



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 17 June 2014
(OR. en)**

11002/14

**Interinstitutional File:
2014/0176 (COD)**

**ESPACE 57
COMPET 417
IND 187
MI 497
CSDP/PSDC 369
CSC 138
TRANS 326
RECH 304
CODEC 1494**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 June 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2014) 344 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the dissemination of Earth observation satellite data for commercial purposes

Delegations will find attached document COM(2014) 344 final.

Encl.: COM(2014) 344 final



EUROPEAN
COMMISSION

Brussels, 17.6.2014
COM(2014) 344 final

2014/0176 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the dissemination of Earth observation satellite data for commercial purposes

{SWD(2014) 184 final}

{SWD(2014) 185 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Commission Communication on the EU Space Industrial Policy from February 2013 “Releasing the potential for economic growth in the space sector”¹ identifies as one of the objectives for an EU space industrial policy the establishment of a comprehensive regulatory framework in order to improve legal coherence and foster the emergence of a European market for space products and services. In this context, the Communication refers in particular to the establishment of a possible regulatory initiative for the production and dissemination of high resolution satellite data for commercial purposes. The Council Conclusions of 30 May 2013 on the above mentioned Communication recognise the need to examine existing legal frameworks with a view to promote the security, safety, sustainability and economic development of space activities and invite the Commission to assess the need for the development of a space legislative framework in the context of ensuring the proper functioning of the internal market.

In line with the above, this proposal for a Directive treats the subject of dissemination of Earth observation satellite data within the Union for commercial purposes, and in particular the issue of defining and controlling high resolutions satellite data (HRSD), as a distinct category of data requiring a differentiated regulatory regime when it is disseminated for commercial purposes. The proposal seeks to secure the proper functioning and development of the internal market for high resolution satellite data products and services by establishing a transparent, fair and consistent legal framework across Member States. This Directive is necessary, as there are no express guarantees on the EU legal level that the dissemination of satellite data by commercial operators should be free and unrestricted within the Union, except dissemination of data that could be defined as high resolution satellite data, which should be controlled due to the higher potential risk that its unauthorized handling can entail. Furthermore, there is no common approach on the national regulatory level for the treatment of high resolution satellite data and for services and products deriving from this data. This leads to a fragmented regulatory framework across Europe, characterised by a lack of coherence, transparency and predictability which therefore hinders the market from developing to its full potential. In addition, as the number of Member States with high resolution data capacities is increasing it is likely to aggravate further the problem of fragmentation of the applicable regulatory framework, thus creating new barriers on the internal market and greater obstacles to competitiveness.

To overcome these problems this proposal will lead to an approximation of the Member States’ legislation in the domain of the dissemination satellite data to ensure coherence. It will help to reduce bureaucratic barriers for the industry and ease the efforts necessary to comply with legislative requirements. Business predictability will improve as there are clearer conditions for the establishment and operation of businesses. Business losses that may arise from the lack of clear and predictable conditions for data acquisition will be reduced and new business opportunities can be realised. There will be significant positive effects for the establishment and operation of high resolution satellite data providing businesses and for data sales.

¹ COM(2013)108 final

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Over a period of almost two years, the Commission has, directly or through external consultants, consulted all institutional actors in the Member States, and a wide range of actors in the value chain involved in space and geospatial activities on issues related to this proposal.

Two studies commissioned by the Commission from external consultants have analysed the existing regulatory framework regarding HRSD and were used as input to the Commission's impact assessment alongside other sources. The studies identified divergent rules and approaches to the dissemination of HRSD.

Experts from Germany and France, the only Member States, who have enacted specific legislation in this domain for the regulation of their HRSD technical capabilities so far, provided the Commission with details of the dedicated regulatory systems implemented in their countries. At the same occasion, they were favourable the idea of a common EU framework. A workshop with space legal experts was organised in March 2012 and confirmed that there is a fragmented regulatory framework for satellite data across Europe. Between March 2012 and October 2013, the Commission presented its reflections on HRSD to the Space Policy Expert Group (SPEG) which is made up of national space experts, a number of times. The issues and the options for a regulatory intervention were discussed.

