

## Guidelines to facilitate Spatial Data and Service sharing

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INSPIRE Legislation

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Guidelines on sharing spatial data and services, in line with the Directive 2007/2/EC establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) and Laws of Malta S.L. 504.89 Infrastructure For Spatial Information Regulations.

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This document can be found at <http://sdi.data.gov.mt>  
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**09. Acknowledgements**

## 10. References

- INSPIRE - Guidelines on the Regulation on access to the spatial datasets and services on the member states by community intuitions and bodies under harmonised conditions. Date 09/01/2013
- INSPIRE – Good practice in data and service sharing
- UK Location Data Sharing operational guidance – part 1 policy context
- Directive 2007/2/EC establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)
- Laws of Malta S.L. 504.89 Infrastructure For Spatial Information Regulations

## 11. Distribution list

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## 01. The EC INSPIRE Directive

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### 01.1 General

Directive 2007/2/EC of the European Parliament and the Council establishing an Infrastructure for Spatial Information in the European Community, commonly referred to as the INSPIRE Directive, came into force in 2007, with full implementation targeted by 2019. It sets general rules for the establishment of an Infrastructure for Spatial Information within the European Union, that primarily aims to improve environmental policy making and data sharing across the Union.

In order to comply with the Directive, EU Member States are required to render available for sharing, through access services, spatial datasets falling within the Directive's scope of applicability. In this manner, the combination of such datasets is expected to provide additional benefits for the development and monitoring of environmental related policies and practices.

### 01.2 The Principles

The Directive is based upon a number of common principles:

- Data should be collected only once and kept where it can be maintained most effectively.
- It should be possible to combine seamless spatial information from different sources across Europe and shared as needed.
- It should be possible for information collected at one level/scale to be shared with all levels/scales; detailed for thorough investigations, general for strategic purposes.
- Geographic information needed for good governance at all levels should be readily and transparently available.
- It should be easy to find what geographic information is available, how it can be used to meet a particular need and the conditions under which it can be acquired and used.

Such principles underpin the Directive's requirements of Member States, outlined below.

### 01.3 Service Requirements

In line with the above principles, the Directive specifically requires that Member States' public authorities which have available datasets, provide and operate five services called the Network Services. The network services are made up of the following:

- View Service
- Discovery Service
- Download Service
- Transform Service
- Invoke Service

Furthermore public authorities within the Member States are required to take specific actions, as defined in the INSPIRE directive, to enable data and service sharing between public authorities and bodies of the European Union.

## 02. The local context

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### 02.1 Transposition into local legislation

The INSPIRE Directive was transposed into local legislation in 2013 as subsidiary legislation (S.L.) 504.89 Infrastructure For Spatial Information Regulations (“the Regulations”).

The sharing of spatial data and services, as required by the Regulations is facilitated by the Malta INSPIRE infrastructure which is hosted and operated by the Malta Information Technology Agency (MITA).

The Regulations also defines the roles and responsibilities expected of the public authorities.

### 02.2 Brief outline on MITA

The **Malta Information Technology Agency (MITA)** is the central driver of Government’s Information and Communications Technology (ICT) policy, programmes and initiatives in Malta.

MITA’s role is to deliver and implement the assigned programmes as set out in the Digital Malta National ICT Strategy 2014 - 2020, and as directed by the Parliamentary Secretary for Competitiveness and Economic Growth from time to time. MITA manages the implementation of IT programmes in Government to enhance public service delivery and provides the infrastructure needed to execute ICT services to Government. MITA is also responsible to propagate further use of ICT in society and economy and to promote and deliver programmes to enhance ICT education and the use of ICT as a learning tool.

MITA’s Raison D’etre is to

- Serve as the central driver of government’s ICT policy and strategy.
- Deliver and manage information systems within government to enable reform and innovation in public service delivery.
- Provide efficient and effective ICT infrastructure and services to government.
- Encourage the application and take-up of ICTs in the wider economy.

### **03. Objectives**

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As the competent authority, MITA has prepared this document as a guide to facilitate the harmonised conditions of access to the spatial data sets and services offered by public authorities.

## **04. Scope**

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This document is intended to guide public authorities to the correct legislative documents and not intended as an explanation to the respective subsidiary legislation. It also guides users to the corresponding legal framework. These guidelines should be read in conjunction with other EC implementing rules (specifically related to Metadata, Data Specifications, Network Services, Data and Service Sharing), decisions and guidelines established by the INSPIRE directive.

## **05. Definitions**

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The terms used in these guidelines are found in article 2 of the Regulations.

## 06. Guidelines

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### 06.1 Restriction on access

As a general rule there should be no limitations to access and sharing of datasets and services. However the Regulations provide for exemptions to the obligation to provide access which generally relate to those instances when access may compromise the course of justice, public security, national defence or international relations. Restriction may also apply due to the applicability of other laws including, amongst others, the suite of laws governing intellectual property right and the Data Protection Act (Cap 440 of the Laws of Malta).

Clarifications for any reasons restricting access and sharing shall be made available by the public authority upon request by the competent authority and relevant European institutions.

There may be specific instances,<sup>1</sup> where datasets need to be made available, even though restrictions may apply. Such situations should be determined by the public authority and the competent authority beforehand and stipulated in a contractual agreement between the public authority and the competent authority.

