

Delegation of operational INSPIRE implementation responsibilities to international organisations or other entities by EU Member States

Reply to the question of MSFD TG Data

Question

The Technical Group on Marine Data (TG DATA) under the Marine Strategy Framework Directive (MSFD), in regards to MSFD Article 19(3) implementation, has raised a proposal of using international marine organisations (e.g. OSPAR, Helsinki, Barcelona and Bucharest Conventions or other similar international entities) for the publication of INSPIRE datasets on behalf of Member States (see Section 6 in document DATA_5-2017-02¹). However, TG DATA has requested clarification on the legal compliance with the INSPIRE Directive (2007/2/EC) of making marine data available through international organisations.

Disclaimer

The Better Regulation Guidelines (SWD(2017)350 of 4 July 2017) introduce clear guidance on providing legal interpretation under [Tool #39](#). This reply was prepared by the Commission's Directorate General for the Environment (DG ENV) and does not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. Moreover, this particular case in the marine domain may not necessarily be transferrable to similar questions in other domains.

Reply

Most of the EU legislation including the INSPIRE Directive is addressed to the EU Member States and therefore obligations have to be implemented by the Member States. In the context of the INSPIRE Directive, the EU Member States have the following main legal obligations when it comes to spatial data management (see INSPIRE Report and related evaluation² for more detail):

- (1) set up coordination structures and adopt and implement legal measures to remove procedural obstacles to the sharing of spatial data;
- (2) identify their spatial data relevant to environmental policies and policies and actions with an environmental impact according to themes listed in the annexes of the Directive;
- (3) document the spatial data so that they can be accessed on the internet together with information on aspects such as their source, geographical coverage, quality and conditions of use, in line with the metadata specifications ;

¹ https://circabc.europa.eu/sd/a/68ae1322-405c-424f-99f0-e2bcfec4f26b/DATA_5-2017-02_Recommendations_v1.0.docx

² http://publications.jrc.ec.europa.eu/repository/bitstream/JRC109035/jrc109035_jrc_inspire_eu_su_mmaryreport_online.pdf

- (4) implement interoperable online services allowing the discovery, visualisation and download of spatial data;
- (5) gradually organise and publish the spatial data according to common data models for greater interoperability and improved productivity.

Once it is established that marine spatial data fall within the scope of the Directive, the first step is to publish metadata in the INSPIRE geoportal³, allowing to discover, view and download these data.

The question is now whether to satisfy these obligations, EU Member States can engage in any arrangement they consider helpful and delegate INSPIRE implementation to international organisations or other entities?

First, it is clear that whatever practical arrangements are envisaged, the Member State obligation, liability and accountability for the implementation of the INSPIRE Directive vis-à-vis EU law cannot be delegated or transferred to a third party. In case of non-compliance, the Member State will be the sole interlocutor for the European Commission. In practice this means for any breach of the obligations under the EU acquis, Member States are the ones who will be held accountable by the European Commission based on the provisions of the Treaties.⁴

Second, in order to promote cost-effectiveness, the INSPIRE Directive promotes the reuse of existing infrastructures for sharing spatial information and advises a pragmatic implementation of the infrastructure by storing, publishing and maintaining spatial data at the most appropriate level of administration. This intended flexibility is explicitly pointed out in recitals (6) and (18) of the INSPIRE Directive. Further provisions are made under Article 4(6) of the Directive where the conditions are set for the obligations on the lowest level of administration and under Articles 4(1)(c)(ii) and 12 that further elaborate on the possible role of third parties such as international organisations.

From a pragmatic point of view and given the role of regional cooperation structures (such as Regional Sea Conventions) to bring together Member States and neighbouring countries that share marine waters to co-ordinate and cooperate, these international structures could function as information node for marine data in the INSPIRE infrastructure and thus could be accepted as part of a the Member State's INSPIRE implementation. The Directive makes it clear that the delegation of (parts of) the implementation does not release the Member State from the obligation laid down in Art. 15(2) to provide access to the services referred to in Art. 11(1) of the Directive through the INSPIRE Geoportal.

Finally, when delegating implementation to a third party, whether it is between local/regional/national/international levels of authority or other third party, it must be clear and documented (e.g. by Memorandum of Understanding, contract or other kind of documentation of arrangements) that the Member State delegates specific implementation tasks to the third party but remains responsible for the legality of the data and the implementation of the INSPIRE Directive. As requested by Art. 21(2)(b) of the Directive Member States will have to communicate this arrangement formally to the services of the European Commission.

³ <http://inspire-geoportal.ec.europa.eu/discovery/>

⁴ See in particular under Article 258 (ex Article 226 TEC) of the Treaty on the Functioning of the European Union.

Guidance

When a Member State delegates parts of its INSPIRE implementation to a third party, the Member State will have to make sure that this part of the developed infrastructure will be connected to the EU geoportal as well. MS can harvest the discovery service of the third party (copy the metadata to the discovery service of the Member State) to guarantee that all services and metadata are accessible through the EU geoportal or can register the third party service providers discovery service endpoint (with a possible filter) for harvesting by the Commission directly.

The Member State uses the existing INSPIRE reporting mechanisms to report to the Commission on any specific sectorial arrangements made as part of the description of its coordination structure in the INSPIRE implementation report.

Any communication to the Commission will go between the INSPIRE National Contact Point or INSPIRE reporter and the Commission.