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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 15 May 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, on the establishment of an Intergovernmental Agreement for the operations of the European Earth Monitoring Programme (GMES) from 2014 to 2020 (Text with EEA relevance)

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Delegations will find attached Commission document COM(2012) 218 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**on the establishment of an Intergovernmental Agreement for the operations of the  
European Earth monitoring programme (GMES) from 2014 to 2020**

(Text with EEA relevance)

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## **1. INTRODUCTION**

The GMES programme's objective is to develop a high-quality European Earth observation capacity. At a time when EU's international partners are investing heavily in such capacities, a coordinated EU response is of strategic importance. As such, GMES services will bring benefits to a wide range of European policies. The programme also represents significant potential for economic growth and job creation, in line with the Europe 2020 strategy for smart, sustainable and inclusive growth.

### *The future GMES programme: state of play*

In its Communication entitled “A Budget for Europe 2020”<sup>1</sup>, the Commission proposed to fund the European Earth monitoring programme (GMES) outside the next multi-annual financial framework (MFF), given the limits of the EU budget to fund this type of large-scale project. However, the Commission is strongly committed to ensuring the success of GMES, and in this context, it adopted in November 2011 a Communication<sup>2</sup> providing the main elements for defining the appropriate governance and long term funding of the GMES programme from 2014 onwards.

In particular, the Commission proposed to set up a specific GMES fund with financial contributions from all 27 EU Member States based on their gross national income (GNI), in a model similar to that of the European Development Fund. This implies the establishment of an intergovernmental agreement between the EU Member States meeting within the Council. The management of the fund should be delegated to the Commission.

On 16 February 2012, the European Parliament adopted a resolution on the future of GMES, stating a preference for financing GMES under the MFF. The Communication has also been debated within the Council, in particular the question of funding through an intergovernmental fund, but no conclusions were reached.

### *Risks associated with delays*

Since its beginning in 1998, the GMES programme has neither experienced cost overruns nor significant delays. However, a possible discontinuity in the operations would be detrimental

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<sup>1</sup> COM (2011) 500 final of 29.06.2011

<sup>2</sup> COM (2011) 831 final of 30.11.2011

to the users, put at risk the investments made so far and the credibility of the programme. It would, moreover, lead to cost overruns.

In their pre-operational phase, the GMES services have led to significant synergies in national or regional investments. Since the beginning of 2012, two GMES services are operational: the GMES Land monitoring service and the GMES Emergency Response service, which are now being used by their respective user communities. A discontinuity in delivering these services would create an important information gap and have a negative impact on users' activities. This would be true as well for the other GMES services that are delivered in a pre-operational way, such as the GMES Marine and Atmosphere monitoring services, or for the GMES Security and Climate change services that are still in a development phase. In this respect, current uncertainties in the preparation of the operational phase are already hindering the commitment of stakeholders, being from the civil protection, environmental or scientific communities as well as private companies, notably SMEs of the downstream services.

Uncertainties on the operation phase also risk leading to difficulties in the deployment of the space component, for which the first three Sentinel satellites will be ready for launch in 2013. The European Space Agency (ESA) Council of April 2012 questioned the opportunity to authorize their launches without more clarity on the operations and future institutional arrangements. Delaying the launch would lead to significant extra costs in particular for stocking the satellite in appropriate conditions. In addition, the recent loss of ENVISAT<sup>3</sup>, which has already served well beyond its nominal life, makes Sentinel's data even more urgently needed by European users.

While the position of the Commission in relation to the funding of GMES outside the multi-annual financial framework has not changed, it remains committed to support Member States in the establishment of the necessary intergovernmental agreement and to prepare the necessary regulations for the GMES operations in a timely manner, in order to avoid disruptions of the programme.

The establishment of an intergovernmental agreement, accompanied by a regulation implementing that agreement and a financial regulation, will take some time. As they have to be in place on 1<sup>st</sup> January 2014, the Commission urges the Member States to start the preparation of the intergovernmental agreement without further delay.

In order to facilitate the ongoing discussions, the annex to this Communication includes a more detailed draft of the main elements of an intergovernmental agreement that can serve as a basis for negotiation.

