



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning

**the common position of the Council on the adoption of a Directive of
the European Parliament and of the Council establishing an infrastructure for
spatial information in the Community (INSPIRE)**

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2004) 516 final – 2004/0175 (COD)):	23 July 2004
Date of the opinion of the European Parliament, first reading:	7 June 2005
Date of the opinion of the European Economic and Social Committee:	9 February 2005
Date of adoption of the common position:	23 January 2006

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The overall aim of the proposal is to improve the way in which spatial data held by public authorities supports environmental policy, by improving the harmonisation of spatial data and the interoperability of spatial services and ensuring greater sharing of the data between public authorities and on-line access by the public. The type of spatial data covered is specified in three annexes to the proposal.

The proposed directive would require Member States to take the following measures:

- establish a network of services that allows to search for, view and access the spatial data from a one-stop Internet portal
- make their spatial data sets and services interoperable (i.e. technically compatible) in accordance with implementing rules adopted by committee procedure
- produce catalogues of the data held by their public authorities, contain “metadata” providing certain types of information regarding the data
- make the spatial data accessible to the public
- remove obstacles for the sharing of spatial data between public authorities

3. COMMENTS ON THE COMMON POSITION

3.1 General comments

The Commission can accept in full, in part or in principle 46 of the 49 amendments proposed by the European Parliament at its first reading. Many of these amendments have now been incorporated, either verbatim or in substance in the common position.

The Commission cannot accept the common position with regard to a number of issues. The most important of these issues include the following:

The Commission does not agree that intellectual property rights held by public authorities should be among the list of grounds for limiting public access to spatial data.

The Commission also does not agree that the possibility of limiting access should be extended to cover discovery services referred to in Article 18(1)(a) of the Commission proposal, since this would mean that the public would not even be able to learn of the existence of the data.

The Commission maintains that the view services referred to in Article 18(1)(b) of the Commission proposal should be made available free of charge, and cannot accept the Council position allowing public authorities to charge and license for these services under certain conditions;

The common position makes the obligation to avoid obstacles to data sharing, as well as the rules for ensuring harmonised conditions for Community institutions and bodies, subordinate to the right of public data providers to charge and license other authorities for their data. It is also vague about the obstacles to be avoided. It will therefore be ineffective in achieving one of the key aims of the proposal, and could even have the effect of increasing obstacles to the sharing of data.

Finally, while the Commission agrees that the provisions relating to data sharing do not affect the existence or ownership of public authorities' intellectual property rights, it does not see the need for this to be stated in the text of the directive. If such a provision is to be included, it should be made equally clear that these rights must be exercised in accordance with the other provisions.

3.2 Detailed comments

3.2.1 *Parliamentary amendments acceptable to the Commission in full, in part or in principle and incorporated in the common position*

Amendments 1 and 5, regarding the recitals, have been incorporated in full, in part or in principle.

Amendment 6 concerning the aim of the directive has been incorporated in part, by referring to spatial management in a recital.

Amendments 8-12 have the effect of restructuring parts of the text in order to make it clearer. This restructuring has also been taken up in the common position. In addition, amendment 9 makes some technical changes to the definitions, most of

which have been incorporated in the common position. Amendment 10 also includes a small, and acceptable, restriction of the comitology provisions in relation to updating the annexes.

Amendment 13 and 14 relate to the metadata that has to be created in relation to spatial data sets and services covered by the directive. These have both been taken up in principle, by requiring Member States to provide information on fees related to the rights of use of spatial data sets and services and ensuring that the quality of the metadata is fit for purpose.

Amendments 15 and 21 slightly change the wording in relation to the timescale for complying with implementing rules, and have been incorporated in the corresponding articles.

Amendments 16-20, 22 and 23 clarify certain provisions relating to the implementing rules designed to improve interoperability between spatial data sets and services. These have all been taken up in principle in the common position Articles 7 to 10, which also improves the structure of this part of the text.

Amendment 24 seeks to clarify the nature of the services to be provided by Member States allowing data providers to link their data to the INSPIRE infrastructure. This concern is also reflected in the common position, Art 12.

Amendment 25 removes an unintended ambiguity in the original proposal and has been incorporated into the common position in the final paragraph of Art 11.

Amendment 27 clarifies the services for which technical specifications are to be drawn up by comitology. The common position incorporates this clarification in Art 16, following its restructured text.

Amendment 29 clarifies that the arrangements for sharing data with international bodies should be the same ones as those applying to sharing between authorities at national and Community level. This has been taken up in Art 17(5) of the common position, with the caveat that this sharing should be on an open and reciprocal basis.

Amendment 31 clarifies the intending meaning of the additional access to data for Community institutions and bodies in the original proposal. Art 17(8) of the common position incorporates this clarification, although other changes to this paragraph made by the Council are not acceptable to the Commission.

