



INSPIRE
Infrastructure for Spatial Information in Europe

Implementing rules for governing access and rights of use of spatial data sets and services for Community institutions and bodies –

Description of the rules with accompanying Commentary and Guidance

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Foreword

This document includes the following sections:

Section A. Description of the rules with commentary. Within the boxes is the text which will form the rules themselves. It is not intended to be the final legal working, but a more understandable description. The text underneath each box is a commentary on what that particular rule is trying to achieve and any other information to assist in the understanding of the rules.

Section B. Guidance on the implementing rules. This section gives information on how the implementing rules can be implemented in the Member State. This will not be mandatory.

Annexes. These are the Annexes to Section B, the Guidance and as such will not be mandatory either.

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Section A – Description of the rules with commentary

1. Introduction

The implementing rules harmonise, as far as is practicable, the terms and conditions under which the institutions and bodies of the Community receive access to, and use of, data sets and services. Complete harmonisation is not possible due to the extreme variety of the types of data and services covered by the Directive.

Although not explicitly mentioned in the implementing rules, it should be noted that they do not prejudice to Directive 2003/4/EC, Directive 2003/98/EC, Directive 91/692/EC and Directives 85/337/EEC and 96/61/EC, amended by the Directive 2003/35/EC.

As stated in the Directive the purpose of the implementing rules is to amend the non-essential elements of Directive 2007/2/EC by supplementing it.

In the following sections, the text which will form the implementing rules is in boxes, with a commentary below.

2. Subject matter and scope

This chapter provides the framework for the implementing rules and specifies the scope in terms of the data sets and services and the situations in which the implementing rules apply.

Objective

These implementing rules lay down measures concerning the provision of access to spatial data sets and services from the Member States or their public authorities to the institutions and bodies of the Community, in accordance with Article 17 of the Directive (EC) No 2007/2/EC of the European Parliament and of the Council establishing an infrastructure for spatial information in the Community (INSPIRE), hereafter the Directive.

The Member States and their public authorities shall enable the institutions and bodies of the Community to gain access to and use spatial data sets and services for the purposes of public tasks of the institutions and bodies of the Community that may have a direct or indirect impact on the environment under harmonised conditions.

This text re-iterates the objective of the implementing rules as stated in the Directive 17(8). It refers to, and clarifies, the mandate given with respect to access to spatial data sets and services.

Scope

These implementing rules cover the provision of spatial data sets and services which fulfil all of the following conditions:

- they relate to an area where a Member State has and/or exercises jurisdictional rights;
- they are in electronic format;
- they are held by or on behalf of a public authority, having been produced or received by a public authority, or being managed or updated by that authority and falling within the scope of its public tasks; and
- they relate to one or more of the themes listed in Annex I, II or III of the Directive.

This text lists the criteria from which it can be determined whether a dataset or service is covered by the implementing rules. Whilst this to some extent repeats what is in the Directive Article 4 and other Articles, it also brings into one place the total scope of the implementing rules.

Some aspects of the geographical scope are not explicitly mentioned in the Directive and for further definition of this, pre-existing European law, or previous custom and practice should apply. An example of this would be the treatment of data for the part of a European territory which falls outside

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Europe, such as French dependencies in the Atlantic. A second example is data held by a public authority but not relating to territory over which it exercises jurisdictional rights. In this case the implementing rules relate only to territory where the Member State has and/or exercises jurisdictional rights.

These implementing rules shall apply to the provision of access to spatial data sets and services by the Member States and their public authorities to the institutions and bodies of the Community for the performance of their public tasks that may have a direct or indirect impact on the environment.

This text re-states the limitation on the use that the institutions and bodies of the Community have. The implementing rules apply ONLY to:

1. The provision of spatial data sets and services by the Member States and their public authorities
2. To an institution or body of the Community
3. For the performance of their European Community public tasks
4. Where those tasks may have a direct or indirect impact on the environment

These rules shall only apply if the institution or body of the Community requiring the data or services states that they shall apply. In circumstances in which no such statement is made, there is no obligation on the Member State or public authority to use the harmonised condition of the implementing rule, or respond to any procurement exercise from a Community institution or body for provision of data or services.

This text recognises the fact that application of these rules is not mandatory on the Community institutions and bodies as they have the freedom to use other arrangements, examples being those available to them under Directive Article 17.5, and any other arrangements they may seek through a procurement exercise. If they do so, of course, the Member States can then choose whether to respond or not.

These implementing rules shall be without prejudice to the obligations under Directive 95/46/EC, Regulation (EC) No 45/2001, Directive 2003/4/EC and Regulation (EC) No 1367/2006.

This text reiterates that obligations imposed by the provisions of European legislation relating to the protection of personal data and access to environmental information remain intact.

3. Definitions related to data and service sharing

This chapter provides definitions of key terms used throughout the implementing rules. These definitions form an additional set of terms that apply to these implementing rules, in addition to the definitions of Article 3 of the INSPIRE Directive, which remain fully applicable.

It has been decided not to seek to further define the following words and phrases in the implementing rules:

- Practical obstacle occurring at the point of use
- Reasonable return on investment
- Access

This is for two reasons. First some of these terms are already used, undefined, in prior legislation, notably the Directives on Freedom of Information, Re-use of Public Sector Information, and Access to Environmental Information. Second, some of these terms are the result of an extended co-decision process. Thus further definition may undermine the outcome of that process and the subsidiarity of the Member States who are allowed to interpret the Directive in national law.

Regarding the term 'access', it should be noted that the Directive implies two meanings to this term. On the one hand it addresses the right of access, and on the other hand it addresses the ability to obtain physical access to a service. In this document, unless indicated otherwise both meanings can be inferred. On the occasions where a distinction between both meanings of the term is needed for the sake of clarity of the implementing rules, the implementing rules refer explicitly to the "right of access", or to "the provision of access" to indicate which interpretation should be used. When the word 'access' is used in the phrase 'public access' the same applies.

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The following terms need defining, because of their specific meaning for these implementing rules.

Institutions and bodies of the Community means

- a) The Institutions set up under the EU and EC Treaties;
- b) Agencies set up under the EC Treaty; and
- c) Agencies set up under the EU Treaty when their activity has a direct or indirect impact on the environment

A distinction can be made between three categories of bodies: the institutions set up under the EU and EC Treaties, Agencies set up under the EC Treaty, and Agencies set up under the EU Treaty when their activity has a direct or indirect impact on the environment.

The institutions can be found in Article 7 of the EC Treaty. There are five: the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors. Regarding the agencies, a distinction has to be made between the agencies that have been set up under the EC Treaty or under the EU Treaty. The EU is broader than the EC, as it also contains the Common Foreign and Security policy and the Police and Judicial Cooperation in Criminal Matters pillar. For the institutions, no such distinction has to be made, as the Commission, the Council and the European Parliament constitute the “single institutional framework” serving both the EC and the EU (see art. 3 EU Treaty).

Hence, the implementing rules apply to the institutions as a whole and to the agencies set up under the EC Treaty. These ‘Community agencies’ are bodies that are governed by European public law. They are distinct from the Institutions and have their own legal personality. They are set up by an act of secondary legislation in order to accomplish a very specific technical, scientific or managerial task, in the framework of the European Union’s “first pillar”. A non-limitative list of examples can be found at http://europa.eu/institutions/index_en.htm. It is an evolving list, as new agencies may be set up in the future. Current examples are:

- European GNSS Supervisory Authority (EGSA)
- Community Fisheries Control Agency (CFCA)
- European Plant Variety Office (CPVO)
- European Agency for Reconstruction (EAR)
- European Agency for Safety and Health at Work (OHSA)
- European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)
- European Aviation Safety Agency (EASA)
- European Centre for Disease Prevention and Control (ECDC)
- European Centre for the Development of Vocational Training (Cedefop)
- European Chemicals Agency (ECHA)
- European Environment Agency (EEA)
- European Food Safety Authority (EFSA)
- European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)
- European Fundamental Rights Agency (EFRA)
- European Maritime Safety Agency (EMSA)
- European Medicines Agency (EMA)
- European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)
- European Monitoring Centre on Racism and Xenophobia (EUMC)
- European Network and Information Security Agency (ENISA)
- European Railway Agency (ERA)
- European Training Foundation (ETF)
- Office for Harmonisation in the Internal Market (OHIM)
- Translation Centre for the Bodies of the European Union (CdT)

Agencies under the 2nd and 3rd pillar are not explicitly covered by the term “institutions and bodies of the Community”. However, when these agencies are given a task under the EC-Treaty or subsequent legislation, i.e. a public task of the institutions and bodies of the European Community, they will fall under the definition. The “Common Foreign and Security Policy Agencies” have been set up to carry

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out very specific technical, scientific and management tasks within the framework of European Union's Common Foreign and Security Policy (CFSP) – the "second pillar" of the EU. Examples are the European Defence Agency (EDA), the European Institute for Security Studies (ISS), and the European Union Satellite Centre (EUSC) (see http://europa.eu.int/institutions/index_en.html). The "Police and judicial cooperation in criminal matters agencies" have been set up to help the EU Member States co-operate in the fight against organised international crime. This co-operation in criminal matters is the "third pillar" of the EU. Examples are the European Police College (CEPOL), the European Judicial Cooperation Unit (EUROJUST), and the European Police Office (EUROPOL) (see http://europa.eu.int/institutions/index_en.html).

A fourth group of agencies are "Executive Agencies". These are organizations established in accordance with Council Regulation (EC) No 58/2003 (OJ L 11, 16.1.2003) with a view to being entrusted with certain tasks relating to the management of one or more Community programmes. These agencies are set up for a fixed period. Their location has to be at the seat of the European Commission (Brussels or Luxembourg). Examples are the Education, Audiovisual and Culture Executive Agency, the Executive Agency for the Public Health Programme, and the Intelligent Energy Executive Agency. They will also fall under the definition of Community bodies and institutions.