## 2. THE GMES FUND

In its Communication of November 2011<sup>2</sup>, the Commission confirmed that the maximum financial envelope needed for the GMES activities between 2014 and 2020 is € 5 841 million in constant prices.

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<sup>3</sup> ENVISAT is an ESA scientific satellite mission. It was launched in 2002 with 10 instruments on board. It is the largest civilian Earth observation mission. It arrived at the end of its expected life span already in 2007.

Three options among the possible GMES funding solutions were explored up to now, all outside the financial framework from 2014 onwards: a specific GMES fund (similar to the model chosen for the European Development Fund), an enhanced cooperation option (which would involve Member States with a strong interest in the programme) and finally, the option of industry participation where responsibilities and funding would be shared with economic actors. The Commission also indicated that in its assessment it does not favour the latter two options since on the one hand enhanced cooperation would put the EU-27 dimension of the programme at risk and, on the other hand, the experience gained with the Galileo project has already shown that attracting and retaining the private sector would be difficult in the short term and not in line with the public good dimension of the programme.

For these reasons, the Commission proposed to set up a specific GMES fund. This fund should be based on contributions by all 27 Member States. Although this is a decision that ultimately falls exclusively within the remit of Member States, the Commission invites all Member States to join in the effort, so as to ensure and consolidate the European dimension of the GMES programme.

This would require an intergovernmental agreement between all EU Member States meeting within the Council. The main elements of such an agreement are further detailed in the Annex of this Communication.

The intergovernmental agreement would specify the financial contributions from all 27 EU Member States based on their gross national income (GNI) covering the period from 1 January 2014 to 31 December 2020. It would establish the “GMES Council” as the main supervisory body of the fund primarily empowered to adopt the general budget, to approve execution of the budget and the accounts of the previous year, to approve the conclusion of any agreement with the Member States, third countries, international governmental and non-governmental organisations, or national organisations of Member States.

In order to ensure continuity of the programme, certain provisions of the GMES fund should be applied on a provisional basis from 1 January 2014 pending ratification by the 27 Member States.

### **3. GMES FUND IMPLEMENTATION**

The intergovernmental agreement is the first step in building the GMES programme beyond 2013, which should be further developed, as regards the detailed execution modalities, in a regulation implementing it.

The regulation on the GMES operations should contain rules to ensure an uninterrupted provision of accurate and reliable data and information on environmental issues, climate change and security matters to policy makers in the EU and its Member States. It should also contribute to economic stability and growth by boosting commercial applications in many different sectors through a full and open access to GMES information and observation data.

Such regulation should lay down the rules of administration, management, execution, accounting, audit and discharge applicable to the GMES fund. It should be adopted by the Council and the Parliament upon proposal by the Commission. It should also contain the provisions regarding the programming and execution of GMES actions, including the rules on the delegation agreements and on the award of contracts and grants. It should also include

adequate provisions to allow the Commission to rely on third party expertise in following up and monitoring the implementation of GMES.

In order to safeguard the long-term duration of GMES, it is important that whatever structure is chosen, the GMES programme should have the necessary operational capacity – namely, in terms of resources and know-how, as well as the appropriate legal capacity to make use of the former and carry out the GMES actions to meet the programme's objectives in line with user expectations.

#### **4. CONCLUSIONS**

Considering the time needed for the preparation of the necessary arrangements for the operational phase, and the risk of discontinuity, the Commission:

- urges the Member States to initiate the necessary measures for the timely adoption of an intergovernmental agreement and of a regulation for the operations of the GMES programme and
- reiterates its commitment to support Member States in this process.

## Annex

### **Main elements of a draft **INTER-GOVERNMENTAL AGREEMENT** on the establishment of an intergovernmental fund for the European Earth monitoring programme (GMES) for the period 2014 to 2020**

between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of the European Earth monitoring programme (GMES) for the period 2014 to 2020

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION, MEETING WITHIN THE COUNCIL,

Whereas:

- (1) [Initial capital ...].
- (2) [Initial capital ...].
- (3) [Initial capital ...].

