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Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing the Copernicus Programme and repealing Regulation (EU) No
911/2010
- General approach

Delegations will find attached the general approach on the proposal for a Regulation of the European Parliament and of the Council establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010, as reached by the Competitiveness Council meeting on 3 December 2013.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010

CHAPTER I
GENERAL AND FINANCIAL PROVISIONS

Article 1

Subject-matter

This Regulation establishes Copernicus, the Union Earth observation and monitoring programme ("Copernicus") and lays down the rules for its implementation.

Article Ibis

Scope

1. Copernicus shall be a civil, user driven programme under civil control, building on the existing national and European capacities, as well as ensuring continuity with the activities achieved under the Global Monitoring for Environment and Security (GMES).
2. Copernicus shall consist of the following components:
 - a) a service component ensuring delivery of information in the following areas:
atmosphere monitoring, climate change monitoring, emergency management, land monitoring, marine monitoring and security;

- (b) a space component ensuring sustainable spaceborne observations for the service areas referred to in point (a);
 - (c) an in-situ component ensuring coordinated access to observations through airborne, seaborne and ground-based installations for the service areas referred to in point (a).
3. Appropriate links and interfaces between these components shall be established.

Article I ter

Definitions

In the context of this regulation,

1. "Dedicated missions" shall mean the space-based Earth observation missions for use and operated in Copernicus, notably the Sentinel missions.
2. "Contributing missions" shall mean space-based Earth observation missions providing data to Copernicus complementing data provided by the dedicated missions.
- 2bis. "Dedicated mission data" shall mean spaceborne Earth observation data from dedicated missions for use in Copernicus.
- 2ter "Contributing Mission Data" shall mean spaceborne Earth observation data from contributing missions licensed or provided for use in Copernicus.
- 2quater "In Situ Data" shall mean observation data from ground-, sea- or air-borne sensors as well as reference and ancillary data licensed or provided for use in Copernicus.
3. "Third party data and information" shall mean data and information created outside the scope of Copernicus and necessary for the implementation of its objectives.
4. "Copernicus data" shall mean dedicated mission data, contributing mission data and in-situ data.

5. "Copernicus information" shall mean information from the Copernicus services referred to in Article 4(1) following processing or modelling of Copernicus data.
6. "Copernicus users " shall mean:
 - a) Copernicus Core Users: Union institutions and bodies, European, national, regional or local authorities, entrusted with the definition, implementation, enforcement or monitoring of a public service or policy in areas referred to in point (a) of Article 1bis(2);
 - b) research users: universities or any other research organisations;
 - c) commercial and private users;
 - d) any other third party.

Article 2

Objectives

1. Copernicus shall contribute to the following general objectives:
 - (a) monitoring of the Earth environment and support to civil protection and civil security efforts;
 - (b) maximising socio-economic benefits, thus supporting of the Europe 2020 strategy and its objectives of smart, sustainable and inclusive growth by promoting the use of Earth observation in applications and services;
 - (c) fostering the development of a competitive European space and services industry and maximising opportunities for European enterprises to develop and provide innovative Earth observation systems and services;
 - (d) ensuring autonomous access to environmental knowledge and key technologies for Earth observation and geoinformation services, thus enabling Europe with independent decision-making and action;

- (e) supporting and contributing to European policies and fostering global initiatives, such as GEOSS.
2. In order to attain the general objectives, described under paragraph 1, Copernicus shall have the following specific objectives:
- (a) delivering accurate and reliable data and information, supplied on a long term and sustainable basis enabling the services referred to in Article 4(1) and responding to the requirements of Copernicus Core Users;
 - (b) providing a sustainable and reliable access to spaceborne data from an autonomous European Earth observation capacity;
 - (c) providing a sustainable and reliable access to in-situ data, relying, in particular, on existing capacities operated at European and national levels, and on global observation systems and networks.
3. The achievement of these objectives shall be measured by the following result indicators:
- (a) increased demand for Copernicus data and Copernicus information measured by the progression in number of users, by the volume of accessed spaceborne data and added-value information by the increased number of downstream services, and by the widening of distribution across Member States and the Union;
 - (b) use of Copernicus data and Copernicus information by Union institutions and bodies, international organisations, European, national, regional or local authorities, including the level of user uptake and satisfaction, and the benefits provided to European societies;
 - (c) market penetration, including expansion of the existing markets and creation of new markets and competitiveness of the European downstream operators;

- (d) sustained availability of Copernicus data supporting the Copernicus services.

