

Netherlands-Legal Framework

Legal framework

MinVROM is the formal responsible for GI-related matters in The Netherlands. The results of the NSDI-initiative are partially integrated in legal instruments:

A key element of the NSDI is the “authentic registers”. Authentic registrations are registrations with a uniquely defined core dataset, which government agencies are obligated to use. The collection and maintenance of the data is regulated in legislation, the data certified as accurate and current, and the producer assumes all liability for its use by others. Access to data in authentic registers should be conformal the guidelines presented in the memorandum towards accessible government (transparency on data policy). Its users are obliged to report incorrect information to producers, and there is a stringent policy on quality assurance.

EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 The Netherlands

K.U.Leuven (SADL) 20

The authentic registrations include several datasets that can be considered as geographic datasets.

First, the law making Top10NL of the Cadastre the authentic registration for topography was adopted in January 2008 by amendments to the Law on the Cadastre. From 1 January 2009, all public bodies in the Netherlands are under an obligation to use it. Local authorities that had their own 1:10.000 topographic maps had to make the switch by 1 January 2010. In addition, the derived 1:50.000, 1:100.000, 1:250.000, 1:500.000 and 1:1.000.000 are also part of the authentic registration for topography. A covenant was signed between the Ministry of VROM and the Cadastre about the maintenance of the registration.

Second, the authentic registration for addresses and buildings was included in the law of 24 January 2008 (which was amended on 14 February 2009). The law entered into force on 1 July 2009, and the local authorities are since then under the obligation to deliver their address and building data to the national registry. From 1 July 2011, the registration has to be used by all public bodies. For the third authentic registration, the large-scale topography (1:500 to 1:5.000), draft legislation was intended to be issued in early 2010. The fourth authentic registration, subsurface, will be fully operational by 2013. This was approved by a Decision from the cabinet in December 2008. Another important legal instrument is the law 2 July 2009 transposing the INSPIRE directive into Dutch law. The law stays close to the directive, requires the public authorities to create metadata and gives everyone the right to use the network services. The rules

Netherlands-Legal Framework

for sharing data have to be set up by a ministerial decree.

Public-private partnerships (PPP's)

In 1975, by Royal Degree, the Large Scale Base Map of the Netherlands (GBKN -Grootschalige Basiskaart van Nederland) was established. After a long period of development, in 1992 the LSV-GBKN (Landelijk Samenwerkingverband – National Cooperation GBKN) was established which finished the production of the GBKN in 1999. The LSV-GBKN was a national joint venture with 11 regional joint ventures. The production costs are €20 million and nationwide fully covered. It is a PPP of the municipalities, utility companies, water boards, the Dutch Cadastre and the Dutch administration. After the GBKN moves to the authentic registration large scale topography, the maintenance will be a public task and the PPP construction will no longer be maintained. Between 2001 and 2007, the private company Geodan had taken over the exploitation and the management of the NCGI. From 2007 onwards, the NCGI was replaced by GEONOVUM.

EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 The Netherlands

Policy and legislation on access to and re-use of public sector information (PSI)

The legal basis for access to public information is the Government Information Public Access Act of 31 October 1991. This act replaced the Act on Public Access to Information of 9 November 1978. It creates a presumption that documents created by a public agency should be available to everyone. The law provides for access to information that is crucial in the decision making process of the administration. The price to be paid for this information is based on dissemination cost. It is reasoned however that the electronic geographic data cannot be obtained through a request based on this Act. Government agencies can claim copyright or database right on their data and most of them do so. Moreover, citizens or businesses cannot access entire databases because -according to current interpretation- the Government Information Act does not apply to complete databases.

