

# ***THE PUBLIC SERVICE OF DISSEMINATION OF FRENCH LAW ON THE INTERNET***

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## ***The Public Service of Dissemination of the French Law on the Internet*** **Summary**

Official electronic databases for legal information (acts, regulations, case-law) have been created in France half a century ago. A public service of dissemination of Law has been built in 1984, and put through the Internet in 2002. This public service, held by the State towards everyone's benefit: citizen consumers, legal professionals, and law vendors, is a part of several technological innovations. One of the most important of them is the digitalization of the Official Gazette.

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The French public powers have given for a long time a special attention to the dissemination of their national law. Not only in order to ensure the effectivity of the rule of law and the legal security, but also to assess in a certain manner the influence of the French law at the international level. The recent bicentennial commemoration of the Napoleon Codes, <<http://www.bicentenaireducodecivil.fr/>> -was the right occasion to reaffirm the role of these texts and of the French law in the legal construction of many countries. Nevertheless, France has not waited the development of the new information technologies to take advantage of their extraordinary facilities as regards the better access to juridical data. Thus, ever since 1960, university labs, in co-operation with the ministry of Justice, the services of the Prime-Minister and the supreme courts, established the first legal databases in the world.

After the especially rich developments during these more than forty years, the ensemble of these public legal databases is ever since the object of an established and protected public service (for a long time in fact, as it is organised by a decree at least from 1984). We shall not emphasise the details of this evolution which were largely discusses (see the bibliography). The regime of this public service, as it results from the last decree of 2002, anticipated the application of the European Directive on the reuse of data of the public sector (maybe it served, in one way or another, as a model for the principles developed in this EC law text?). This field is a very rich incubator of ideas for the public powers. In fact, with a view to make more accessible their funds, the producers and editors of official legal databases try to use the advanced new technologies at their best. The regime of this public service of dissemination of law on the Internet (I) allows, by its particular functioning (II) to accompany or to initiate technological innovations often revolutionary (III), like, among others, the one which allows to propose an authenticated electronic official journal.

## **I. The Legal Regime of the Public Service of Dissemination of the French Law on the Internet**

### **The Decree's Text**

J.O n° 185 of 9 August 2002 page 13655, text n° 5  
Decree n° 2002-1064 of 7 August 2002 on the Public Service of Dissemination of the French Law on the Internet <<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0205836D>>

The Prime Minister,

According to the Law n° 2000-321 of 12 April 2000 on the rights of citizens in their relationship with the administration, especially its Article 2 ;

According to the Decree n° 89-647 of 12 September 1989 modified as regards the composition and the functioning of the Superior Commission of codification

Decreets :

Article 1

A public service of dissemination of the French law on the internet is created.

This service has the goal to facilitate the public access to the legal texts in force as well as to the case-law.

It makes available at no costs for the public the following data:

1° The following normative acts, presented as they result from the successive modifications:

a) The Constitution, the codes, the laws and the acts with regulatory character (à caractère réglementaire) coming from the State authorities;

b) The national collective conventions having made the object of an extension order.

2° The acts resulting from international commitments of France:

a) The treaties and agreements to which France is a party;

b) The directives and regulations coming from the authorities of the European Union, as they are disseminated by these authorities.

3° The case-law:

a) The decisions and judgments of the Constitutional Council, of the State Council (Conseil d'Etat), of the Court of Cassation and of the conflicts tribunal;

b) The judgments and decisions given by the Court of Auditors and by the other administrative, judicial and financial jurisdictions, which were selected on criteria suitable for every jurisdiction order;

c) The judgments of the European Court of Human Rights and the decisions of the European Commission of Human Rights;

d) The decisions of the European Court of Justice and of the court of first instance of the European Communities.

4° An ensemble of official publications :

a) The edition « Lois et décrets » of the Official Journal (Journal officiel) of the French Republic ;

b) The official bulletins of the ministries;

c) The Official journal of the European Communities.

#### Article 2

It is created a website named Légifrance (<http://www.legifrance.gouv.fr>), placed under the responsibility of the Government's General Secretary and exploited by the Direction of official journals.

This site gives access, directly or by links, to the ensemble of data mentioned at Article 1. It makes available to the public instruments meant to facilitate the search of this data. It offers the possibility to browse the other national public sites, those of foreign States, those of the European Union institutions or of international organisation having a mission of legal information. It informs on the legislative, reglementary and jurisdictional update. The other sites managed by the State administrations which participate in the execution of the public service of dissemination of law by Internet are mentioned by order of the Prime Minister, given after the advisory opinion of the committee mentioned in Article 5 of the present Decree.

#### Article 3

The Direction of official journals produces the databases corresponding to the acts of which it ensures the publication. It achieves especially a base ensuring the integration, in short time, of the modification of the legislative and reglementary texts. It can also create other bases mentioned in Article 1, upon request of the authorities which enact the data.

