



INSPIRE

Infrastructure for Spatial Information in Europe

# Guidance on the 'Regulation on access to spatial data sets and services of the Member States by Community institutions and bodies under harmonised conditions'

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#### Disclaimer:

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## 1 Introduction

This Guidance has been drafted to assist Member States and their public authorities as well as the Community institutions and bodies in complying with or applying the 'COMMISSION REGULATION (EU) No 268/2010 of 29 March 2010 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards the access to spatial data sets and services of the Member States by Community institutions and bodies under harmonised conditions<sup>1</sup>' hereafter referred to shortly as 'the Regulation' or "the Regulation on Data and Service Sharing". The purpose of the Regulation is to establish harmonised conditions of access to spatial data sets and services for the institutions and bodies of the European Community. The general obligation for Member States to provide the institutions and bodies of the Community with access to spatial data sets and services is already given by Article 17 of the Directive 2007/2/EC and entered into force with the entry into force of the Directive, independently of the adoption of the Regulation.

As stated in the Directive, the Regulation amends the non-essential elements of Directive 2007/2/EC, by supplementing it. Therefore the Regulation only addresses access to data and services, as anything pertaining to the actual use of data and services is regulated by the Directive itself.

Therefore this Guidance document in its main part concentrates on access to spatial data sets and services and provides guidance and information about the provisions of the Regulation, in order to clarify the scope, meaning and background of these provisions. This should facilitate Member States and the public authorities as well as the Community institutions and bodies in applying the Regulation. In order to provide a complete picture on sharing of spatial data sets and services in a second part the Guidance document provides further advice and guidelines which can help the Member States to create a harmonised approach to the provision of spatial data sets and services to the institution and bodies of the Community.

While these guidelines are not mandatory, their content provides what may be considered to be good practice, whose adoption could significantly support the harmonisation of the conditions of access for the Community bodies and institutions. A separate Good Practice document will include examples of data and service sharing practices that can improve sharing according to Article 17 within and between the Member States.

Sharing agreements can assume different forms, e.g. e-mail, licence statement on a webpage, a click licence, a licence agreement signed by all the parties involved. Whatever form the agreement takes, it is legally binding and defines the conditions of use of the related spatial data sets and services. Often these agreements are formalised in form of a licence, as this allows to clearly specifying all relevant rights and obligations.

The Guidance includes INSPIRE model licences which can be used by the Member States or public authorities, when they choose to use a licence, within the context of INSPIRE, although using the models is not compulsory. The use of these model licenses allows to reach a high level of harmonisation.

Two types of INSPIRE model licences are introduced in the annexes:

- The Basic INSPIRE Licence (Annex B) applies when spatial data sets or services can be used under INSPIRE conditions without significant further restrictions or conditions and are free of charge.
- The Specific INSPIRE Licence (Annex C) applies when a Member State public authority wishes to grant the Community institution or body additional rights of use or wants to impose additional conditions on that use and/or charges.

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:083:0008:0009:EN:PDF>

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The Basic INSPIRE Licence can be used either as fully two-sided licence agreement (signed or acknowledged by all parties involved), or as a licence declaration, that can be for example found on a website, where use conditions applicable to the data made available on that website are specified.

The Guidance also provides key concepts for INSPIRE Framework Agreements, which are recommended for all those cases where a licence agreement is needed, especially where the contract includes two or more partners and/or covers the conditions for access and use of one or more data sets and services.

The role of national contact points and coordination structures in ensuring the harmonised and optimal provision of spatial data sets and services from the Member States to the Community institutions and bodies is discussed. Furthermore, the Guidance gives also suggestions on measures which Member States and their public authorities can put in place to ensure access to spatial data sets and services in case of a major emergency situation having impact on the environment.

The applicability of the Regulation as well as links to other Directives, are introduced. Special attention is given to the definition of conditions of use which are to be expressed in the metadata.

The changes introduced by the Lisbon Treaty have not been integrated in the current version of the guidelines in order to be consistent with the terminology used in this Regulation, drafted before the new Treaty entered into force.

## 2 Guidance to the Regulation on Data and service Sharing

### 2.1 Article 1: Subject matter

#### 2.1.1 Terminology

The Regulation establishes harmonised conditions of access by the institutions and bodies of the Community to spatial data sets and services of the Member States and their public authorities, in accordance with Article 17 of the Directive. The following terms that are used require further explanation.

- **Institutions and bodies of the Community**

The institutions and bodies of the Community are defined in the EC Treaty and in other legislation, e.g. Regulation (EC) No.45/2001. The institutions of the Community 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<sup>2</sup>.

The list of institutions and bodies can be found under [http://europa.eu/institutions/index\\_en.htm](http://europa.eu/institutions/index_en.htm). This list includes a list of agencies ([http://europa.eu/agencies/community\\_agencies/index\\_en.htm](http://europa.eu/agencies/community_agencies/index_en.htm)). It is an evolving list, as new agencies may be created or closed in the future.

Agencies under the 2nd and 3rd pillars are not covered by the term “institutions and bodies of the Community”, therefore they do not fall under INSPIRE Directive.

European Topic Centres do not fall under the definition of “institutions and bodies of the Community”; however when acting as contractors to Community institutions and bodies they may have access to the data and services under the terms specified in the Regulation (Article 4.1).