A consultation of stakeholders consisting of an online questionnaire targeted to data resellers and a public hearing to solicit the views of data providers and data resellers was carried out in June and July 2013.

The main conclusions of these consultations can be summarised as follows:

- Industry representatives and in particular data resellers confirm that the existing framework for the distribution of satellite data and in particular HRSD lacks transparency, predictability and does not guarantee equal treatment and therefore prevents the market from developing to its full potential. A large majority consider that action to address this situation would improve the business environment.
- Overall Member States are open to the adoption of a common EU approach dealing with dissemination of satellite data, providing express guarantees for the free circulation of low resolution one, and in particular to ensure an effective and integrated treatment of security and market issues regarding high resolution satellite data. The measures employed should be proportionate and ensure the necessary level of security. Member States have also stressed that the ultimate responsibility for security related decisions must stay with the national authorities.

The impact assessment accompanying this proposal identifies three policy options – in addition to the baseline scenario – that seek to achieve the objectives by setting up a framework for the handling and dissemination of Earth observation data in the European Union: Option 1 - Baseline scenario, Option 2 - Recommendations and guidelines, Option 3 - Basic legislative instrument and Option 4 - Extended legislative instrument.

The problems identified, including a lack of transparency, predictability and equal treatment stem from the absence of a common definition of high resolution satellite data, framework criteria to determine whether high resolution satellite data should be considered sensitive, clear authorisation procedures, free circulation guarantees and clear requirements to become a

HRSD data provider. All of these policy options, except the baseline scenario, would seek to address these issues. The difference between options 3 and 4 concerns the scope, with option 4 including a licensing element for acquiring a data provider's status that option 3 leaves to Member States.

Option 3 is the preferred option combining a good level of economic, strategic and social benefits with a high level of effectiveness and efficiency, while at the same time leaving as much room as possible for Member States for controlling the data-providing businesses in their territory.

3. LEGAL ELEMENTS OF THE PROPOSAL

Since the initiative foresees harmonization in order to ensure the proper establishment and functioning of the internal market, the proper legal basis for the directive is Art. 114 TFEU.

That treaty provision is applicable in general to two different types of situations:

- Where the legislation contributes to the elimination of likely obstacles to the exercise of fundamental freedoms;
- Where the legislation contributes to the removal of appreciable distortions of competition which are likely to arise from the diverse national rules.

The jurisprudence has set the practical standard for the scrutiny of the proposals under Art. 114 TFEU specifying that the measures promoted must be genuinely intended to improve the conditions for the establishment and functioning of the internal market, and could actually have that effect.²

The present proposal is in line with the requirements stemming from the use of Art. 114 TFEU, for the following reasons:

- First, with the express guarantees for the free circulation of low resolution satellite data it is clarified that any data falling outside the definition will be considered "business - ready", prone for free dissemination without delay enabling the unhindered business cycles (Article 5);
- Second, with the establishment of common technical parameters of HRSD (Article 4) it will be possible to set up a common scope of application of the advanced legal regime and to delimit the internal market of HRSD, as a specific component of the Earth Observation market. Further, the clarification as to which kind or quality of satellite data could possibly harm security interests; and which therefore needs to be disseminated with respect to certain conditions, allows the setting of the most appropriate procedural requirements to safeguard the public;
- Third, by enhancing the coherence, transparency and predictability of the regulatory framework this directive aims to remove/prevent obstacles of national jurisdictional nature to the free circulation of HRSD within the Union, in accordance with the screening, or authorisation modalities. It is foreseen that the dissemination of HRSD approved in accordance with this directive cannot be reassessed, impeded or

² Case C-380/03 Tobacco Advertising II [2006], ECR I-11573, paras. 80, 81.

restricted subsequently, as long as the dissemination is in compliance with the screening or authorisation conducted (Article 6(3));

- Fourth, aiming at positive integration, the present proposal provides for the basic procedures for the dissemination of HRSD, promoting the equal and non-discriminatory treatment of all EU data resellers by data providers, preventing likely distortions of competition, and additionally enhancing the market opportunities available in the domain of the HRSD (Article 7 and Article 8).