European Topic Centres do not fall under the definition of "institutions and bodies of the Community" as such. However, as they entered into a contract with the European Environmental Agency or other agencies, they may obtain the spatial data sets and services as referred to in Section 4.4

Public tasks (of the institutions and bodies of the Community) means:

The development, implementation and monitoring of policies and related activities as defined by the EC Treaty and subsequent Community legislation.

This definition only addresses the specific tasks of the Community bodies and institutions, and does not intend to give a definition of the public task in general which is defined elsewhere for other organisations.

The implementing rules apply to the provision of access to spatial data sets and services to the institutions and bodies of the Community for their public tasks relating to the environment. Any other use by the Community institutions and bodies does not fall within these rules and may be subject to other conditions.

The terms defined in these implementing rules and the definitions of Article 3 of the Directive shall be used in all licences that comply with these rules.

This text mandates the Member States to use these definitions in their licences. The aim of this is to ensure a level of harmonisation in such licences, and to reduce confusion and ambiguity.

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4. General Provisions for data and service sharing

4.1. Structure for provision of spatial data and services

Member States shall put in place adequate structures for the efficient provision of access to spatial data sets and services to the institutions and bodies of the Community as specified by the Directive. They shall ensure that such structures are sustainable and that their effectiveness is monitored on a regular basis.

The current situation in many Member States is that if an institution or body of the Community requires spatial data or a service from a Member State's public authority, it must approach the public authority directly on a one to one basis. This is inefficient and time-consuming. Increasingly both sides will be dealing with multiple themes, data sets, coverages etc. Streamlining of the sharing procedure covering both the licensing process and the actual provision of data is required. This rule therefore calls for a structure to be put in place to improve the efficiency of data and service provision in the Member State in order to provide data to the institutions and bodies of the Community.

A good practice may be to assign the responsibility for contacts between the Community institution and/or body and the relevant public authority of the Member State to the national contact point. However, that does not exclude the Member State establishing sharing arrangements through direct contact between its public authorities and the institutions or bodies of the Community or via an alternative focal point.

4.2. Restrictions on access

As stated in Article 17(7) of the Directive, Member States and their public authorities may limit the provision of access to spatial data sets and services when this would compromise the course of justice, public security, national defence or international relations. Clarification for any such restriction shall be provided by the Member State or the public authority in question at the time of the refusal to supply.

Restrictions are to be considered as justified exceptions to the general rule and aim of sharing. As such, the Directive foresees a limited number of (policy) domains in which specific risks can occur when disclosing certain spatial data. For example, some Ministries of the Environment do not wish to give access to information on Natura 2000 sites which are military sites. Another example is ICAO's restrictions on Aviation Met Observations and forecasts. The latter are - effectively - freely available, but ICAO restricts the ability of anyone to modify them or to change the format - on the presumption that if the modified data reaches pilots there is the possibility of misunderstanding or even negligence in the event of a court of enquiry.

In formulating any licence it may be necessary to bear in mind that in very specific cases, exceptions to the restriction may occur as well. For example access to spatial data which have to be readily accessible in emergency situation e.g. a forest fire threatening a military installations could make the fire brigade require access to some military data which would otherwise fall under the non-disclosure restriction under national defence.

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4.3. Licences

Any licences used when complying with these implementing rules must be fully compatible the requirements of the rules.

This text envisages that licences will often be required by the one or both parties and puts in place a requirement that any licence used must be fully compatible with this implementing rule. The Guidance gives more information on how any licence may be harmonised. However, use of a formal written or electronic licence is not mandatory and in situations in which none is used, the provisions of these rules will apply by default.

4.4. INSPIRE use

1. The spatial data set or service may be used for activities where the activity has, or may have, a direct or indirect impact on the environment and the purpose of those activities is within the European Community public task. This will include reporting within and between institutions and bodies of the Community.
2. The institution or body of the Community may make the spatial data set or service available to;
 - a) its contractors,
 - b) its grant holders, and
 - c) other public authorities

who may only use it for the purpose for which it was supplied by the institution or body of the Community in fulfilment of that institution or body's public task as limited in paragraph 1.
3. In the situations listed in 2. a), b) and c) the institution or body of the Community remains the responsible party and all the conditions are unaffected.

The 'INSPIRE use' of spatial data and services has to be compliant with the objectives of the Directive. As such, the concept of 'INSPIRE use' has to include all of the following aspects:

- objective of usage: the Directive refers to the definition, implementation and follow up of Community environmental policies and related to policies or activities which may have an impact on the environment.
- users: the Community Institutions and Bodies acting as a "public authority" or its equivalents as defined in Article. 3 of the Directive
- data: all spatial data as specified in Article. 4 of the Directive and detailed in the annexes I, II and III of the Directive
- services: all services listed in the Implementing Rules on Metadata – Part D.3

Paragraph 1. This paragraph focuses on the purpose of the activity rather than the activity itself. This is intentional as it is not practical to list all those activities which may be needed to fulfill the public task of the institution or body. The data or service can only be used for a purpose which is within the public task of institution or body of the Community and which has an impact on the environment. This includes any internal use, i.e. use within the institution or body of the Community without access by the public or any third parties. There are no restrictions on, for example, the number of users or terminals within the licensed institution or body.

Internal reporting within and between the institutions and bodies is included in INSPIRE use.

Paragraph 2. The data and services can be passed on. Paragraph 2 relates to the provision to other institutions and bodies with equivalent rights. The reason for allowing data or services to be made available to bodies with equivalent rights and obligations is to encourage data sharing.

Paragraph 3 deals with three situations in which data may be passed on.

First, the institution or body of the Community can make the data or the service available to its subcontractors, if this is needed for performing the purpose within the public task related to the

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environment for which the data or service was obtained, e.g. if the subcontractor is processing the data for the body or institution under a procurement contract.

Second, the European Commission attributes grants in order to promote and sustain European policies, as it is the case for the Framework Programmes for Research. Projects, co-financed by the Commission through grants, which are intended to support environmental policies, may need to get access to INSPIRE data and services for activities limited to the scope of the project. ESDIN - the **European Spatial Data Infrastructure with a Best Practice Network** — a project supported by the eContentplus programme is an example of such a grant-funded project. In these circumstances the institution or body of the Community can make the data or service available to those it has given grants to, for the performance of work relating to those grants.

Third, it may be made available to other public authorities in Member States. In all cases it may only be used for the purposes for which it is supplied and the responsibility for it remains that of the institution or body of the Community. Any other use will require separate licensing from the data supplier.

The use described as 'INSPIRE Use' here can be extended or restricted with the agreement of both sides. However, this will reduce the level of harmonisation and would be better dealt with outside the INSPIRE framework.

4. The institutions and bodies of the Community may allow public access to any data or service provided to them under these rules if to do so forms part of their public task relating to the environment. The following conditions apply;
- a) If public access is made available by the Member State at no charge, then the same access may be allowed by the institution or body of the Community. If an end user licence is used in the Member State then the same end user licence will be used.
 - b) If public access to the spatial data sets and services is limited by the Member States or their public authorities on the basis of Article 13 of the Directive, the institutions and bodies of the Community shall also limit public access to these spatial data sets and services in the same way as the Member State. Such limitations shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by providing this access and the reason for the limitations, so as to maximise the public access to data and services. On request these reasons shall be clarified by the Member State or the public authority in question. If an end user licence is used in the Member State then the same end user licence will be used.
 - c) If public access to the spatial data sets and services is limited or not allowed by the Member States or their public authorities on the basis of Article 13 (1) sub paragraphs a), b), c), d), f), g), or h) of the Directive, the Member State or the public authority may state the measures that are required for the institutions and bodies of the Community to allow public access. Such measures must not unnecessarily restrict the institution or body from carrying out its public task.
 - d) If public access to the spatial data sets and services is limited or not allowed by the Member States or their public authorities on the basis of Article 13 (1) sub paragraph e) of the Directive or is allowed but charged for, the Member State or the public authority may state the measures that are required for the institutions and bodies of the Community to allow public access at no charge. Such measures must not unnecessarily restrict the institution or body from carrying out its public task.

The requirement for all services to be available to the public in Article 11.1 of the INSPIRE Directive (unless excluded by virtue of Article 13) is an obligation placed on the Member State and not on the Community institution or bodies. The public access referred to here is only that which the Community institutions and bodies need to give to deliver their public tasks.

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Paragraph 4 ensures that by default the institutions and bodies will be able to pass the data and services to the public in fulfilment of their public task as it relates to the environment.

However, even if such public access is considered to be necessary in order to fulfil the public task, there are some exceptions and exemptions. The Directive allows Member States to restrict access to the public based on the criteria listed in Article 13.1. Furthermore the INSPIRE Directive requires free public access to discovery and download services except if the conditions in Article 14.2. of the INSPIRE Directive are met. In essence access given by the Community institutions and bodies must be guided by whether public access is already allowed in the Member State and under what conditions. Sub paragraph a) deals with the simplest case in which public access is allowed in the Member State at no charge. In this case, the same may be allowed by the institution or body.

Sub paragraph b) deals with a slightly more complex situation in which public access is allowed at no charge in the Member State, but there are some restrictions or conditions applying. Essentially the Community institution or body must apply the same restrictions of conditions. This may include an end user licence which, for example, prohibits commercial use. It is anticipated that if any such end user licence is required it will be a click licence.

Sub-paragraphs c) and d) deal with situations in which public access is not already allowed in the Member State, or a charge is made for it. There is a distinction between data or services which are restricted for reasons of sensitivity (Article 13(1) a), b), c), d), f), g) and h) of the Directive), and data or services which are restricted to protect intellectual property rights (Article 13 (1) e) of the Directive) or to allow charging. Sub-paragraph c) deals with the first situation and sub-paragraph d) with the second.