#### Article 4

Licences of reuse the data mentioned in article 1 and detained by the State can be granted to persons who ask to use this data in the framework of their activity, having or not a commercial character. A convention specifies the conditions of use of data and especially the commitment of the beneficiary to guarantee the use in accordance with the requirements of fiability imposed for the dissemination of such data.

The decision to grant the licence is taken by the authority which is responsible with the exploitation of the site on which the object of the licence is disseminated. The Committee mentioned in Article 5 of the present decree is consulted in advance. The licences are granted at no costs. The beneficiary supports the costs of the publication of the data. The licences cannot be given back.

#### Article 5

It is created, under the authority of the Prime Minister, a committee of the Public Service of Dissemination of the French Law on the Internet. This committee has the following attributions :

1° It gives the advisory opinions provided for by Articles 2 and 4 of the present decree; it can also deal with any conflict which would arise from the use of licences mentioned in Article 4;

2° It makes all proposals which seem useful with a view to improve the quality of the public service of dissemination of the law ;

3° It establishes, every year, an evaluation report which is published on the site mentioned in the first paragraph of Article 2 of the present decree;

4° It brings its expertise to the administrations willing to proceed to the dissemination of legal data on the Internet. An order of the Prime Minister establishes the composition of the committee, especially the representatives of the companies specialised in the legal editing field.

#### Article 6

The Decree of 12 September 1989 abovementioned is modified as follows:

I. – It is added to Article 1 of this decree the following paragraph:

« Finally, the commission is informed by the Direction of official journals of the difficulties that arise from the updating of the texts mentioned in Article 1, 1° of the Decree n° 2002-1064 of 7 August 2002 on the Public Service of Dissemination of the Law on the Internet as well as of any other problem linked with this activity. It formulates any proposal useful in this field.»

II. – It is added to Article 2 of the same decree the following paragraph :

« In order to exercise the mission defined in the first paragraph of Article 1 of the present decree, the commission use the work of an expert group constituted under its authority, the composition of which is established by order of the Prime Minister. »

#### Article 7

The dispositions of the present decree enter into force on 15 September 2002. The Decree n° 96-481 of 31 May 1996 on the public service of legal databases ceases its application on the same date.

### **Definition of the Service**

The extent of the public service of dissemination of the law by Internet (hereinafter SPDDI) is thus defined by the Decree n° 2002-1064 of 7 August 2002 which takes over the previous decrees of 1984 and 1996 with subtle modifications. The field of application of this public service seems therefore drawn. But this enumeration of texts is not saved of slight imprecision and, in practice, not all fields are covered in the same way. (See, on the Legifrance site, the column « A propos du droit », paragraph 7 on « the field of the disseminated legal data », consulted on 19 January 2006).

In fact, when the decree says that the « following data are made available to the public at no charges » and it follows an enumeration, it is necessary to make some specifications on the real extent of the offer of this public service. These specifications are not statements of the service's malfunctioning. The decree states in principle that these data must be available for free on the Internet. If they are not immediately available, it is obviously not a matter of rendering

compulsory the on-line publishing of data which are not yet available for technical or regulatory reasons (e.g. in the case of the absence of anonymity for the judicial decisions). Moreover, if the 2002 decree “creates” the site Legifrance (in fact open since February 1998), the latter has no vocation to host all this data, but to constitute a site to give access « directly or by establishing of links, to the ensemble of the data mentioned in Article 1 ».

## Contents of the Service

It is therefore useful to make a point on the reality of the SPDDI offer, by studying it with respect to what is made available on or via the site Legifrance. (See also the note 2 of the explanatory note on the reuse of the data available on Legifrance, which briefly describes these bases <[http://www.legifrance.gouv.fr/html/licences/licences\\_notice.htm](http://www.legifrance.gouv.fr/html/licences/licences_notice.htm)>)

*It (the SPDDI) makes available to the public for free the following data:*

*1° The normative acts, presented as they result from the successive modifications: :*

a) the Constitution,	Present up-to-date directly on Legifrance	More links with the site of the Constitutional Council for specifications.
the codes,	Part of the base LEGI (base of the full text of the codes, laws and decrees in force since 1978). <b>These codes are reproduced in their up-to-date version and “consolidated”,</b> the articles totally abrogated are not cited.  There are all the codes, up-to-date and generally one week after the modification.	<b>The 60 official codes</b> , that is those which make the object of a parliamentary vote or which were codified by decree following the works of the superior Commission of codification.  <b>A whole code (or a part of a code</b> – legislative part, regulatory part – decrees of the Conseil d'Etat, regulatory part – ordinary decrees, orders) is reconstituted with its table of contents.
the laws and the acts with regulatory character (à caractère réglementaire) coming from the State authorities	Combination of bases : - LEX (references and summaries of texts published in the official journal since 1936) - JORF (full text of a great part of the texts published in the official journal since 1990)  - also LEGI (full text of laws, decrees and codes in force since 1978) (The Direction of official journals, which makes this database of consolidated texts has the goal the	<b>The column "Other legislative and regulatory texts" is made of two data bodies:</b>  - LEX: the documentary fund produced by the documentary Service of the general Secretariat of the Government, constituted of all the legislative and regulatory acts in force (or abrogated if they were in force during the last 40 years).  Beside the identification data characterising this body, every legislative or regulatory text comprises analysis data. These are

