis aktsepteerima, et teeme vigu? Kokkuvõttes, me ei tea ka ID kaardi kohta, mis tulevikus on. Võib-olla tulevikus see on täielik jama.

Interviewer: nii et riik peaks ise olema see tark tellija?

Respondent 5: jah, just. Ja eks see on see poliitika küsimus, me võime panna mingi reegli, et riik peaks olema tark tellija, aga tegelikult riik ei julge riske võtta ega neid erasektoriga jagada. Kui see välja tuleks, et riske erasektoriga jagati, siis avalikkus ei neela seda alla.

Interviewer: kas siinkohal kui riigi jaoks riskide jagamine teeb liiga ettevaatlikuks, kas riik võiks ise võtta selle arendaja, hooldaja jms rolli?

Respondent 5: minule on jäänud mulje, et riigil on väga raske osta erasektorilt töid, ühest küljest, sest n tohutud eelarve piirangud, kogu arendusprotsess on ette ennustamatu ja teiseks on palju läinud riik selle peale, et pigem püütakse kompetentsi endale majja tuua. Minu meelest läheb vastuollu sellega, et IT spetsialiste pole.. ei konkureeri spetsialistide peale, aga väidetavalt riik ei saa seda, mida tahab erasektorilt. Ei oska selgeks teha, mida vajatakse ja siis püütakse ise luua. Aga see on nii absurdne.

Interviewer: Vastutus ja riskid, kas peaks e-riigi kontekstis vatutust kuidagi konkreetsemalt reguleerida?

Respondent 5: aga miks?

Interviewer: üks asi on poliitiline vastutus, mis hetkel siia ei puutu, aga kuidas veel saaks reguleerida?

Respondent 5: projektid on ju nii suured, näiteks SKAIS2. Vastan selle kohe ära, et ma arvan, et vastutuse reguleerimine ei peaks kuidagi teistmoodi olema. Võib-olla võiks olla,

et igasuguse uuenduslikkuse puhul riskitaluvus võiks olla kõrgem. Aga kui me räägime SKAISist, siis seal mängis rolli, et huve oli nii palju erinevaid. Aga nende suurte e-riigi lahenduste puhul mängib natukene rolli nö silodes elamine, on nii palju erinevaid ameteid jms, igaüks ajab oma asja, mitte ei olda ühise eesmärgi peal väljas.

Interviewer: kas me siis võiksime kuskil hanges konkreetsemalt öelda, kes on see vastutaja?

Respondent 5: see peaks olema kuidagi nii, et me tahame teha seda või seda, tahame, et tavainimestel oleks parem. Ja me võiks kohe alguses öelda, et see ei pruugi õnnestuda. Aga me tahame proovida, aga ma ei tea, kas avalikkus on valmis maksumaksja raha eest katsetama. Lihtsam on teha avatud hankementlust, kus ütleme, et kõik riskid paneme erasektorile. See ei ole õige, riske peaks jagama. Ja jagamine käiks kohe nii, et ütleme kohe alguses, et risk on olemas.

Interviewer: konkurentsist veel, kas rahvusvahelised juhtivorganisatsioonid meid regulatsioonide osas suunavad?

Respondent 5: meil on Europe 2020, mis ütleb, et 3% SKPst tuleb panustada innovatsiooni. Seega tegelikult Euroopa on andnud suunise kätte ja ma ise olen mõelnud, et siin võiks mingi norm olla – valitsuse otsus vms, mis annab juhise avaliku sektoril organisatsioonidele, et kõikidest hangetest vähemalt 3% peaks olema suunatud uuenduslikule lahendusele, nt e-riigi arendamisse. Aga muidu rahvusvahelised organisatsioonid, ma ei kujuta ette, et nad meile mingeid muid reegleid paneksid.

Aga Euroopa teeb ise väga palju – Eesti on küll ees ära läinud, aga kogu Euroopa tuleb järgi. Sh ka kogu see robotite värk ja muud asjad.

Interviewer: Jah, meil ju on arutluses see nö krati seadus.

Respondent 5: jah, aga see on väga oluline ja mõneti ka e-riigiga seotud, et me ei ole sabas sörkijad. Me ei saa küll olla domineerijad, aga me peaks olema käivitajad.

Interviewer: ja kuna me natukene seal eesrinnas oleme, kas rahvusvahelised regulatsioonid võiksid meid hoopis kuidagi pidurdada?