Article 4

Copernicus service component

1. The Copernicus service component shall consist of the following services:
 - (a) the atmosphere monitoring service, which shall provide information on air quality on a European scale and of the chemical composition of the atmosphere on a global scale. It shall in particular provide information for air quality monitoring systems run at the local to national scales, and should contribute to the monitoring of atmospheric composition climate variables;
 - (b) the marine environment monitoring service, which shall provide information on the state and dynamics of physical ocean and marine ecosystems for the global ocean and the European regional marine areas, in support of marine safety, monitoring of marine environmental, coastal and polar regions, and of marine resources as well as meteorological forecasting and climate monitoring;
 - (c) the land monitoring service, which shall provide information on land cover, ice, climate change and biogeophysical variables, including their dynamics in support of the global-to-local environmental monitoring of biodiversity, soil, in-land and coastal water, forests and vegetation, and natural resources, as well as in general implementation of environment, agriculture, development, energy, urban planning, infrastructure and transport policies;

- (d) the climate change service, which shall provide information to increase the knowledge base to support adaptation and mitigation policies. It shall in particular contribute to the provision of Essential Climate Variables (ECVs), climate analyses, projections and indicators at temporal and spatial scales relevant to adaptation and mitigation strategies for the various Union's sectorial and societal benefit areas;
 - (e) the emergency management service, which shall provide information for emergency response in relation to different types of disasters, including meteorological hazards, geophysical hazards, deliberate and accidental man-made disasters and other humanitarian disasters, as well as the prevention, preparedness, response and recovery activities¹;
 - (f) the security service, which shall provide information in support of the civil security challenges of Europe improving crisis prevention, preparedness and response capacities, in particular for border and maritime surveillance, but also support for the Union's external action, without prejudice to cooperation arrangements which could be concluded between the Commission and various Common Foreign and Security Policy bodies, notably the European Union Satellite Centre (EUSC).
2. The provision of services shall take into account the subsidiarity and proportionality principles, be cost-effective and decentralised where appropriate, to integrate at European level existing space, in-situ and reference data and capacities in Member States, thus avoiding duplication. Procurement of new data that duplicate existing sources shall be avoided, unless the use of existing or upgradable data sets is not technically feasible, cost-effective or possible in a timely manner.

¹ First part of recital (9) shall be modified as following
"[Whereas (9)] In order to attain its objectives, the Copernicus programme should rely on an autonomous Union's capacity for space borne observations and provide operational services in the field of environment, civil protection and security, fully respecting national mandates on official warnings."

The services shall implement rigorous quality control systems and shall provide information about service levels including availability, reliability, quality and timeliness.

3. In order to ensure the evolution of the services referred to in paragraph (1) and their public sector uptake, the following activities shall also be undertaken:
 - (a) development activities aimed at improving the quality and performance of services, including their evolution and adaptation, avoiding or mitigating the operational risks as well as exploiting synergies with related activities, e.g. under Horizon 2020;
 - (b) support activities consisting in measures to promote the uptake of Copernicus data and Copernicus information:
 - (i) by public authorities entrusted with the definition, implementation, enforcement or monitoring of a public service or policy in areas referred to in paragraph (1) of this Article. This shall include capacity building and development of standard procedures to integrate Copernicus data and Copernicus information into users' workflow;
 - (ii) by other users and downstream applications. This shall include outreach, training and dissemination activities.