	<p>exhaustion of documentary fund of legislation / national regulation, not yet totally achieved to date)</p> <p>Therefore we have the full text systematically since 1978 (rarely before, for some great texts), and especially only for laws (a hundred a year) and decrees (a thousand a year). For the other texts published in the official Journal (orders, circulaires etc.) we have the rough versions since 1990.</p>	<p>sorted by place of application, modification or abrogation : the link made between the references of the texts allow to consult the legal links of a given text, be it subsequent (modifying, abrogating or explanatory) or previous (modified, abrogated or sources)</p> <p>- JORF : the documentary fund of documents published in the edition " Lois et décrets " of the official Journal since 1990.</p>
b) The national collective conventions having made the object of an extension order.	ex-base KALI	<p>The documentary fund of the collective conventions, <b>in simplified</b> search, comprises the ensemble of brochures edited and published by the Direction of official journals, in their <b>version into force. The advanced search refers to the ensemble of the documentary fund of the collective conventions, including the modified and abrogated versions.</b> These works are updated from the official Bulletin «Conventions collectives» elaborated by the social affairs, labour and solidarity ministry.</p>

2° The acts resulting from international commitments of France:

a) The treaties and agreements to which France is a party	PACTE base, <a href="#">Ensemble of treaties and agreements related to France</a>	Sends to the PACTE base (Ministry of foreign affairs), but also to a selection of fundamental treaties. <a href="#">Sélection des traités fondamentaux</a>
b) The directives and regulations coming from the authorities of the European Union, as they are disseminated by these authorities.	A number of links to Eur-Lex	The indicated transposition measures are the ones which were notified by France to the European Commission. This does not prejudice of the subsequent advice of the latter regarding the exhaustivity of each notified transposition and a fortiori of a decision of the Court of Justice on an action in an infringement proceeding.

3° The case-law :

a) The decisions and judgments of the Constitutional Council (sic)	Base CONSTIT, full text of the decisions, actions since the origin (1958) and notices of the Government since 1995.	The base offered directly by the services of the Constitutional Council is, in the general opinion, easier and more complete. But the corpus is not gigantic anyway.
of the Conseil d'Etat,	Base JADE ( <i>des Juridictions AdministrativEs/</i> of administrative jurisdictions). Comprises the full text anonymised of the decisions of the Conseil d'Etat since 1968	Comprises also a selection of judgments of administrative Courts of appeal and some very rare judgments of administrative tribunals.
of the Court of Cassation	Bases CASS and INCA	The CASS base is the oldest full text database in France. It dates from 1960. As it did take the origins only the published judgments, (approx. 10%), in 1984 appeared INCA (for <i>INédits de la cour de Cassation.</i> )
and of the conflicts tribunal ;	(included in the CASS and JADE bases)	
b) The decisions and judgments given by the Court of Auditors (Cour des Comptes)	Redirects to the site of the Court of Auditors	
b) by the other administrative, judicial and financial jurisdictions which were selected on criteria suitable for every jurisdiction order;	Base JURIDICE Before, the old payment-based system Jurifrance had a passage to the service of the commercial base Jurisdata, produced by the editors Lexis-Nexis and having more than 500,000 judgments of the courts of appeal. From now on, the base Juridice, produced by the ministry of justice, tends to replace this costly offer, but cannot achieve, due to different reasons, of organisation and regulation, the “cruise rhythm” which would allow it to compete with its private rival.	The judgments of the courts of appeal The documentary fund of case-law of courts of appeal and tribunals brings two fundamental innovations: free access and the comprised decisions are in full text. If the volume of decisions accessible nowadays is <b>more limited</b> that the one once available on the site Jurifrance, it will grow in a significant and regular manner in the following months. These documents concern a selection of recent decisions of courts and tribunals.  - This selection comprises only the most relevant and significant decisions, selected from the civil and criminal fields by the chamber presidents of the courts of appeal and by the jurisdiction presidents.  - The titles (the key-words) and summaries are done within the

		courts of appeal in cooperation with the documentation service (SDE) of the Court of Cassation.
c) The judgments of the European Court of Human Rights and the decisions of the European Commission of Human Rights ;	Redirects to HUDOC	
d) The decisions of the European Court of Justice and of the court of first instance	Redirects to CURIA	

4° An ensemble of official publications :

a) The edition " Lois et décrets " / « Laws and decrees » of the official Journal of the French Republic ;	Redirects to the site of the official Journal	
b) The official bulletins of the ministries ;	Redirects to a list of links of the ministries proposing, unfortunately in a non-normalised manner, their production of official bulletins.	
c) The official Journal of the European Communities	Redirects to Eur-lex	