Respondent 5: ma ei oska öelda, ma reeglitesse väga ei usu.. kuigi kogu robootika seisukohast on oluline kokku leppida, mis on tehnoloogiliselt teostatav ja mis sotsiaalselt aktsepteeritav. Tehnoloogia küll võimaldab teha, aga kas see on ka õige? E-riik võib areneda sinna, et pole üldse privaatsust, aga kas see on tegelikult see, millises riigis tahame elada? Normide puhul peaks riik tegema just selle, et ta ütleb, kus see piir läheb. Jah, me saame teha kõiki neid asju, aga kas see on ka õige. See on see, millega riik tegelema peaks. Riik on see, kes tõmbab või lükkab uuenduslikkust. Erasektor ei võta iial

seda finantsriski, kui nad ei tea, et seda saab hiljem rahaks muuta, et sellel on äriedu. Mina normidesse ei usu, aga avalikul sektoril endal peab olema mingi nägemus, visioon ja valmisolek finantseerida neid suuri asju ja võtta ka neid riske.

6. Respondent 6

Interviewer: E-valitsemise kontekstis teevad riigid tihti koostööd erasektoriga, sh infosüsteemide arendamise või hooldamise osas. Seega võib öelda, et erasektoril on teatav roll e-valitsemise kontekstis. E-valitsemine regulatsioonide kontekstis on aga küllaltki uus kontsept, seega kas ja millisel määral peaksid riigid erasektori kaasamist reguleerima? Milline on täna Eesti praktika?

Respondent 6: Eesti kontekstis tuleks ette võtta meil kehtiv ja pidevalt uuenev Infoühiskonna arengukava, mis on poliitiline raamdokument ja sätestab kesk-pikas perspektiivis olevad eesmärgid ja nende elluviimiseks vajalikud tegevused. Selle kõrval on valdkondlikud arengukavad ja tegevuskavad, nt SImi haldusala omad ja kõigi nende asutuste juures on üleselt loodud infosüsteemide keskused, nt SMIT/RIK ja nende enda tegevuskavad siis. Ja küsides, kas meil peaks kuidagi olema seadusega reguleeritud, siis seni selleks vajadust ei ole olnud, et just e-valitsemise elluviimine oleks kuidagi konkreetse seadusandlusega reguleeritud. Eestis digiteemad peavad olema valdkondlikes seadustes kajastatud, vähemalt ei tohi ükski seadus olla selline, mis välistaks e-lahenduste kasutamise. Jah, on ka selliseid riike, kus on oma digiminister ja eraldi digiregulatsioon, aga Eestis me seda ei kasuta ja ei soovita ka teistel kasutada. Põhjus – e-valitsemine ei tohi muutuda asjaks iseeneses, see hakkaks ka vähendama nt valdkondlike ministrite kohustust oma vastutusalas digiteemade arendamiseks. Iga valdkond peaks ise kujundama oma digiteemad, need köitma üheks valdkonna arengukavaks ja see oleks üheks tervikuks pandud kogu riiki katvas infoühiskonna arengukavas.

Interviewer: kas arengukavades on kuidagi eraldi sätestatud ka erasektori roll? Kas on kohustus kaasata nt?

Respondent 6: ei, ei ole, mitte ilmtingimata. On küll kirjutatud, et koostöös erasektoriga ja erasektorit kaasates. Aga läbi praktika näeme, et neid tegevusi viiakse ellu läbi riigihangete ning see, kas ja kuivõrd strateegiline see koostöö on, see sõnastatakse vastava valdkonna enda arengukava ja tegvsutega. Päästeamet, politsei, kaitsevägi – nad kõik ostavad teenuseid erasektorist ning erasektori tarnijad peavad olema võimelised nendele tingimustele vastama. Kõikjal arenenud riikides on avaliku sektori eelarve kaudu finantseeritavad IT arendusteenused kõige suurema turumahuga (üle 30 protsendi). See

on kõige suurem turuosaline, suurem kui pangad, telekom, muu infrastruktuur. See on olulise turujõuga tellimus, mida riik igal aastal turult tellib. Avaliku sektori IT lahenduste hange kui olulise turujõuga tellimus, mõjutab olulisel määral erasektori kompetentse ja konkurentsivõimet. Kui riik tellib eilseid lahendusi suure rahakotiga, siis erasektor keskendub sellele, et tarnida neid eilseid lahendusi. Kui riik tellib midagi innovaatilist, siis selle kaudu ka erasektor püüdleb selle poole et tarnida seda uut ja huvitavat. Pea kõik riigid tellivad erasektorilt oma IT lahendusi, aga need riigid, kes tellivad innovaatilisi lahendusi, nende erasektor on konkurentsivõimeline ka rahvusvahelisel tasandil. Riigi hankepoliitikal ja fookusel on hästi oluline roll erasektori konkurentsivõime stimuleerimisel.