Directive 2003/4 on access to environmental information was implemented in Dutch law by the Act of 30 September 2004, modifying the Government Information Public Access Act, the Act on environmental management and other Acts. The Government Information Public Access Act has been revised to include the implementation of Directive 2003/98 on the re-use of PSI. In 2009, the Ministry of Internal Affairs announced that it would review the legislation implementing the PSI directive. While the Dutch policy already went beyond the minimum requirements of the directive (thanks to the policy document 'Naar de optimale beschikbaarheid

Netherlands-Legal Framework

van overheidsinformatie – Towards the optimal availability of public sector information), this will be translated into the legislation. The new legislation is intended to be brought before Parliament before the end of 2010. Its main principles are: the adaptation of the pricing principle towards the charging of only marginal costs; the banning of public sector bodies to use their intellectual property rights to impose conditions on re-use; and the creation of transitory rules for a number of data collections, including the Cadastre, allowing for the adaptation of their funding model.

Legal protection of GI by intellectual property rights

Copyright is primarily regulated by the Copyright Act of 1912. The 2001 directive on copyright in the information society has been included into national legislation. In principle, copyright is applicable to all government information -with the exception of official texts of legislation, judicial decisions and administrative decrees-, although copyright must be claimed explicitly by the government for the protection to be effective and a copyright sign (©) has to be placed on the work. Commercial use of the data for which copyright is claimed by an administrative agency is only allowed when the agency concerned gives its consent. Due to their factual and standardized character geographic information often does not meet the requirements of originality required by copyright. However, common law shows that geo-information with a personal view can still be protected by copyright.

EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 The Netherlands

Based on the European Directive on the legal protection of databases (96/9/EC), the 1912 Copyright Act was amended and a Dutch version of the Directive, the Database Law, enacted in 1999. The new law protects the producer of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents. Government agencies explicitly have to reserve their rights. In a Decision on a case between the City of Amsterdam and Landmark, the Council of State (the highest administrative court) decided that the city could not be considered a producer of the database, because it did not bear the risk of the substantial investment in the database, as the data was partially obtained from the national ministry, and partially paid for by the city of Amsterdam in order to facilitate the performance of its public task. The court found that there was no financial risk, so the city could not invoke its database right to impose conditions on the re-use by Landmark. The new legislation on PSI will ban the public sector bodies from using their intellectual property rights to restrict the re-use of their data.

Restricted access to GI further to the legal protection of privacy

Netherlands-Legal Framework

The Netherlands Data Registration Act was passed in 1989 and applies to all collections of personal data, regardless of residency status in the Netherlands. It also applies to foreign files having a Dutch file controller and containing personal data about Netherlands residents. A new Personal Data Protection Act (Wet Bescherming Persoonsgegevens – WBP) was approved by the parliament in June 2000 and implements EU Directive 95/46/EG. It came into force on 1 September 2001. Although geographic data primarily focuses on geographic objects and not on natural persons, and even might be presented in an anonymous way, an operator can often easily relate these data to natural persons. In most cases the law concerning privacy protection is therefore applicable to geo-information. Hence, each organization or business should notify persons that they have been registered and for what purpose.

Directive 2002/58 on privacy and electronic communications has been implemented in national law by several regulations and an act of 22 April 2004 in particular. For an overview of the acts implementing this directive, see

http://europa.eu.int/information_society/policy/ecom/doc/implementation_enforcement/country_by_country/n

Particular attention to privacy and personal data is also paid in the legislation on the authentic registration for buildings and addresses. Data from the registration that can be considered as personal data can only be transferred to parties that are authorised to process personal data under the privacy legislation.

Licensing framework

GEONOVUM, in cooperation with T.U.Delft, has started working on a licensing model based on creative commons, called Geo gedeeld. It proposes four sets of standard EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 The Netherlands K.U.Leuven (SADL) 23 licensing conditions. All licences contain an obligation of attribution, and may contain one or more of the following conditions:

Permission is required to make the data available to third parties or to create derived products;#
The licence has a limited duration; # A charge has to be paid for using the data. The model was discussed with the data holders and adapted to their needs. It will be implemented in the course of 2010.

UN-GGIM Knowledge Base

<http://ggim.un.org/knowledgebase/KnowledgebaseArticle51515.aspx>