

France-Legal Framework

Legal framework

The main legal instruments specifically relating to GI include: *f* Decree no. 2004-1246 of 22 November 2004 on the National Geographic Institute, consolidated in May 2005; *f* Decision of 16 March 2005 stating the list of geographic data sets and cartography that has to be maintained by IGN as part of its public task; *f* Decision of 19 April on the development and maintenance of the RGE; *f* Decree on the role and the composition of the CNIG, consolidated on 30 September 1999.

After the Ministry of Public Works had created a first draft for the transposition of the INSPIRE directive in 2007, the responsibility for the transposition was shifted to the Ministry of Environment, Energy, Sustainable Development and the Sea. During 2008 and 2009, a draft proposal was developed, but at the end of 2009, it was decided to transpose the directive by an Ordonnance. The law that allows this was submitted to the Senate in December 2009 (see

<http://www.ign.fr/institut/documentArticle.do?idDoc=5653965&indexRoot=3&indexChild=1#>

With this law, the Parliament agrees with legislation that is still to come, so that it EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 France K.U.Leuven (SADL) 18 does not have to debate about the law when it is presented. This law is currently in the Chamber, but the Parliament has a backlog, so there is some delay. A text of the transposition law is ready, with a minimal transposition of the directive. Executive measures are necessary in order to fully transpose the directive. These will be ready by the end of the year (see <http://inspire.ign.fr/index.php/actualites-inspire>).

IGN performs its tasks on the basis of a contract with the government. This contract sets the objectives for a certain period, generally a couple of years. A new agreement was made in 2008 between IGN and the Ministry of Food Supply, Agriculture and Fisheries (MAAP) and the Ministry of Ecology, Energy, Sustainable Development and the Seas (MEEDDM). In addition, the white paper on defence and national security published on July 31, 2008 planned a closer cooperation with the Ministry of Defence (see IGN, 2008 Activity report). Since 2010, an agreement on targets and performance between IGN and the government specifies the objectives for the period 2010-2013.

Public-private partnerships (PPPs)

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There is no true PPP in France. For instance, geometric experts having tasks relating to the cadastre are considered to have a public mission, so they cannot be considered as private partners in relationship to the state. The private sector is involved in the creation of value-added products, but rather as a client of the public sector data providers than as a partner. Currently, the private sector does not play a big role in the NSDI in France, but there are signs that its role will grow in the future.

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

Law no. 78-753 of 17 July 1978 ('Loi portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal') regulates the freedom of access to administrative documents. This "CADA" law has been amended several times throughout the years. The law applies to central government, local government and the administrations of public undertakings. Requests may be refused on a limited number of grounds, such as state security, privacy and commercial secrets. Documents received may not be reproduced or redistributed for commercial purposes. Jurisprudence of this law allows the charging for data access. Directive 2003/98 on re-use of PSI was transposed by Ordonnance n° 2005-650 relative à la liberté d'accès aux documents administratifs et à la réutilisation des informations publiques of 6 June 2005 and by the Décret 2005-1755 relatif à la liberté d'accès aux documents administratifs et à la réutilisation des informations publiques, pris pour l'application de la loi n° 78-753 du 17 juillet 1978. The former contains a general right of re-use of all the information in the documents held by the administrations mentioned in the law of 1978. Directive 2003/4 was transposed into French law by the Law of 26 EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 France K.U.Leuven (SADL) 19 October 2005 (LOI no 2005-1319 du 26 octobre 2005 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de l'environnement, <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=DEVX0500055L>

The Agence du Patrimoine Immatériel d'Etat was established in 2007, under the Ministry of Economy and the Ministry of Budget, with among others the responsibility to help economic operators to access PSI for re-use and to create awareness with the public bodies with regard to the possibilities for re-use. For this, it has created model licences; it supports public bodies in developing their registers of information and has proposed to create a portal for access to all re-usable public sector information. APIE works closely with the Commission d'accès aux documents administratifs (CADA), and maintains contacts with the Groupement Français de l'Industrie de l'Information (GFII) and the Fondation Internet Nouvelle Génération (FING) (see

https://www.apiefrance.com/sections/acces_thematique/reutilisation-des-informationspubliques/la_reutilisation_

Legal protection of GI by intellectual property rights

The Intellectual Property Code of 1957 (revised several times throughout the years) includes a section on copyright. It provides a list of examples of works that may be protected which is similar to that of the Berne Convention. French courts have repeatedly decided works of GI to be subject to copyright. Database Directive 96/9/EC was implemented into law on 1 July 1998 by integrating the new rules into various sections of the French Intellectual Property Code. The 2001 directive on copyright in the information society is transposed by the Law on the digital economy.

