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NOTE

From: Presidency

To: Permanent Representatives Committee

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Subject: Proposal for a Directive of the European Parliament and the Council on the dissemination of Earth observation satellite data for commercial purposes
- Guidance for further work

I. INTRODUCTION

1. On 17 June 2014, the Commission adopted the proposal for a Directive of the European Parliament and the Council on the dissemination of Earth observation satellite data for commercial purposes¹, with a legal basis in Article 114 of the Treaty on the Functioning of the European Union (TFEU).

¹ Doc. 11002/14+ADD1+ADD2+ADD3

2. The dissemination of high resolution satellite data by commercial operators is regulated individually by the Member States where they are registered. There is not a common approach at the national regulatory level for the treatment of high resolution satellite data and for services and products deriving from these data. The number of Member States dealing with high resolution satellite data is likely to increase in the future.
3. The aim of the Commission's proposal is to ensure the proper functioning and development of the internal market of Earth observation satellite data for commercial purposes by establishing a transparent, fair and consistent legal framework across Member States. This proposal would apply to the dissemination of Earth observation data generated by Earth observation systems.
4. However, on 16 December 2014, the Commission adopted its Work Programme for 2015 and included the Proposal in its list² of existing pending proposals which the Commission proposes to withdraw or amend for political or technical reasons, in this case "If not agreed in six months withdraw and replace by a new initiative". However, it seems unclear what precisely "if not agreed" implies and when exactly the six months deadline is due.

II. WORK WITHIN THE COUNCIL

5. Under the Hellenic Presidency, the Proposal was presented at the SPACE Working Party (SPACE WP) meeting on 23 June 2014.
6. Under the Italian Presidency, three meetings of the SPACE WP were dedicated to the analysis of the Impact Assessment (IA) of the Proposal, following requests by several Member States as well as to follow-up from the 2014 Annual report on Impact Assessment within the Council³ and the recommendations of Coreper⁴. These discussions identified a need for further information, justification and explanations by the Commission on some general as well as specific issues, related to the IA.

² doc. 5080/15 ADD 2

³ doc. 10882/14

⁴ doc. 8406/13

7. Following a number of concerns expressed by several Member States against the starting of the analysis of the legislative text by the SPACE WP at that stage, the Permanent Representatives Committee at its meeting on 17 October 2014 was called to give its political guidance to the SPACE WP on further handling of the Proposal, and it invited the Commission to provide additional elements of information⁵ to integrate its Impact Assessment before the SPACE WP would start the analysis of the legislative text.
8. Under the Latvian Presidency the SPACE WP has met on 16 January and on 6 February 2015. At the first meeting, the Commission presented the additional elements of information to integrate its Impact Assessment and subsequently a non-paper with this additional information was distributed to the Member States. At the second meeting, and in subsequent written comments, a substantial number of delegations considered that the additional consultation undertaken by the Commission had failed to satisfactorily provide the additional elements of information as requested by the Permanent Representatives Committee at its meeting on 17 October 2014.

Member States expressed concerns with the additional information provided relate mainly to:

- the failure to provide additional evidence of significant and current obstacles hindering the functioning of the internal market and therefore of the appropriateness of the proposed legal basis;
- the lack of evidence-based justification that the proposed solution - Directive - will improve the functioning of the Internal Market; and its impact on SMEs;
- the persistence of the narrow scope of the additional consultations undertaken (in particular the lack of consultation of security experts, end users, etc.) and consequently poor problem definition;

⁵ Doc. 14038/14

- the unclear quantification of costs and poor economic analysis, in particular concerning the administrative costs of the transposition of the Directive for MS without high resolution Earth Observation (EO) capabilities, as well as for those MS having no legislation in place;
- the failure to properly address the existing regulatory regimes (both within and outside of Europe) and how they have impacted upon growth;
- the lack of an additional comparative analysis of options 2 (recommendation) and 3 (directive) of the IA as requested.

9. As a result of the above meetings, delegations' views could be summarised as follows:

- Several of these delegations expressed themselves against starting the analysis of the legislative text at the SPACE WP for the moment, and explicitly requested to go back to Coreper to ask for its political guidance;
- A minor number of delegations is unwilling to start the examination of the legislative proposal at all;
- A number of delegations, whilst acknowledging the shortfalls of the additional information, would not oppose to proceed directly with the discussion of the legislative text at the SPACE WP; some delegations however would request further clarifications from the Commission;
- A couple of delegations would like to proceed to the examination of the legislative text without further considerations or conditions attached.

10. As regards impact assessment and its role in Council work, the Interinstitutional Agreement on better law-making (2003/C 321/01) and the Inter-Institutional Common Approach to Impact Assessment of November 2005 (14901/05) set out a number of important general principles, in particular that the three institutions consider it essential that the assessment of the impacts of initiatives and substantive amendments is rigorous and comprehensive, and is based on accurate, objective and complete information. According to the Common Approach, it is also important to ensure that the analysis is proportionate and focuses on the proposal's aims and objectives. Moreover, the rigour, objectivity and comprehensive nature of the analysis should mean that the impact assessment is not a simple justification of the initiative or the substantive amendment.

The 2013 report on Impact Assessment within the Council (doc. 8406/13, par. 9) and the "Impact assessment handbook" (doc. 16024/14, section 6) provide general guidance on handling cases where the Commission is invited to complement its original impact assessment.

It is also important to recall that the Common approach to Impact Assessment provides that impact assessment must not lead to undue delays in the legislative process, nor be abused as an instrument for opposing undesired legislation or prejudice the legislator's capacity to propose amendments. Furthermore, the judgment of the Court of Justice in *Case C-343/09 Afton Chemical* held that a Commission impact assessment is not binding on either the Council or the Parliament, who, under the ordinary legislative procedure, are entitled to make amendments to a Commission proposal.

III. WAY FORWARD

11. On the basis of the above, it can be considered that so far the Commission has failed to provide convincing evidence in particular of the existence of a problem with the functioning of the Internal Market of Earth observation satellite data for commercial purposes. Against this background, the Presidency considers that the Commission needs to commit to provide new, relevant and thorough data on the problem the proposal is seeking to address, as a condition to progress on this file.

Timely delivery of such information is crucial in particular as the Commission has included this Proposal in the list of existing proposals which the Commission explicitly proposes to withdraw and replace by a new initiative if not agreed in six months.

In the light of all of the above and to facilitate a pragmatic solution based on the political will of all the parties involved, the Permanent Representatives' Committee is asked if it:

- a) agrees to proceed with the examination of the legislative proposal at the Working Party level and receive the Commission's pertinent information in parallel to the discussions at the SPACE WP, aiming to achieve progress which would also constitute a sufficient ground for the Commission to not withdraw this initiative; OR
- b) considers that the conditions are not in place for proceeding with the examination of the legislative proposal at the Working Party level, therefore concluding that it is neither feasible nor practical to examine this initiative, signalling to the Commission that the Council would support withdrawal and follow the way forward in line with the suggestion in the Commission's Work Programme.

12. Moreover, the Permanent Representatives Committee is invited to establish that, in case it agrees on the Working Party to proceed to the examination of the legislative proposal, it is for the Working Party to assess whether the new information in relation to the Impact Assessment is adequate and act accordingly.

IV. CONCLUSIONS

The Permanent Representatives Committee is invited to examine the options given above on further handling of the proposal for a Directive on the dissemination of Earth observation satellite data for commercial purposes, with a view to reach an agreement on the way forward.