Sensitive Data or Service (sub-para c) above) In this situation the data supplier may state what can be done to remove the sensitivity and hence allow public access. Such access will not be possible in all cases, but in many a removal of sensitive records, aggregation or a similar technique may remove the sensitivity. When these measures have been taken Article 13(1) a), b), c), d), f), g) or h) would no longer apply and hence public access could be allowed in the Member State and hence also from the Community institution or body.

IPR protection or charging. (sub-paragraph d) above). Article 13 (1) sub paragraph e) relates to restrictions as a result of intellectual property rights. In this instance the position of the data suppliers is safeguarded by allowing them to require the Community institution or body to impose measures to prevent unlicensed use of data or services made available for public access. Such measures might include, but are not limited to, aggregation, reduction of resolution, limits on the proportion of the data set passed on, restriction to view rather than download, removal of certain attributes, watermarking, acknowledgements, or degradation of position and any end user licence which must be used. It is anticipated that any such licence would be a click-licence. Sub-para d) above also applies to situations in which a charge is made for public access in the Member State. Measures can be stated which will allow the Community institution or body to provide public access at no charge.

For the avoidance of doubt, if public access to the original data is limited as a result of Article 13, then it does not necessarily follow that public access can be limited to derived or value-added data. Each case must meet the criteria of Article 13 before public access can be denied.

For the avoidance of doubt, this exemption does not apply, of course, to any data supplied under a reporting obligation in an environmental Directive.

Derived or value-added data.

By default the criteria used in the Member States to decide if public access to original data and services can be limited will be the same which determine if access is restricted to any derived or value added dataset or service. This does not mean that any derived or value added product has the same protection as the original data, but it guarantees that if the derived or value added data still contains the information protected through Article 13.1 then it is submitted to the same restrictions as the original data. Therefore one of the following situations applies:

1. The public authority supplying the data or service states, at the time at which they supply it, the measures necessary to allow public access. This will apply chiefly to sensitive data. The

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Community institution or body will then not need to refer back and will be fully aware of what can be made public.

2. The Community institution or body wishes to give public access to a data derived from a dataset or service which is not available for public access in the Member State or for which a charge is made. In case of doubt it will then refer back to the public authority to clarify whether public access can be allowed at no charge to the derived or value added data as proposed, and whether any end user licence is required.

4.5. Acknowledgement of intellectual property rights

The institution or body of the Community will acknowledge any intellectual property rights as required and specified by the Member State or its public authority.

This text allows the data supplier protect its intellectual property rights, and those held by third parties whose data they have been permitted to distribute, by requiring the Community institution or body to make acknowledgements and to state how and where these are to appear. Such specification will be included in the licence.

4.6. Charging for spatial data and services

In accordance with Article 17(3) of the Directive Member States may allow public authorities that supply spatial data sets and services to require payment from the institutions and bodies of the Community that use these spatial data sets and services.

Any such charges and system for charging must be fully compatible with the general aim of facilitating the sharing of spatial data sets and services between public authorities. Where charges are made, these shall be kept to the minimum required to ensure the necessary quality and supply of spatial data sets and services together with a reasonable return on investment, while respecting the self-financing requirements of public authorities supplying spatial data sets and services, where applicable.

When charges apply, Member States shall ensure that such charges do not create practical obstacles, occurring at the point of use, to the sharing of spatial data sets and services.

When charges apply, requests for provision of access to spatial data sets or services under INSPIRE use will be made according to the Financial Regulation¹.

When requested, offers shall include the calculation basis for charges and the factors taken into account in this calculation.

Article 17(3) of the Directive allows charges to be made under certain conditions. In order to demonstrate compliance with these conditions, the Member State or public authority may be asked to clarify the basis on which they have arrived at the charges.

4.7. Transparency

When a request for provision of access to and INSPIRE use is made by an institution or body of the Community, the Member States or their public authorities shall make available, on request, information on the mechanisms for collecting, processing, producing, quality control and providing access to the spatial data sets and services.

The principle of transparency is a part of good administration. In the context of INSPIRE data and service sharing it is about the Member States and their public authorities being clear on a) how its data is collected, processed and can be obtained.

The reason for transparency on data collection and processing is so that the user can determine whether the data is fit for their particular purpose. Some of this information may be available as

¹ <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/2002/R/02002R1605-20070101-en.pdf>

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metadata, but more detailed information should also be made available if requested to allow an assessment of fitness to be made. This is particularly important if the data is being used for a purpose which is different from that for which it was originally collected.

4.8. Provision of spatial data services by third parties

Where a public authority uses a third party to supply spatial data sets and services, that public authority shall ensure that the provisions of these implementing rules are respected by the third party.

It is quite common for public authorities to use third parties to supply their data and services. When this is the case, it is the responsibility of the public authority to ensure that the third party fulfils all the obligations of the Directive and its implementation measures on behalf of the public authority. The means by which the public authority does this can vary, but it is suggested that rather than simply mandate the use of a licence, a separate requirement is placed on the third party as part of their contract which requires them to comply with all provisions of the Directive and its implementation measures. This will avoid any problems if a new implementation measure is brought in which was not in place when the third party contract was signed.

4.9. Response Times

When an institution or body of the Community requests the provision of access to and INSPIRE use of a spatial data set or service, the Member States or their public authorities shall process the request, conclude a licence if needed, and provide access to the data or services without delay.

If the provision of access to the spatial data sets or services is not possible within 5 working days, the Member States or their public authorities shall inform the institution or body of the Community as soon as possible. In any case, the provision of access to the spatial data sets or services shall take place within 20 working days after receipt of a request.

If the request is part of a call for tender, the response time above will start from the conclusion of the contract.

In exceptional circumstances, this timeframe may be extended by mutual agreement of the public authority or Member State and the institution or body of the Community.

The principle upon which the supply of data and services should operate is that there should be no unnecessary delay and normal supply mechanisms should be used. A fast response will be facilitated by harmonised licences and standard supply processes. Generally, access to data and/or data services should be facilitated as soon as possible, including finalising licences and invoicing and receiving payment. Due consideration should be given to the type and use of data and/or data services, ensuring that the response time is appropriate. For example water data during a flood may cease to be useful if its supply is delayed too long. However if it is required for climate comparisons, a wait of some days may be acceptable. Operationally the supplying authority will normally have considered the use by the end user, so an appropriate response time is already included in a 'without delay' supply.

It is expected that access to data sets will increasingly be online, via the network services established under the Directive.

Any request originating from a person who is authorised to act on behalf on the institution or body of the Community will be considered to be a formal request.

Requests can be directed to the national contact point according to Section 5.1 of these implementing rules or directly to the individual suppliers of data or data services or at any other focal point which has been notified to the Commission under that rule.

In instances where institution of body is letting a tender, the time period in which the public authority must supply the data or service starts at the conclusion of the contract.

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If access to data can not be facilitated without delay, the data provider must provide information explaining the cause of the delay and when data and /or data services will be available to the requesting party. Reasons for not delivering the data without delay might include:

- Complicated licensing procedures or negotiations
- A service is not operating for some reason

The rule allows further arrangements to be made in exceptional circumstances. These might include the fact that:

- It is not part of the public authority's normal procedure to deliver such data or services
- Separation of parts of a product that may take longer than 20 days or be prohibitively expensive in terms of cash or resources to create
- Hardware is needed or a system needs to be built or rebuilt
- There are unexpected technical problems

4.10. Emergency use

Member States and their public authorities shall put in place adequate measures to ensure the provision of access to spatial data sets and services in major emergencies falling under Article 6 of the Council Decision of 8 November 2007 establishing a Community Civil Protection System, so that spatial data sets or service can be delivered immediately in such situations.

Where a licence is used, it must include within it the arrangements by which emergency access can be obtained.

Despite the harmonisation of conditions for supply of data and services there will inevitably be instances in which data is needed urgently by a Community institution or body to deal with an emergency situation. Environmental emergencies could include but are not limited to;

- natural disasters like floods, earthquakes, heavy wind storms, periods of extreme temperatures etc
- man made environmental accidents like oil spills, nuclear accidents, dispersion of dangerous chemicals or gases etc

The concept of emergencies is already used in European legislation:

an "**emergency**" is defined as "any situation which has or may have an adverse impact on people, the environment or property" in the of the Council Decision of 5 March 2007 establishing a Civil Protection Financial Instrument.

a "**major emergency**" is defined as "any situation which has or may have an adverse impact on people, the environment or property and which may result in a call for assistance under the Mechanism" in Article 3 of the "Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism"

The same Decision continues in Article 6 to link the trans-boundary consequences of a "major emergency" and the need for notification at EU level:

"In the event of a major emergency within the Community, or of an imminent threat thereof, which causes or is capable of causing trans-boundary effects, the Member State in which the emergency has occurred shall, without delay, notify the Commission and those Member States which may be affected by the emergency."

A link is also made between the possible request for assistance following a major emergency and the need to inform the Commission:

"In the event of a major emergency within the Community, or of an imminent threat thereof, which may result in a call for assistance from one or more Member States, the Member State in which the emergency has occurred shall, without delay notify the Commission, when a possible request for assistance through the MIC can be

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anticipated, in order to enable the Commission, as appropriate, to inform the other Member States and activate its competent services."

These definitions, together with Article 6 of the Decision, are extremely useful and congruent with INSPIRE as the reason for a Community institution or body requiring access to spatial data will be as a result of the situations defined above. Therefore, the definitions, qualified by Article 6, have been adopted in the implementing rules.

When emergency access and use is required there will either be arrangements already in place or no arrangement in place at all. The first situation is covered by the requirement that all INSPIRE licences and include within them the arrangements by which emergency access is obtained. This is a relatively straightforward requirement and will probably only relate to the physical supply of updated data and not its licensing which is already covered.