Article 5

Copernicus space component

1. The Copernicus space component shall provide spaceborne observations, serving primarily the services referred to in Article 4(1).
2. The Copernicus space component shall consist of dedicated missions and data from contributing missions, and include the following activities:

- (a) Provision of spaceborne observations, including:
 - (i) completion, maintenance and operation of dedicated missions, including tasking of the satellites, monitoring and control of the satellites, reception, processing, archiving and dissemination of data, permanent calibration and validation;
 - (ii) provision of in-situ data for calibration and validation of dedicated mission observations;
 - (iii) provision, archiving and dissemination of contributing mission data complementing dedicated mission data;
- (b) Activities in response to evolving needs of the users, including:
 - (i) identification of observation gaps² and specification of new dedicated missions on the basis of user requirements;
 - (ii) developments aiming at modernising and complementing the dedicated missions, including design and procurement of new elements of the related space infrastructure;
- (c) ³ Protection of satellites against the risk of collision;

² An accompanying new recital will be added stating the following
"[Whereas]: The evolution of the space component should be based on an analysis of options to meet the evolving users needs, including procurement from national/public missions and commercial providers in Europe, specification of new dedicated missions,international agreements ensuring access to non-European missions, and the European Earth observation market."

³ This provision is proposed to be accompanied by the following amendment to recital (9), as for the GNSS regulation:
"[Whereas(9)]: In order to attain [.....] space component.
Therefore, the programme activities should include the protection of the systems and their operation, including during the launch of satellites. In this respect, a proportional contribution to the costs of services capable of providing such protection could be financed by the budget allocated to Copernicus insofar as possible following rigorous cost management and full compliance with the maximum amount established in Council Regulation (EU) No 11791/13 laying down the multiannual financial framework for the years 2014-2020. Such contribution should be used only for the provision of data and services and not for the purchase of infrastructure."

- (d) Safe decommissioning of the satellites at the end of life.

Article 6

Copernicus in-situ component

1. The Copernicus in-situ component shall provide access to in-situ data, serving primarily the Copernicus services referred to in Article 4(1).

It shall include the following activities:

- (a) provision of in-situ data to the operational services, including third party in-situ data at international level, based on existing capacities;
- (b) coordination and harmonisation of the collection and provision of in-situ data;
- (c) technical assistance in support of the definition of user requirements for in-situ observation data;
- (d) cooperation with in-situ operators to promote the consistency of development activities related to the in-situ observation infrastructure and networks;
- (e) identification of gaps in the in-situ observations that cannot be filled by existing infrastructure and networks, including at global level, and addressing these, while respecting the principle of subsidiarity.

- 1bis. The in-situ data shall be used in Copernicus in accordance with applicable third party rights, including those of Member States, and applicable restrictions on use or re-distribution.

2. In accordance with point (c) of Article 58(1) of Regulation (EU, Euratom) No 966/2012, the Commission may entrust, in part or in full, the activities of the in-situ component to the service operators, referred to in Article 6quater (1) or, when an overall coordination is required, to the European Environment Agency (EEA).

Article 6bis

Funding

1. The maximum amount allocated by the Union to implement the activities referred to in Articles (4), (5) and (6) shall be EUR 3.786 million at 2011 prices⁴ for the period from 1 January 2014 to 31 December 2020.
- 1bis. The amount referred to in the first paragraph shall be broken down in the following categories of expenditure at 2011 prices:
 - (a) for the activities referred to in Articles 4 and 6, EUR 791,711 million;
 - (b) for the activities referred to in Article 5, EUR 2.994,289 million, including a maximum amount of EUR 26,5 million for the activities referred to in Article 5.2 (c).
- 1ter. The Commission may re-allocate funds from one category of expenditure, as laid down in points (a) and (b) of paragraph 1bis, to another, up to a ceiling of 10 % of the amount referred to in paragraph 1. Where the re-allocation reaches a cumulative amount greater than 10 % of the amount referred to paragraph 1bis, the Commission shall consult the Committee in accordance with the advisory procedure referred to in Article 20(2).

⁴ A horizontal approach is expected to be taken with respect to the use of the current prices.