## The Principles

We will remind rapidly that before becoming the SPDDI, its predecessor, the public service of legal databases was formally qualified as “public service by nature” (REP 1997) ([CE Contentieux, 17-12-1997, n° 181611, ORDRE DES AVOCATS A LA COUR DE PARIS <http://www.rajf.org/ce/181611.php>](http://www.rajf.org/ce/181611.php) (see especially the [conclusions Combrexelle on this decision <http://www.rabenou.org/bdj/ce181611cc.htm>](http://www.rabenou.org/bdj/ce181611cc.htm))

It was never a question of making gratuity a principle (which, anyway, is not a law of Rolland). Historically, the gratuity notion was a handy parting line to separate the two services Legifrance (free) and Jurifrance (payable) from 1997 to 2003. On the other hand, one of the counterparties to the old *de facto* monopole created by the 1984 decree and the Leclercq report was respecting the classical services of a public service, which can be recognised in:

- the completeness and the fiability « Laws of Rolland » **mutability and continuity**
- and for the laws of Rolland **neutrality** (primacy) and **equality** we have the non-written principle of non-competition with the private sector (principle implied to the whole construction of the SPDDI)

Are these principles satisfied? This is the question. The legislator wished to give rapidly this



public service the means to prosper in the strict framework of its principles. The law n° 2000-321 of 12 April 2000 on the rights of citizens in their relationship with the administration <<http://www.legifrance.gouv.fr/texteconsolide/PPEDQ.htm>> sets forth in its Article 2 “*the right of every person to information is specified and guaranteed by the present chapter as regards the freedom of access to the legal rules applicable to citizens* .

*The administrative authorities **must organise a simple access** to the legal rules which they issue. The availability and the dissemination of the legal texts is a public service mission the accomplishment of which is the task of the administrative authorities. »*

## The Goals

- Intelligibility of the Law;
- Accessibility of the legal rules ;
- Anonymisation of the judicial decisions.

The SPDDI, if it must respect the principles described above, it does it in order to achieve the abovementioned goals. This list is though not exhaustive.

On the first two goals, it is formally a matter of a constitutional value goal inferred by the Constitutional Council in its decision n° 99-421 DC of 16 December 1999 <<http://www.conseil-constitutionnel.fr/decision/1999/99421/index.htm>> and which found a positive application in the review of an article of the finances’ law of 2006, reversed by the Council for “complexity”. (**Decision n° 2005-530 DC - 29 December 2005** <<http://www.conseil-constitutionnel.fr/decision/2005/2005530/index.htm>>) See the document linked to this last decision <<http://www.conseil-constitutionnel.fr/decision/2005/2005530/doc.pdf>> pages 84 to 87.

One of the practical answers to these two first goals is in the guide for the elaboration of legal texts, a big work of more than 450 pages, present in full text on the homepage of the site Legifrance <[http://www.legifrance.gouv.fr/html/Guide\\_legistique/accueil\\_guide\\_leg.htm](http://www.legifrance.gouv.fr/html/Guide_legistique/accueil_guide_leg.htm)>. It presents in detail the procedures applied by the public powers to elaborate and publish coherent and error-free normative texts. The work is very complete and didactic. It is filled with specific examples and regularly updated. We shall retain that the chapters 1.4.1 and 1.4.2 respectively dedicated to Legifrance and to the codification take the description of the stakes of SPDDI.

Finally, the objective of the anonymisation of the judicial decisions is drawn obviously from the principle of the right to forget, inherent to any constitution of electronic files which process nominal data. This goal is reminded in a [Deliberation of CNIL n° 01-057 of 29 November 2001](#) on the recommendation regarding the diffusion of personal data on the Internet by the legal databases. <<http://www.cnil.fr/index.php?id=1361>>

(more generally, on the anonymisation of the judicial decisions, see <[http://www.servicedoc.info/mot.php3?id\\_mot=7](http://www.servicedoc.info/mot.php3?id_mot=7)>).

It is for sure that these goals are achieved. But the public powers do everything to achieve that.

## II. The Functioning of the Service

### The Website

The SPDDI is based on the creation of an Internet site, open on 2 February 1998 under the name of [legifrance.gouv.fr](http://www.legifrance.gouv.fr). The obligatory normative texts (CNIL declaration) are the following:

Order of 6 July 1999 on the creation of the Internet site Legifrance (J.O n° 160 of 13 July 1999 page 10406)

<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX9903642A>>

Order of 9 October 2002 on the Internet site Légifrance (J.O n° 238 of 11 October 2002 page 16801)<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0205968A>>

See « A propos du site » <<http://www.legifrance.gouv.fr/html/aproposite/aproposdusite.htm>> .

### The Committee

*Excerpt of the Decree n° 2002-1064 of 7 August 2002 on the public service of dissemination or law by Internet*

It is created, under the authority of the Prime Minister, a committee of the Public Service of Dissemination of the French Law on the Internet. This committee has the following attributions :

1° It gives the advisory opinions provided for by Articles 2 and 4 of the present decree; it can also deal with any conflict which would arise from the use of licences mentioned in Article 4;

2° It makes all proposals which seem useful with a view to improve the quality of the public service of dissemination of the law ;

3° It establishes, every year, an evaluation report which is published on the site mentioned in the first paragraph of Article 2 of the present decree;

4° It brings its expertise to the administrations willing to proceed to the dissemination of legal data on the Internet. An order of the Prime Minister establishes the composition of the committee, especially the representatives of the companies specialised in the legal editing field.