Amendment 35 clarifies that international standards should support the implementation of the directive alongside European standards. This has been taken up in Art 20 of the common position, with the additional clarification that the implementing rules referred to in the directive should take them into account.

Amendment 36 requires Member States to make the results of their monitoring of the implementation of the directive available on a permanent basis to the public as well as to the Commission. This has been taken up in Art 21(1).

Amendment 38 specifies that the Commission's report on the application of the directive should be based on the reports from the Member States. This has been taken

up in Art 23, with the addition of the words “inter alia”, recognising that there may be other sources as well.

Amendments 39, 42, 43, 46 and 48 provide useful clarifications or minor modifications to various themes in the annexes and are incorporated in common position, sometimes with further clarification. Amendment 40 and 41 move the data theme “geology” from Annex III to Annex II.

Amendment 44 extends the scope of the directive to include utilities, government services and environmental monitoring facilities. This extension will increase the relevance of the directive for environmental-policy making and therefore serves its overall aim. Amendment 49 includes an extra theme on renewable energy sources. The extra themes are also incorporated in the common position, with some modification.

3.2.2 Parliamentary amendments not acceptable to the Commission and not incorporated in the common position

Amendment 2 regarding the recitals was not considered relevant for the proposal and has therefore not been accepted.

Amendment 7 extending the infrastructure to include data held at Community level is not acceptable to the Commission and has not been incorporated into the common position, since such a provision would entail obligations on Community institutions and bodies, which a Directive cannot do. The statement given at the end of this Communication nevertheless expresses the Commission’s willingness to ensure that data held by Community institutions and bodies are in practice incorporated into the INSPIRE infrastructure.

3.2.3 Parliamentary amendments accepted by the Council but not acceptable to the Commission

Amendment 30 truncates the text of a provision in the Commission proposal that aims to prevent distortion of competition in cases where public authorities also carry out commercial activities unrelated to the performance of their public tasks. Since the provision as amended simply restates the Treaty obligation to prevent distortion of competition without specifying the context or relevance, the Council has therefore decided to delete the provision altogether. While this is an improvement on the Parliament’s amendment, the Commission would prefer to see the original provision reinstated in full.

3.2.4 Parliamentary amendments acceptable to the Commission but not integrated in the common position

Amendment 3 seeks to clarify the provisions relating to data sharing between public authorities by including a recital concerning financial compensation of public data providers. The Commission can accept this amendment since it is consistent with the Commission proposal. The Council, on the other hand, has made more substantial changes to the data sharing provisions and have consequently not incorporated this amendment.

Amendments 4, 33 and 34 provide that structures set up to co-ordinate the INSPIRE infrastructure should extend to the various levels of government and take account of the distribution of powers and responsibilities within the Member States. This is acceptable to the Commission, with some modification, but has not been incorporated in the Council position.

Amendment 26 would allow public data providers to make view services available in a form preventing their re-use for commercial purposes, and to include a click-licence to restrict the use that can be made of the data. This would provide an effective means to protect public data providers from any abusive use of this service. The Council has not incorporated this amendment, preferring to include a more general provision allowing data providers to apply charges as well as license to these services.

Amendment 28 requires Member States to ensure that implementation of the provisions relating to the sharing of data between public authorities does not adversely affect the availability of spatial data sets and services. This amendment has not been taken up by the Council, which has instead opted for a considerable weakening of the data sharing provisions.

Amendment 32 ensures that the establishment of common licences foreseen in the Commission proposal will not unnecessarily restrict possibilities for re-use of data and use of services and will not be used to restrain competition. This is entirely consistent with the Commission's intention, but has not been taken up by the Council, which has instead opted to delete the corresponding provision altogether.

Amendment 37 requires Member States to provide information on the agreements between public authorities on harmonising and sharing information. There is no specific provision in the proposal for agreements on harmonisation of information, but this amendment could be accepted in principle if it refers to the measures taken by Member States to improve interoperability between spatial data sets and services. The amendment has not been taken up by the Council.

Amendment 45 provides a justifiable extension to the scope of the data theme on population distribution and demography. Amendment 47 adds a new data theme on "areas under anthropogenic stress", which could be accepted provided the concept is further clarified. Neither of these amendments are reflected in the common position

3.2.5 Additional changes made by the Council to the Proposal

The Council has made a number of additional changes to the proposal. Many of these are of a technical nature and go in a similar direction to the Parliament's amendments. However, the common position makes a number of more substantial modifications to the Commission proposal, some of which seriously undermine the agreed aim of the directive.

The most important of these changes relate to public access and sharing of data between public authorities.