The second situation is that in which there are no prior arrangements made between the public authority and the institutions and bodies of the Community. This situation will prevail when there is no licence in place. The Member State and its public authorities are required to ensure that some provision is made for access and use in emergencies. Such provision will probably apply to any organisations needing emergency access and not just an institution or body of the Community. In meeting this requirement the Member State will take into account existing national and international systems for emergency management.

Such provision might include 24/7 phone numbers, emergency usernames and passwords for data download services, and/or temporary suspension of normal licensing procedures in order that data for use in emergency situations may be accessed immediately. Mechanisms should include procedures for the retrospective establishment of licensing agreements for data used in such circumstances. Where charges would normally be made for data or services, it will not be possible to apply these charges retrospectively.

Note also the obligations of the national contact point with respect to emergencies in Section 5.1.

5. Implementing provisions for data and service sharing

5.1. Coordination

The national contact point, as referred to in Article 19 of the Directive, and supporting coordination structure shall take appropriate measures to

- a) ensure communication of these implementing rules to all the public authorities across the different levels of the government;
- b) promote the use of framework agreements in accordance with these implementing rules for the provision of access to spatial data sets and services from the Member States and the public authorities to the institutions and bodies of the Community.
- c) streamline the process for institutions and bodies of the Community to obtain access to spatial data sets and services, including optimising the number of specific licences required and the process for establishing them;
- d) streamline the practical mechanisms for obtaining access to the data.

The national contact point and the supporting coordinating structure shall ensure that appropriate mechanisms are in place to facilitate immediate provision of access to spatial data sets and services in emergency situations.

The Member State shall ensure via the national contact point that the Commission is kept informed about the responsible stakeholders and established procedures within that Member State for the provision of spatial data sets and services to the institutions and bodies of the Community.

Even with the harmonised licences provided for in these implementing rules, the provision of data and services from a Member State or its public authorities to an institution or body of the Community may still involve considerable effort and administration as there may be a large number of transactions to

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be conducted between each of the players. This text seeks to streamline that process by requiring a degree of coordination in the Member State. This will be led by the national contact point (NCP), although it is appreciated that in some States, or for some themes, it will not be the NCP itself which provides the data. However, it will be the responsibility of the NCP to ensure that, for all data themes, the Community bodies know how to get them - whether it is through the NCP or directly from the public authority, or via an intermediate body.

It is also the responsibility of the NCP to ensure that appropriate measures are in place to allow emergency access to data when needed. Once again, in many Member States it may not be the NCP itself which is the prime point of contact for such emergency access, but they must ensure that if not them that it is widely known where that emergency contact point is.

The implementing rules on Monitoring and Reporting deal with data sharing under the Directive as a whole and specifically within and between Member States. The provision made in this rule for keeping the Community institutions and bodies informed applies only to the provision made within the Member State for supply of data and services towards the Community Institutions and bodies.

The rule refers to promoting the use of framework agreements. Further information on these can be found in the Guidance document.

6. Final Provisions

For new provision of spatial data sets and services, Member States and their public authorities must comply with these implementing rules from six months after entry into force of the rules.

For existing arrangements for provision of spatial data sets and services, Member States and their public authorities must comply with the implementing rules on renewal of the arrangement.

The implementing rules will need to come into effect in a staged way to allow time for Member States and their public authorities to produce and put into use the necessary licences. Two situations are covered in this rule – first for new supplies of data or services, and second to replace existing arrangements.

In the first situation, six months are allowed from entry into force of the implementing rules until the use of the rules is mandatory for all supply of data and services within scope.

For the second situation, in which there are existing arrangements, these must be brought into compliance when they expire and are due for renewal. The implementing rules do not require any existing arrangements to be terminated or amended.

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Section B. Guidance on the implementing rules

1. Introduction

These Guidance notes are written to assist Member States and their public authorities comply with the implementing rules on data and service sharing. Whilst not mandatory, it is hoped that the content will be considered to be good practice, and adoption by all Member States will significantly assist harmonisation of conditions without the need for further legislation.

This Guidance relates only to the implementation of the implementing rules on data and service sharing specifying harmonised conditions for access. The general obligation for Member States to provide the institutions and bodies of the Community with access to spatial data sets and services is given by Article 17(8) of the Directive and will enter into force independently of the adoption of the implementing rules.

A separate Recommendations document will consider how the rules and this Guidance can be applied in other contexts such as within and between Member States.

2. Circumstances in which the implementing rules apply

2.1. Requests by the institutions and bodies of the Community

The implementing rules apply only if the Commission or any other institution or body of the Community chooses to request for spatial data sets or services under these implementing rules. No obligations are imposed on the institutions or bodies of the Community in the INSPIRE Directive, nor in these implementing rules.

Therefore the institutions and bodies of the Community may also decide to call on Article 17.4 of the INSPIRE Directive to use the arrangements for the sharing of spatial data sets and services that have been set up within and between the Member States, or to request for spatial data sets and services under different conditions in a procurement procedure.

It is considered good practice, however, that the institutions and bodies of the Community request for spatial data sets and services under these implementing rules. This is the best way to ensure that the conditions under which the data are obtained, are as harmonised as possible.

2.2. Reporting obligations from the Member States

These implementing rules do not address spatial data sets or services that are provided by the Member States or the public authorities for the fulfilment of their reporting obligations. A whole framework of such existing and future environmental reporting obligations require the provision of spatial data and/or services to the European Commission under Community legislation.

Use of data or services for reporting obligations may for instance be based on:

- Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directive 85/337/EEC and 96/61/EC;
- Regulation n° 2152/2003 of the European Parliament and of the Council of 17 November 2003 concerning monitoring of forests and environmental interactions in the Community;
- Commission Decision of 17 July 2000 on the implementation of a European pollutant emission register (EPER) according to art. 15 of Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC).

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Each of these reporting obligations has its specific procedure for data collection, transmission, presentation etc, including specific conditions of use. It is therefore not appropriate to consider these procedures in the INSPIRE implementing rules as for some the conditions are already defined and for those yet to come, the implementing rules should not attempt to define them as they will be defined in future Community legislation.

As a result, different conditions of use can apply to a single data set, depending on whether it has been provided to the Community institutions and bodies under an environmental reporting obligation or if it has been provided for under these INSPIRE implementing rules. If a data set is made available by a Member State as part of the Member States' reporting obligations and this data set is normally subject to charging for any other purposes, the Community institutions and bodies must ensure that this data set is not used for any other purpose other than reporting. This applies to existing and future reporting obligations.

In the future, it would be beneficial for the harmonisation of the provision of spatial data sets and services if any new Directives imposing reporting obligations include a harmonised set of conditions. Whilst it might appear that it would be convenient for this to be the same as INSPIRE Use, the implication would be that data and services provided in this way would have to be free of charge. Such an implication would undermine the provision in the Directive for the possibility for data and services provided for INSPIRE Use to be charged for. A better approach would be for a sub-set of INSPIRE Use to be defined as 'reporting use' in future Directives.

2.3. Link with technical aspects of the INSPIRE Directive

The INSPIRE Directive requires the Member States to fulfil their obligations with regard to some of the technical aspects within different time limits. For example, under Article 6 of the Directive, the Member States have to create the metadata for the data themes in Annex I and II within two years after the adoption of the implementing rules on metadata, and within five years for the data themes in Annex III. Whatever time limits are laid down in the Directive or the implementing rules concerning metadata, data specifications or network services do not have any impact on the entry into force or the applicability of the implementing rules on data and service sharing. This is solely determined by the final provisions of these implementing rules themselves.

3. Types of Licence

Introduction

The Member States and their public authorities are encouraged to make upstream framework INSPIRE agreements on data sharing with the institutions and bodies of the European Community. However, if such agreements are not available, the Member States or the public authorities are encouraged to use a Basic or Specific INSPIRE licence, containing the rights and obligations of both parties. For the latter a model licence is provided, in order to reach maximum harmonisation of the terms and conditions for the access to and the use of the spatial data sets and services by the institutions and bodies of the Community.

The INSPIRE Directive and the implementing rules on data and service sharing explicitly confirm that they should not affect the existence or ownership of public authorities' intellectual property rights. Of course, this is also reflected in any licence concluded in accordance with the implementing rules. It does not transfer any rights from the public authorities or the Member States to the institutions and bodies of the Community, it only grants the right to the institutions and bodies of the Community to obtain access to and use the spatial data sets and services under the conditions stated in the Directive, the implementing rules and the licence.

The Member State or public authority may wish to allow wider use of the data set or service than is allowed in INSPIRE use. This is possible by setting out the additional use rights in a schedule to the licence.

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The implementing rules allow for licences to be used where required, although they are not compulsory. When one is used, it can either be a single licence covering the provision of one data set or service from one authority to another authority, or a framework agreement, which is an agreement between more than 2 authorities covering one or more data sets. Framework agreements are also based on licences.

Single licences will generally be granted at the moment where the institution and body of the Community needs access to a spatial data set or service and contacts the Member State or the public authority that owns this data or services to obtain access. However, the Directive requires agreements to be made as much as possible on a broad basis covering long term access. Providing an agreement for each delivery can become an obstacle. This situation can be prevented if the institution or body of the Community has concluded an upstream agreement beforehand.

Licences according to these implementing rules have to be made available by public authorities of the Member States if requested by a Community institution or body. The arrangements may contain other elements and may take different forms, but they have to include the allowed use of the spatial data sets and services, as specified in the implementing rules. If there is mutual agreement on the side of the public authority of the Member State and on the side of the Community Institution or Body, the Member State or its public authority may extend the allowed use beyond the INSPIRE allowed use.

In order to promote harmonised licences these Guidelines propose 2 INSPIRE licenses, a Basic INSPIRE Licence and a Specific INSPIRE Licence, both of which include the INSPIRE allowed use.

The Basic INSPIRE Licence (Annex B) applies when spatial data sets or services can be used without significant further restrictions or conditions and is free of charge.