The regulatory approach chosen for the proposal is that of partial harmonization. It confirms the principle of free circulation for satellite data with low resolution, but targets only a limited number of key regulatory elements of the national HRSD legislations which are sufficiently well elaborated to allow for alignment.

Therefore the intended approximation of laws is limited, respecting the principles of subsidiarity and proportionality (Art. 5(3) and (4) TEU).

More specifically,

- In terms of subsidiarity, the proposal establishes the Union dimension by a common approach towards satellite data dissemination within the Union, and a distinction between low resolution and high resolution satellite data, on the basis of the proposed technical definitions. The proposal establishes as well a common, transaction- and metadata-based approach for the assessment of the dissemination of high resolution satellite data and transparent procedures, while leaving all the unregulated issues to the national MSs to settle in accordance with national regulatory traditions (like licensing and control of data providers for example);
- In terms of proportionality – through the careful selection of the regulatory elements to be aligned, the proposal ensures that the Union action will be proportionate to the problems identified, and that the measures prescribed are in fact the most suitable for the achievement of the objectives laid down in Article 1 of the proposed Directive.

Taking into account the fact that, for a number of operational issues the national legislation is adequate and that, at the same time legitimate security interests of the Member States can allow for some divergence in the national legislation, it has been reasoned that a regulation, completely replacing the existing national legislation with an all-encompassing Union regime is neither justified nor desired by the Member States.

Consequently, a directive would guarantee the required legislative flexibility to limit the regulatory action to the harmonisation of only the most relevant and sufficiently articulated core regulatory elements of the regime for commercialization of the Earth observation satellite data.

4. BUDGETARY IMPLICATION

The proposal does not have implications on the operational budget. The enclosed Financial Statement indicates the specific budgetary impact.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the dissemination of Earth observation satellite data for commercial purposes

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Commission Communication of 28 February 2013 ‘EU Space Industrial Policy - Releasing the potential for economic growth in the space sector’⁴ identifies as one of the objectives for an EU space industrial policy the establishment of a coherent regulatory framework in order to improve legal coherence and foster the emergence of a Union market for space products and services. In this context, the Communication refers in particular to the establishment of a possible regulatory initiative for the production and dissemination of high resolution satellite data for commercial purposes.
- (2) The Council Conclusions of 30 May 2013 on the Communication on the EU Space Industrial Policy recognise the need to examine existing legal frameworks with a view to ensuring the security, safety, sustainability and economic development of space activities and welcomed the Commission’s intention to assess the need for the development of a space legislative framework in the context of ensuring the proper functioning of the internal market, while respecting the principle of subsidiarity.

³ OJ C , , p. .

⁴ COM(2013) 108 final.

- (3) The Commission Delegated Regulation (EU) No 1159/2013⁵ allows for this Directive to exclude GMES and Copernicus dedicated data from its scope.
- (4) The dissemination of high resolution satellite data by commercial operators has until now been regulated individually by the Member States where they are registered.
- (5) There has been no common approach at the national regulatory level for the treatment of high resolution satellite data and for services and products deriving from these data. This leads to a fragmented regulatory framework across the Union, characterised by a lack of coherence, transparency and predictability, which was therefore preventing the market from developing to its full potential.
- (6) The number of Member States with high resolution satellite data capabilities is increasing, and national regulatory frameworks become more and more diverged. As a consequence, the fragmentation of the regulatory framework creates new barriers for the internal market and greater obstacles to competitiveness.
- (7) To overcome those problems, this Directive should ensure the proper functioning and development of the internal market for high resolution satellite data and derivative products and services by establishing a transparent, fair and consistent legal framework across the Union. The approximation of the Member States' legislation in the field of dissemination of high resolution satellite data to ensure coherence as regards of the procedures to control its dissemination should reduce bureaucratic barriers for industry and ease the compliance with legislative requirements. This Directive will enhance business predictability as there would be clearer conditions for the establishment and operation of businesses.
- (8) A functioning internal market for high resolution satellite data and derivative products and services would foster the development of a competitive Union space and services industry, maximise opportunities for Union enterprises to develop and provide innovative earth observation systems and services, and promote the use of high resolution satellite data. Therefore, a common Union standard for high resolution satellite data is needed, which also reflects the risks from the inadvertent release of high resolution satellite data.
- (9) In order to introduce a common Union standard for high resolution satellite data a definition of high resolution satellite data should be provided for which is based on the technical capabilities of the Earth observation system, of its sensors and of the sensor modes which are used to generate the Earth observation data. The technical capabilities of the Earth observation system, its sensors and sensor