The orders taken by virtue of this part of the decree are the following:

- Order of 12 September 2002 on the committee of the public service of dissemination of law by Internet (Journal officiel of 13 September 2002, p. 15127)

<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0205886A>> which specifies the list of members and especially states that « the members of the committee are bound to the strictest confidentiality as regards the information elements which are provided for them during their time. » This explains why no report or text issued by the committee is publicly available.

- Order of 17 September 2002 on the nomination of the president of the public service of dissemination of law by Internet : M. Martin Laprade (Bruno), conseiller d'Etat, (Journal officiel du 18 September 2002, p. 15375)

<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0205906A>>

- Order of 17 September 2002 on the nomination of qualified personalities called to sit in the committee of the public service of dissemination of law by Internet (Journal officiel of 18 September 2002, p. 15375)

<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0205907A>

### **The Licences: the Reproduction and the Reuse of Data**

By virtue of the decree n°2002-1064 of 7 August 2002, the public service of dissemination of law by Internet (SPDDI) has for object to make available free of charge to the Internet users, on the site Legifrance, the essential data of the legal rules and of the French case-law.

But this gratuitousness does not exclude certain constraints for the download and reuse of the data available on the site. (see the column « [Licences](#) » accessible from the homepage of the site [http://www.legifrance.gouv.fr/html/licences/menu\\_licences.htm](http://www.legifrance.gouv.fr/html/licences/menu_licences.htm)).

The simple indication of a link to the site Legifrance is not considered a download. This can be done without authorisation by any site, public or private ; with this purpose, there is on the site an instrument authorising, in favour of the Internet users, the creation of links (URL addresses) which point to the documents of the site. The procedure of the establishment of such links is described in the site's homepage (column « Etablir un lien » situated as a footer of the home desktop).

On the other hand, during the posting of a document, the possibility to copy or to send its address is proposed.

One can read also in the explanatory notice on the reuse of data available on Legifrance - « notice explicative relative à la réutilisation des données disponibles sur Legifrance » - [http://www.legifrance.gouv.fr/html/licences/licences\\_notice.htm](http://www.legifrance.gouv.fr/html/licences/licences_notice.htm) > that there is a « third way » between the payable acquisition of the licences and the simple indication of links. It is in fact possible to withdraw a part « not substantial from the quality or quantity points of view » from the contents of Legifrance. The notice draws precisely the limits of the character of extractions – substantial or not and also establishes the commitments which must be respected by all borrowers (respect of integrity and mention of the source).

The details of the available data and the fees of the licences are present on the pages :  
- [Catalogue](http://www.legifrance.gouv.fr/html/licences/licences_catalogue.htm) : [http://www.legifrance.gouv.fr/html/licences/licences\\_catalogue.htm](http://www.legifrance.gouv.fr/html/licences/licences_catalogue.htm)  
- [Tarifs](http://www.legifrance.gouv.fr/html/licences/licences_tarifs.htm) : [http://www.legifrance.gouv.fr/html/licences/licences\\_tarifs.htm](http://www.legifrance.gouv.fr/html/licences/licences_tarifs.htm)

It is important that the prices of licences have been mentioned in an order of 30 December 2005 which establishes the remunerations due as a counterpart of the services provided for by the Direction of official journals (J.O n° 304 of 31 December 2005 page 20737 ) <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0508968A>, itself an application of the decree n° 2005-1073 of 31 August 2005 on the remuneration of the services provided by the Direction of official journals (J.O n° 203 of 1 September 2005, text n° 1) <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0500050D>

### **III. The Life and the Actuality of the SPDDI**

The accessories of the public service of dissemination of law by Internet: the new regime of the publication of laws and the reuse of the public sector information.

## **The New Regime of the Publication of Laws**

The importance of the technical and regulatory innovations developed for the SPDDI cannot be understood without putting it into perspective with the new (and revolutionary) regime of the dissemination of laws in France and on the other hand with the EC evolution born with the directive of 2003 on the reuse of public sector information.