- 1quater. The interest generated by pre-financing payments made to entities responsible for implementing the budget indirectly shall be assigned to activities subject to the delegation agreement or the contract concluded between the Commission and the entity concerned. In accordance with the principle of sound financial management, the entities responsible for indirect implementation of the budget shall open accounts enabling the funds and corresponding interest to be identified.
2. Appropriations shall be authorised annually by the budgetary authority within the limits laid down in the multi-annual financial framework. Budgetary commitments for activities extending over more than one financial year may be broken down over several years into annual instalments.
 3. The financial allocation for Copernicus may also cover expenses relating to preparatory, monitoring, control, audit and evaluation activities which are required directly for the management of Copernicus and the achievement of its objectives, including studies, meetings, information and communication actions, as well as expenses linked to IT networks focusing on information processing and exchange of data.
 4. The Commission may entrust the implementation of Copernicus to the entities set out in point (c) of Article 58(1) of the Financial Regulation (EU 966/2012). Where Copernicus budget is implemented by indirect management on the basis of Articles 6ter (2bis) or 6quater (1), the procurement rules of the entities entrusted with budget implementation tasks should apply to the extent allowable under Article 60 of the Financial Regulation (EU 966/2012). Specific adjustments necessary to these rules should be defined in the corresponding delegation agreements.

CHAPTER II
GOVERNANCE OF THE COPERNICUS PROGRAMME

Article 6bisbis
Role of the Commission

1. The Commission shall have the overall responsibility for Copernicus and for the coordination among its different components. It shall manage the funds allocated under this Regulation and oversee the implementation of Copernicus including definition of priorities, user involvement, cost, schedule, performance and procurement.
2. The Commission shall manage, on behalf of the Union and in its field of competence, relationships with third countries and international organisations, ensuring the coordination of Copernicus with activities at national, Union and international levels.
3. The Commission shall facilitate coordinated contributions of Member States aiming at the operational delivery of services and the long-term availability of necessary observation data.
4. The Commission shall, where appropriate, support the continued development of the Copernicus services and ensure the complementarity, consistency and links between Copernicus and other relevant Union policies, instruments, programmes and actions in order to ensure that these benefit from Copernicus services.
5. The Commission shall ensure that any entities entrusted with implementation tasks shall provide their services to all Union Member States.
6. The Commission shall adopt implementing acts, in accordance with the procedure referred to in Article 20(3) concerning:

- (a) the technical specifications for the Copernicus service component, referred to in Article 4(1), regarding its implementation⁵;
 - (b) the technical specifications for the Copernicus space component, referred to in Article 5, regarding its implementation and evolution on the basis of user requirements⁶.
7. The Commission shall provide to the Member States and the European Parliament, in a timely manner, all relevant information pertaining to Copernicus, in particular in terms of risk management, overall cost, annual operating costs of each significant item of Copernicus infrastructure, schedule, performance, procurement and the assessment of the Intellectual Property Rights (IPR) management.

⁵ An accompanying new recital will be added to explain the rationale of this implementing act by stating the following:
"[Whereas]: The implementation of the Copernicus service component should be based on technical specifications given the complexity and resources allocated to the programme. This would also facilitate the public uptake of services as users would be able to anticipate availability and evolution of services as well as cooperation with Member States and other parties. Therefore, the Commission should adopt and update, as necessary, technical specifications for all Copernicus services addressing aspects such as scope, architecture, technical service portfolios, indicative cost break-down and planning, performance levels, space and in-situ data access needs, evolution, standards, archiving and dissemination of data."

⁶ An accompanying new recital will be added to explain the rationale of this implementing act by stating the following
"[Whereas]: The implementation of the Copernicus space component should be based on technical specifications given the complexity and resources allocated to the programme. Therefore, the Commission should adopt and update, as necessary, technical specifications detailing the activities to be supported under the Copernicus space component and their indicative cost break-down and planning. Since Copernicus should build on investments made by the Union, the ESA and Member States in context of the Global Monitoring for Environment and Security, the activities under the Copernicus Space component should take into consideration, where appropriate, elements of the ESA Long-Term Scenario (LTS). LTS is a document prepared and updated by ESA, establishing an overall framework for the Copernicus space component."