- **Definitions from the Directive**

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<sup>2</sup> The Lisbon Treaty introduced 2 more institutions: European Council, European Central Bank.

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The Regulation (Preamble 4 and Article 3) specifically refers to article 3 of the Directive for the relevant definitions that have to be used in arrangements concerning access to spatial data sets and services. Terms defined in the Directive and relevant to the Regulation include 'spatial data set', 'spatial data service', 'public authority' and 'third party'.

- **Public task of an institution or body of the Community**

The Commission 'public task' fall under 3 categories:

- Commission right of initiative for making proposals for legislation,
- Commission as 'guardian of the treaties' - which implies ensuring that EU legislation is applied correctly in the Member States,
- Commission as executive body, responsible for implementing and managing policy.

The public task of the other Community institutions and bodies are part of the legal acts which created them and/or described their role.

## 2.1.2 Scope of the Regulation

- **Relevant data sets and services**

The Regulation covers the access to spatial data sets and services which fulfil all of the following conditions stated in the Directive:

- They relate to an area where a Member State has or exercises jurisdictional rights; and
- They are in electronic format; and
- 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.

In addition, this must be checked out:

- If they are held by or on behalf of a public authority operating at the lowest level of government, they fall under INSPIRE only if the spatial data sets and services have been created to comply with a law or regulation requiring their collection or dissemination. This is in reference to Article 4(6) which gives derogation for public authorities at the lowest level of government where their datasets have not been collected in order to comply with a law or regulation requiring their collection or dissemination.
- If they contain third party intellectual property rights to fall under INSPIRE it is necessary that the consent of the third party has been given.

All themes listed in Annexes I, II and III of the INSPIRE Directive are covered by the obligation to share according to article 17 from the day the INSPIRE Directive came into force (15 May 2007). From that date onwards the sharing must abide by the rules for access in INSPIRE Directive. This means that the sharing obligation for data sets and services exists independently of the related INSPIRE data specification still to be developed.

Where data falling within the scope of one of the Directive themes is held in multiple ownership – by several Member States, or by several public authorities within one Member State – it is still within the scope of the Regulation, and the joint owners will need to cooperate to determine how to provide the data to the Community institutions and bodies.

The data within the scope of the Regulation include old, archived or superseded datasets where they meet the criteria listed under scope. However, there is no obligation through the

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INSPIRE legislation to maintain archives; the same way as there is no obligation to establish new datasets. But if datasets under the scope exist, they are covered by the obligation to share.

- **Relevant tasks**

The Regulation applies to access to spatial data sets and services for the institutions and bodies of the Community for the performance of their public tasks that may have an impact on the environment.

Access under INSPIRE Directive only applies when and if the institution or body of the Community states that it requires the data sets or services to be shared under the harmonised conditions of INSPIRE Directive. The Community institutions and bodies have the freedom to use other arrangements.

## **2.2 Article 2: Restrictions on access**

In accordance with Article 17(7) of INSPIRE Directive, Member States and their public authorities may limit the sharing of 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 if requested by a Community institution or body. This is included in Article 2 of the Regulation. The clarification on the restriction, which is only given when requested, should identify at least which of the legitimate reasons for restriction applies, and, if possible, further clarification.

Other restrictions may also apply due to other European legislation. An example of this is personal data. National legislation exists within the framework set by Community legislation and INSPIRE Directive states that sharing arrangements made under Article 17 of INSPIRE Directive may be accompanied by requirements under national law conditioning their use.. An example could be when a sensitive dataset is compiled for a specific purpose and therefore can not be used freely for other purposes (art. 6 of the Directive 95/46/EC on the processing of personal data). The community institution or body must also process any data containing personal information 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).

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.

In formulating any license 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 available in emergency situation e.g. a forest fire threatening a military installations could make it necessary to access to some military data which would otherwise fall under the non-disclosure restriction under national defence.

While restrictions can be necessary INSPIRE has a general aim to improve data sharing. Article 2 therefore also foresees that if possible, Member States or public authorities should state under what conditions access to otherwise restricted spatial data sets and services in accordance with Article 17(7) can be allowed. The reason for this provision is due that there may be situations in which the data could be provided, but only if some additional measures are taken, such as more stringent access controls or if some information is removed. These should be stated by the Member State or public authority so as to enable data sharing wherever possible.



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### **2.3 Article 3: Arrangements**

Article 3.1 states that any arrangements made under INSPIRE as regards access to spatial data sets or services for the Community institutions and bodies, must be compliant with the Regulation itself.

Article 3.2 further states that all the definitions laid down in Article 3 of Directive 2007/2/EC shall be used in any arrangements concerning access to spatial data sets and services. The definitions foreseen in the Directive therefore directly apply and the terms defined there should be used in any arrangement. Also as explained in paragraph 2.1.1 it has been decided not to seek to further define these terms in the Regulation.

### **2.4 Article 4: Use of spatial data sets and services**

The Regulation is aimed at regulating access to data sets and services. Any agreement of access to the data is, according to INSPIRE Directive, to the discretion of the Member State, unless it is proven to be a hindrance to data and service sharing. However, art. 4 wants to clarify that contractors acting on behalf of the Community institutions and bodies are seen as an integral part of these institutions and bodies and therefore should be treated as one and the same entity.