<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=JUSX0300196R>>

*J.O n° 44 of 21 February 2004 page 3514, text n° 5*

*Ordinance n° 2004-164 of 20 February 2004 on the modalities and effects of the publication of laws and of certain administrative acts*

*The President of the Republic,*

*Based the report of the Prime Minister and of the minister of justice, (J.O n° 44 of 21 February 2004 page 3512, text n° 4*

<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=JUSX0400033R>> )

*Considering the Constitution, especially its Article 38;*

*Considering the Civil code;*

*Considering the law n° 2003-591 of 2 July 2003 empowering the Government to simplify the law, especially its Article 4;*

*With the advice of the Conseil d'Etat ;*

*With the advice of the Council of ministers,*

*Orders:*

*Article 1*

*Article 1 of the Civil code is replaced with the following dispositions:*

*« Art. 1. – The laws and, when they are published in the official Journal of the French republic, the administrative acts, enter into force at the date they establish or, in the absence of such an indication, the next day after their publication. However, the entry into force of those dispositions the execution of which needs application measures is postponed to the date of the entry into force of these measures.*

*« In case of emergency, the laws whose decree of promulgation so prescribes and the administrative acts for which the Government orders so by a special disposition, enter into force on the day of their publication.*

*« The dispositions of the present article are not applicable to individual acts. »*

*Article 2*

*The laws, ordinances, decrees and, when a decree so prescribes, the other administrative acts, are published in the official Journal.*

*Article 3*

*The publication of the acts mentioned in article 2 is ensures, on the same day, in conditions capable to guarantee their authenticity, on paper and in electronic form. The official Journal of the French Republic is put at the disposition of the public in an electronic form on a permanent*

*and free of charge basis.*

#### *Article 4*

*A decree of the Conseil d'Etat issued with the advice of the National Commission on Information Technology and Liberties (la Commission nationale de l'informatique et des libertés) defines the individual acts, especially those related to the status and nationality of persons, who, in the present available state of technology must not be the object of an electronic publication.*

#### *Article 5*

*A decree of the Conseil d'Etat defines the categories of administrative acts for which, taking into account their nature, their importance and the persons to whom they apply, the publication in the official Journal in an electronic form suffices in order to ensure their entry into force.*

(...)

This text is the decree n° 2004-617 of 29 June 2004 on the modalities and effects of the publication in electronic form of certain administrative acts in the official Journal of the French Republic.

(<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0400087D>> ). It was the object of an appeal for excess of power (*recours pour excès de pouvoir*) at the Conseil d'Etat, which rejected it: CE 9 November 2005 M. M..., n°271713 « *the substitution of the electronic version to the paper version of the official Journal made by the ordinance of 20 February 2004 is not likely to infringe neither Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms by virtue of which every person is guaranteed the right to the freedom of expression and the one to receive or communicate information or ideas without any interference from the authorities, nor to the non-discrimination clause mentioned by Article 14 of the same convention.* »

(*A contrario* see Judgment of the Belgian Court of Arbitrage n° 106/2004 of 16 June 2004) <<http://www.arbitrage.be/public/f/2004/2004-106f.pdf>> « If it is not accompanied by sufficient measures capable to guarantee the equal access to official texts, the contested measure (the publication of the Moniteur belge exclusively on the Internet) has disproportionate effects at the expense of certain categories of persons.

It is not therefore compatible with Articles 10 and 11 of the Constitution ». For more details, see <<http://www.servicedoc.info/Recours-pour-exces-de-pouvoir.html>> .

### **The Reuse of Public Sector Information**

J.O n° 131 of 7 June 2005 page 10022

text n° 13

Ordinance n° 2005-650 of 6 June 2005 on the free access to administrative documents and to on the reuse of public information

<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=JUSX0500084R>>

Based on the report of the Prime Minister, of the minister of justice and of the minister of economy, finances and industry,

Excerpt of the report : J.O n° 131 of 7 June 2005 page 10021  
text n° 12

<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=JUSX0500084P>>

*II. – The main innovation resulting from the present ordinance is the creation within the law of 17 July 1978 of a Chapter II, comprising the Articles 10 to 19, dedicated to the reuse of public information.*

*Firstly, it is to be noted that the Directive 2003/98/CE (JOCE L, 345, 31 December 2003, p. 90) <[http://europa.eu.int/eur-lex/pri/fr/oj/dat/2003/l\\_345/l\\_34520031231fr009000096.pdf](http://europa.eu.int/eur-lex/pri/fr/oj/dat/2003/l_345/l_34520031231fr009000096.pdf)> on the reuse of public sector information, which is understood as the use of such information in purposes other than the one to which they were produced, leaves to the Member States the choice of the field within which to apply the regime of the reuse.*

*The field retained by the present Ordinance includes the reuse of information detained or produced by the State, the territorial collectivities, the organs charged with a public service mission. There are not included in this field so defined the information elaborated or held in the framework of a mission of an industrial and commercial public service and the ones on which third parties have rights of intellectual property. The information of the cultural institutions or of education establishments have a special regime, left to the free appreciation of the respective establishments. Finally it is specified that the exchanges of information between the administrative authorities are not submitted to the regime of the reuse. When the reuse of public information is authorised, the directive pose a certain number of minimal requirements destined to ensure the effectivity of the reuse and the respect of the competition rules.*