If the public authority or Member States wants to include any charges or restrictions on the provision of access to the spatial data sets or services, which will still need to respect the conditions set out by the implementing rules on Data and Service Sharing, it should to use a Specific INSPIRE licence (see Annex C). This Specific INSPIRE licence is based on the template licence at Annex C and will include all the basic terms and conditions but some parts can be customised for the spatial data sets and services involved.

The INSPIRE Directive is about access to data for environmental purposes, and the 'INSPIRE Allowed Use' reflects this. However, a Member State or public authority may wish to allow the institution or body additional use and conditions of that use. This is possible when a specific INSPIRE Licence is used but must be done by adding in a Schedule detailing that additional use and conditions rather than amending the licence itself. This will allow easier comparison of licences to identify which ones allow additional rights beyond INSPIRE use.

The Basic INSPIRE Licence and the licence template for the Specific INSPIRE Licence will be made available through the INSPIRE website, and should also be readily available via the national contact points. Where optional clauses are needed, then the national contact point may ensure that these optional clauses are harmonised for that Member State and apply a single common wording as much as possible.

3.1. Use of the Basic INSPIRE licence

A "Basic INSPIRE Licence" is an agreement that access to the spatial data sets and services is provided by the public authorities for INSPIRE allowed use as it is described in and the terms of the Basic INSPIRE Licence in Annex B, without any further restrictions or conditions and free of charge. The public authority may refer to the Basic INSPIRE licence with a reference to a website it appears on, (such as the INSPIRE national or European Geoportal), in e-mail to the actual receiver, on a CD/DVD containing the data, or in any other way that is useful to ensure that the receiver is aware that these are the conditions for receiving that particular data set or service. It is possible that in future this Basic INSPIRE Licence could be usefully represented by a 'Creative Commons' type symbol.

In a 'Creative Commons' style licence, the user does not need to enter into a separate agreement with the right holder to use the work. He accepts the licence just by using the work. Hence, if the Member State or public authority states that its spatial data sets or services are subject to the Basic INSPIRE

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licence, this means that the institution or body of the Community will automatically become a licensee and be subject to the conditions of the Basic INSPIRE licence, just by using the data sets or services.

However, if the Member State or its public authority needs to include restrictions, for example regarding public access, or charges, a Specific INSPIRE licence should be used.

3.2. Use of the specific INSPIRE licence

A “Specific INSPIRE licence” is a licence for the provision of access to spatial data sets and/or services from the Member States or the public authorities to the institutions and bodies of the Community under these implementing rules. This licence takes the form of the Model Licence included in Annex C, completed by the parties to customize it for the provision of access to a particular data set or service. The highest level of harmonisation will be achieved if Member States or public authorities copy the terms of the model licence, choose one of the given options where they are given a choice, and fill out the details that are required in the fields that are left open. This model licence can be used by the Member States and their public authorities as a template for their actual licence. While many of the sections in this model licence can be included word-for-word, some of the sections leave options for the public authorities or the Member States to choose from and others can be filled out according to the specifications given in the explanatory text between the []brackets.

The main difference between a Basic and Specific INSPIRE licence is that the Basic INSPIRE licence works like an open published licence along the same lines as a Creative Commons licence². One can simply refer to it and the text can be found at a web link. The Specific licence is handled the same way as one usually handles other licences. It is adapted to the licensor’s purpose and is presented to the licensee who accepts this licence specifically in the way that the licensor prescribes.

The Specific INSPIRE licence may be presented as a form of click-licence on-line. However, it can also be a paper-based licence, or a published licence along the same lines as the Basic INSPIRE licence, appearing at the website of the Member State or the public authority in question.

3.3. Use of INSPIRE Framework Agreements

This section provides the key concept for INSPIRE Framework.

What is a Framework Agreement in the context of INSPIRE?

In general terms a Framework Agreement is a contract that includes more than only two partners and covers the conditions for access and use of one or more data sets and services.

In the context of INSPIRE a Framework Agreement can be seen as an upstream agreement between one or more institutions and bodies of the Community on the one hand and one or more public authorities in a Member State on the other hand, covering more than two partners all together. A distinctive characteristic of the INSPIRE Framework agreement is that it is always an upstream agreement, while a Specific INSPIRE Licence or a Basic INSPIRE licence may be upstream, but in most cases will be concluded at the point in time when the data is needed.

An INSPIRE Framework agreement may be broader than just the provision of spatial data sets and services under INSPIRE, but in any case, it will have to contain the conditions for this provision, within the limits set by the implementing rules and use the definitions.

The Benefits of Framework Agreements

Reducing efforts and obstacles at the point of use

Framework Agreements will produce benefits for the institutions and bodies of the Community as well as for the Member States. It reduces the efforts of establishing data sharing agreements for all the partners as it requires the management of only a small amount of contracts, and, where required, financial transactions.

² Further information can be found at <http://creativecommons.org/>

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The Framework Agreement is set up in a way that case by case negotiations, procurements, contracts, licenses etc... are no longer needed "at the point of use" of the spatial data and services. In other words: the upstream settlement of the agreements takes away a major threshold for usage of spatial data sets and services in an operational policy context as any public servant covered by the Framework Agreement does no longer need to worry about paperwork related to the sharing aspect prior to the actual usage of the spatial data and services. As many policy related processes are organised either cross-cutting various departments of a governmental level, or throughout the various levels of government in a Member State, and therefore require contributions, e.g. spatial data sets, from different institutions and departments, such a framework agreement, which largely facilitates the actual sharing of spatial data and services, enhances the efficiency of these processes.

Facilitating the integrated use of different data sets

As Framework Agreements include several partners under a common set of rules this approach will foster harmonised licensing schemes which greatly facilitate the integrated use of different data sets, especially in cross-border situations such as commune-commune, province-province or region-region.

Growing benefits

In general the benefits of Framework Agreements are rising with the number of partners being included: all the more public authorities and data sets can be included in a single arrangement, all the more transparent and smooth sharing becomes for the end-users.

Provision of data in the context of an emergency situation

A framework agreement is an important mechanism for providing access to spatial data sets and services in emergency situations. As the contractual aspects have been settled before hand no further negotiations are needed during an emergency situation and access to the data or service can be provided directly.

Difficulties versus benefits

To come to some successful Framework Agreement with all its benefits it is necessary to include many partners in the preparatory negotiations. As a result there will be a high diversity of different ideas to consider and it is crucial that all partners are willing to compromise.

It is obvious that for Framework Agreements a bigger time frame needs to be scheduled than for a bilateral contract. A pragmatic step-wise approach will help in making a quicker start-up. It might also be helpful to create or integrate a coordination body for Framework Agreements. The coordination body can just be a facilitator for the development of the Framework Agreements, e.g. by providing templates for possible policies and / or it can be a part of the out coming Framework Agreements, e.g. by providing an access point to the data sets and services.

Implementation of Framework Agreements

Use conditions

The Framework Agreement as a minimum has to cover what is called in the INSPIRE implementing rules for Data and Service Sharing the "INSPIRE allowed use".

License Models

An INSPIRE Framework Agreement has to comprise the requirements laid down by INSPIRE Directive and by the implementing rules on data and service sharing. One way to do so is to base the framework agreement on the INSPIRE License Models, which are specified within this Guidance Document (Annex B and C). Framework Agreements might vary in their individual specifications, e.g. to adapt regulations to the national situation, therefore the Specific INSPIRE Licence foresees options which allow to integrate such individual specifications. Where Framework Agreements already exist the goal should be to extend or adapt the existing agreements towards the INSPIRE Framework Agreements.

Duration and renewal

Framework Agreements should cover a longer period of time, at least one year. Various formulas can be envisaged, but the basic idea is that the end-user can access and use the spatial data and services more or less on a continuous basis. This entails that the Framework Agreement either covers a

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sufficiently large period in time, or a flexible renewing mechanism is foreseen, allowing for continuity in the operational allowed usage.

Openness

Framework Agreements do not have to automatically open the door for new members, but they should foresee a flexible mechanism to enable future interested stakeholders to join in without jeopardising the whole framework.

Private Participation / Partnership

The Framework Agreement should cover a high fraction of stakeholders. This includes private partners where it is necessary and useful. In this sense the Framework Agreement can be seen as a kind of Public Private Partnership where public partners as well as private partners can be data collectors, providers or users.

Stepwise implementation

Trying to include the largest possible number of participants right from the beginning may prove to be unfeasible. It is therefore recommended to “think big”, but to “start small”. A successful approach is to go for a limited number of partners, preferably involving the sharing of data sets for which there is a general feeling amongst stakeholders that access to these data should be arranged for in the short term and for which a sufficiently important number of administrative or policy driven processes can make use of these data on a structural basis.

4. Commission Procurement

If charges are made by the Member State or the Public Authority for the provision of spatial data sets and services, the rules of the Financial Regulation (Regulation (EC, Euratom) No 1605/2002 and amendments) and its implementing rules need to be complied with. The Financial Regulation forms the legal basis for any public procurement by the European Commission and the Community Bodies and Institutions. Its main principles are transparency, proportionality, equal treatment and non-discrimination. While securing the best price and quality, the contracting authority must also ensure that all economic operators are treated equally.

The applicability of the Financial Regulations entails that, next to the conditions laid down by these implementing rules, the Member States and public authorities will also have to comply with the conditions of the Financial Regulations. These include the need for a written contract, which usually consists of three parts: special conditions, general conditions and annexes. The Commission can choose from a limited number of procedures for concluding a contract. Use of the open or restricted procedure with publication of a contract notice in the Official Journal is the default procedure. In this case, the Commission would publish such a contract notice and, ideally, include the conditions of these implementing rules as requirements. As it is an open procedure, it is possible that not only public authorities, but also private companies might tender for the contract. While the public authorities have an obligation to respond to the tender under the INSPIRE Directive and, if required by the Tender, these implementing rules, the Commission is not under any obligation to select the public authorities, but it can choose to award the contract to a private company if this company has the best offer. In addition, the Commission may decide not to refer to the conditions of the INSPIRE Directive and the implementing rules, and it can include different requirements in the call for tender. In this case, the public authorities are, of course, not under any obligation to reply to the call for tender.