### **2.5 Article 5: Metadata**

Article 5 requires specifying the conditions for sharing applicable to the Community institutions and bodies in metadata element 8.1 described in Part B of the Annex to Commission regulation (EC) No 1205/2008. This metadata element is described as follows:

*8.1. Conditions applying to access and use - this metadata element defines the conditions for access and use of spatial data sets and services, and where applicable, corresponding fees as required by Article 5(2)(b) and Article 11(2)(f) of Directive 2007/2/EC. The value domain of this metadata element is free text. The element must have values. If no conditions apply to the access and use of the resource, 'no conditions apply' shall be used. If conditions are unknown, 'conditions unknown' shall be used. This element shall also provide information on any fees necessary to access and use the resource, if applicable, or refer to a uniform resource locator (URL) where information on fees is available.*

This should allow all users, including Community institutions and bodies, to find the conditions for sharing that apply to them.

This metadata element is defined as a free text element. It should contain as much as possible the description of the conditions applying to access and use; where necessary, this description can be further integrated including one or more links referencing web pages, where detailed information can be found.

Article 5 (1) of the INSPIRE Directive clearly requires Member States to keep metadata up to date which means that any changes in the conditions have to be reflected in the metadata in timely manner. Care has to be taken to provide correct information in the metadata and to avoid misleading advertising.

### **2.6 Article 6: Transparency**

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 how their data are 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 are fit for their particular purpose. Some of this information may be available as metadata, but more detailed information should also be made available if available and requested to allow an assessment of fitness to be made. This further information is

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particularly important if the data is to be used for a purpose which is different from that for which it was originally collected.

There is no intention to duplicate or supplement the Metadata Regulation (COMMISSION REGULATION (EC) No 1205/2008 Implementing Directive 2007/2/EC of the European Parliament and of the Council as regards metadata) nor the draft COMMISSION REGULATION (EU) Implementing Directive 2007/2/EC of the European Parliament and of the Council as regards interoperability of spatial data sets and services. The Regulation on data and service sharing requires (Article 6 (1)) that additional information for evaluation and use should be made available upon request. Unlike the Metadata Regulation and the draft Implementing Rules on the interoperability of spatial data sets and services there is no requirement to produce information, only to provide it if it is readily available and requested by the users.

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 (see article 17.2 of the Directive). 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 (Article 6(2)).

## **2.7 Article 7: Response times**

The provision of access to the spatial data sets or services shall take place within 20 working days after receipt of a request, according to article 7 of the Regulation. This timeframe may be extended by mutual agreement of the public authority or Member State and the institution or body of the Community.

Any request originating from an institution or body of the Community will be considered a legitimate request.

As a general principle, there should be no unnecessary delay. A fast response can be facilitated by harmonised licences and simple access procedures. Generally, access to data and/or services should be provided as soon as possible, all necessary steps should be taken without any unnecessary delay including, if necessary, finalising licences, invoicing and receiving payment as well as providing the access. Due consideration should be given to the type and use of data and/or data services, ensuring that the response time is appropriate for the given use. 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, waiting some days to receive the data may be acceptable. The supplying authority should normally have considered carefully how current the data needs to be for their users, so an appropriate response time is generally already included in their normal supply times.

Ultimately the goal is that download services established according to the Directive will allow for instant downloading. However, the Community institutions and bodies may not make use of electronic payment facilities under the present financial regulation, applicable to the general budget of the European Communities<sup>3</sup>. Use of download services for these datasets will therefore depend on pre-existing arrangements. Still, it should allow the response time to be very short, when the information on access and use are well publicised in the metadata.

In any case the request should be in writing by any means (e.g. hard copy, email, web message).

If access can not be provided without delay, the data provider should immediately provide information explaining the cause of the delay then the two parties have to mutually agree on a new response time.

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<sup>3</sup> [http://ec.europa.eu/budget/documents/financial\\_regulation\\_en.htm](http://ec.europa.eu/budget/documents/financial_regulation_en.htm)

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## ***2.8 Article 8: Transitional provisions***

The Regulation comes 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 or other arrangements. Two situations are covered in the Regulation – first for new supplies of data or services, second to replace existing arrangements.

In the first situation, eighteen months are allowed from entry into force of the Regulation until the conditions in the Regulation are 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 but anyway not later than 3 years after the entry into force of the Regulation.

The Regulation will apply whether or not the Data Specification Regulation is in effect for the theme of the dataset or service, or the Network Services Regulations are in effect, as the only reference to decide if a spatial data set or service is covered by INSPIRE sharing requirements is the INSPIRE Directive itself.

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### **3 Further guidance on the provision of access to spatial data sets and services from Member States to the Community bodies and institutions**

While the previous section provided more information on the provisions of the Regulation and how these should be understood, this section aims to give guidance to the Member States and the public authorities, as well as to the Community institutions and bodies in which way they can promote further harmonisation for access and use. Hence, this section does not contain any obligations for the Member States and the public authorities, nor for the Community institutions and bodies, but rather guidelines or advice on how harmonised conditions could best be achieved.