*Regarding the prescriptions destined to ensure the effectivity of the reuse, the ordinance pose the principle of the freedom to reuse the information, with commercial or non-commercial purposes, and supposes some obligations for the administrations. In this respect, it provides for the appointment, in conditions determined by the regulatory power, of a responsible person with the reuse, it places the regime of the reuse under the control of the commission for access to administrative documents (hereinafter CADA) (and, in fine, under the one of the administrative judge) and it imposes that the negative decisions, such as the refuse to licence the reuse, be motivated and written. The administrations are moreover bound to transparency as regards the calculation of the indemnities, as regards the main information likely to be reused which are mentioned in a repertoire ad hoc and as regards the eventual holders of intellectual property rights. Regarding the respect of the free competition, the project transposes without arrangement the constraints regarding the exclusive rights and takes the requirements of the directive in the price matter. The directive prohibits that the amount of the indemnity charged with the occasion of a reuse exceeds the whole costs supported by the administration, increased with an amount on a reasonable investment. This ceiling applies also to the amount which represents the total of the indemnities charged for the reuse of the same information.*

*According to this framework, the ordinance authorises the perception of an indemnity, for the commercial or non-commercial reuses, the amount of which can include the costs born by the producer or holder administration, and especially the costs to make available and of the eventual anonymisation of the information. The prior delivery of a licence is asked when the reuse gives place to the charge of an indemnity and the administration holds licences at the disposal of the interested persons.*

*The present project of ordinance has accompanying dispositions which guarantee the general balance of the disposition.*

*It is reminded firstly that the reuse of information on the data of personal use is done according*

*to the law called "IT and freedoms" / « informatique et libertés » and, in this respect, the embryo of a particular regime is created. This regime is based on the consent of the interested person or on an alternative passing through either the anonymisation of data or the regime resulting from an ad hoc text.*

*On the other hand, the project confers to CADA the power to apply administrative sanctions, including a fine of 300 000 EUR, adapted in function of the purposes of the reuse, when the reuse infringed the obligation of licence, the prescriptions of the licence or when it reveals an unauthorised alteration of the public data. This power of sanctioning guarantees particularly the respect of the principle of the separation of the regimes of access to administrative documents and of the reuse of information.*

Excerpt of the ordinance n° 2005-650 of 6 June 2005 on the free access to administrative documents and on the reuse of public information (J.O n° 131 of 7 June 2005 page 10022, text n° 13)

(...)

#### Article 1

The law of 17 July 1978 abovementioned (*Loi n° 78-753 of 17 July 1978 modified with diverse measures of amelioration of the relationships between the administration and the public and diverse administrative, social and fiscal dispositions*) is modified according to the Articles 2 to 10 of the present ordinance.

(...)

#### Article 10

There are created in the 1<sup>st</sup> title, after Article 9, the chapters II, III et IV as follows:

##### « Chapter II

##### « **On the reuse of public information**

« Art. 10. - The information in documents elaborated or held by the administrations mentioned in Article 1, no matter their support, can be used by any person who requests them in other purposes than those of the public service mission for the needs of which the documents have been elaborated or are held. The limits and the conditions of this reuse are regulated by the present chapter, even if this information have been obtained in the framework of the exercise of the right to access to administrative documents regulated by the 1<sup>st</sup> chapter.

« The information included in the following documents are not considered public in the sense of the present chapter:

- « a) the communication of which is not a right in the application of the 1<sup>st</sup> chapter or of other legislative dispositions, except if this information are the object of a public diffusion;
- « b) or elaborated or held by the administrations mentioned in Article 1 in the exercise of a public service mission with industrial or commercial character;
- « c) Or on which third parties hold intellectual property rights.

« The exchange of public information between the authorities mentioned in Article 1, with the purpose of exercising their public service mission, is not a reuse in the sense of the present

chapter.

« Art. 11. – By derogation from the present chapter, the conditions in which the information can be reused are established by the authorities mentioned in a) and b) of the present article when they are mentioned in the documents elaborated or held by:  
«a) establishments and institutions of education and research;  
«b) cultural establishments, organs or services.

« Art. 12. – Unless with the consent of the administration, the reuse of public information is submitted to the condition that the latter are not altered, that their sense is not denatured and that their sources and date of their last update is mentioned.

« Art. 13. – The reuse of public information including personal data is subordinated to the respect of the law of 6 January 1978 abovementioned, on information technology, files and freedoms.

« The public information including personal data may be the object of a reuse either when the interested person consented to that or when the holder authority is capable to make them anonymous or, if not, when a legislative or regulation disposition allows it.

« Art. 14. – The reuse of public information cannot be the object of an exclusive right granted to a third party, except when such a right is necessary to the exercise of a public service mission.

« The foundation of the grant of an exclusive right is the object of a periodical re-examination at least every three years.

« Art. 15. – **The reuse of public information can give rise to the charge of dues.**

« In order to establish the dues, the administrations which elaborated or hold the documents containing the public information likely to be reused takes into account the costs of availability of the information, especially of the costs of a treatment allowing them to become anonymous.

«The administration can also take into account the costs of collecting and producing information and can include in the amount of dues a reasonable remuneration of its investments comprising, if there is the case, a part on grounds of intellectual property rights. In this case, the administration must be sure that the dues are established in a non-discriminatory manner and that their total product, evaluated on an appropriate accounting period by reference to the investments' amortisation, does not exceed the total formed by, on one hand, of the costs of collecting, producing and making available of the information and on the other hand the remuneration defined in the present paragraph.