### 06.2 Provision of datasets and services by contractor

Contractors acting on behalf of the public authorities are considered as an integral part of the public authorities. It is in the interest of the public authority to have a contractual agreement with the contractor to regulate data management including rights, duties, intellectual property rights and data ownership.

### 06.3 Metadata

The use of metadata must allow all users to find the conditions for sharing that apply to the dataset. The metadata element "*conditions apply to access and use*" shall include the conditions for access and use of spatial data sets and services and where applicable, corresponding fees as required by Article 5(2) and article 11(2) (f) of the Directive 2007/2/EC. Due to the importance of using the metadata to set the conditions for sharing, it is crucial that the metadata is kept up to date and that any changes to the conditions are reflected accordingly in a timely manner. Similarly, any websites referred to within the metadata element must also be kept up-to-date.

### 06.4 Datasets

In order to support the transparency of data, it is important that information on what kind of data or services is available and how the data or service can be obtained or used is clearly provided. This will allow the users to determine if the data or service available meets their requirements and is fit for use. Therefore transparency of data can be achieved by having:

- Available and updated spatial datasets
- Available and updated metadata (as indicated in Section 6.3)
- Available technical information to assist in the fit for purpose assessments
- Clear conditions for use.

### 06.5 Response time

The Regulations emphasis that access to datasets may be sought and provided almost instantaneously using the services provided. However in some exceptional cases this may not be possible. In general, the provision of access to the datasets or services shall take place within 20

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<sup>1</sup> such as emergency situations

working days after a formal request has been submitted. The timeframe may be extended by mutual agreement between the data requestor and the public authority. If delays are expected for access, the requestor shall be informed immediately with an explanation for the cause of the delay. A new response time shall be agreed upon by both parties.

A fast response to the provision of datasets may be facilitated through:

- harmonisation of licences
- a simple access procedures
- lower lead times in, for example, the issuing of invoices or in receiving payments
- the provision of download services which reduce delays due to human intervention.

If the services require payment and the public authority does not have an electronic payment service, the electronic payment system made available by the Government of Malta must be used.

## **06.6 Emergency access**

In cases where the access to datasets or services is not readily available, and there is a major emergency, adequate measures are to be available to provide datasets access within timeframes that are proportionate to the nature of the emergency.

Special attention should be given to major emergencies that have an impact on the environment such as natural disasters and man-made environmental accidents.

Where emergency access is needed and no prior agreement between the data requestor and the public authority is in place, a temporary short term licence agreement should be provided for the actual emergency situation, in a form that does not hinder the timely provision of data.

In the case where a prior agreement is available, such agreement needs to include the measures for emergency access which could be made available in a central location such as the national geo-portal or a national emergency centre. The measures should include contact points and procedures to download data.

## **06.7 Charging for datasets and services**

It is of critical importance that the charging mechanism used does not create practical obstacles when sharing spatial datasets and services.

In accordance to the Regulations, clarification on the charging amount may be requested.

In multiparty contracts involving Member States' public authorities and institutions and bodies of the EU, the EC Financial Regulations (Council Regulation (EC, Euratom) 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities) shall apply if charges are made.

In accordance with the Regulations, "Spatial data sets and spatial data services made available to EU institutions or EU bodies required for the fulfilment of reporting obligations pursuant to EU regulations related to the environment shall not, however, be subject to any payment".

## **06.8 Intellectual Property Rights and Licensing Arrangements**

As indicated above, the rules of access set out in the Regulations are subject to the applicability of other laws. The main laws that impact the rules of access are the Data Protection Act (Cap 440 of the Laws of Malta) and the suite of laws governing intellectual property right, namely the Trademarks Act (Cap 416 of the Laws of Malta), Patents and Designs Act (Cap 417 of the Laws of Malta), Copyright Act (Cap 415 of the Laws of Malta), Intellectual Property Rights (cross-border measures) Act (Cap 414 of the Laws of Malta) and the Enforcement of Intellectual Property Rights (Regulation) Act (Cap 488 of the Laws of Malta).

The rules of access should be explained by the public authority through a license agreement. The license agreement is necessary in order to address particular legal issues that may arise in relation to the use and/or sharing of spatial data. The following points need to be kept in mind:

- (a) It is important to define what is being licensed;
- (b) The rights and limitations to use and/or share the spatial data;
- (c) The representations and warranties, if any, being granted by the public authority;
- (d) Any indemnification by the public authority and/or the user if damages are incurred;
- (e) The governing law and applicable dispute resolution procedure.

## **06.9 Licensing Agreements**

Licensing Agreements for the use of the spatial datasets may be in the form of

1. a single licence agreement, covering the provision of one data set or service from one authority to another , or;
2. through a framework agreement between authorities covering one or more data sets which are concluded before the datasets are needed.

### **06.9.1 Single licence agreement**

This is normally used when specific data is required and a specific agreement is made between the requestor and the public authority concerned.

### **06.9.2 Framework agreement**

Establishing an agreement for every request made may lead to complications and be time consuming. It is therefore recommended that an INPSIRE framework agreement is made between the public authorities and the requesting parties. This agreement should be made before the actual data or service is required and may cover one or more dataset and/or service.

Specific agreements can be made by public authorities wishing to:

- grant specific additional rights of use, or
- impose additional conditions on the use and/or impose charges.