#### ***3.1 Reporting obligations from the Member States***

Neither the Directive nor the Regulation addresses spatial data or services sharing that are provided by the Member States or their public authorities for the fulfilment of their reporting obligations.

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 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).

A consequence of this is that 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 under INSPIRE.

#### ***3.2 Emergency access and use***

It is advisable that the Members states have in place adequate measures to provide access to Community institutions and bodies as well as to national bodies, in the case of a major emergency so that spatial data sets or services can be provided without delay. In the context of INSPIRE special interest is given to major emergencies that have an impact on the environment.

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

When emergency access is required and no prior arrangement is in place access could be given under the condition that a formal licence is entered into later, or as a very limited short-time licence for the actual emergency situation. If there is a prior arrangement, it is advisable that it includes measures for emergency access in the described situations.

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Such measures could include the provision of a contact point for emergencies to the national contact point, 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 without delay. Mechanisms should include procedures for the retrospective establishment of licensing agreements for data used in such circumstances.

The need for appropriate measures for emergency access and use can be linked to the Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism. This Decision links in Article 6 the trans-boundary consequences of a "major emergency" and the need for notification at EU level:

*"In the event of a major emergency<sup>4</sup> 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 should also be 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 Monitoring and Information Centre (MIC) can be anticipated, in order to enable the Commission, as appropriate, to inform the other Member States and activate its competent services."*

### **3.3 INSPIRE use**

According to the Directive, the spatial data sets or services provided under the Regulation may be used for activities which may have an impact on the environment and where the purpose of those activities is a public task of the institution or body of the Community.

While the Regulation does not specify the rights of use of the institutions and bodies of the Community, this Guidance aims to provide guidelines for the framework for use under the Directive, by focusing on the purpose of the activity rather than the activity itself, as it is not practical to list all those activities which may be needed to fulfil the public task of the institution or body. This suggested harmonised right of use is referred to as 'INSPIRE use'.

Internal reporting within and between the institutions and bodies is included in INSPIRE use where it is part of the public task that may have an impact on the environment. Note that this is not the same as the reporting obligations placed on Member States by environmental Directives, which are not covered by the Regulation (see above).

#### **3.3.1 Public Access to data supplied under INSPIRE**

If no provisions on public access are contained in the agreement between Member States and the Community institutions and bodies then access given by the institutions and bodies should be guided by whether public access is already, or could be, allowed in the Member State and under what conditions.

When this public access to spatial data sets or services can not be allowed, due to any exemption provided for by law, data producers are encouraged to state the conditions under which such an access is possible, for example by removing sensitive information or by

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<sup>4</sup> "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"

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downgrading the accuracy. It is also suggested that any such measures are, as far as possible, harmonised within and between Member States, so that they can effectively be applied to aggregated data sets that potentially may come from a huge number of producers.

Public access to Member States' spatial data sets and services could be of interest to Member States and the public in general when Community institutions and bodies produce aggregated spatial data sets or services based on data coming from several Member States. In this case the resulting data sets offer clear added information in that they combine spatial information on a European level. Public access should therefore be promoted as much as possible, while respecting any exemptions provided for by law.

### **3.3.2 Acknowledgement of intellectual property rights**

The data supplier can protect its intellectual property rights, and those held by other entities whose data it has been permitted to distribute, by requiring the Community institution or body to make acknowledgements and to state how and where these are to appear. If needed, such specification will be included in the licence.

Also in this case there is potential for situations in which there are a number of datasets or services involved. It is therefore recommended to develop simple and possibly harmonised measures to be agreed with all the relevant Member States and their relevant public authorities.

## **3.4 Charging for spatial data sets and services**

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 (see article 17.2 of INSPIRE Directive).

In order to demonstrate compliance with these conditions, the Regulation on Data and Service Sharing foresees that the Member State or public authority may be asked to clarify the basis on which they have arrived at the charges, as outlined in chapter 2.6.

When charges apply, the Community institutions and bodies will be required to apply the Financial Regulation applicable to the general budget of the European Communities (Council Regulation (EC, Euratom) No 1605/2002) and further amendments.

These include the need for a written contract, which usually consists of three parts: special conditions, general conditions and annexes. The Financial Regulation foresees a limited number of procedures for concluding a contract including the open and the restricted procedure and the publication of a contract notice in the Official Journal. 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. The negotiated procedure can be used where the contract can only be awarded to a particular economic operator, due to technical or artistic reasons or reasons connected with the 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, that is when there is in fact a monopoly situation. This may be the situation for some of the INSPIRE datasets and services.

If multi-party contracts are concluded between Member States public authorities on the one side and several institutions and bodies of the Community on the other side, as for example in the case of framework agreements, the Financial Regulations 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. One lead institution acts as sole representative of the institutions and bodies during the procedure

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up to the signature of the contract, and remains responsible for overall management of the contract.

### **3.5 International data sets**

The Directive can only address Member States and their public authorities with respect to spatial data sets and services falling under the scope of the Directive as specified in Article 4(1). However this does not mean that international data sets including data from more than one country are not addressed. They are addressed insofar as they are held by or on behalf of a public authority, and have been produced or received by a public authority, or are managed or updated by that authority and fall within the scope of its public task.