Article 6ter

The role of ESA

1. The Commission shall conclude a delegation agreement with ESA entrusting it the following tasks:
 - (a) ensure the technical coordination of the Copernicus space component;
 - (b) define the overall system architecture for the Copernicus space component and its evolution on the basis of user requirements coordinated by the Commission;
 - (c) develop new dedicated missions;
 - (d) procure recurrent dedicated missions;
 - (e) operate the dedicated missions, except those operated by EUMETSAT under paragraph 2 of this Article;
 - (f) coordinate a scheme for the access to contributing mission data by Copernicus services;
 - (g) procure access rights and negotiate conditions of use of commercial satellite data required by the Copernicus services under Article 4(1).
2. The Commission shall conclude a delegation agreement with EUMETSAT entrusting it the responsibility to operate dedicated missions and provide access to contributing mission data, according to its mandate and expertise.
- 2bis. The delegation agreements with ESA and EUMETSAT shall be concluded on the basis of a delegation decision adopted by the Commission in accordance with point (c) of Article 58(1) of Regulation (EU, Euratom) No 966/2012.
3. In accordance with Article 60 of the Financial Regulation (EU, EURATOM) No 966/2012, ESA and EUMETSAT shall act as contracting authority with the capacity to take decisions regarding the implementation and coordination of the procurement tasks delegated to them.

- 3bis. The delegation agreements shall, insofar as necessary for the tasks and budget implementation delegated, lay down the general conditions for the management of the funds entrusted to ESA and EUMETSAT and shall take into consideration, where appropriate, the Long-Term Scenario (LTS). In particular, they shall lay down the actions to be implemented as regards the development, procurement and operation of the system, the relevant financing, management procedures and monitoring and control measures, the measures applicable in the event of inadequate implementation of contracts in terms of costs, schedule, performance and procurement, as well as the rules regarding ownership of all tangible and intangible assets.
- 3ter The monitoring and control measures shall, in particular, provide for a provisional cost forecast system, for systematic information to the Commission on costs and schedule, and, in the event of a discrepancy between the planned budgets, performance and schedule, for corrective action ensuring the implementation of the activities within the limits of the budgets allocated.
- 3quater The Copernicus Committee, referred to in Article 20, shall be consulted on the delegation decision referred to in paragraph 2bis of this Article, in accordance with the advisory procedure referred to in Article 20(2). The Committee shall be informed in advance of the delegation agreements to be concluded by the Union, as represented by the Commission, with ESA and EUMETSAT.
4. The Commission shall inform the Copernicus Committee of the results of the evaluation of the procurement tenders and of the contracts with private sector entities to be concluded by ESA and EUMETSAT, including the information relating to subcontracting.

Article 6quater

Service Operators

1. The Commission may entrust the service component implementation tasks, by means of delegation agreements or contractual arrangements, where duly justified by the special nature of the action and existing specific expertise, mandate, operation and management capacity, inter alia to the following entities:
 - (a) the European Environment Agency (EEA);
 - (b) the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX);
 - (c) the European Maritime Safety Agency (EMSA);
 - (d) the European Union Satellite Centre (EUSC);
 - (e) the European Centre for Medium Range Weather Forecast (ECMWF);
 - (f) other relevant European agencies, groupings or consortia of national bodies.

The delegation agreements with the service operators shall be concluded on the basis of a delegation decision adopted by the Commission in accordance with point (c) of Article 58 (1) of Regulation (EU, Euratom) No 966/2012.

2. The choice of the entities referred to in paragraph 1 shall take due account of the cost efficiency of entrusting those tasks and the impact on the body's governance structure and on its financial and human resources.

3. The Copernicus Committee, referred to in Article 20, shall be consulted on the delegation decision referred to in paragraph 1 of this Article in accordance with the advisory procedure referred to in Article 20(2). The Copernicus Committee shall be informed in advance of the delegation agreements to be concluded by the Union, as represented by the Commission, and the service operators.

