

MEMORANDUM

to the European Parliament and the Council

from the EU Committee of the Austrian *Bundesrat*

pursuant to Article 23f(4) of the Austrian Constitution

– 8 October 2014 –

COM(2014) 344 final

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

The document COM(2014) 344 final concerning the Proposal for a Directive of the European Parliament and of the Council on the dissemination of Earth observation satellite data for commercial purposes was published by the European Commission on 17 June 2014.

The Proposal for a Directive seeks to promote and regulate the free circulation of earth observation data generated from earth observation systems while preserving the security interests of the Member States. Data from the Copernicus and Global Monitoring for Environment and Security systems are excluded from the scope of the proposed legislation.

For the dissemination of high resolution satellite data, the Proposal for a Directive lays down screening and authorisation procedures which Member States must implement when data of this kind are generated by earth observation systems operated from their territory. The free circulation of high resolution satellite data authorised and supervised in another Member State must not be impeded. Moreover, the Member States are required to designate the competent national authorities responsible for the application of the Directive.

On the basis of comments made by the City of Vienna authorities, the EU Committee in the *Bundesrat* would draw attention to the following two problem areas:

1. "Voluntary use of satellite data"

The aim of the Proposal for a Directive is to develop an internal market for high-resolution satellite data and related products and services, in particular in the context of standardised use of satellite data by the EU Member States. In the view of the province of Vienna, however, this must not mean that every Member State within its constitutional structure is compelled to purchase the satellite data covered by the Proposal for a Directive or to use it for particular purposes (including EU purposes), especially as the aerial photographs used by the Viennese authorities for digital map series are more accurate than the satellite data covered by the Proposal for a Directive. A twin-track approach to the use of different data sources for different data applications would create extra work. Moreover, if the province of Vienna were to give up using the data material which it prefers to use, this would reduce the quality of a large number of data applications which are based on its digital map series and are recognised internationally.

In order to prevent the province of Vienna from incurring unnecessary extra expenditure, the negotiations at EU level should ensure that every Member State within its constitutional structure continues to be allowed to work with its own data and is not obliged to use the satellite data covered by the Proposal for a Directive. The information required by the European Commission could then be derived from the Member States' own data and made available.

Consideration should also be given to making satellite data intended for free circulation and use by the administrations of the Member States available as open data.

2. Data protection issues concerning "sensitive data" and "sensitive dissemination", as well as protection of privacy, the right to privacy and the right to the protection of property:

Although the Proposal for a Directive includes a definition of the concept of "sensitive dissemination" in Article 3(8), it does not contain a definition of the concept of "sensitive data". Nor is a definition of "sensitive data" to be found in the Data Protection Directive (Directive 95/46/EC) referred to in recital (22) of the Proposal for a Directive. A definition of this concept is only available in the Austrian Data Protection Act 2000 [*Bundesgesetz über den Schutz personenbezogener Daten (Datenschutzgesetz 2000 - DSG 2000)*] / Federal Act on the Protection of Personal Data (Data Protection Act 2000)], Federal Law Gazette (*BGBI.*) I No 165/1999 (§ 4(2), § 8 and § 9).

In the document accompanying the Proposal for a Directive ("Executive Summary of the Impact Assessment", SWD(2014) 184 final), point 6 "Monitoring and Evaluation" makes provision for statistics to be provided to the Commission on the "percentage of "non-sensitive" and "sensitive" requests" (third indent) and the "number of sensitive requests that are submitted for subsequent authorisation" (fifth indent).

This raises the question of what is meant by the expression "sensitive data", which does not appear in current EU legislation on data protection. Given the context, the expression "sensitive data" in the third and fifth indents of point 6 of the above-mentioned document accompanying the Proposal for a Directive can only be a kind of shorthand. Therefore what is being referred to is not "sensitive data" but data from "sensitive dissemination" (Article 7(2) of the Proposal for a Directive), which are subject to authorisation under Article 8 of the Proposal for a Directive. This is also evident from the content of the sixth indent of point 6 of the accompanying document.

In order to create legal certainty, we would therefore propose that the reference to EU data protection legislation in recital (22) be moved to the prescriptive text of the Proposal for a Directive. The expression "sensitive data" in indents 3 and 5 of point 6 of the document accompanying the Proposal for the Directive should also be replaced with the expression "data from sensitive dissemination". This will make it clear that the data referred to in Article 8 of the Data Protection Directive and the data from sensitive dissemination are completely different things and that the concept of "sensitive data" continues to be confined to national legislation on data protection. On the other hand, this would also make it absolutely clear that high resolution satellite data concerning a particular natural person (i.e. personal data within the meaning of Article 2(a) of the Data Protection Directive) are subject to the provisions of EU legislation on data protection.