Interviewer: enamus regulatsiooni hetkel on läbi hangete ja muud moodi reguleeritud ei ole. Kui juba konkurentsi juurde jõudsime, kas meil selles mõttes võiks olla midagi, mis aitaks just väikeseid IT ettevõtteid?

Respondent 6: Jah, võiks olla ja plaanitud neid on ka. Kõik hanked ei ole suured, palju on ka väikeseid asju. Suured hanked jagatakse nö tükkideks ja see on rahvusvaheliselt ka hea tava, mida soovitatakse. Esiteks, suured projektid oleksid jagatud väikesteks etappideks. Selle eelduseks on see, et riigis on IT arhitektuur ja koosvõimeraamistik, st et kui hangin nt ministeeriumile erafirmalt IT arendust, selleks, et see sobituks kokku ülejäänud, juba olemaoleva IT raamistikuga, peavad olema teatud standardid (koosvõimeraamistik). Ja nendest lähtuvalt on võimalik ka väiksematel osalejatel väiksemaid tükke tarnida. Paljude väike-ettevõtete jaoks riik ei ole hea partner – ta on aeglane, aeganõudvam ja riigihangete puhul fookus võib hägustuda (st ettevõtte fookus võib hägustuda). Lisaks, mida me oleme proovinud survestada - Eesti riik läbi oma hankepoliitika ja eesti IT ettevõtted, mis meile on suured tegijad, aga rahvusvaheliselt on ka nemad väikesed. Selleks, et nad oleksid ka rahvusvaheliselt suured, peavad nad õppima tegema koostööd omavahel. Ehk eraldi on meil olnud püüdeid, ca 20 aastat, kus on loodud hankeid, mille eeltingimuseks on tarnekonsertsium ehk et võib olla nö peapakkuja, aga tingimus on, et kaasatud peab olema 2-3 erinevat ettevõtet. Selle kaudu tagatakse ettevõtete motivatsioon leida endale partnereid/koostööd ja teisalt tagatakse see, et väikestes ettevõtetes olev väga spetsiifiline kompetents oleks ka kaasatud. Suured firmad ei pea kõiki spetsialiste omale tööle võtma.

Interviewer: enne tuli jutuks just see riigieelarve pool. Aga toetume palju hetkel Euroopa rahadele. Kas kuidagi rahvusvahelised juhtivorganisatsioonid samuti reguleerivad riikide e-valitsemist?

Respondent 6: ütleme ainukene mõjur eestis on ELi KOM kaudu tulevad direktiivid, otsekohalduvad direktiivid ja soovitused. Seal võib näha jah et need valdkondlikud mõjud on laiemalt mõjutamas kogu IT sektorit. Ja ta võib mõjutada meid ka negatiivselt, see tähendab, et ELi raamistik võib küll aidata Euroopal tervikuna areneda, aga riigi siseselt võime me olla juba rohkem arenenud ja seega oleme me kaotamas. Ja kuna IT on ka selline horisontaalne valdkond, mis mõjutab kõiki teisi, siis see seisak või taandareng mõjutab ka kõiki teisi valdkondi. Ja lisaks meid jah mõjutavad ELi direktiivid, sh nt andmekaitse (tuleb maikuus), digi identiteet (eIdas), maksedirektiivid jne. Mõju võib olla ka kahetine, kas ta pärib arengut või on võimendiks. Eesti on selles mõttes eriline, et suurimad tarkvaraettevõtted klassikalises mõttes on olnud ikkagi eraettevõtted. Samas kui Euroopas on suurimad olnud riigiettevõtted (ajalooliselt juba, nt Elisa oli alguses Soome KOVide teenusepakkuja. Igal KOVis oli oma riiklik side-ettevõte ja nende koostöö ja liitumise tulemusel tekkis Elisa). Sellist IT hangete süsteemi nagu on Pr, või Hisp, me eestis ei ole kogenud. Eestis on ikkagi erasektori poolt tarnimise osakaal oluliselt suurem. Ohuna võib esile tuua selle, et meil on trend, kus inforegistrite keskused (SMIT, RIK jne) on muutunud ka ise mitte vaid infosüsteemide haldajateks, vaid neil on ka sisemised arendusüksused. Oluline osa nendest teenustest, mida võiks erasektor riigi jaoks arendada, arendatatkse asutuste siseselt. Ja see omakorda tähendab seda, et riik läheb kaasa tööturukonkurentsi spetsialistide eest, st võetakse tööle programmeerijaid. Ja see vana doktriin oli see, et riik ei palka neid.

