



SDI performance from a legal perspective

Katleen Janssen and Jos Dumortier

ICRI – K.U.Leuven – IBBT

katleen.janssen@law.kuleuven.be, jos.dumortier@law.kuleuven.be

While spatial data infrastructures (SDI) have often been proclaimed to be vital for the preparation and implementation of good policies – e.g. relating to the environment, sustainability, agriculture, transport, etc. – there is very little evidence whether SDIs actually do what they are promising to do. This lack of empirical evidence on the performance of SDIs and the benefits they bring, makes it difficult to sell the “SDI-product” to its main investors, national governments and Treasuries. Before they decide to invest, these purse-holders will need an estimation of what costs and benefits an SDI-initiative will bring. Secondly, they want *post factum* evaluation whether the SD-initiative actually succeeded in its goal, i.e. whatever demand or need the organizations or processes involved have (Nedovic-Budic et.al, 2008). Therefore, an assessment of SDI-performance is indispensable.

Recently, increasing attention is being given to SDI-performance, not only from a technical point of view, but also from an organizational or institutional perspective. Such an organizational or institutional perspective often comprises legal elements. However, to make sure that these legal elements are incorporated properly in this organizational perspective, one needs to take a step back and look at the specific characteristics of a legal approach for assessing SDI performance.

Generally, a legal assessment contains three levels on the first level, the compliance of the SDI with existing legislation is examined. The second level determines whether the different laws, regulations and practices that are all applicable to an SDI form one coherent legal framework. Finally, the third level evaluates whether the SDI achieves the objectives that have been set for it. (Janssen, 2008). The three levels have a different look at different elements of the SDI.

The *compliance* level, assesses whether a certain situation, behaviour or fact follows the rules that are applicable to it. For instance, it will determine whether an organisation that obtained spatial data from another (public or private) party uses these data in accordance with the legislation on intellectual property rights or privacy. Hence, the entire SDI initiative is not assessed, but only some elements thereof: particular interactions or behaviours.

The second level deals with *coherence*. It assumes that SDIs will not function properly, if they are subject to different laws that contradict each other. For instance, if an organisation is under an obligation to provide data to a citizen under freedom of information legislation, but it also subject to legislation on security and privacy that prevent it from disseminating these data, it cannot

comply with both provisions. In most cases, such contradictions can be solved by applying basic legal principles of interpretation and hierarchy of norms, but this may not always be the case. For instance, a law may precede a Royal Decree, but if two laws contradict each other, the hierarchy of norms cannot offer a solution, because they have the same legal value. Once again, the SDI initiative is not assessed, but the performance of the legal framework in itself.

It is only on the third level that the performance of the SDI-initiative itself is assessed. For lack of a better term, this third level might be referred to as *legal effectiveness*. The question arises whether it is sufficient to determine that the law underpinning the SDI contributes to reaching the goals that have been set for it, or whether the law brings a set of separate goals to the table that should also be met by the SDI. In the first situation, the law is seen as a boundary condition for the goal of the SDI. Under the second option, the law adds an extra objective. Not only should the needs of certain organisations or processes be fulfilled, but there are also some external legal requirements that have to be taken into account.

These requirements would stem from fundamental or human rights that are generally considered to be universal and that need to be taken into account in any situation or decision. The right to privacy, the freedom of expression and information, the right to a fair trial, and the prohibition of discrimination are examples of such fundamental rights. This would entail that whatever the goals of the SDI initiative are, it also needs to respect the privacy of the individual, within the boundaries laid down by the International Convention on Civil and Political Rights or the European Convention on Human Rights. In its turn, this means that these fundamental rights have to be taken into account in the development of the SDI initiative from the start. In addition, it means that the evaluation of the performance of the SDI may also lie in the hands of the courts, and not only government or Treasury.

References

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