⁵ Commission Delegated Regulation (EU) No 1159/2013 of 12 July 2013 supplementing Regulation (EU) No 911/2010 of the European Parliament and of the Council on the European Earth monitoring programme (GMES) by establishing registration and licensing conditions for GMES users and defining criteria for restricting access to GMES dedicated data and GMES service information (OJ L 309, 19.11.2013, p. 1).

modes that should be taken into account, are the spectral resolution, the spectral coverage, the spatial resolution, the radiometric resolution, the temporal resolution and the positional accuracy. The definition should be based on the availability of similar Earth observation data on the global markets and should be based on the potential prejudice to the interests, including internal and external security interests, of the Union or of the Member States which can derive from the dissemination of the Earth observation data. This definition also allows the identification of Earth observation satellite data other than high resolution data and is the basis for guaranteeing the free circulation for this data based on the fact that they do not have the potential to cause prejudice to the afore-mentioned interests.

- (10) The possibility to assess all relevant variables in the dissemination of high resolution satellite data should allow for a precise assessment which promotes the use of high resolution satellite data and thus creates maximum commercial advantages for the businesses involved. An assessment of the dissemination is more efficient in terms of security than an assessment based only on the high resolution satellite data itself.
- (11) The screening of high resolution satellite data at its first entry on the market in a dedicated screening procedure should guarantee the promotion of the use of high resolution satellite data and the strengthening of Earth observation markets in the Union while preventing prejudice to the interests of the Union or of one or more Member States. The criteria for the screening procedure should take into account all relevant factors of the dissemination of high resolution satellite data in order to ensure that the Member States can set up the most appropriate conditions by the specification of those criteria and by combining the resulting standards within the most suitable procedure. The criteria should describe the metadata of the envisaged dissemination, which ensures, that the screening can be done without assessing the high resolution satellite data itself and therefore can be done prior to the generation and the dissemination of the data. In particular through its transparency and its capacity to deliver clear results allowing a fast and automatic implementation, thereby making it an efficient filtering system, the screening procedure should foster the commercial use of the high resolution satellite data and the businesses involved.
- (12) In order to ensure that business and administrative needs can be met the most effective and efficient way, Member States may allow for the screening procedure to be carried out by the data provider himself or by any other appropriate private entity.
- (13) While certain criteria and operational rules for the screening procedure should render possible dissemination of high resolution satellite data in the vast majority of cases, there would still be a need for an authorisation procedure which should, on a case-by-case basis, carry out an in-depth assessment considering all circumstances of the individual case, in order to foster the dissemination of high

resolution satellite data. This Directive lists the interests, on which a refusal might be based.

- (14) In view of the administrative procedures established in the Member States to comply with this Directive and in particular in view of the authorisation procedure Member States should respect the administrative due process.
- (15) In order to ensure free circulation of high resolution satellite data which was generated from Earth observation systems operated from third countries this Directive provides conditions under which Member States should not prohibit, restrict or impede free circulation of that data.
- (16) In order to keep up with technological developments and the availability on the global markets of high resolution satellite data there is provision on the regular review of this Directive.
- (17) In order to allow the Commission to monitor the implementation process, Member States should be required to provide the Commission with the necessary information to assess the evolution of the Union market of high resolution satellite data.
- (18) This Directive does neither affect the competence of Member States in the field of foreign policy and national security, nor should it be interpreted in a way as to prevent Member States from exercising their competence in this field and from taking into account the security and foreign policy interests of the Union.
- (19) The provisions of this Directive should be without prejudice to the application of the general rules on contractual law, and any other relevant law in other areas including competition law, intellectual or industrial property rights, confidentiality, trade secrets, privacy and consumer rights.
- (20) Directive 2006/123/EC of the European Parliament and of the Council⁶ should apply to the service of the dissemination of high resolution Earth observation satellite data for commercial purposes. In the event of a conflict between a provision of Directive 2006/123/EC and this Directive, the provisions of this Directive shall prevail.
- (21) This Directive should not apply to any service provided between the satellite operator and the data provider that enables the latter to have access to high resolution satellite data. As far as the data provider provides a service to Earth observation system, the award of the respective contract to the data provider has to comply with applicable public procurement legislation.