So the Member States and their public authorities are responsible for making these data sets available according to INSPIRE conditions but this might be achieved by making sure that another entity makes them available in conformance with the INSPIRE requirements on their behalf. This can be a national, a European wide or any other international entity. An example might be ECOMET which holds data on behalf of a number of meteorological organisations. In this context INSPIRE sets minimum conditions, so obviously agreements going beyond these minimum conditions still respect INSPIRE requirements and therefore fulfil INSPIRE obligations. In case of data sets covering territory outside the areas where Member States have and/or exercise jurisdictional rights the INSPIRE obligations only applies to the Member States territory. This does not mean that the data sets outside of the territory may not be supplied under the same conditions. This would certainly be very useful, but strictly speaking there is no obligation to do so.

It also has to be pointed out that the provision of data through any kind of framework agreement is very much encouraged as it allows including several partners under a common set of rules and therefore fosters harmonised data sets and licensing schemes which greatly facilitate the integrated use of different data sets. This will be given more attention in the Good Practice document.

### **3.6 Provision of spatial data sets and services by other entities**

It is quite common for public authorities in Member States to use other entities to supply their data and services. When this is the case, it is the responsibility of the public authority to ensure that the other entity fulfils all the obligations of the Directive and its implementing rules 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 other entity as part of their contract. In any case, the public authorities remains under the obligation to provide access to the spatial data set or service, whether it does so itself or via a third party.

## **3.7 Coordination**

### **3.7.1 Structure**

The current situation in many Member States is that if an institution or body of the Community requires spatial data sets 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 provision of access is required. It is therefore advisable 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.

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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 or any other single responsible organisation. However, that does not preclude 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.

### 3.7.2 Measures

It is recommended that the Member State takes appropriate measures to

- a) ensure communication of the Regulation to all the public authorities across the different levels of the government;
- b) promote the use of framework agreements in accordance with the Regulation for the 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;
- e) enable an effective response to requests for spatial data sets and spatial data services in emergency situations.

The Member State should ensure that if a institution or body of the Community requests information 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, this information can be supplied without delay.

## 3.8 Licensing

### 3.8.1 Introduction

Sharing agreements can assume different forms, e.g. e-mail, licence statement on a webpage, a click licence, a licence agreement signed by all the parties involved. Whatever form the agreement takes, it is legally binding and defines the conditions of use of the related spatial data sets and services. Often these agreements are formalised in form of a licence, as this allows to clearly specifying all relevant rights and obligations. This is why specific attention has been given to INSPIRE licences presented in the following chapters. The terms specified there can be also used in click licences or a licence declaration or any other agreement.

As regards more specifically INSPIRE use the Regulation on Data and Service Sharing in article 3 it states that

1. *Any arrangements concerning access to spatial data sets and services shall be fully compatible with the requirements of this Regulation.*
2. *The definitions laid down in Article 3 of Directive 2007/2/EC shall be used in any arrangements concerning access to spatial data sets and services.*

Any agreement and any licence for the access under the INSPIRE Directive according to article 17 must be compliant with the terms of the Directive as well as the rules of the Regulation.

This Guidance gives more information on how any written licence agreement may be harmonised. It is advisable that any licence states that it is an 'INSPIRE' licence to make clear that any terms use the definitions from the Directive and the Regulation.



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Use of a formal written or electronic licence is not mandatory and the supplier may choose not to use one. The Directive and Regulation will apply anyway. When a written licence 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 authorities covering one or more data sets, concluded before the data is needed, therefore removing a potential obstacle at the point of use. As already pointed out at the beginning of this chapter the conditions defined in these licences can also be used in other types of agreements, such as click licences, licence statements.

Single licences will generally be granted at the moment where the institution or 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, providing an agreement for each delivery can become an obstacle at the point of use. Therefore Member States and their public authorities are encouraged to make framework INSPIRE agreements on data sharing with the institutions and bodies of the European Community prior to the need for data or services.

If such agreements are not available, the Member States or the public authorities are encouraged to use the Basic or the Specific model INSPIRE licence included in the Annex to this Guidance, as a basis for their own licenses to achieve maximum harmonisation.

The Member State or public authority may wish to allow wider use of the data set or service than that which is required under the Directive (see INSPIRE use). This is possible by setting out the additional use rights in a schedule to the licence, or concluding a separate licence.

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 in Member States. Where optional clauses are needed, the Member State is encouraged to harmonise these optional clauses for that Member State so that a single common wording can be applied as much as possible.

### **3.8.2 Use of the Basic INSPIRE licence**

A 'Basic INSPIRE Licence' is an agreement that enables access to the spatial data sets and services under INSPIRE to be provided by the public authorities to Community institutions and bodies without any further restrictions or conditions and free of charge. The Basic INSPIRE Licence may be used as a 'click-licence'. An example of such a licence is the PSI Licence used in the UK. See [www.opsi.gov.uk/click-use/](http://www.opsi.gov.uk/click-use/) for further information.

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. When the licence is used in this way, the user does not need to enter into a separate agreement with the right holder to use the work. The user 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 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 allowed for by law, for example regarding or charges, or want to set further rights of use, then a Specific INSPIRE licence should be used.