In exceptional cases, the Commission can use a negotiated procedure rather than an open call for tender. Under this procedure, the Commission can consult economic operators of its choice and negotiate the contract with one or more of them. Hence, the Commission can directly contact the Member State or public authority and request data under the conditions of these implementing rules. The model for the Specific INSPIRE licence (Annex C) could be used for such contracts. The negotiation procedure can be used with or without publication depending upon the amount of the tender.

The negotiated procedure (without publication) can be used where, can only be awarded to a particular economic operator, due to technical or artistic reasons or reasons connected with the

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protection of exclusive rights. This is directed towards specific products for which there is only one particular supplier and there is no competition on the market.

If framework agreements are concluded between the Member States and public authorities on the one side and several institutions and bodies of the Community on the other side, the rules of procurement will still have to be followed if charges are made. On the side of the Community there is no permanent inter-institutional structure that manages such contracts, but inter-institutional procurement is possible. In these cases, the list of institutions or bodies has to be published in the contract notice, with no possibility to add any later. One lead institution (usually the Commission) acts as sole representative of the institutions and bodies during the procedure up to the signature of the contract, and remains responsible for overall management of the contract.

5. Coordination

To ensure the optimal harmonisation of the provision of spatial data sets and services from the Member States and public authorities to the institutions and bodies of the Community, coordination will be indispensable. The national contact points have an important role to play in with regard to coordination. There are several ways in which they could contribute to increasing coordination, for instance:

- By being the first contact point for the institutions and bodies of the Community;
- By giving an overview of what data or services are available, where access can be obtained and who is able to sign a contract. A list could be maintained at the level of the national contact point of the contact persons within each public authority that is responsible for the provision of the spatial data sets or services.
- By informing the institutions and bodies of the Community of the arrangements that are put in place for data and service sharing, so that the effectiveness of these arrangements can be monitored.
- By giving an overview of the restrictions that are put on the availability of the spatial data sets and services by the public authorities, so that the institutions and bodies of the Community have a first indication of what data or service might be subject to limitations.
- By establishing an advisory board with representatives of different public authorities, that can support the development of harmonized structures and agreements within the Member States;
- By acting as a mediator between the public authorities and the institutions and bodies of the European Community;
- By acting as an agent or a mandatory for the public authorities and in their name conclude agreements with the institutions and bodies of the Community;

For the sharing of data sets and services to fully benefit from any coordination efforts from the Member States, a similar degree of coordination on the side of the Community institutions and bodies would also be required, preferably by indicating one entity which can conclude licences or agreements in the name of the other institutions and bodies of the Community. While the implementing rules are not applicable to the Commission itself so cannot mandate such coordination, the Commission has indicated, however, that it intends to adopt the principles enshrined in the implementing rules so it can be assumed that they will put in place a coordination structure (see the Communication from the Commission to the European Parliament pursuant to the second subparagraph of Article 251 (2) of the EC Treaty concerning the common position of the Council on the adoption of a Directive of the European Parliament and of the Council establishing an infrastructure for spatial information in the Community (INSPIRE), COM(2006) 51 final).

6. Links to other rules

Links between the INSPIRE implementing rules are yet to be finalised as the other rules are also in the process of development. One link which can be made is that with the Metadata rules. The rules allow for information to be included on access restrictions. This is defined as a free text element. As there may be varying restrictions depending on who the recipient is, there is a one to many relationship between a data set and service and the restrictions. As a result it will be difficult to include

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all relevant information in the one metadata field. Good practice, therefore, is to publish such information elsewhere and to use the metadata field to hold a link to that information. This achieves greater flexibility and leaves the door open to further harmonisation.

The second area where there may be significant links to other rules is to the network services aspect of INSPIRE. The ability to use digital rights management is envisaged, but as yet details as to how this can be linked to harmonised INSPIRE licensing are not worked out. Revised versions of this Guidance will be produced when more details are available. In the meantime the implementing rules have been formulated to allow both traditional and digital rights management.

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Annex A. Commentary on basic INSPIRE licence and model for specific INSPIRE licence

Preamble

The Preamble contains explanatory statements on the context of the rights and obligations of the Member States and the institutions and bodies of the Community, as defined by the Directive and the implementing rules. It provides more information on the purpose of the model licence, i.e. harmonising the terms and conditions for access of the institutions and bodies of the Community.

The Preamble makes clear that the party to the licence who will obtain access to the spatial data sets and services, i.e. the licensee, has to be an institution or body of the Community as defined in the implementing rules. Hence, this includes the institutions set up under the EU and EC Treaties, the agencies set up under the EC Treaty, and the agencies set up under the EU Treaty insofar as their activity has a direct or indirect impact on the environment.

The Preamble also contains a reference to the general rule of the Directive and the implementing rules that any charges that may be included in the licence have to be fully compatible with the general aim of facilitating the sharing of spatial data sets and services between public authorities. Any charges that the licence may set, will have to be kept to the minimum required to ensure the necessary quality and supply of spatial data sets and services together with a reasonable return on investment, while respecting the self-financing requirements of the public authorities supplying spatial data sets and services, where applicable. This is stated in Article 17(3) of the Directive, and in the implementing rules.

The use of the Basic INSPIRE licence and the model for the specific INSPIRE licence is intended to facilitate the smooth access of the institutions and bodies of the Community under harmonised conditions to the spatial data sets and services held by the Member States or the public authorities as mentioned in the implementing rules. This smooth access is hindered if it depends on ad hoc negotiations. Therefore, all licences need to have the same provisions, or where this is not possible, a common structure and common terminology, to reduce the need for ad hoc negotiations to a minimum. The model for the specific INSPIRE licence attempts to answer to that need and therefore its use should be encouraged for any provision of spatial data sets and services under the implementing rules which is not covered under a framework INSPIRE agreement or a Basic INSPIRE licence.

The terms of the licences should always be considered to be in harmony with the Directive and the implementing rules. If there is any doubt on the interpretation of the terms, the parties should look to text and the spirit of the Directive and the implementing rules for clarification and guidance. If there would be any possible conflict in interpretation between the Inspire licences on the one hand and the Directive and the implementing rules on the other hand, the latter will prevail.

Parties

The supplier will be the Member State(s) or a public authority. Depending on the coordination structure and measures within the Member States or between public authorities of different Member States, it might also be a national coordinating body, the national contact point or any other body that has received a mandate from the public authorities to licence the spatial data sets and services to the institutions and bodies of the Community (e.g. regional bodies such as EuroGeographics, EuroGeosurveys; third parties from the private sector that are mandated by a public authority under public procurement to provide the service).

The user will be an institution or body of the Community as defined in the implementing rules. This may include, for example, the Commission Directorates General, and European Environmental Agency.

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Definitions

The definition of a number of the terms that are used in the licences can be found in the Directive and implementing rules. Any other definitions refer to terms of which the meaning needs to be understood in the context of the licence, and may not be the same as their meaning in everyday life.

Product

The Member States or public authorities may in some cases deliver components of the themes listed in the Annexes of the Directive, but they may also wish to deliver a product that they have created, which includes not only these components, but also others that may fall outside of the scope of INSPIRE, or that may not be of interest to the institution and body of the Community requesting a particular component. This component will have to be extracted to be of any use for the Community institution or body and to be harmonised with the same components from the other Member States. However, the Member State or the public authority may wish to deliver its product as it is prepared for, and provided to, any other user.

This raises the issue of who should be responsible for the extraction of the component. If it is the Member State of the public authority, this will be reflected in the charges for the data, as there is a cost for this extraction. On the other hand, if the institution or body of the Community has to do the extraction for the data sets and services for all the Member States, this may potentially require a very large effort and might render the performance of the Community public task difficult.

This issue could have a considerable impact on the provision of spatial data sets and services from the Member States and the public authorities to the institutions and bodies of the Community and has been referred the Commission for consideration.

Grant

The user gets a non-exclusive licence that cannot be transferred to any other party. Hence, if the institution or body of the Community that has entered into the licence (the licensed institution) wishes to transfer one of its competences or task for which it had obtained the spatial data set or service, the licence cannot be transferred with it. However, the data or service may be transferred so that the second institution can perform a task for the licensed institution. If the second institution wishes to use the data or service for any other purpose they would have to enter into a new licence with the Member State or the public authority.

The licence will determine the use that can be made of the spatial data sets and services that are provided, on the basis of the INSPIRE use determined in the implementing rules. Any other use is not allowed unless in the Specific Licence the optional paragraph 4 is selected. If other use is allowed, but under a separate licence then this licence will no longer be subject to the implementing rules. However, of course, the Member State or the public authority may still use other aspects of the INSPIRE licence, in order to obtain wider harmonisation.

Although the grant in the license give the supplier sole discretion to decide whether the data or service can be used for any other purposes, the supplier is, of course, still subject to other legislation which may require them to allow such use.

Allowed INSPIRE use

The description of allowed INSPIRE use in the implementing rules will have to be followed by the parties to the licence. The data or service can only be used for a purpose which is within the public task of institution or body of the Community and which has an impact on the environment. This includes any internal use, i.e. use within the institution or body of the Community without access of the public or any third parties.

The institution or body of the Community is only allowed to provide public access to the spatial data or service under a number of conditions. The public authority giving the licence has to decide which

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situation mentioned in the implementing rules is applicable to its case and adapt the licence accordingly.

The Member State or the public authority may also add as an additional requirement in the licence that the institution or body of the Community has to impose technical limitations on the view services, preventing re-use of the product. The Member States or the public authorities are allowed, under Article 14.3 of the Directive, to make their data available in a form preventing their data from being re-used for commercial purposes. If they choose to do so, they may also require the institution or body of the Community to do the same.

