

German-Legal Framework

Legal framework

The main legal instruments on the federal level include the federal law on access to geographic data (Gesetz über den Zugang zu digitalen Geodaten -Geodatenzugangsgesetz – GeoZG) and the Administration Agreement, signed by the federal government and all the Länder. The Geodatenzugangsgesetz, which implements INSPIRE for the federal level, was published in 2008 and entered into force in February 2009. The Act creates a legal framework to access spatial data, spatial data services and metadata from the federal geodata holders, primarily aimed at environmental protection (M. Badowski, EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 Germany K. U. Leuven (SADL) 24 Implementation of the INSPIRE-Directive in Germany and Poland – Legal Point of View). The laws of the 16 Länder are very alike the federal law, based on a common strategy for the transposition and a common template for the law that was agreed on by all Länder and the federal state. Nine Länder have already adopted their legislation, with the other seven to follow in 2010.

Public-private partnerships (PPPs)

Within the context of INSPIRE implementation the German SDI (GDI-DE) is opened for third parties: As long as they accept the underlying principles of GDI-DE and the regulations of GeoZG third parties may contribute their geo data and metadata using the geoportal of GDI-DE. They just have to ensure the compliance with the technical rules defined by the GeoZG, the INSPIRE implementing rules and the GDI-DE Architecture. In that respect the work of the INSPIRE Task Force can be seen as an example of a PPP. Representatives of the government, scientific institutions and enterprises cooperate to coordinate the outcome of European and national legislation with the technical development within GDI-DE. Establishment of GDI-DE itself is done with major participation of the "Commission of Geo-Information Industry" on the conceptual level.

Policy and legislation on access to public sector information(PSI)

The Federation implemented the European Directive 2003/98/EG on PSI into national law in 2006 by adopting the "Informationsweiterverwendungsgesetz" (IWG – reuse of public sector information). The IWG regulates the Federal as well as the Federal state and municipal administrative level. Furthermore the Federation in September 2005 adopted the

"Informationsfreiheitsgesetz" (IFG – free access to public information)", granting each person an unconditional right to access official federal information. 'Freedom of information laws' have been adopted at the regional level by some of the Länder. In Brandenburg the right to freedom of information was explicitly laid down in legislation (constitution) in 1998. It relates to the right of all citizens to access public records held by state authorities, districts and cities, unless public or private interests prevail. Berlin, Schleswig-Holstein, North Rhine-Westphalia, Mecklenburg-Vorpommern, Hamburg, Bremen, Saarland and Thüringen have also recently adopted freedom of information laws. Other federal states are still preparing their FOI laws. Directive 2003/4 on access to environmental information has been implemented by the German Environmental Information Law (Umweltinformationsgesetz - UIG), which passed the German Parliament on 22nd of December 2004. UIG defines the facilities which are affected, describes the access to environmental as well as rejection of access, active dissemination of environmental information and fees. It has entered into force on 14 February 2005. The main instrument to support access to environmental information is

the German Environmental Information Portal, PortalU® EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 Germany K. U. Leuven (SADL) 25

Legal protection of GI by intellectual property rights

In Germany the national legislator is competent to issue copyright regulation and other intellectual property laws. The federal states are not allowed to issue state laws that contradict national laws. The German Copyright Act (Urheberrechtsgesetz – UrhG) explicitly states that works of literature, science or art have to be original to enjoy copyright protection. Since products of geographical information are functional, their level of originality tends to be rather low. Works with a low level of originality such as geographic maps, tables and so on enjoy copyright protection if some creativity has come into play, for instance in the generalisation process that is inherent in map production, or in the selection and arrangement of data. However, if the level of originality is low, protection granted is similarly low. Photographic works that are original are covered by common copyright. The German Copyright Act however has a special clause that gives the creator of a non-original photograph a right to resist duplication (art. 72 UrhG). The Directives 96/9/EC on the legal protection of databases and 91/250/EC on the legal protection of computer programs have been fully integrated in German Copyright Act.

According to article 5 of the Copyright Act, government information is not subject to copyright.

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Government information is divided into two categories. One category encompasses laws, decrees and so on (article 5(1)), whereas another category deals with official works published in the official interest for public information (article 5(2)). Interpretation of this last article is however very strict since – according to the Supreme Court – it only applies to information that is meant to be made generally available and copied.

The different federal states laws that regulate the work of the surveying and mapping authorities contain clauses that regulate the use of information collected or produced by them. The 2001 Directive on copyright in the information society was transposed by the Gesetz zur Regelung des Urheberrechts in der Informationsgesellschaft of 10 September 2003.

Restricted access to GI further to the legal protection of privacy

Protection of privacy has a long tradition in Germany and is considered tantamount to a human right. Hence privacy and personal data laws in Germany are generally very restrictive. Spatial datasets that contain information on individuals are in principle subject to the German laws on the protection of privacy. To ensure protection of privacy when implementing the INSPIRE-Directive, the Federal commissioner for data protection was involved when drafting GeoZG. The Federal Data Protection Act of 20 December 1990 Bundesdatenschutzgesetz) – as already amended by the law of 14 September 1994 – was later amended by the Federal Data Protection Act of 18 May 2001. This latest act implements Directive 95/46/EC and came into force on 23 May 2001. The Federal Data Protection Act applies to the federal public sector and the private sector. All federal states (except Sachsen and Bremen) adopted new Data Protection Laws to implement the EU Directive. These acts apply to the public sector of the respective federal states. EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 Germany K. U. Leuven (SADL) 26 A particularity of German data protection law lies in the fact that in addition to the above Federal Data Protection Act there are numerous sector-specific provisions. All these rules are granting the data subject a variety of possibilities aiming at the respect of his individual data protection rights. The use of (public) geodata is also restricted by the cadastral laws at the federal state level. Directive 2002/58 on privacy and electronic communication has been transposed in German law.

Licensing framework

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Each German authority or agency currently defines its own data policy on a case-by-case basis under the direction of the appropriate Minister. The GDI-DE Steering Committee, GIW-Commission, IMAGI, DDGI and AdV are all – directly or indirectly – working towards the development of a harmonised and simplified licensing framework for GI. A framework to get comparable prices for geo data was adopted by IMAGI in 2006, (see 2.3.7). One of the tasks of AdV is also to deliberate on the costs. These bodies thus have a mission in developing a pricing policy for GI.

A good example for simplifying licensing processes is the contract between the Federal states and the Federal Ministry for Interior to provide reference datasets from the federal states to the Federal Administration. It regulates an annual all-inclusive payment from federation to the federal states, which enables the BKG to provide all topographic data sets and services to Federal Agencies for free. In order to further coordinate and simplify the licensing policies for geographic data, the GDI-DE is currently working on licensing templates for spatial data sets and services, aiming at the gradual harmonisation of licences. The provision of licences via standardised web services is in preparation.

UN-GGIM Knowledge Base

<http://ggim.un.org/knowledgebase/KnowledgebaseArticle51516.aspx>