No copyright exists in laws, decrees, court decisions, legal texts and so on. Maps belong to the same category as books, music and other artistic creation activities results. They therefore benefit of IPR protection under French law. Copyright is regulated by a system of licences. A licence for internal use exists, and several tariffs are in force depending on the amount of use to which the information is put. Government bodies also grant licences to private companies for the commercialisation of their data.

Restricted access to GI further to the legal protection of privacy

French privacy legislation can be found in Law no. 78-17 of 6 January 1978 (Loi relative à l'informatique, aux fichiers et aux libertés). Most notably this legislation provides for a priori declaration of all databases containing nominative data, and a right of access and correction for information concerning oneself. This law is more protective of private life than many other European equivalent legislations. The Commission Nationale de l'Informatique et des Libertés (CNIL - National Commission for Information Technology EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 France K.U.Leuven (SADL) 20 and Individual Liberties) is the regulatory body set up to enforce and report on application of French Privacy law (www.cnil.fr). On 11 January 2000 the European Commission decided to take France to court for failure to notify all the measures necessary to implement Directive 95/46/EC on the protection of personal data. Article 5 of Law no. 2000-321 of 12 April 2000 already amended Law no. 78-17. However, Directive 95/46/EC is now fully transposed into French law. On 30 January 2002 the French National Assembly therefore adopted a draft implementation law (projet de loi) regarding the processing of personal data, modifying Law no. 78-17. This law has been definitively adopted by an Assemblée National vote on the 29th of April 2004. The law of

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22 June 2000 concerning the digital economy has transposed both the 1995 directive on the processing of personal data and the 2002 directive on privacy and electronic communications into French law.

Licensing framework

The Ordonnance of 6 June 2005 on re-use of PSI states that if charges are made for the re-use, a licence has to be available, which holds the conditions for the re-use. These conditions can only put restrictions on the re-use for the purpose of the general interest, and in a proportionate way. Model licences should be available. Such model licences are provided by APIE, which makes available some model licences for the re-use of PSI on its website, for a one-off delivery and for continuous delivery of information. IGN provides general conditions for the use of its products and services on its website (www.ign.fr) as well as a set of licences: standard licence, server licence, electronic representation, graphical representation, commercial exploitation, integration, etc. Specific terms are foreseen for the educational sector and the research sector. Parcel data and address data are only available for the public sector. On the geoportal www.geoportail.fr, one can also buy IGN data online. Payment can be done by bank transfer or by credit card. Price lists and terms of use are available on the website (<https://boutiquepro.ign.fr/index.php?event=DisplayInfosProduits>). Over 8000 contracts have been concluded via the Geoportal. Such general conditions are also provided by SHOM. These conditions have been set up in strong cooperation within the IHO Regional Hydrographic Commission for the North Sea (NSHC). Furthermore this NSHC has also established a principle of custodianship, by which a country A portraying on its charts the data owned by an other country B can authorize the re-use of the data of the country B (provided the corresponding fees are yearly paid to country B).

Another maritime example can be found in the Regional Electronic Navigation Chart established under the auspices of the IHO WEND commission: for instance Primar Stavanger, operated by the Norwegian Hydrographic Service, distributes (including EC-INSPIRE: Spatial Data Infrastructures in Europe: State of play Spring 2010 France K.U.Leuven (SADL) 21 weekly up-dating) the ENC of several countries, amongst which France. The conditions for the distributors are the same for all the countries participating in Primar Stavanger.

UN-GGIM Knowledge Base

<http://ggim.un.org/knowledgebase/KnowledgebaseArticle51520.aspx>