⁶ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

- (22) Union legislation concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data, in particular Directive 95/46/EC of the European Parliament and of the Council⁷ and Regulation (EC) No 45/2001 of the European Parliament and of the Council⁸ of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data are applicable.
- (23) Since the objective of this Directive, namely the ensuring of the functioning of the internal market of Earth observation data, cannot be sufficiently achieved by the Member States, as evidenced by the divergences and fragmentation of the existing national regulation, but can rather, by reason of reducing bureaucratic barriers and improving conditions for businesses, be better achieved at Union level, it is proportionate to adopt Union level measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (24) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents⁹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified;

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Purpose and Subject matter

- (1) The purpose of this Directive is to establish the internal market for Earth observation data through harmonisation of certain rules for their dissemination.
- (2) For the purpose set out in paragraph 1, this Directive lays down rules and procedures concerning the dissemination of Earth observation satellite data.

⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

⁸ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.01.2001, p.1).

⁹ OJ C 369, 17.12.2011, p. 14.

Article 2

Scope

- (1) This Directive shall apply to the dissemination of Earth observation data generated by Earth observation systems.
- (2) This Directive shall not affect the dissemination of Earth observation data generated by the Earth observation systems which are:
 - (a) GMES dedicated data according to the Commission¹⁰ delegated Regulation (EU) No 1159/2013 and Regulation (EU) No 911/2010 of the European Parliament and of the Council¹¹ and being subject to the respective data and information policy;
 - (b) Copernicus dedicated mission data according to [COM NB]¹² and Regulation (EU) No 377/2014 of the European Parliament and of the Council¹³ and being subject to the Copernicus data and security policy.
- (3) This Directive shall not apply to the dissemination of satellite data referred to in paragraph 1 where such dissemination is carried out by or on behalf of and supervised by the Union or one or more Member States and is for the purposes of security and defence.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) ‘Earth observation system’ means an orbital transport system, a satellite or a constellation of satellites which by using one or more sensors is capable of generating Earth observation data;
- (2) ‘Earth observation data’ means data processed from signals generated by one or more sensors of an Earth observation system as well as information derived

¹⁰ Commission Delegated Regulation (EU) No 1159/2013 of 12 July 2013 supplementing Regulation (EU) No 911/2010 of the European Parliament and of the Council on the European Earth monitoring programme (GMES) by establishing registration and licensing conditions for GMES users and defining criteria for restricting access to GMES dedicated data and GMES service information (OJ L 309, 19.11.2013, p.1).

¹¹ Regulation (EU) No 911/2010 of the European Parliament and of the Council of 22 September 2010 on the European Earth monitoring programme (GMES) and its initial operations (2011 to 2013) (OJ L 276, 20.10.2010, p.1).

¹²
¹³ Regulation (EU) No 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010 (OJ L 122, 24.04.2014, p.44).

therefrom, regardless of their degree of processing and their type of storage or representation;

- (3) 'high resolution satellite data' means Earth observation data as defined in Article 4;
- (4) 'data provider' means a natural or legal person who has, directly or via the operator of an Earth observation system, access to high resolution satellite data which has not undergone the screening and authorisation procedures set out in Article 7 and Article 8 and disseminates it upon request of its customer or by his own initiative;
- (5) 'sensor' means a part of an Earth observation system which records electromagnetic waves of any spectral range or gravitational fields generating Earth observation data;
- (6) 'sensor mode' means the way one or multiple sensors generate Earth observation data with regard to a specific acquisition of Earth observation data;
- (7) 'dissemination' means the action whereby high resolution satellite data, generated by Earth observation, is made accessible to any third party by a data provider;
- (8) 'sensitive dissemination' means dissemination which could cause varying degrees of prejudice to the interests, including internal and external security interests, of the Union or of the Member States.

Article 4

Definition of high resolution satellite data

High resolution satellite data is defined on the basis of precise technical specifications. These technical specifications are set out in the Annex.