Warranties

The warranty includes any warranties which “follow from national law”. National law can have particular requirements for a product or service to warrant a level of reliability. This is included in any licence.

Suppliers of data sets or services which include data with privately owned intellectual property rights should ensure that in their licences with the third party that they are permitted to pass the information to the institutions and bodies of the Community.

Security

The institution or body of the Community obtaining access to the spatial data sets or services will have to keep up an adequate level of measures to protect the integrity and security of the data or services they obtain access to.

The Member State or public authority licensing the data or service may choose to include specific security measures for the institution or body of the Community to follow. If the public authority or the Member State chooses to impose specific security measures, they must provide the details in a schedule to the licence. The options for security are limited to the following:

Level 1: Only for use by staff of the User.

Level 2: Only for use by authorised staff of the User.

Level 3: Only for use by authorised staff of the User in a closed network.

Level 4: Only for use by authorised staff of the User on standalone computers.

Other level of security. If this option is selected, the Schedule will include details of the security required.

Pricing and payment

The Member State or public authority can provide the spatial data set or service free of charge, but it can also impose a charge in the licence, within the conditions of the Directive and the implementing rules. If there is charge, it should be described in a separate schedule to the licence. In this instance the Basic INSPIRE Licence may not be used as it is only for free of charge arrangements.

Access and delivery

The Member State or the public authority licensing the spatial data sets or services must ensure that the institution or body of the Community can obtain access in a timely and efficient manner. In case of an emergency and access to the data or service is needed in a more immediate manner, the public authority or the Member State should foresee this possibility.

The specific details of the delivery can be determined by the Member State or the public authority in a separate schedule to the licence.

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Applicable law and jurisdiction

A distinction has to be made between disputes between the parties to the licence addressing the principles of the Directive itself and disputes addressing the terms of the licence.

Any dispute that would address the principles of sharing as set out in Article 17 of the Directive should be seen as a dispute on European Community law, as a breach of these principles is a breach of EC law. Therefore, it should be dealt with by the European Court of Justice. For example, the refusal of a Member State or a public authority to provide access to spatial data sets or services to an institution or body of the Community without a valid exemption under Article 13 of the Directive should be seen as a breach of EC law.

In case a licence has been established, and a dispute arises on the execution of the terms of the licence, then this should be considered as a problem related to contract law, and the applicable law will be the national law that is determined in the licence. For example, if the charges determined in the licence are not paid within the time limit agreed by the parties, this is an issue under contract law. The Basic Licence does not include a jurisdiction as it is intended that it can work in a similar way to a Creative Commons licence. A Creative Commons licence does not have a clause on applicable law because it leaves it to the general rules of private international law to determine the applicable law. This could be the French law between two French companies or Italian law if the licensee is Italian etc. This is regulated by international Treaties. However, if the licence is part of a procurement exercise from a Community institution or body, it is likely that the applicable law will be that of Luxembourg.

Termination

The licence requires that there must be a reason for terminating the licence. Reasons could include that the product is no longer produced or needed, or there is an irresolvable dispute.

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Annex B. Basic INSPIRE Licence

Preamble

Considering that under INSPIRE Directive Article 17(8) Member States or their public authorities shall enable the institutions and bodies of the Community to gain access to spatial data sets and services under harmonised conditions, and to exchange and use those sets and services, for the purposes of public tasks that may have an impact on the environment.;

Considering that the licence needs to have common structure and terminology to fulfil the requirements of the Directive, and the implementing rules.

Whereas the terms of this licence always must be considered to be in harmony with the Directive and its implementing rules and national transposition measures;

The product (as defined below) is provided under the terms of this licence. By exercising any rights to the product provided here, the user accepts and agrees to be bound by this licence.

Definitions

Spatial data	any data with a direct or indirect reference to a specific location or geographical area
Spatial data set	an identifiable collection of spatial data
Spatial data services	the operations which may be performed, by invoking a computer application, on the spatial data contained in spatial data sets or on the related metadata
Public authority	<p>(a) any government or other public administration, including public advisory bodies, at national, regional or local level;</p> <p>(b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and</p> <p>(c) any natural or legal person having public responsibilities or functions, or providing public services relating to the environment under the control of a body or person falling within (a) or (b).</p> <p>Member States may provide that when bodies or institutions are acting in a judicial or legislative capacity, they are not to be regarded as a public authority for the purposes of this Directive;</p>
Supplier	The public authority that provides access to the Product under the terms of this Licence
User	The institution or body of the Community that obtains the right to use the Product under the terms of this Licence
Third party	Any natural or legal person other than a public authority.
European Community public tasks	The development, implementation and monitoring of policies and related activities as defined by the EC Treaty and subsequent Community legislation
Institutions and bodies of the Community	<p>a) The Institutions set up under the EU and EC Treaties</p> <p>b) Agencies set up under the EC Treaty; and</p>

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c) Agencies set up under the EU Treaty when their activity has a direct or indirect impact on the environment

Having equivalent rights

Being licensed for the same rights and obligations as laid down in this licence.

Product

The spatial data sets and services provided under this licence are hereafter referred to as the Product.

The spatial data set(s) provided under this licence equate to, include, or are components of the themes listed in Annexes I-III of Directive 2007/2/EC.

The spatial data service(s) provided under this licence are defined in Directive 2007/2/EC.

Grant

The supplier grants the user a non-exclusive and non-transferable licence to use the Product according to the terms of the INSPIRE Directive and [Instrument] xxx (these implementing rules).

Use for any purpose other than permitted by this Licence is expressly prohibited without the prior written permission of the supplier, who in its sole discretion may deny such permission or claim a separate additional charge for it.

Allowed use

1. The spatial data set or service may be used for activities where the activity has, or may have, a direct or indirect impact on the environment and the purpose of those activities is within the European Community public task. This will include reporting within and between institutions and bodies of the Community.
2. The institution or body of the Community may make the spatial data set or service available to;
 - a) its contractors,
 - b) its grant holders, and
 - c) other public authorities

who may only use it for the purpose for which it was supplied by the institution or body of the Community in fulfilment of that institution or body's public task as limited in paragraph 1.
3. In the situations listed in 2. a), b) and c) the institution or body of the Community remains the responsible party and all the conditions are unaffected.
4. Public access may be allowed to the spatial data set or service, or any data or service derived from it.

Unauthorised use

The Parties shall co-operate to prevent, stop and avoid occurrence of any unauthorised use of the Product.

Warranties

The supplier warrants to the user that to the best of its knowledge it has the authority and power to grant the rights granted under this Licence, has no reason to believe that the use of the Product could infringe any third party's rights and is not aware of any claim alleging that such infringement exists.

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The supplier does not warrant that the Product will meet the requirements of the user, unless this is stated specifically or follows from national law. Neither does the supplier warrant that its operation will be uninterrupted or error free.

Except as expressly provided in this licence, there are no conditions, warranties or other terms binding on the supplier with respect to the actions contemplated hereunder. Any condition, warranty or other term in this regard which might otherwise be implied or incorporated into this Licence, whether by statute, common law or otherwise, is, insofar as it is lawful to do so, hereby excluded.

Security

The User shall maintain adequate security measures to protect the integrity and security of the Product. The User shall notify the Supplier of any breach or suspected breach of such security measures.

Liability

The Product is provided on “as is” basis, without warranty of any kind, either expressed or implied, except as otherwise provided in this Licence. No oral or written advice given by the supplier or its dealers, distributors, agents or employees creates a warranty or in any way increases supplier’s liability.

Neither of the Parties shall be liable for any indirect damage. The supplier shall not be liable for any damage arising out of reliance upon, use or inability to use the Product.

The supplier shall not be liable for any harm that may be caused by the transmission of a computer virus, worm or other such computer program.

This clause does not exclude liability for the supplier where this is prescribed by national law.

Pricing and payment

The licence is free of charge.

Access and delivery

The Supplier shall ensure that the User gets access to the Product in a timely and efficient manner, according to the terms of the implementing rules and this licence.

The Supplier undertakes to ensure that independent of the provisions agreed to for access, the User can get immediate access to the Product in major emergencies referred to in Article 6 of Council Decision of 8 November 2007 establishing a Community Civil Protection System.

Processing of personal data

The user undertakes to process personal data in accordance with Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12 January 2001).

Assignment, sub-licensing and contracting

This Licence may not be assigned. The user has no rights to sub-license the Product.

Where the User contracts work which requires use of the Product to a third party, the Product may be supplied under the following conditions:

- The contractor shall be subject to the same obligations as the user under this licence;

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- The contractor shall not be given the power to grant rights to the Product;
- The contractor shall not have any rights to use the Product for purposes beyond the contract.
- The contractor shall have no right to retain the Product after the end of the contract or this Licence.

Force majeure

No Party shall be liable for failures or have the right to terminate this licence for any delay or failure in performance under this licence if such delay or failure is caused by force majeure.

The non-performing Party shall inform the other Party in writing as soon as is practicable about the force majeure circumstances specifying the nature and extent of the circumstances. The non-performing party has no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to commence its affected operations in order for it to perform its obligations.

Force majeure shall mean any cause preventing a party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), act of God, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

Conflict resolution

In the event of any dispute over the licence, the parties shall attempt to solve the issue by negotiations. Either Party may suspend the Licence until the dispute is resolved.

In the event of the said issues not being solved within 3 months from the start of the negotiations, the parties may bring the issue to the applicable court of law.

Termination

This Licence can be terminated by the Parties with 30 days notice. Termination can not be without a reasonable cause.

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Annex C. Model for Specific INSPIRE Licence

Preamble

Considering that under INSPIRE Directive Article 17(8) Member States or their public authorities shall enable the institutions and bodies of the Community to gain access to spatial data sets and services under harmonised conditions, and to exchange and use those sets and services, for the purposes of public tasks that may have an impact on the environment.