Interviewer: kas see oli selline hea tahte leping nö, et riik ei palka?

Respondent 6: mitu asja oli. Osalt, et stimuleerida eraettevõtlust, st et riik on klient ja võimalikult tark klient. Mitte ei ole konkurents ja tee ise asju. Jah, selline hea tava. Nt täna on e-eesti nõukogu, kus on ainsa erasektorit esindava organina ITL kaasatud, ülejäänud on nagu isikliku nimetatusega. ITL muidugi esindab ainult oma liikmeskonda, mitte kogu Eesti IT sektorit.

Interviewer: aga kui siht on mingil määral sinna, et riik konkureerib spetsialistide pärast, kas on mõeldav, et riik hakkabki ise IT teenust arendama, hooldama jms.

Respondent 6: Jah, neid näiteid on. Ja teoreetiliselt küll. Aga sellel ei oleks vajadust ega head tulemust. See otsus langetati meil 90ndatel juba, et riik on tark klient ja riigi infosüsteem ei ole kuskil ühes kohas üks kogus. Singapuris nt on väga tsentraliseeritud IT juhtimine ja IT süsteem, riigiasutused on ühe riikliku struktuuri kliendid. Tellitaksegi ühest riigiasutusest. Meie aga teeme teistsugust mudelit. Jah, tõepoolest, arutledes me võime jõuda sinna, et kas infosüsteemi haldaja peab üldse olema riigiasutus? See on

diskussioonikoht. Ehk kas maksu- ja tolliameti infosüsteem peab olema tema haldusalas, või võiks seda hallata mõni erafirma? Ka Tallinna ühistranspordi piletite haldusega tegeleb üks eraettevõte. Riik ostab teenust. Ka Eesti ID kaardi sertifikaatide haldaja on AS SK.

Interviewer: Kes teeb selle valiku, kes haldab?

Respondent 6: arendusprotsessi käigus. See on pigem spetsialistide soovitus, kas selles valdkonnas võib olla mõttekas, et omab riik või KOV või kas võiks hallata hoopis selleks loodud ettevõte. Ja see ettevõte kas võiks olla edukas ka rahvusvaheliselt, st jagades oma know-howd.

Interviewer: aga kui kaasame ikkagi erasektori, kuidas on reguleeritud vastutus?

Respondent 6: lõpp-vastutaja on konkreetne ministeerium. Vastutust ei saa riik teenuse ja valdkonna toimimise eest kuskile delegeerida. Meil küll on e-tervise SA, kes haldas muuhulgas ka digi infrastruktuuri komponente. Aga vastutus selle SA loomise järel ei kadunud kuskile.

Interviewer: jah, poliitiline vastutus küll, aga kui räägime infosüsteemi arendamisest, riskidest jms,

Respondent 6: hange reguleerib. Näiteks SKAIS - me ei saa otsida lahendust sealt, et meil oleks mingi e-riigi teenuste tarnimise seadus, vaid vastutust tuleb otsida tellija ja tarnija vahelisest suhtest ja sellest, et nii tellija kui ka tarnija tegid lepingu sõlmimise järel lisa-protokollidega pidevalt vigu. Ja see hägustas seda. Ja seda et see keerukus väljus skoobist ja kontrolli alt, seda ei suutnud tellija ega tarnija kumbki hoomata.

Interviewer: aga mida me sellest olukorrast õppida võiksime, kas peaksime tulevikus kuidas muudmoodi konkreetsemalt reguleerima?

Respondent 6: ei, seadusesse mitte. Kindlasti mitte. Endiselt hanked ja lepingud ja mida läbipaistvamad ja mida paremini ette valmistatud, mida selgemalt lahti kirjutatud, seda parem on ka lõpptulemus.

Interviewer: kui räägime üldiselt radikaalsetest muutustest tehnoloogias, kas poliitikakujundajad peaksid kuidagi sekkuma?

Respondent 6: me püüame seda teha, mingites valdkondades. Nt tehisintellekt ja iseseisvate automaatsete infosüsteemide regulatsioon.