Article 5

Dissemination of Earth observation data

Member States shall not prohibit, restrict or otherwise impede the dissemination or free circulation of other than high resolution satellite data for reasons of the dissemination being considered sensitive.

Article 6

Dissemination of high resolution satellite data

- (1) Member States shall ensure that no dissemination of high resolution satellite data generated by an Earth observation system operated from the territory of a

Member State is carried out in their territory without the appropriate monitoring by the competent national authorities.

- (2) Member States shall ensure, where there is a data provider in their territory that the dissemination of the data referred to in paragraph 1 is carried out in compliance with the screening and the authorisation procedures set out in Article 7 and Article 8.
- (3) Member States shall not prohibit, restrict or impede the free circulation of high resolution satellite data for reasons of the dissemination being considered sensitive, where that dissemination has been approved in accordance with the procedures set out in Article 7 and Article 8.

Article 7 **Screening procedure**

- (1) Member States shall ensure that in their territory any dissemination of the data set out in Article 6(1) is subject to a screening procedure.
- (2) The screening procedure shall determine whether the dissemination is non-sensitive and can be carried out without further authorisation, or whether the dissemination is considered sensitive and requires an authorisation in accordance with Article 8.
- (3) The screening procedure shall enable a metadata-based ex-ante examination and shall consist of the examination of the following criteria with regard to the envisaged dissemination:
 - (a) the identity of the party requesting the Earth observation data;
 - (b) the persons and the categories of persons who may have access to the Earth observation data;
 - (c) the characteristics of the information represented by the Earth observation data obtained as a result of the sensor operation and processing mode;
 - (d) the target area represented by the Earth observation data;
 - (e) the Earth observation data generation time and the time delay between the data generation and the envisaged dissemination;
 - (f) the ground receiving stations to which the Earth observation data is to be transmitted from the satellite.
- (4) Member States shall specify the criteria set out in paragraph 3 and shall establish the operational rules how to combine them in the screening procedure. The

specification of the criteria and the operational rules shall be made based on the following:

- (a) the availability of similar Earth observation data on the global markets;
 - (b) the potential prejudice to the interests, including internal and external security interests, of the Union or of the Member States which can derive from the dissemination of the Earth observation data.
- (5) Member States shall ensure that the criteria and the operational rules are publicly available, are specified and established in a non-discriminatory manner and do not provide for discretion as to whether the dissemination is deemed to be sensitive or non-sensitive.
- (6) Member States shall determine the appropriate private or public entity responsible to carry out the screening procedure. This entity shall notify the result of the screening procedure to the requesting party without undue delay.

Article 8 *Authorisation procedure*

- (1) Member States shall establish an authorisation procedure whereby dissemination which is considered sensitive in accordance with the screening procedure set out in Article 7 may be authorised by the competent national public authority.
- (2) For the purposes of paragraph 1, the data provider interested in a sensitive dissemination shall submit an application to the competent national authority.
- (3) The competent national authority may refuse the request for an authorisation of the dissemination of high resolution satellite data if it considers that the dissemination could undermine any of the following:
- (a) the essential security interests of the Union or a Member State;
 - (b) the fundamental foreign policy interests of the Union or a Member State;
 - (c) the essential public security interests of the Union or a Member State.
- (4) If the competent national authority determines that none of the grounds referred to in paragraph 3 for refusing the request is applicable, it shall authorise the dissemination in question.
- (5) When authorising the request, the competent national authority may impose certain conditions in order to ensure compliance with the objectives laid down in paragraph 3. Any such condition shall be based on objective criteria and shall not be discriminative.

- (6) When authorising the request, the competent national authority may decide to consult the competent national authority of the Member State which is concerned by the first dissemination of the high resolution satellite data.
- (7) Member States may authorise in a single administrative procedure the dissemination of data at regular intervals or representing large target areas.
- (8) Member States shall ensure that the competent national authority takes the decision referred to in paragraph 3 as soon as possible and within seven days at the latest after receiving the application referred to in paragraph 2. The competent national authority shall notify that decision to the data provider.
- (9) Member States shall provide for a possibility to appeal the decision of the competent national authority referred to in paragraphs 3 and 5.
- (10) Member States may impose charges for the requests referred to in paragraph 2 as long as these are reasonable and proportionate to the costs of the authorisation procedure for the competent national authority.

