

II

(Non-legislative acts)

REGULATIONS

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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) ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

(1) GMES data and information policy should be consistent with other relevant Union policies, instruments and actions. In particular, it should be compliant with the requirements of Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) ⁽²⁾. This policy should respect the rights and principles recognized in the Charter of Fundamental Rights of the EU, in particular the right for private life, the protection of personal data, the right to intellectual property, the freedom of arts and science and the freedom to conduct business.

(2) GMES data and information policy should strongly contribute to the open data policy promoted by the Union, initiated by Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information ⁽³⁾ and reinforced by Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission docu-

ments ⁽⁴⁾ adopted in the context of the Commission Communication of 26 August 2010 entitled 'A Digital Agenda for Europe' ⁽⁵⁾.

(3) Registration and licensing conditions for GMES users should be established and criteria for restricting access to GMES dedicated data and GMES service information should be defined. The access conditions of other data and information used as inputs to GMES services should be defined by their providers.

(4) The Commission, in its Communication of 28 October 2009 entitled 'Global Monitoring for Environment and Security (GMES): Challenges and Next Steps for the Space Component' ⁽⁶⁾, indicated its intention to pursue the implementation of a free and open access policy for the Sentinels.

(5) Access to Sentinel data should be free, full and open, in line with the Joint Principles for a Sentinel Data Policy ⁽⁷⁾ adopted by the Programme Board for Earth Observation (PB-EO) of the European Space Agency.

(6) Third countries or international organisations contributing to the operations of GMES under Article 7 of Regulation (EU) No 911/2010 should have access to GMES dedicated data and GMES service information under the same conditions which apply to Member States.

(7) As indicated in recital 28 of Regulation (EU) No 911/2010, GMES should be considered as a European contribution to building the Global Earth Observation System of Systems (GEOSS). Therefore, the GMES open dissemination should be fully compatible with GEOSS data sharing principles.

⁽¹⁾ OJ L 276, 20.10.2010, p. 1.

⁽²⁾ OJ L 108, 25.4.2007, p. 1.

⁽³⁾ OJ L 345, 31.12.2003, p. 90.

⁽⁴⁾ OJ L 330, 14.12.2011, p. 39.

⁽⁵⁾ COM(2010) 245 final/2 of 26 August 2010.

⁽⁶⁾ COM(2009) 589 final.

⁽⁷⁾ ESA/PB-EO(2009)98, rev. 1.

- (8) To serve the objectives of GMES data and information policy stated in Article 9 of Regulation (EU) No 911/2010, users should be provided with the necessary authorisation to use GMES dedicated data and GMES service information to the fullest extent possible. Users should also be allowed to re-distribute GMES dedicated data and GMES service information, with or without modifications.
- (9) GMES dedicated data and GMES service information should be free of charge for the users to capitalise on the social benefits arising from an increased use of GMES dedicated data and GMES service information.
- (10) The GMES open dissemination policy may be reviewed and where necessary adapted, taking into consideration the needs of users, the needs of the Earth observation industry and technological developments.
- (11) In the interest of a wide distribution of GMES data and information, it is appropriate not to provide for any express or implied warranty, including as regards quality and suitability for any purpose.
- (12) The Commission should apply restrictions on the GMES open dissemination, where the free, full and open access to some GMES dedicated data and GMES service information would affect the rights and principles enshrined in the Charter of Fundamental Rights of the EU such as the right for private life privacy, the protection of personal data or intellectual property rights on data used as inputs in the production process of GMES services.
- (13) Where necessary, restrictions should protect the security interests of the Union, as well as the national security interests of the Member States. As far as national security interests are concerned, such restrictions should respect the obligations of Member States that have adhered to a common defence organisation under international treaties. The assessment of the sensitivity criteria for restricting the dissemination of GMES dedicated data and GMES service information should ensure the *ex-ante* clearance of security issues allowing for the uninterrupted delivery of GMES dedicated data and GMES service information.
- (14) The sensitivity criteria should capture the different parameters which are likely to constitute a risk for the security of the Union or its Member States. The threats to critical infrastructure, as defined under Article 2(a) of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection⁽¹⁾, should be taken into account as an important sensitivity criterion.
- (15) Where necessary, Member States should be able to request that restrictions be applied to the provision of specific GMES dedicated data and GMES service information. In examining such requests, or under its own initiative, the Commission should ensure an efficient and effective response to protect the security interests of the Union or the Member States, while striving for the least possible interruption of data and information flows to users.
- (16) GMES dissemination platforms may face technical limitations which could make it impossible for them to honour all the requests for data or information. In such exceptional circumstances, the technical accessibility of GMES dedicated data and GMES service information should be reserved to users from countries and international organisations contributing to the operations of GMES activities to ensure service continuity. Where appropriate, the benefit of the reservation of services should be made conditional upon some form of registration. Such reservation should not prevent those users who have obtained data or information benefiting from the reservation from exercising the rights granted under this Regulation, including the right to re-distribute such data or information.
- (17) Four levels of registration of users should be provided as regards the access to GMES dedicated data and GMES service information. First, in the interest of a wide use of GMES dedicated data and GMES service information, discovery and view services within the meaning of Article 11(1)(a) and (b) of Directive 2007/2/EC should be provided without registration. Secondly, it should be possible to require a light form of registration as regards download services within the meaning of Article 11(1)(c) of Directive 2007/2/EC. The registration process should not deter users from accessing the data and information, but it should be possible to use it to collect user statistics. Thirdly, an intermediate level of registration should allow the implementation of the reservation of access to certain groups of users. Fourthly, a strict registration procedure should be used to address the need to restrict access for security reasons requiring the unequivocal identification of the user,

