

## **Consultation on the transposition of EC Inspire Directive 2007/2/EC into UK law**

### **Response of the Open Rights Group and Open Knowledge Foundation**

#### **Detail of Respondents**

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#### **About the Open Rights Group**

The Open Rights Group is a grassroots digital rights advocacy group based in the UK. It aims to increase awareness of digital rights issues, help foster grassroots activity and preserve civil liberties in the digital age. It is funded by individual donations and small grants.

#### **About the Open Knowledge Foundation**

The Open Knowledge Foundation is a not-for-profit organization founded in 2004 and dedicated to promoting open knowledge in all its forms. It is a leader in this field nationally and internationally. The Foundation's activities are organized around individual working groups and projects, each focused on a different aspect of open knowledge, but united by a common set of concerns, and a common set of traditions in both etiquette and process. These can be summarized as open discussion, meritocracy and tolerance.

#### **Response**

##### **(2) Derogations**

**(a)** As the question notes, the Directive excludes the "lowest level" of government from an obligation to make data available under INSPIRE unless there is a separate legal requirement to collect or publish that data -

Article 4, Paragraph 6: this Directive shall cover spatial data sets held by or on behalf of a public authority operating at the lowest level of government within a Member State only if the Member State has laws or regulations requiring their collection or dissemination.

This does not seem to provide grounds for excluding local authorities below District Council level from participation in INSPIRE, whether or not there is a legal requirement for them to collect data which could be relevant to an SDI. In fact, it explicitly states that such authorities must participate if there is a relevant legal requirement to collect or publish data.

It should be noted that according to the developing Implementing Rules, individual public authorities will not be under an obligation to provide the full set of services making up INSPIRE, as long as those services are provided at a Member State level.

For example, the Network Services Implementing Rules, currently in the comitology stage of the European process<sup>1</sup>, state simply "Member States are required to establish and operate a network of services for the spatial data sets and services for which metadata have been created in accordance with that Directive."

The individual local authority is not obliged to sustain the cost of maintaining search and view services for data, as long as metadata and data are made available to a "geoportal" which does. This may involve a manual submission process, or a simple request for files made available on a webserver - not much of a departure from "business as usual", given the long timescale if this data is not already available in electronic form.

The grounds for wishing to exempt some local authorities from INSPIRE should be made crystal clear. If the detailed definition of public authorities contained in the Freedom of Information Act is going to have derogations, then better if they were listed explicitly, along with the grounds for their exemption. Otherwise, this leaves some room for doubt amongst other public authorities as to whether they do have to participate, even if they do clearly have a requirement to collect and publish data (such as TfL's under the Highways Act 1984, 14C).

**(b)** The EIR is a transposition of the Environmental Information Directive 2003/4/EC and the terms of INSPIRE "should be without prejudice to 2003/4/EC".

In theory INSPIRE's terms should be at least as liberal if not more so than those contained in the EIR. It would be hard to justify further constraints on access to data and services. It

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<sup>1</sup> <http://is.gd/FfjO>

is always possible to be more permissive than the Directive, and by being "more open" the UK would be complying both with the letter and the spirit of INSPIRE.

The PSI Directive constrains access based on commercial confidentiality of data, and allows for a "reasonable return on investment" factored into data pricing. Arguably, this approach has not been a success, prompting a re-evaluation of the way the PSI Directive works. While INSPIRE is much more specific than the EIR, the Directives cover the same ground. If the EI and PSI Directives were working as originally intended, INSPIRE would not be so badly needed.

### **(3) Other issues**

On the question of the spectrum of "marginal cost" to "cost recovery" regimes for data access, Annex 1 appears to say two different things.

Paragraph 18 states that "...public authorities may apply charges where such charges secure the maintenance of spatial data sets and corresponding data services"

Paragraph 29 "... Where charges are made these shall be kept to the minimum to ensure the necessary quality and supply of data sets and services and a reasonable return on investment."

If the intention is to provide access at as near marginal cost as will allow for maintenance of the data, then the "reasonable return on investment" wording originating in the PSI Directive should be omitted.

The BERR/Treasury study on "Models of Public Sector Information Provision via Trading Funds"<sup>2</sup> concluded that "in most cases, a marginal cost regime would be welfare improving - that is, the benefits to society of moving to a marginal cost regime outweighed the costs." "Unrefined" or raw data should be provided at marginal cost without constraints on re-use, allowing for open competition in added-value services.

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<sup>2</sup> <http://www.berr.gov.uk/files/file45136.pdf>