7

Article 8

Work programme of the Commission

1. The Commission shall adopt an annual work programme for Copernicus pursuant to Article 84 of the Regulation (EU, Euratom) No 966/2012.
- 1bis. ⁸The annual work programme shall include an implementation plan detailing actions pertaining to the Copernicus components referred to in Articles (4), (5) and (6) and shall be forward-looking taking into account evolving user needs and technological developments.
2. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 20(3) of this Regulation.

⁷ An accompanying new recital will be added stating the following:
"[Whereas]: The entities entrusted with the implementation tasks of the service component should be encouraged to open to competition, up to an adequate level, the execution of these tasks, in accordance with the Financial Regulation."

⁸ This text is proposed to be accompanied by the following amended recital (11):
"[Whereas (11)]: With a view to improving the implementation of Copernicus and its long-term planning, the Commission should adopt an annual work programme including an implementation plan of the actions required to meet the objectives of Copernicus. This implementation plan should be forward-looking and should describe the actions needed to implement Copernicus taking into account evolving user needs and technological developments."

Article 9

Cooperation with Member States

1. The Commission shall co-operate with Member States in order to improve the exchange of data and information between them and aim to ensure that the required data and information are available to Copernicus. The Member States contributing missions, service and in-situ infrastructures are essential contributions to Copernicus.
2. The Commission may adopt, by means of implementing acts, measures to promote the use of Copernicus data and Copernicus information by Member States and support their access to the technology and development in Earth Observation. Such measures shall not have the effect to distort free competition. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 20(3).

CHAPTER III
PUBLIC PROCUREMENT

SECTION I

General provisions applicable to public procurement

Article 13bis

General principles

Without prejudice to measures required to protect the essential interests of the security of the Union or public security or to comply with Union export control requirements, the Regulation (EC, Euratom) No 966/2012, and in particular open access and fair competition throughout the industrial supply chain, tendering on the basis of the provision of transparent and timely information, clear communication of the applicable procurement rules, selection and award criteria and any other relevant information allowing a level-playing field for all potential bidders, shall apply to Copernicus.

Article 13ter

Specific objectives

During the procurement, the following objectives shall be pursued by the contracting authorities in their calls for tender:

- (a) to promote the widest and most open participation possible throughout the Union by all economic operators, in particular by new entrants and SMEs, including through encouraging the recourse to sub-contracting by the tenderers;
- (b) to avoid possible abuse of dominance and reliance on a single supplier;
- (c) to take advantage of prior public sector investments and lessons learned as well as industrial experience and competences, while ensuring that competitive tendering rules are complied with;
- (d) to pursue multiple sourcing wherever appropriate in order to ensure better overall control of Copernicus, its costs and time-schedule;
- (e) to take into account wherever appropriate the total cost over the useful life-cycle of the product, service or work being tendered.

SECTION II

Specific provisions applicable to public procurement

Article 13quater

Establishing fair competition conditions

The contracting authority must take the appropriate measures to ensure fair competition conditions when previous involvement of an economic operator in activities associated with the subject of the call for tender:

- (a) may confer significant advantages on that economic operator in terms of privileged information and therefore may give rise to concerns as to compliance with equal treatment; or

- (b) affect normal competition conditions or the impartiality and objectivity of the award or performance of the contracts.

These measures must not distort fair competition, equal treatment and confidentiality of data collected about undertakings, their business relations and cost structure. In this context, these measures shall take into account the nature and particulars of the intended contract.

Article 13quinquies

Security of information

When contracts involve, require and/or contain classified information, the contracting authority/entity shall specify in the tender documentation the measures and requirements necessary to ensure the security of such information at the requisite level.

Article 13 sexies

Reliability of supply

The contracting authority shall specify in the tender documentation its requirements in relation to reliability of supplies or of the provision of services for the execution of the contract.