Considering that the (name of Community party) is an institution or body of the Community as defined in the implementing rules;

Considering that any charges must be fully compatible with the terms of the Directive Article 17(3) and the implementing rules.

Considering that the licence needs to have common structure and terminology to fulfil the requirements of the Directive, the implementing rules.

Whereas the terms of this licence always must be considered to be in harmony with the Directive and its implementing rules and national regulations;

The parties have agreed to the following licence:

Parties

The parties are [MS or public authority] ..., represented by [.....], with official address [...], hereafter called 'the supplier', who is a supplier of data and services in [Member State] under the INSPIRE Directive;

And [institution or body of the Community] ..., represented by [.....], with official address [...], hereafter called 'the user', who is an institution or body of the Community as defined in the implementing rules.

Definitions

The Directive Definitions from Article 3.

Spatial data	any data with a direct or indirect reference to a specific location or geographical area
Spatial data set	an identifiable collection of spatial data
Spatial data services	the operations which may be performed, by invoking a computer application, on the spatial data contained in spatial data sets or on the related metadata
Public authority	<p>(a) any government or other public administration, including public advisory bodies, at national, regional or local level;</p> <p>(b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and</p> <p>(c) any natural or legal person having public responsibilities or functions, or providing public services relating to the environment under the control of a body or person falling within (a) or (b).</p> <p>Member States may provide that when bodies or institutions are acting in a judicial or legislative capacity, they are not to be regarded as a public authority for the purposes of this Directive;</p>

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Third party	Any natural or legal person other than a public authority.
Public tasks of the institutions and bodies of the Community	The development, implementation and monitoring of policies and related activities as defined by the EC Treaty and subsequent Community legislation
Institutions and bodies of the Community	<p>a) The Institutions set up under the EU and EC Treaties</p> <p>b) Agencies set up under the EC Treaty; and</p> <p>c) Agencies set up under the EU Treaty when their activity has a direct or indirect impact on the environment</p>
Having equivalent rights	Being licensed for the same rights and obligations as laid down in this licence.

Product

The details of the spatial data sets and/or services, hereafter referred to the Product, are provided in Schedule 1 to this licence.

The spatial data set(s) provided under this licence equate to, include, or are components of the themes listed in Annexes I-III of Directive 2007/2/EC.

The spatial data service(s) provided under this licence are defined in Directive 2007/2/.

Grant

The supplier grants the user a non-exclusive and non-transferable licence to use the Product according to the terms of the INSPIRE Directive and these [Instrument] xxx (these implementing rules).

Use for any purpose other than permitted by this Licence is expressly prohibited without the prior written permission of the supplier, who in its sole discretion may deny such permission or claim a separate additional charge for it.

Allowed use

1. The spatial data set or service may be used for activities where the activity has, or may have, a direct or indirect impact on the environment and the purpose of those activities is within the European Community public task. This will include reporting within and between institutions and bodies of the Community.
2. The institution or body of the Community may make the spatial data set or service available to;
 - a) its contractors,
 - b) its grant holders, and
 - c) other public authorities

who may only use it for the purpose for which it was supplied by the institution or body of the Community in fulfilment of that institution or body's public task as limited in paragraph 1.
3. In the situations listed in 2. a), b) and c) the institution or body of the Community remains the responsible party and all the conditions are unaffected.
4. [Option 1. The institution or body of the Community may make the Product and any data or services derived from it available to the public at no charge.

Infrastructure for Spatial Information in Europe		Reference: D4.9_Draft_IR_Data_and_Service_sharing_v2.0	
DSS DT	Implementing rules for governing access and rights of use of spatial datasets and services for Community institutions and bodies. Description of the rules with accompanying Commentary and Guidance.	12/12/2008	Page 35 of 38

Option 2. The institution or body of the Community may make the Product and any data or services derived from it available to the public under the conditions defined in Schedule 7.

Option 3. The institution or body of the Community may not make the Product or any data or services derived from it available to the public.]

5. [Optional: The User will impose technical limitations on the view services, preventing re-use of the product. These limitations are defined in schedule 6.]

6. [Optional: Additional use is allowed as specified in Schedule 8.]

Unauthorised use

The Parties shall co-operate to prevent, stop and avoid occurrence of any unauthorised use of the Product,

Warranties

The supplier warrants to the user that to the best of its knowledge it has the authority and power to grant the rights granted under this Licence, has no reason to believe that the use of the Product could infringe any third party's rights and is not aware of any claim alleging that such infringement exists.

The supplier does not warrant that the Product will meet the requirements of the user, unless this is stated specifically or follows from national law. Neither does the supplier warrant that its operation will be uninterrupted or error free.

Except as expressly provided in this licence, there are no conditions, warranties or other terms binding on the supplier with respect to the actions contemplated hereunder. Any condition, warranty or other term in this regard which might otherwise be implied or incorporated into this Licence, whether by statute, common law or otherwise, is, insofar as it is lawful to do so, hereby excluded.

Security

The User shall maintain adequate security measures to protect the integrity and confidentiality of the Product. The User shall notify the Supplier of any breach or suspected breach of such security measures.

[Optional: The User shall implement the measures that are described in Schedule 5.]

Liability

The Product is provided on "as is" basis, without warranty of any kind, either expressed or implied, except as otherwise provided in this Licence. No oral or written advice given by the supplier or its dealers, distributors, agents or employees creates a warranty or in any way increases supplier's liability.

Neither of the Parties shall be liable for any indirect damage. The supplier shall not be liable for any damage arising out of reliance upon, use or inability to use the Product.

The supplier shall not be liable for any harm that may be caused by the transmission of a computer virus, worm or other such computer program.

This clause does not exclude liability for the supplier where this is prescribed by national law.

Pricing and payment

[Option 1. The licence is free of charge.

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Option 2. The licence will be charged for as described in Schedule 4.]

Access and delivery

The Supplier shall ensure that the User gets access to the Product in a timely and efficient manner, according to the terms of the implementing rules and this licence.

The Supplier undertakes to ensure that independent of the provisions agreed to for access, the User can get immediate access to the Product in major emergencies referred to in Article 6 of Council Decision of 8 November 2007 establishing a Community Civil Protection System .

Arrangements for access and delivery, both normal and in major emergencies, are detailed in Schedule 2.

Processing of personal data

The user undertakes to process personal data in accordance with Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12 January 2001).

Assignment, sub-licensing and contracting

This Licence may not be assigned. The user has no rights to sub-license the Product.

Where the User contracts work which requires use of the Product to a third party, the Product may be supplied under the following conditions:

- The contractor shall be subject to the same obligations as the user under this licence;
- The contractor shall not be given the power to grant rights to the Product;
- The contractor shall not have any rights to use the Product for purposes beyond the contract..
- The contractor shall have no right to retain the Product after the end of the contract or this Licence.

Force majeure

No Party shall be liable for failures or have the right to terminate this licence for any delay or failure in performance under this licence if such delay or failure is caused by force majeure.

The non-performing Party shall inform the other Party in writing as soon as is practicable about the force majeure circumstances specifying the nature and extent of the circumstances. The non-performing party has no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to commence its affected operations in order for it to perform its obligations.

Force majeure shall mean any cause preventing a party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), act of God, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

Contact persons

Optional: [].

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Conflict resolution

In the event of any dispute over the licence, the parties shall attempt to solve the issue by negotiations. Either Party may suspend the Licence until the dispute is resolved.

In the event of the said issues not being solved within 3 months from the start of the negotiations, the parties may bring the issue to the applicable court of law.

Applicable law and jurisdiction

Any dispute rising that cannot be solved by negotiation is to be handled as a dispute under the law of [insert relevant jurisdiction].

Termination

[Option 1: This Licence can be terminated by the Parties with 30 days notice. Termination can not be without a reasonable cause.

Option 2: This Licence can be terminated by the Parties. Termination can not be without a reasonable cause. If there is a material breach of contract, the license can be terminated with immediate effect. In all other cases it should be given 60 days written notice by registered mail. In any of these cases, any data will be deleted by the User if not otherwise licensed for use.

Option 3: This License will terminate at the end of the license period as specified in Schedule 3. This Licence can also be terminated by the Parties. Termination can not be without a reasonable cause. If there is a material breach of contract, the license can be terminated with immediate effect. In all other cases it should be given 60 days written notice by registered mail. In any of these cases, any data will be deleted by the User if not otherwise licensed for use.]

Infrastructure for Spatial Information in Europe		Reference: D4.9_Draft_IR_Data_and_Service_sharing_v2.0	
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Schedule 1 – Product

Schedule will include:

- Name of product(s)
- Update Details
- Technical details

Schedule 2 – Delivery

Schedule will include;

- Delivery Details
- Access arrangements in major emergencies

Schedule 3 - Licence Period (optional)

Schedule will include:

- licence period
- end date.

Schedule 4 – Pricing and payment (optional)

Schedule will include:

- Details of the charges
- when payment is due
- payment arrangements.

Schedule 5 - Additional security (optional)

Schedule will include one of the following:

Option 1: Level 1: Only for use by staff of the User.

Option 2: Level 2: Only for use by authorised staff of the User.

Option 3: Level 3: Only for use by authorised staff of the User in a closed network.

Option 4: Level 4: Only for use by authorised staff of the User on standalone computers.

Option 5: Other level of security. If this option is selected, the Schedule will include details of the security required.

Schedule 6 – Technical Restrictions on view services (optional)

Schedule will include a description of the restrictions required.

Schedule 7 – Additional conditions under which public access may be allowed (optional)

Schedule will include the amendments required. The may include, but not be restricted to, a reduction in accuracy or resolution, removal of specified sensitive records, or restrictions on the amount of data which can be viewed or downloaded. It may also include an end user licence which must be used.

Schedule 8 – Extended allowed use

Schedule will include details and description of the additional use allowed by the Licence beyond INSPIRE use.