### **3.8.3 Use of the specific model 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 which includes the possibility to specify a number of harmonised op-

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tions. This licence takes the form of the Model Licence included in the Annex, completed by the parties to customize it for the provision of access to a particular data set or service. The specific 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 to choose from and others can be filled out according to the specifications given in the explanatory text between the [] brackets. 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.

The Specific licence can be adapted to the licensor's and the licensee's purpose and is presented to the licensee who accepts this licence specifically in the way that the licensor prescribes. However, by starting from a template with suggested options the level of harmonisation is maximised.

Also the Specific model 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.

### **3.8.4 Use of INSPIRE Framework Agreements**

In the context of INSPIRE a Framework Agreement can be seen as an 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 concluded prior to the datasets or services being required. The agreement may address one or multiple data sets or services. A distinctive characteristic of the INSPIRE Framework agreement is that it is always an agreement concluded prior to need. Whilst a Specific INSPIRE Licence or a Basic INSPIRE licence may be concluded prior to need, in most cases they will be concluded at the point in time when the data is needed.

Framework Agreements will produce benefits for the institutions and bodies of the Community as well as for the Member States as 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.

The Framework Agreement is set up in a way that case by case negotiations, procurements, contracts, licences etc. are no longer needed "at the point of use" of the spatial data sets and services. In other words: the prior 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. Similar efficiencies can be gained in the institutions and bodies of the Community.

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 fulfil the requirements set by the Directive and the Regulation.

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. The benefits of Framework Agreements rise with the number of partners being included: the more public authorities and data sets can be included

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in a single arrangement, the more transparent and smooth sharing becomes for the end-users.

To come to some successful Framework Agreement with all its benefits it is necessary to spend time in the preparatory negotiations. There are likely to be diverse 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.

It is advisable to use the terms of the model INSPIRE license as far as possible in setting up a Framework Agreement. A number of elements should be covered as a minimum:

- **Licence Models:** An INSPIRE Framework Agreement should comprise the requirements laid down by the INSPIRE Directive and the Regulation. One way to do so is to base the framework agreement on the INSPIRE Licence Models, which are specified in the Annex of this Guidance Document. Framework Agreements might vary in their individual specifications, e.g. to adapt regulations to the national situation. The Specific INSPIRE Licence foresees such options which allow integration of 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 sufficiently large period in time, or that 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 ideally cover a high fraction of stakeholders. This may also include 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.

### ***3.9 Applicability of these implementing rules***

Data Specifications implementing rules will be put in place over a period of years for the themes in Annexes I, II and III of the Directive. The obligation of the Regulation to provide access to spatial data sets and services, however, will apply regardless of these specifications, as the only legal reference in order to decide if a spatial data set or service is under INSPIRE, is the INSPIRE Directive itself.

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### **3.10 Links to other Directives**

The INSPIRE Directive makes a reference to other Directives that may be applicable to the provision of spatial data sets and services, such as Directive 2003/4/EC on public access to environmental information and Directive 2003/98EC on the re-use of public sector information.

In particular, as regards the relationship between INSPIRE and the PSI Directive, the provision of data sets and services for any activity that remains within the performance of the public task as defined in the INSPIRE Directive, falls under the field of application of INSPIRE, while the provision for any activity outside of the public task falls under the PSI Directive.

So access to data and services provided under INSPIRE only concern the use of the data for public tasks that may have an impact on the environment. Re-use is not regulated or provided for by INSPIRE use.

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## **Annex A. Commentary on basic INSPIRE licence and the 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 Regulation. 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 clarifies that the party to the licence who will obtain access to the spatial data sets and services, i.e. the licensee, has to be one of the institutions or bodies of the Community.

The Preamble to the Specific INSPIRE Licence also contains a reference to the general rule of the Directive 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.

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 Regulation. This smooth access is hindered if it depends on ad hoc negotiations. Therefore, ideally all licences should have the same provisions, or where this is not possible, a common structure and common terminology based on definitions of Article 3 of the Directive, 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 Regulation which is not covered under a INSPIRE Framework Agreement or a Basic INSPIRE licence.

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

### ***Parties***

The supplier will usually 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; cooperative organisations of municipalities or third parties from the private sector that are mandated by a public authority under public procurement to provide the service). As this body is acting on behalf of the public authority, be it private or public, it also falls under the rules of the Directive and the Regulation for the provision of the service.

The user will be an institution or body of the Community which is a legal entity. This may include, for example, the European Commission or the European Environmental Agency.

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The Parties are not explicitly stated in the Basic INSPIRE Licence. They are implicit from the context in which the Licence was created.

### **Definitions**

The definition of a number of the terms that are used in the licences can be found in Article 3 of the Directive and are referred to in Article 3 of the Regulation. 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.

### **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. Any other use is not allowed unless in the Specific Licence the optional Schedule 8 is selected. If other use is allowed, but under a separate licence then that licence will no longer be subject to the Regulation. 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 licence gives 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 is based on the provisions in the Directive. The data or service can be used for a purpose which is within the public task of the institution or body of the Community and which may have an impact on the environment. This includes any internal use.

In the basic licence and the model for the specific INSPIRE licence, the data or service can be passed on to other entities in a limited number of situations. The institution or body of the Community remains the responsible party, but it is good practice in these situations to put appropriate obligations on the other entity in the agreement made with them.