⁽¹⁾ OJ L 345, 23.12.2008, p. 75.

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes

- (a) conditions for full and open access to information produced by the GMES services and of data collected through the GMES dedicated infrastructure;
- (b) criteria for restricting access to that information and data;
- (c) conditions for registration of GMES users.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'GMES services' means the service component referred to in Article 2(2)(a) of Regulation (EU) No 911/2010;
- (b) 'GMES service information' means information and its metadata produced by GMES services;
- (c) 'GMES dedicated data' means data collected through the GMES dedicated infrastructure and their metadata;
- (d) 'metadata' means structured information on data or information allowing their discovery, inventory and use;
- (e) 'GMES dissemination platform' means technical systems used to disseminate GMES dedicated data and GMES service information to users;
- (f) 'discovery services', means discovery services as defined in point 1.(a) of Article 11 of Directive 2007/2/EC;
- (g) 'view services' means view services as defined in point 1.(b) of Article 11 of Directive 2007/2/EC;
- (h) 'download services' means 'download services' as defined in point 1.(c) of Article 11 of Directive 2007/2/EC.

CHAPTER 2

OPEN DISSEMINATION OF GMES DEDICATED DATA AND GMES SERVICE INFORMATION – LICENSING CONDITIONS

Article 3

The open dissemination principles

Users shall have free, full and open access to GMES dedicated data and GMES service information under the conditions laid down in Articles 4 to 10, subject to the restrictions laid down in Articles 11 to 16.

Article 4

Financial conditions

Free access shall be given to GMES dedicated data and GMES service information made available through GMES dissemination platforms under pre-defined technical conditions referred to in Article 5(1).

Article 5

Conditions regarding characteristics, format and dissemination media

1. For each type of GMES dedicated data and GMES service information, the providers of these data and information shall define at least one set of characteristics, format and dissemination media under the supervision of the Commission and shall communicate that definition on GMES dissemination platforms.

2. GMES dedicated data and GMES service information shall comply with the requirements of Directive 2007/2/EC to the extent that the data and information fall within the scope of those provisions.

Article 6

Conditions regarding GMES dissemination platforms

GMES dedicated data and GMES service information shall be disseminated to users through GMES dissemination platforms provided by, or under the supervision of, the Commission.

Article 7

Conditions regarding use

1. Access to GMES dedicated data and GMES service information shall be given for the purpose of the following use in so far as it is lawful:

- (a) reproduction;
- (b) distribution;
- (c) communication to the public;
- (d) adaptation, modification and combination with other data and information;
- (e) any combination of points (a) to (d).

2. GMES dedicated data and GMES service information may be used worldwide without limitations in time.

Article 8

Conditions regarding information to be given by users

1. When distributing or communicating GMES dedicated data and GMES service information to the public, users shall inform the public of the source of that data and information.

2. Users shall make sure not to convey the impression to the public that the user's activities are officially endorsed by the Union.

3. Where that data or information has been adapted or modified, the user shall clearly state this.

Article 9

Absence of warranty

GMES dedicated data and GMES service information are provided to users without any express or implied warranty, including as regards quality and suitability for any purpose.

Article 10

Conditions in the event of restrictions to the open dissemination

Where the Commission restricts access to GMES dedicated data and GMES service information to certain users in accordance with Article 12, those users shall register under a procedure allowing their unequivocal identification before they are allowed access.

CHAPTER 3

RESTRICTIONS

Article 11

Conflicting rights

Where the open dissemination of certain GMES dedicated data or GMES service information conflicts with international agreements or the protection of intellectual property rights attached to data and information used as inputs in the production processes of GMES service information, or would affect in a disproportionate manner the rights and principles recognized in the Charter of Fundamental Rights of the EU, such as the right for private life or the protection of personal data, the Commission shall take the necessary measures pursuant to Article 13(1) of Regulation (EU) No 911/2010 to avoid any such conflict or to restrict the dissemination of the GMES dedicated data or GMES service information in question.