Article 13 septies

Conditional stage-payment contract

1. The contracting authority may award a contract in the form of a conditional stage-payment contract.

2. A conditional stage-payment contract shall include a fixed stage which is accompanied by a budgetary commitment which results in a firm commitment to provide the works, supplies or services contracted for that stage and one or more stages which are conditional in terms of both budget and execution. The tender documents refer to the specific features of conditional stage-payment contracts. In particular, they specify the subject-matter of the contract, the price or the arrangements for determining the price and the arrangements for provision of supplies and services at each stage.
3. The fixed stage obligations must be part of a consistent whole; the same is true for the obligations under each conditional stage, taking into account the obligations under the previous stages.
4. Performance of each conditional stage shall be subject to a decision by the contracting authority, notified to the contractor in accordance with the contract. When a conditional stage is confirmed belatedly or is not confirmed, the contractor may benefit, if the contract so provides and under the conditions laid down therein, from a tideover allowance or a non-execution allowance.
5. Where, with regard to a particular stage, the contracting authority finds that works and services agreed for that stage have not been realised, it may claim damages and terminate the contract, if the contract so provides and under the conditions laid down therein.

Article 13 octies

Cost-reimbursement contracts

1. The contracting authority may opt for a full or partial cost-reimbursement contract up to a ceiling price, under the conditions laid down in paragraph 2.

The price to be paid for such contracts shall consist of reimbursement of all direct costs incurred by the contractor in performing the contract, such as expenditure on labour, materials, consumables, use of equipment and infrastructures necessary to perform the contract. These costs shall be increased by a fixed fee covering indirect costs and the profit, or a sum covering indirect costs and incentive fee compensation based on achieving objectives in respect of performance and delivery schedules.

2. The contracting authority may opt for a full or partial cost-reimbursement contract when it is objectively impossible to specify an accurate fixed price and if it can be reasonably shown that such a fixed price would be abnormally high due to the uncertainties inherent in performance of the contract because:
 - (a) the contract has very complex features or features which require the use of a new technology and, therefore, includes a significant number of technical risks; or
 - (b) the activities subject to the contract must, for operational reasons, start immediately even though it is not yet possible to determine a firm fixed price in full due to significant risks or because performance of the contract depends in part on the performance of other contracts.

3. The ceiling price for a full or partial cost-reimbursement contract shall be the maximum price payable. It may only be exceeded in duly justified exceptional circumstances subject to prior agreement by the contracting authority.
4. The tender documents of a procurement procedure for a full or partial cost-reimbursement contract shall specify:
 - (a) the type of contract, namely whether it is a full or partial cost-reimbursement contract up to a ceiling price;
 - (b) for a partial cost-reimbursement contract, the elements of the contract subject to cost-reimbursement;
 - (c) the total ceiling price;
 - (d) the award criteria, which must enable evaluation of the plausibility of the estimated overall budget, of the reimbursable costs, of the mechanisms for determining these costs, and the profit referred to in the tender to be evaluated;
 - (e) the mechanics of the increase referred to in paragraph 1 to be applied to direct costs;
 - (f) the rules and procedures which determine the eligibility of the costs planned by the tenderer for performance of the contract, in accordance with the principles set out in paragraph 5;
 - (g) the accounting rules with which tenderers must comply;

- (h) in the case of a partial cost-reimbursement contract to be converted into a firm fixed-price contract, the parameters for this conversion.
5. The costs declared by the contractor during the performance of a full or partial cost-reimbursement contract shall only be eligible if they:
- (a) are actually incurred during the duration of the contract, with the exception of costs for equipment, infrastructures and intangible fixed assets necessary for performance of the contract which may be deemed eligible for the whole of their purchase value;
 - (b) are referred to in the estimated overall budget which may be revised by amendments to the initial contract;
 - (c) are necessary for the performance of the contract;
 - (d) result from the performance of the contract and are attributable to this;
 - (e) are identifiable, verifiable, recorded in the Contractor's accounting record and determined in accordance with the accounting standards referred to in the specifications and in the contract;
 - (f) comply with the requirements of applicable tax and social legislation;
 - (g) do not derogate from the terms of the contract;
 - (h) are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The contractor shall be responsible for its own cost accounting, keeping sound accounting records or any other document required to show that the costs for which reimbursement is requested have been incurred and comply with the principles set out in this Article. Costs which cannot be substantiated by the contractor shall be deemed ineligible and their reimbursement shall be refused.