In the basic licence Public access may be allowed to the spatial data set or service if this does not constitute a duplication of the original data set or service from the Member State, or any data or service derived from it.

The basic licence is intended for those cases where the spatial data sets are not under any restrictions from the Member States as to its re-use. If there are any restrictions (security, personal data, use restrictions, etc.), a Specific License should be used, where these restrictions can be adequately reflected. The principles of the INSPIRE directive include that one should not duplicate efforts on a European scale, which will have the consequence that Community institutions and bodies should not unnecessarily replicate what is already available in the MS. Therefore the basic licence explicitly states that "Public access may be allowed to the spatial data set or service," and further specifies "without unnecessarily duplicating the original data set or service from the Member State, or any data or service derived from it".

This in practice means that if the Community institutions and bodies are using Member States spatial data sets in one of their services they should bind the Member States service for this data set into their service, if such a service is available and compliant. If such a ser-

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vice is not available in the Member States then Community institutions and bodies can build their own services to give access to those MS datasets.

If derived data sets have been created from the original data set, then these derived data sets can be made available in whatever form. The intention is that whatever added value is produced by the Community institutions and bodies this added value product can be made available to anybody interested in it and for whatever use.

In the model licence different conditions for public access to the spatial data or service can be specified. The public authority giving the licence has to decide which situation is applicable to its case and adapt the licence accordingly.

### ***Warranties***

The warranty includes any warranties which “follow from national law”. National law can have particular requirements for a dataset or service to warrant a level of reliability.

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.

When access to spatial data sets or services can not be allowed, due to any exemption provided for by law, Member State or the public authority licensing the data or service may state the conditions under which such an access is possible for example by taking additional security measures. 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.

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

The staff of the User does not include contractors. If contractors are to be included, the fifth option, ‘Other level of security’ should be selected and details provided in a Schedule.

### ***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 Regulation. If there is a 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 designed 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, according to art. 7 of the Regulation.

Where an INSPIRE Network Service is used, the response time of that service must comply with the implementing rules on network services. However, for access and delivery where

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services are not used because, for example they are not yet in place, other arrangements can be written in to the licence using a Schedule.

### ***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.

When 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 INSPIRE Licence do not include a jurisdiction as it is intended that it should be left 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. The specific model INSPIRE Licence allows a jurisdiction to be inserted and this should be used if the parties wish to specify the applicable law to be used.

### ***Termination***

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

The Basic INSPIRE Licence is a perpetual licence. If a fixed term licence is required, the Specific INSPIRE Licence should be used.



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## Annex B. Basic INSPIRE Licence

### *Preamble*

**Considering** that under Article 17(8) of Directive 2007/2/EC (INSPIRE), 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 a common structure and terminology of licences can play a role in stimulating the provision of spatial data sets and services under harmonised conditions.

**Whereas** the terms of this licence always must be considered to be in harmony with Directive 2007/2/EC and its implementing rules.

The subject (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*

The Definitions from Article 3 of Directive 2007/2/EC (INSPIRE) and supplementary definitions

Spatial data	any data with a direct or indirect reference to a specific location or geographical area (Article 3(2) of Directive 2007/2/EC (INSPIRE))
Spatial data set	an identifiable collection of spatial data (Article 3(3) of Directive 2007/2/EC (INSPIRE))
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 (Article 3(4) of Directive 2007/2/EC (INSPIRE))
Public authority	(a) any government or other public administration, including public advisory bodies, at national, regional or local level;  (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  (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). (Article 3(9) of Directive 2007/2/EC (INSPIRE))
Third party	Any natural or legal person other than a public authority.
Supplier	The public authority that provides access to the Subject under the terms of this Licence
User	The institution or body of the Community that obtains the right to use the Subject under the terms of this Licence
Public task (of the institution or body of the community)	The development, implementation and monitoring of policies as defined by the EC Treaty and subsequent Community legislation
Major Emergency	Any situation which 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 Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism

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### **Subject**

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

The spatial data set(s) provided under this licence equate to, include, or are components of the themes listed in Annexes I, II, 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 Subject according to the terms of Directive 2007/2/EC (INSPIRE) and Commission Regulation (EU) No 268/2010 of 29 March 2010 (the Regulation).

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 charge for it.

### **Allowed use**

1. Institutions or bodies of the Community may make spatial data sets or services available to contractors acting on their behalf.
2. Where a spatial data set or service has been made available pursuant to paragraph 1, the party who received it may not make the spatial data set or service available to any other party without the written consent of the original data or service provider.
3. The spatial data set or service may only be used for activities where the activity may have an impact on the environment and the purpose of those activities is a public task of the institution or body of the Community.
4. Public access may be allowed to the spatial data set or service, without unnecessarily duplicating the original data set or service from the Member State, or any data or service derived from it.

### **Unauthorised use**

The Parties shall make every possible effort to avoid unauthorised use of the Subject.

### **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 Subject could infringe any other entity's rights and is not aware of any claim alleging that such infringement exists.

The supplier does not warrant that the Subject 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 Subject. The User shall notify the Supplier of any breach or suspected breach of such security measures.

### **Liability**

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The Subject is provided on an “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 Subject.

