

COMMUNICATION
from the European Affairs Committee of the Federal Council
of 8 October 2014
to the European Parliament and the Council
pursuant to Article 23 f (4) of the Austrian Constitution

COM (2014) 344 final

Proposal for a Directive of the European Parliament and the Council on the dissemination of Earth observation satellite data for commercial purposes

On 17 June 2014 the European Commission published its document COM (2014) 344 final regarding the proposal for a Directive of the European Parliament and the Council on the dissemination of Earth observation satellite data for commercial purposes.

The proposal is intended to promote and regulate the free circulation of Earth observation data generated by Earth observation satellites, while preserving the security interests of the Member States. The “Global Monitoring for Environment and Security” and “Copernicus” systems are excluded from the scope of the proposed directive.

The directive provides for monitoring and authorization procedures for the dissemination of high-resolution satellite data to be performed by each Member State, if such data are generated by an Earth observation system operated from the territory of the Member State. The free circulation of high-resolution satellite data authorized and monitored in another Member State must not be impeded. Moreover, each Member State has to designate a competent national authority for the application of the directive.

On the basis of an opinion submitted by the Municipality of Vienna, the European Affairs Committee of the Federal Council wishes to draw attention to two problem areas:

1. The “voluntary use of satellite data”:

The objective of the draft directive is to develop an internal market for high-resolution satellite data and for products and services deriving from such data, in particular in connection with the standardized use of satellite data by the Member States of the

European Union. In the opinion of the Land of Vienna, this should not result in Member States being forced within their constitutional structures to buy the satellite data covered by the proposed directive or to use them for certain applications, including Community applications. The aerial photographs used by the Land of Vienna for digital maps are of higher accuracy than the satellite data covered by the proposed directive. An overlap due to the use of different data sources for different applications would constitute an added burden. Moreover, if the Land of Vienna were to abandon the use of its preferred data material, this would result in a loss of quality in many internationally valued data applications based on its digital maps.

In order to avoid an unnecessary, additional financial burden, as in the case of the Land of Vienna, negotiations at EU level should be aimed at ensuring that each Member State, acting within the framework of its constitutional structure, has the right to continue working with its own data and will not be forced to use the satellite data covered by the proposed directive. The information required under the proposed directive can be derived from the Member State's own data and provided to the European Commission.

Moreover, the possibility of making satellite data intended for free circulation and for use by the administrative bodies of the Member States available as open data should be considered.

2. Data protection considerations relating to “sensitive data” and “sensitive dissemination”, protection of personal rights, right to privacy, right to protection of property:

Article 3(8) of the proposed directive defines the term “sensitive dissemination”. However, the draft does not contain a definition of “sensitive data”, nor is such a definition to be found in the Data Protection Directive (95/46/EC) referred to in recital (22). A definition of the term is, however, contained in the Austrian Data Protection Act from 2000, published in Federal Law Gazette I No. 165/1999 (section 4(2) and sections 8 and 9).

In the Commission staff working document accompanying the proposal, “Executive Summary of the Impact Assessment”, SWD (2014) 184 final, paragraph 6 “Monitoring and Evaluation” refers to the submission of statistics to the Commission on the “percentage of “non-sensitive” and “sensitive” requests (third bullet point) and to the “number of sensitive requests that are submitted for subsequent authorization (fifth bullet point).

As the term “sensitive data” is nowhere to be found in current EU data protection legislation, its meaning in this context is unclear. We therefore assume that “sensitive data”, as used in the third and fifth bullet points of the aforementioned accompanying document, is a contraction, meaning not “sensitive data” but data from “sensitive dissemination” (Article 7(2) of the proposed directive), which is subject to authorization under Article 8 of the proposed directive. This can also be derived from the sixth bullet point of the accompanying document.

For clarity's sake, we therefore propose that the reference to Union law on data protection be transferred from recital (22) to the main text of the proposed directive. Moreover, the term “sensitive data” in the third and fifth bullet points of the document accompanying the proposal should be replaced by “data from sensitive dissemination”. This would clarify that data pursuant to Article 8 of the Data Protection Directive and data from sensitive dissemination are completely different notions and that the term “sensitive data” is only used in national data protection law. At the same time, it would be clear that in the case of high-resolution satellite data concerning an identifiable natural person, i.e. personal data as defined in Article 2(a) of the Data Protection Directive, the provisions of EU data protection law apply.