« When the administration which elaborated or holds the documents containing the public information uses them in the framework of commercial activities, it cannot charge the reuse to other operators at a higher cost than the one which it uses, nor impose them conditions less favourable than those that apply to itself.

« Art. 16. – When it is subject to the payment of dues, the reuse of public information requires the delivery of a licence.

« This licence establishes the conditions of reuse of public information. These conditions cannot bring restrictions to the reuse except for public interest reasons and in a proportionate manner. They cannot have as an object or as an effect to limit the competition.

« The administrations which elaborate or hold documents containing public information which



could be reused under the conditions provided for in the present article are complied to priorly set licences types, including in an electronic form, and make them available to interested persons.

« The conditions in which a licence offer is proposed to the person who requests it are set forth by a regulation.

« Art. 17. - The administrations which produce or hold public information keep at the disposal of the users a repertoire of the main documents where that information exists.

« The conditions of reuse of public information as well as the calculation base for the establishment of the amount of dues are communicated, by the administrations which produced or hold this information, to any person who so requires.

« Art. 18. – Every person reusing the public information by infringing the prescriptions mentioned in the 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs of the present Article can be subjected to a fine pronounced by the commission mentioned in chapter III.  
« The maximum amount of the fine is equal to the one set by Articles 131-13 of the Penal code for 5th class offences when the public information have been reused for non-commercial purposes by infringing the dispositions of Article 12 or the conditions of reuse set forth by a licence delivered to this end or in violation of the obligation to obtain a licence.

« When the public information have been reused for commercial purposes in violation of the dispositions of Article 12 or of the conditions of reuse set forth by a licence delivered to this end or in violation of the obligation to obtain a licence, the amount of the fine is proportionate with the seriousness of the violation and of the advantages obtained by this violation.

« For the application of the 3<sup>rd</sup> paragraph, the amount of the fine pronounced to sanction the first violation cannot exceed 150 000 EUR. In case of repeated violation in the 5 years from the date of the prior sanction has become definitive, the fine cannot exceed 300 000 EUR or, if it comes to a company, 5 % of the business flow without taxes from the last exercise within the limit of 300 000 EUR.

« The commission mentioned in chapter III can, to replace or to complete the fine, forbid the author of an offence to reuse public information during a maximum period of 2 years. This duration can be increased to 5 years in case of repeated offences in the five years after the first violation.

« The commission also can order the publication of the sanction at the expense of the person who is subjected to it, by the ways established by decree of the Conseil d'Etat.

« The fines are recovered as the debts of the foreign states for taxes and for domain.

« Art. 19. – The modalities of the application of the present chapter are established by decree of the Conseil d'Etat.

This decree was issued on 30 December 2005 : [décret n° 2005-1755 of 30 December 2005 on the free access to administrative documents and the reuse of public information, in application of the law n° 78-753 of 17 July 1978](#) (J.O n° 304 of 31 December 2005 page 20827 text n° 119) <<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=JUSC0520903D>> , but it does not directly concern the public service of dissemination of law by Internet, as long as the 2002 decree is sufficient by itself and anticipates largely the integration of the European Directive. In exchange, this 2005 decree regulates the problem of the dissemination of legal texts produced by

public persons (or holders of public power prerogatives) and which are not integrated in the first decree of 2002 (in the public service of dissemination of law by Internet ). These latter texts, « outside the SPDDI », enjoy the new status of administrative document, generally accessible (with the exceptions regulated by the decree) and especially “reusable” under the conditions organise by the decree (Article 38 : « The conditions of reuse of public information are fair, proportionate and non-discriminatory for comparable categories of reuse. »).

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Law n° 2000-321 of 12 April 2000 on the rights of citizens in their relationship with the administration, <<http://www.legifrance.gouv.fr/texteconsolide/PPEDQ.htm>> especially its Article 2 : "*the right of every person to information is specified and guaranteed by the present chapter as regards the freedom of access to the legal rules applicable to citizens . The administrative authorities must organise a simple access to the legal rules which they issue. The availability and the dissemination of the legal texts is a public service mission the accomplishment of which is the task of the administrative authorities.* »

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Arrêté du 5 février 2003 fixant le montant des indemnités susceptibles d'être allouées au président et aux collaborateurs du comité du service public de la diffusion du droit par l'internet

(Journal officiel du 8 février 2003, p. 2375)  
<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0206218A>>

Décret n° 2005-1073 du 31 août 2005 relatif à la rémunération des services rendus par la Direction des Journaux officiels (J.O n° 203 du 1 septembre 2005, texte n° 1)<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0500050D>>

Arrêté du 30 décembre 2005 fixant le montant des rémunérations dues en contrepartie des prestations fournies par la Direction des Journaux officiels (J.O n° 304 du 31 décembre 2005 page 20737 )  
<<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=PRMX0508968A>>