Article 9

High resolution satellite data from third countries

Member States shall not prohibit, restrict or impede the free circulation of high resolution satellite data generated from Earth observation systems operated from third countries for reasons of being considered sensitive, where the circulation of the high resolution satellite data has been authorised and is subject to effective supervision by the competent national authority of the Member State where the data provider, which is disseminating high resolution satellite data from a third country, is established.

Article 10

Competent national authorities

- (1) Member States shall designate a competent national authority or competent national authorities responsible for the application of this Directive.
- (2) The competent national authority for the purposes of Article 8 shall be the competent national authority of the Member State where the data provider is established.

Article 11

Reporting by Member States

- (1) Member States shall notify the following information to the Commission:

- (a) a list of the Earth observation systems generating high resolution satellite data that are operated from their territory and respective satellite operator;
 - (b) a list of the data providers in their territory;
 - (c) the designated competent national authorities referred to in Article 10.
- (2) Member States shall transmit to the Commission on an annual basis statistical information on the screening procedure referred to in Article 7 and the authorisation procedure in Article 8, including the following information:
- (a) the overall number of the data transactions screened;
 - (b) the percentage of screening procedures delivering non-sensitive dissemination and sensitive dissemination as a result;
 - (c) the percentage of parties requesting the Earth observation data according to Article 7(3)(a) from domestic, intra-Union cross-border and non-Union;
 - (d) the overall number of applications for authorisation;
 - (e) the percentage of denials of authorisation for dissemination.
- (3) Member States shall make the information referred to in paragraphs 1 and 2 available in an electronic format.

Article 12 **Review**

The Commission shall submit to the European Parliament and to the Council a report on the implementation of this Directive within three years from the expiry of the transposition period provided for in Article 13.

Article 13 **Transposition**

- (1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2017 at the latest. They shall forthwith communicate to the Commission the text of those provisions.
- (2) When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- (3) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 14
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 15
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

SIMPLIFIED FINANCIAL STATEMENT

(to be used for any internal Commission decision of general significance with a budgetary impact on appropriations of an administrative nature or on human resources, when use of any other type of financial statement is not appropriate – Article 27 of the Internal Rules)

1 Title of draft decision:

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the dissemination of Earth observation satellite data for commercial purposes

2 Policy area(s) and ABB activity(ies) concerned:

Policy areas: Space and internal market. ABB: Human resources and other administrative expenditure.
--

3 Legal basis

Administrative autonomy X Other (specify): Art. 114 TFEU

4 Description and grounds:

In line with the Commission Communication on the EU Space Industrial Policy from February 2013 “Releasing the potential for economic growth in the space sector” DG ENTR drafted a proposal for a Directive on the dissemination of Earth observation satellite data for commercial purposes. The Directive seeks to ensure the proper functioning and development of the internal market commercial satellite data products and services by establishing a transparent, predictable, fair and coherent legal framework across Member States.

5 Duration and estimated financial impact:

5.1 Period of application:

- Decision with a limited duration: decision in force from [date] to [date]
X Decision with an indefinite duration: in force from 01.01.2015

5.2 Estimated budgetary impact:

The draft decision entails:

- savings
X additional costs (if so, specify the heading(s) of the multiannual financial framework concerned): **Heading 5**

Complete the estimated financial impact table in the annex for appropriations of an administrative nature or for human resources. If the draft decision is of indefinite

duration, the costs must be indicated for each year of development and then for each year of operation at full capacity (in the column "Total/annual cost").

5.3 Third-party contributions to the financing of the draft decision:

If the proposal provides for co-financing by Member States or other bodies (please specify which), you should give an estimate of the level of co-financing, if known.

appropriations in EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5	Year n+6	Total
Specify cofinancing source/body								
TOTAL appropriations cofinanced								

5.4 Explanation of figures:

Average staff costs are shown at the foot of page http://www.cc.cec/budg/pre/legalbasis/pre-040-020_preparation_en.html

The proposal does not have budgetary implications in terms of operational appropriations or appropriations for administrative execution. The budgetary implications are limited to human resources and other administrative expenditure incurred by the Commission to ensure the implementation of its obligations under the proposed legal instrument, i.e. monitoring, evaluation and, if appropriate, revisions or updates of the legislative acts. In total, the budgetary implications are very minor and will be limited to approx. 0.3 M € during MFF 2014 – 2020.