Whereas the Commission proposal provides that network services allowing the public to discover and view data held by public authorities should be made available

free of charge, the common position allows public data providers to apply charges and licensing restrictions when they “are an essential precondition to maintain the spatial data sets and services or to fulfil requirements of already existing international spatial data infrastructure in a sustainable way” (Art 14), without defining in what circumstances this could be the case. Furthermore, the common position includes intellectual property rights among the list of grounds for limiting public access provided in Art 13, and allows these grounds to apply to discovery services alongside the other network services.

In relation to sharing of data between public authorities, Art 17 reflects a significantly lower level of ambition than Art 23 of the Commission proposal, and could even have the effect of increasing rather than reducing obstacles to the sharing of data. The most important changes are in:

- paragraph 3, which makes the preclusion of restrictions subordinate to the right of data providers to enter into licensing arrangements and require payment from user authorities,
- paragraph 8, which makes the provisions relating to harmonised access for Community institutions and bodies subject to the same condition, and
- paragraph 9, which asserts that the Article does not affect the existence or ownership of public sector authorities' intellectual property rights, without clarifying that these rights should nevertheless be exercised in accordance with the other provisions.

The Commission cannot support these changes since they will unduly limit public access, make implementation of the directive more difficult to achieve, and reduce the availability of data and consequently the added value of the infrastructure. Art 17(3) presents a particular concern since it is likely to encourage data providers to up legal and financial obstacles to the sharing of data with public authorities, thus having the opposite effect to the one intended.

Another serious concern relates to the procedure for adopting implementing rules on interoperability provided in Art 7(2) and (3) of the common position. This requires the Commission to undertake an analysis of the feasibility and expected costs and benefits, specifies that the rules cannot result in excessive costs to a Member State, and requires Member States to comply with the rules only “to the extent feasible”.

While the Commission fully recognises the need to take feasibility and cost-benefit considerations into account when drawing up the rules, their technical and incremental nature will not in general justify a full and explicit analysis, and a requirement to provide such an analysis will lead to considerable delay and wasted effort. Furthermore, the text as proposed by the Council could be interpreted to mean an implementing rule could not be proposed for adoption if excessive costs would result for just one out of the 25 Member States. The committee procedure foreseen in the Commission proposal allows Member States to scrutinise the draft rules and reject them if they are unfeasible, not cost-effective or otherwise inappropriate. Once they are adopted, it is essential that they are applied without exception, otherwise the objective of ensuring interoperability will not be achieved.

Finally, the Commission also has the following comments concerning other additional changes made by the Council.

- Some of the timescales envisaged in the Commission proposal for implementation by Member States, both of the implementing rules and of the directive as a whole, have been lengthened. The Commission considers that the timescales in the original proposal should be maintained.
- It must be ensured that the references to international standards (Art 7(1)) and standards adopted by European standardisation bodies (Art 20) do not create an obligation to adopt such standards in the context of the INSPIRE directive, since in some cases this would lead to high costs that would not be justified from a cost-benefit point of view.
- Metadata created for spatial data sets and services should include not only information on whether the data have been validated (Art 5(2)(c)) but also other types of information concerning the validity of the data including, for example, a description of the validation method.
- In Annex III point 7, the following title would be more in line with the way the relevant services are described in the General Agreement on Trade in Services (GATS): "Government, health, education, energy, environmental services and environmental monitoring facilities".

4. CONCLUSION

The common position potentially represents a significant milestone towards the adoption of a directive that will help to improve the knowledge base for environmental and other policies by improving the availability and interoperability of spatial data. Many of its provisions provide a good basis on which to make progress.

However, certain aspects of the common position could have the effect of reducing rather than increasing the availability of spatial data, by consolidating the obstacles to data sharing between authorities and unduly limiting public access. Other provisions will make the directive difficult to implement and reduce its effectiveness in making data systems interoperable.

For this reason, the Commission cannot accept the common position.

5. STATEMENTS BY THE COMMISSION

General statement.

The Commission notes that the common position has been adopted unanimously by the Council. The Commission nevertheless cannot support the common position as it falls well short of the overall level of ambition that is essential for this Proposal.

The text of the common position leaves too much scope for data providers to refuse to give public access to their data and share it with other authorities. Other concerns are the over-burdensome procedures for adopting rules under comitology and

insufficient guarantee that these rules will be fully implemented in the Member States

Statement concerning the application of INSPIRE to data held by Community Institutions and bodies

The Commission fully agrees that the INSPIRE infrastructure should cover spatial data sets and services at Community level, in order to ensure coherence between the infrastructure for spatial information established in the Member States and relevant information at Community level. The Commission will make every effort to ensure this and will, if appropriate, come forward with a legislative proposal regulating the establishment of the components of INSPIRE within the relevant Community Institutions and bodies.