HAVE AGREED AS FOLLOWS:

#### **Establishment of the GMES Fund**

1. By this Agreement, the Member States establish among themselves a fund to finance the European Earth monitoring programme called GMES, hereinafter called the "GMES Fund".
2. The GMES Fund will finance all operations and actions of the GMES programme. To that effect, it may make use of all financing instruments deemed necessary or best suited to attain the objectives of GMES.
3. The GMES Fund shall have a Regulation laying down the rules of administration, management, execution, accounting, discharge and audit applicable to the fund. It shall be adopted by the Council and the Parliament upon proposal by the Commission.
4. That Regulation shall contain the provisions regarding functioning of the GMES Fund and the programming and execution of GMES actions, including the rules governing the delegation of powers to the Commission, the rules on the delegation agreements with agencies governed by Union law, bodies set up by the Communities and other specialised Union bodies, and national or international public-sector bodies or bodies governed by private law with a public-service mission., and the rules on the award of contracts and grants.
5. In addition, the Regulation shall lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. It shall also lay down the responsibilities and detailed rules for each body to whom

budget management powers are delegated, concerning their part in effecting their own expenditure.

### **Supervision and management**

6. The GMES Fund shall be supervised by a GMES Council, composed of one representative appointed by each Member State and chaired by the Commission.
7. The management of the GMES Fund shall be entrusted to the Commission. The Commission shall undertake the financial implementation of the budget approved by the GMES Council and shall undertake the financial execution of projects and programmes.
8. The Commission shall implement the actions financed by the GMES Fund. To that effect, it may delegate execution tasks to
  - (a) agencies governed by Union law;
  - (b) bodies set up by the Communities and other specialised Union bodies, provided that to do so is compatible with the tasks of each body as defined in the basic act;
  - (c) national or international public-sector bodies or bodies governed by private law with a public-service mission providing adequate financial guarantees and complying with the conditions provided for in the Regulation implementing this agreement.
9. When doing so, however, the Commission may not delegate the powers it enjoys under the Treaties or this Agreement where they involve a large measure of discretion implying political choices.
10. For the recovery of sums unduly paid, decisions of the Commission shall be enforceable in accordance with Article 299 TFEU.

### **GMES Council**

11. The GMES Council shall be empowered, by qualified majority, of two-thirds of its voting members:
  - (a) to adopt the general budget and approve the execution of the budget and the accounts of the previous year, together with the balance sheet of the assets and liabilities of the GMES Fund, after taking note of the external auditor's report;
  - (b) to decide on any measures of financing programmes, including through dedicated financial instruments;
  - (c) to decide on the terms and conditions governing accession of third countries;
  - (d) to approve the conclusion of any agreement with the Member States, third countries, international governmental and non-governmental organisations, or national organisations of Member States.

12. The GMES Council shall be empowered, by simple majority of its voting members:

- (a) to decide on the adjustment of the annual contributions to the GMES Fund by its Member States;
- (b) to appoint the auditors and to decide the length of their appointments;
- (c) to adopt its own rules of procedure;
- (d) to adopt recommendations to the Member States concerning amendments to this Agreement;
- (e) to undertake any management measure not entrusted to the Commission warranted by the good functioning of the GMES Fund.

13. The GMES Council shall decide by unanimity of its Member States on the exclusion of a Member State, the conditions of such exclusion, as well as on the dissolution or liquidation of the GMES Fund.

14. Each Member State shall have a number of votes in the GMES Council, proportional to their contribution to the GMES Fund. However, a Member State shall have no vote in the GMES Council if the amount of its arrears of contributions exceeds the assessed amount of its contributions for the current financial year. Member States that abstain shall be considered as not voting.

15. The total number of votes shall be 999, as distributed below:

Member State	Votes
<b>Belgium</b>	29
<b>Bulgaria</b>	3
<b>Czech Republic</b>	12
<b>Denmark</b>	19
<b>Germany</b>	203
<b>Estonia</b>	1
<b>Ireland</b>	12
<b>Greece</b>	17
<b>Spain</b>	85
<b>France</b>	157
<b>Italy</b>	126
<b>Cyprus</b>	1

<b>Latvia</b>	2
<b>Lithuania</b>	2
<b>Luxembourg</b>	3
<b>Hungary</b>	8
<b>Malta</b>	1
<b>Netherlands</b>	48
<b>Austria</b>	24
<b>Poland</b>	29
<b>Portugal</b>	14
<b>Romania</b>	10
<b>Slovenia</b>	3
<b>Slovakia</b>	6
<b>Finland</b>	15
<b>Sweden</b>	31
<b>United Kingdom</b>	138
<b>Total</b>	999

16. The GMES Council may delegate to the Commission, by mandate, with any other competence required, beyond its management powers, the task to achieve the objectives of GMES and to revoke any such delegation.