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 Subject in a timely and efficient manner, according to the terms of Commission Regulation (EU) No 268/2010 and this licence.

The Supplier undertakes to ensure that independent of the provisions agreed to for access, the User can get access to the Subject without delay in major emergencies with and impact on the environment.

***Processing of personal data***

The user undertakes to process personal data in accordance with Regulation No 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 Subject.

Where the User contracts work which requires use of the Subject to another entity, the Subject may be supplied under the following conditions:

- The contractor shall be bound by the same obligations as the user under this licence;
- The contractor shall not be given the power to grant rights to the Subject;
- The contractor shall not have any rights to use the Subject for purposes beyond the contract.
- The contractor shall have no right to retain the Subject 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

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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 Article 17(8) of Directive 2007/2/EC (INSPIRE) 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.

**Considering** that any charges must be fully compatible with the terms of Article 17(3) of Directive 2007/2/EC and Commission Regulation (EU) No 268/2010.

**Considering** that a common structure and terminology of licences can play a role in stimulating the provision of spatial data sets and services under harmonised conditions.

**Whereas** the terms of this licence always must be considered to be in harmony with the Directive 2007/2/EC and its implementing rules

*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 Directive 2007/2/EC (INSPIRE);

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.

### **Definitions**

The Definitions from Article 3 of the Directive 2007/2/EC (INSPIRE) and supplementary definitions

Spatial data	any data with a direct or indirect reference to a specific location or geographical area (Article 3(2) of Directive 2007/2/EC (INSPIRE))
Spatial data set	an identifiable collection of spatial data (Article 3(3) of Directive 2007/2/EC (INSPIRE))
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 (Article 3(4) of Directive 2007/2/EC (INSPIRE))
Public authority	(a) any government or other public administration, including public advisory bodies, at national, regional or local level;  (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  (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). (Article 3(9) of Directive 2007/2/EC (INSPIRE))
Third party	Any natural or legal person other than a public authority.
Supplier	The public authority that provides access to the Subject under the terms of this Licence

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User	The institution or body of the Community that obtains the right to use the Subject under the terms of this Licence
Public task (of the institution of body of the Community)	The development, implementation and monitoring of policies and related activities as defined by the EC Treaty and subsequent Community legislation
Major Emergency	Any situation which 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 Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism

### **Subject**

The details of the spatial data sets and/or services, hereafter referred to as the Subject, 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, II, 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 Subject according to the terms of Directive 2007/2/EC (INSPIRE) and Commission Regulation (EU) No 268/2010 of 29 March 2010 (the Regulation).

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. Institutions or bodies of the Community may make spatial data sets or services available to contractors acting on their behalf.
2. Where a spatial data set or service has been made available pursuant to paragraph 1, the party who received it may not make the spatial data set or service available to any other party without the written consent of the original data or service provider.
3. The spatial data set or service may only be used for activities where the activity may have, an impact on the environment and the purpose of those activities is a public task of the institution or body of the Community.

5. [Option 1. The institution or body of the Community may make any data or services derived from the Subject available to the public at no charge.

Option 2. The institution or body of the Community may make the Subject 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 Subject or any data or services derived from it available to the public.]

6. [Optional: When public access is allowed, an End User Licence will be used as specified in Schedule 10]

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

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

### ***Unauthorised use***

The Parties shall make every possible effort to avoid unauthorised use of the Subject.

### ***Acknowledgement of intellectual property rights (optional)***

The user will place acknowledgements of the supplier's intellectual property rights as defined in Schedule 9.

### ***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 Subject could infringe any other entity's rights and is not aware of any claim alleging that such infringement exists.

The supplier does not warrant that the Subject 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 Subject. The User shall notify the Supplier of any breach or suspected breach of such security measures.

Given that the access to spatial data sets or services can not be allowed, due to any exemption provided for by law, additional security measures need to be taken in order to allow access anyway:

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

### ***Liability***

The Subject 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 Subject.

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 Subject in a timely and efficient manner, according to the terms of this licence.

The Supplier undertakes to ensure that independent of the provisions agreed to for access, the User can get access to the Subject without delay in major emergencies with an impact on the environment.

Arrangements for access and delivery, both in 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 Subject.

Where the User contracts work which requires use of the Subject to another entity, the Subject may be supplied under the following conditions:

- The contractor shall be bound by the same obligations as the user under this licence;
- The contractor shall not be given the power to grant rights to the Subject;
- The contractor shall not have any rights to use the Subject for purposes beyond the contract;
- The contractor shall have no right to retain the Subject 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: [].

### ***Conflict resolution***



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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 licence 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 Licence will terminate at the end of the licence 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 licence 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.]

### **Schedule 1 – Subject**

Schedule will include:

- Name of Subject(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)**

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Given that the access to spatial data sets or services can not be allowed, due to any exemption provided for by law, additional security measures need to be taken in order to allow access anyway:

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)**

This 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.

#### **Schedule 8 – Extended allowed use (optional)**

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

#### **Schedule 9. – Acknowledgements of intellectual property rights (optional)**

Schedule will include details of, for example, the content and placement of statements, watermarks etc.

#### **Schedule 10. End User Licence for public access [optional]**

Schedule will contain the licence to be used.