Article 12

Protection of security interests

1. Where the open dissemination of GMES dedicated data and GMES service information presents an unacceptable degree of risk to the security interests of the Union or its Member States due to the sensitivity of the data and information, the Commission shall restrict their dissemination pursuant to Article 13(1) of Regulation (EU) No 911/2010.

2. The Commission shall assess the sensitivity of the GMES dedicated data and GMES service information using the sensitivity criteria set out in Articles 13 to 16.

Article 13

Sensitivity criteria for GMES dedicated data

1. Where GMES dedicated data are produced by a space-based observation system meeting at least one of the characteristics listed in the Annex, the Commission shall assess the data sensitivity on the basis of the following criteria:

- (a) the technical characteristics of the data, including spatial resolution and spectral bands;
- (b) the time between acquisition and dissemination of the data;
- (c) the existence of armed conflicts, threats to international or regional peace and security, or to critical infrastructures within the meaning of point (a) of Article 2 of Directive 2008/114/EC in the area the GMES dedicated data relate to;
- (d) the existence of security vulnerabilities or the likely use of GMES dedicated data for tactical or operational activities harming the security interests of the Union, its Member States or international partners.

2. Where GMES dedicated data are produced by a space-based observation system which does not meet any of the characteristics listed in the Annex, the GMES dedicated data are presumed not to be sensitive.

Article 14

Sensitivity criteria for GMES service information

The Commission shall assess the sensitivity of GMES service information using the following criteria:

- (a) the sensitivity of inputs used in the production of GMES service information;
- (b) the time between acquisition of inputs and dissemination of the GMES service information;
- (c) the existence of armed conflicts, threats to international or regional peace and security, or to critical infrastructures within the meaning of point (a) of Article 2 of Directive 2008/114/EC in the area the GMES service information relates to;
- (d) the existence of security vulnerabilities or the likely use of GMES service information for tactical or operational activities harming the security interests of the Union, its Member States or international partners.

Article 15

Request for reassessment of sensitivity

Where the conditions under which the assessment made according to Article 13 or 14 have changed, the Commission may reassess the sensitivity of GMES dedicated data or GMES service information on its own initiative or at the request of a Member State with a view to restricting, suspending or allowing the acquisition of GMES dedicated data or the dissemination of GMES service information. Where a Member State has submitted a request, the Commission shall have regard to the limits of the restriction in time and scope requested.

*Article 16***Balance of interests**

1. In the assessment of the sensitivity of the GMES dedicated data and GMES service information in accordance with Article 12, security interests shall be balanced against the interests of users and the environmental, societal and economic benefits of the collection, production and open dissemination of the data and information in question.

2. The Commission shall consider, when making its security assessment, whether restrictions will be effective if similar data are in any event available from other sources.

CHAPTER 4

RESERVATION OF ACCESS AND REGISTRATION*Article 17***Reservation of access**

1. Where the requests for access exceed the capacity of the GMES dissemination platforms, access to GMES resources may be reserved to any of the following users:

- (a) the public services, industry, research organisations and citizens in the Union;
- (b) the public services, industry, research organisations and citizens in third countries contributing to the operations of GMES;

(c) international organisations contributing to the operations of GMES.

2. The users for whom access is reserved in accordance with paragraph 1 shall register in order to gain access, providing their identity, contact information, area of activity and country of establishment.

*Article 18***Registration**

1. To access download services, users shall register online on the GMES dissemination platforms. Registration shall be free of charge. Users shall be required to register only once and shall be accepted automatically. The registration process shall require the following:

- (a) the creation by the user of a user account and password;
- (b) statistical information limited to no more than 10 items to be given by the user.

2. No registration shall be required for discovery services and view services.

CHAPTER 5

FINAL PROVISIONS*Article 19*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 July 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

Characteristics of space-based observation system as referred to in Article 13

- (a) The system is technically capable of generating data of a geometric resolution of 2,5 metres or less in at least one horizontal direction.
 - (b) The system is technically capable of generating data of a geometric resolution of 5 metres or less in at least one horizontal direction in the 8–12 microns spectral range (thermal infrared).
 - (c) The system is technically capable of generating data of a geometrical resolution of 3 metres or less in at least one horizontal direction in the spectral range from 1 millimetre to 1 metre (microwave).
 - (d) The system has more than 49 spectral channels and is technically capable of generating data of a geometric resolution of 10 metres or less in at least one horizontal direction in at least one spectral channel.
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