#### **Composition of the GMES Fund**

17. The GMES Fund shall consist of EUR 5 841 million, at 2011 prices, contributed by the Member States based on their Gross National Income and shall cover the period from 1 January 2014 to 31 December 2020. For the first year of operations, the Member States shall make available the following funds before 30 September 2013:

Member State	Contribution key	2014 Contribution in EUR <sup>4</sup>
<b>Belgium</b>	2,93%	24 451 749
<b>Bulgaria</b>	0,31%	2 573 644
<b>Czech Republic</b>	1,25%	10 398 781
<b>Denmark</b>	1,91%	15 917 693
<b>Germany</b>	20,34%	169 693 249
<b>Estonia</b>	0,13%	1 056 893
<b>Ireland</b>	1,23%	10 304 449
<b>Greece</b>	1,72%	14 378 433
<b>Spain</b>	8,49%	70 851 816
<b>France</b>	15,72%	131 203 971
<b>Italy</b>	12,55%	104 702 411
<b>Cyprus</b>	0,14%	1 183 430
<b>Latvia</b>	0,16%	1 294 145
<b>Lithuania</b>	0,24%	2 004 516
<b>Luxembourg</b>	0,33%	2 757 700
<b>Hungary</b>	0,79%	6 553 633
<b>Malta</b>	0,05%	425 091
<b>Netherlands</b>	4,81%	40 095 555
<b>Austria</b>	2,38%	19 861 219
<b>Poland</b>	2,92%	24 377 945
<b>Portugal</b>	1,36%	11 329 104
<b>Romania</b>	1,04%	8 681 881
<b>Slovenia</b>	0,28%	2 363 824
<b>Slovakia</b>	0,55%	4 616 893

<sup>4</sup>

Source: Eurostat 2012

<b>Finland</b>	1,50%	12 521 438
<b>Sweden</b>	3,06%	25 492 378
<b>United Kingdom</b>	13,82%	115 336 728
<b>Total</b>	100%	<b>834 430 583</b>

18. The GMES Council shall decide on the adjustment of the annual contribution of the Member States for each subsequent year based on the revised repartition key in accordance with the respective Gross National Income of the Member States. The adjustment decision shall be executed by the Commission and be enforceable in accordance with Article 299 TFEU. Once notified of the adjustment decision, the Member States shall undertake to pay their amounts due before 30 September
19. The financial appropriations of the GMES Fund shall no longer be committed beyond 31 December 2020, unless the Council of the European Union decides otherwise by unanimity, on a proposal from the Commission.

### **Contributions to the GMES Fund**

20. Each year, the Commission shall establish and communicate to the GMES Council by 30 September a statement of the commitments, payments and the annual amount of the calls for contributions to be made in the current and the two following budget years.
21. These amounts shall be based on the capacity to deliver the proposed level of resources effectively.
22. Upon a proposal from the Commission, the GMES Council shall decide by qualified majority, on the ceiling for the annual amount of the contribution for the second year following the proposal from the Commission (n+2) and, within the ceiling decided the previous year, on the annual amount of the call for contribution for the first year following the proposal from the Commission (n+1).
23. Should the contributions deviate from actual needs of GMES during the financial year in question, the Commission shall submit proposals to amend the contribution amounts to the GMES Council, which shall take a decision by qualified majority.
24. The calls for contribution cannot exceed the ceiling referred to in the paragraphs above nor can the ceiling be increased except when decided by the GMES Council by qualified majority in cases of special needs resulting from exceptional or unforeseen circumstances. In this case, the Commission and the GMES Council shall ensure that contributions correspond to expected payments.
25. Each year, the Commission, shall communicate to the GMES Council by 30 October its estimates of commitments, disbursements and contributions for each of year following.