6 Compatibility with the current multiannual financial framework:

- The proposal is compatible with existing financial programming.
- The proposal will entail reprogramming of the relevant heading in the multiannual financial framework.
- The proposal requires use of the flexibility instrument or revision of the multiannual financial framework¹⁴.

7 Impact of savings or additional costs on the allocation of resources:

- Resources to be obtained by means of internal redeployment within departments
- Resources already allocated to the department(s) concerned
- Resources to be requested during the next allocation procedure

¹⁴ See points 19 and 24 of the Interinstitutional Agreement for the period 2007-2013.

The human and administrative resources required will be covered by the allocation which may be granted to the managing DG under the annual allocation procedure in the light of existing budgetary constraints.

ANNEX:

ESTIMATED FINANCIAL IMPACT (savings or additional costs) FOR APPROPRIATIONS OF AN ADMINISTRATIVE NATURE OR FOR HUMAN RESOURCES

FTE in persons/year	Year N (2014)		Year n+1		Year n+2		Year n+3		Year n+4		Year n+5		Year n+6		Total	
	FT	E	FT	E	FT	E	FT	E	FT	E	FT	E	FT	E		
	approp.		approp.		approp.		approp.		approp.		approp.		approp.			
Heading 5																
Establishment plan posts (officials and/or temporary staff)																
XX 01 01 (Headquarters and Commission's Representation Offices)							0.25	0.033	0.25	0.033	0.25	0.033	0.25	0.033	1 AD	0.132
XX 01 01 02 (Delegations)																
External staff																
XX 01 02 01 (Global envelope)																
XX 01 02 02 (Delegations)																
Other budget lines (specify)																
Subtotal – Heading 5							0.25	0.033	0.25	0.033	0.25	0.033	0.25	0.033	1	0.132
Outside Heading 5																
Establishment plan posts (officials and/or temporary staff)																
XX 01 05 01 (Indirect research)																
10 01 05 01 (Direct research)																
External staff																
XX 01 04 yy																
- Headquarters																
- Delegations																
XX 01 05 02 (Indirect research)																

EUR million (to 3 decimal places)

XX is the policy area or title concerned

FTE=Full-Time Equivalent

Other administrative appropriations XX is the policy area or title concerned EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5	Year n+6	TOTAL
Heading 5								
Headquarters:								
XX 01 02 11 01 - Mission and representation expenses				0.004	0.004	0.004	0.004	0.016
XX 01 02 11 02 - Conference and meeting costs								
XX 01 02 11 03 - Committees								
XX 01 02 11 04 - Studies and consultations							0.15	0.15
XX 01 03 01 03 – ICT equipment ¹⁵								
XX 01 03 01 04 – ICT services ²								
Other budget lines (specify where necessary)								
Delegations:								
XX 01 02 12 01 – Missions, conferences and representation expenses								
XX 01 02 12 02 - Further training of staff								
XX 01 03 02 01 – Acquisition, renting and related expenditure								
XX 01 03 02 02 Equipment, furniture, supplies and services								
Subtotal – Heading 5				0.004	0.004	0.004	0.154	0.166
Outside Heading 5								
XX 01 04 yy – Expenditure on technical and administrative assistance (not including external staff) from operational appropriations (former 'BA' lines)								
- Headquarters								
- Delegations								
XX 01 05 03 - Other management expenditure for indirect research								
10 01 05 03 - Other management expenditure for direct research								

¹⁵

ICT: Information and Communication Technologies

Other budget lines (specify where necessary)										
Subtotal – Outside Heading 5										
GRAND TOTAL		0.037	0.037	0.037	0.037	0.037	0.187	0.298		

The human and administrative resources required will be covered by the allocation which may be granted to the managing DG under the annual allocation procedure in the light of existing budgetary constraints.