Chapter Six

EO in the European Union: Legal Considerations

Sa’id Mosteshar

I. Introduction

This chapter is concerned with satellite Earth observation (EO) information, and its use as evidence. It considers the relevant laws of some Member States of the European Union (EU). Jurisdictions discussed here are England and Wales,1 Germany,2 The Netherlands3 and Belgium,4 as representative of laws of Member States, both in civil and common law. EU laws, in so far as they relate to specific use of EO

---

1 The United Kingdom comprises three jurisdictions: England and Wales, Scotland and Northern Ireland. In many areas, particularly under statute, the laws in these jurisdictions are the same or very similar. Here the law stated is that of England and Wales (‘English law’).
2 This section draws substantially on the research of Ms Johanna Symmons, ISPL researcher, and her report prepared as part of the ESA Project conducted by the London Institute of Space Policy and Law on the use of EO information as evidence. The author is greatly indebted to Ms Symmons. The author alone is responsible for errors or omissions.
3 This section draws on the research of Tanja L Masson-Zwaan, Deputy Director, IIASL, Leiden University and Yeliz Korkmaz, researcher at IIASL, and their report prepared as part of the ESA Project conducted by the London Institute of Space Policy and Law on the use of EO information as evidence. The author is greatly indebted to them both. The author alone is responsible for errors or omissions.
4 This section draws on the research of Professor Frank Maes, School of Law, Ghent University and Sarah Moens, researcher at Ghent University, and their report prepared as part of the ESA Project conducted by the London Institute of Space Policy and Law on the use of EO information as evidence. The author is greatly indebted to them both. The author alone is responsible for errors or omissions.
information, are incorporated in the laws of Member States. Relevant Directives of the European Commission, underlying the municipal laws, are mentioned where appropriate.

Several factors affect the utility and use of EO information as evidence. Many of these relate to the reliability and admissibility of such information under the rules of evidence. Some are specific to the application for which they are used, affecting the nature of the facts that have to be established.

In many cases, the information must be specific to a time and location to be of use. Both these elements are established by the Global Positioning System (GPS), which provides time and location information. The rules affecting EO information apply equally to GPS, with the significant distinction that it has been so firmly integrated into the information system that its accuracy and reliability are not questioned. Further, the use of Automatic Identification Systems (AIS) by ships is a requirement under EU law.5

EO information is frequently used to detect or monitor conditions and activity.6 One area where the use of EO information is promoted is the verification of agricultural subsidy claims. Verification does not directly resolve a disputed claim, but is usually corroborated by inspections of the farm.

Monitoring is not the focus of this chapter, as it does not require the rigour demanded of legal evidence. However, there are some aspects of monitoring that are of interest in the broader context of this chapter. The monitoring exercise often leads to the gathering of evidence by other means, and to enforcement actions based on that evidence.7

---


7 In a written Answer to a Parliamentary Question on 29 April 2010, the UK Minister for Agriculture, Fisheries and Food stated that his Department in “delivering the Direct Payment Schemes, is required to carry out on-the-spot inspections on a