26. The detailed rules for the payment of contributions by the Member States shall be determined by the Regulation implementing this Agreement.

### **Other resources of the GMES Fund**

27. Should a new country accede to the EU, the allocation of contributions shall be amended by a decision of the GMES Council.

28. Financial resources may be adjusted by a decision of the GMES Council acting by qualified majority.

29. Any Member State may, without prejudice of the decision making rules and procedures set out in the regulation provide to the Commission contributions to support the objectives of GMES. The Member States may also co-finance projects or programmes in the framework of specific initiatives to be managed by the Commission, the EIB or any Union body or organisation with whom the GMES Fund has established a partnership agreement or to whom certain implementation tasks were entrusted.

30. The Regulation implementing this Agreement shall include the necessary provisions for co-financing by the GMES Fund, as well as for co-financing activities implemented by the Member States.

31. Member States shall inform the GMES Council in advance of their contributions.

### **Actions under the GMES Fund**

32. Operations of the GMES Services

(a) Operational activities of the GMES Services:

- global systematic/routine activities for monitoring and forecasting the state of the Earth's subsystems at regional and global levels covering in particular marine environment, atmosphere and air quality, global land and climate change monitoring services;
- regional/local on-demand activities covering in particular, emergency management, security and pan-European land monitoring services, within or outside Europe.

(b) Development activities consisting in improving the quality and performance of existing services, developing new service elements and fostering the downstream uptake;

33. Operations of the space component

34. Operational activities of space-borne observations:

(a) operations of the dedicated space infrastructure (i.e. Sentinel missions);

(b) access to third party missions;

- (c) distribution of data;
- (d) technical assistance to the Commission for federating service data requirements;
- (e) identification of observation gaps, contributing to the specification of new space missions.

35. Development activities:

- (a) design and procurement of new elements of the space infrastructure;
- (b) provision of technical support to the Commission for the translation of service requirements into specifications of new space missions with the support of space infrastructure operators;
- (c) coordination of the development of space activities, including developments aiming at modernising and complementing the space observation capacity.

36. The operational activities of the GMES in situ observations:

- (a) coordination of the provision of in situ data to GMES services with ad hoc administrative arrangements with the in situ operators;
- (b) coordination of the provision of third party in situ data at international level;
- (c) provision of technical assistance for the translation of GMES service data requirements into specifications of in situ observation infrastructure and networks;
- (d) interaction with in-situ operators to promote consistency of development activities related to the GMES observation capacity.

### **Participation of third countries and international organisations**

37. The GMES Council may conclude international agreements, including their admission to the GMES Fund, with the following third countries:

- (a) European Free Trade Association (EFTA) countries which are Contracting Parties to the EEA Agreement in accordance with the conditions laid down in the EEA Agreement;
- (b) the candidate countries, as well as potential candidates included in the stabilisation and association process in accordance with the Framework Agreements, or a Protocol to an Association Agreement, on the general principles for the participation of those countries in Union programmes, concluded with those countries;
- (c) the Swiss Confederation, other third countries not referred to in points (1) and (2), and international organisations, in accordance with agreements concluded by the Union with such third countries or international organisations pursuant

to Article 218 TFEU, which shall lay down the conditions and detailed rules for their involvement.

### **Adoption and entry into force**

38. The Member States shall notify the Secretary-General of the Council of the European Union of the completion of the internal procedures necessary for the entry into force of this Agreement.
39. This Agreement shall enter into force on the first day of the second month following notification to the Secretary-General of the Council of the European Union of the completion of the internal procedures necessary for its entry into force by the last Member State to take this step.
40. This Agreement shall cease to be in force after 31 December 2020 and no legal or financial commitment may be made beyond that date.
41. Without prejudice of the above, all payments and obligations resulting from commitments undertaken by the GMES Fund or on its behalf before 31 December 2020 shall be satisfied by the GMES Fund until 31 December 2023. Beyond that date, any pending obligations shall revert to the Member States.
42. The Secretary-General of the Council of the European Union shall act as depositary for this Agreement which shall be published in the Official Journal of the European Union

IN WITNESS WHEREOF, the undersigned Representatives of the Governments of the Member States, meeting within the Council, have signed this Agreement