6. The contracting authority shall be responsible for the following tasks in order to ensure correct performance of cost-reimbursement contracts:
- (a) it shall determine the most realistic possible ceiling price, while providing the necessary flexibility to account for technical difficulties;
 - (b) it shall convert a partial cost-reimbursement contract into a full firm fixed-price contract as soon as it is possible to determine such a firm fixed-price during performance of the contract. For this reason, it shall determine the conversion parameters to convert a contract concluded on a cost-reimbursement basis to a firm fixed-price contract;
 - (c) it shall implement monitoring and inspection measures which provide, in particular, an estimated cost forecast system;
 - (d) it shall determine suitable principles, tools and procedures for the implementation of contracts, in particular for identifying and checking the eligibility of costs declared by the contractor or its subcontractors during performance of the contract, and for entering amendments to the contract;
 - (e) it shall check that the contractor and its subcontractors comply with the accounting standards stipulated in the contract and with the obligation to provide their accounting documents which should present a true and fair view of the accounts;
 - (f) throughout performance of the contract, it shall ensure continuously the effectiveness of the principles, tools and procedures referred to in point (d).

Article 13 nonies

Amendments

The contracting authority and the contractors may change the contract by an amendment on condition that this amendment fulfils all of the following conditions:

- (a) it does not alter the subject-matter of the contract;
- (b) it does not disturb the economic balance of the contract;
- (c) it does not introduce conditions which, if they had appeared initially in the contract documents, would have allowed for the admission of tenderers other than those initially admitted or would have allowed for the acceptance of a tender other than the one initially accepted.

Article 13 decies

Subcontracting

1. The contracting authority shall request the tenderer to subcontract a share of the contract by competitive tendering at the appropriate levels of sub-contracting to companies other than those that belong to the tenderer's group in particular to SMEs and new entrants.
2. The contracting authority shall express the requisite share of the contract to be subcontracted in the form of a range from a minimum to a maximum percentage. In defining such percentages the contracting authority shall take into account that such percentages are in proportion to the objective and value of the contract, the nature of the sector of activity concerned, and in particular, the competitive conditions and industrial potential observed.

3. If the tenderer indicates in its tender that it intends not to sub-contract any share of the contract or to subcontract a share inferior to the minimum of the range referred to in paragraph 2, it shall provide the reasons therefore to the contracting authority. The contracting authority shall submit this information to the Commission.
4. The contracting authority may reject subcontractors selected by the candidate at the stage of the main contract award procedure or by the tenderer selected for the performance of the contract. It shall justify this rejection in writing, which may only be based on the criteria used for selection of tenderers for the main contract.

CHAPTER IV

DATA AND SECURITY POLICY

Article 14

Copernicus data and Copernicus information policy

1. The data and information policy for actions financed under Copernicus shall support the objectives referred to in Article 2 and the following specific objectives:
 - (a) promoting the use and sharing of Copernicus data and Copernicus information;
 - (b) strengthening Earth observation markets in Europe, in particular the downstream sector, with a view to enabling growth and job creation;
 - (c) contributing to the sustainability and continuity of the provision of Copernicus data and Copernicus information;
 - (d) supporting the European research, technology and innovation communities.

2. Dedicated mission data and Copernicus information shall be made available through Copernicus dissemination platforms, under pre-defined technical conditions, on a full, open and free-of-charge basis, subject to the following limitations:
 - (a) licensing conditions for third party data and information;
 - (b) dissemination formats, characteristics and distribution means;
 - (c) security interests and external relations of the Union or its Member States;
 - (d) risk of disruption, for safety or technical reasons, of the system producing Copernicus data and Copernicus information;
 - (e) ensuring reliable access to Copernicus data and Copernicus information for European users.

Article 15

Conditions and limitations of Copernicus data and Copernicus information access and use

1. The Commission, respecting third party data and information policies and without prejudice to rules and procedures applicable to space and in-situ infrastructure under national control or under control of international organisations, may adopt delegated acts in accordance with Article 21, concerning:
 - (a) the conditions and procedures as regards access to, registration and use of Copernicus data and Copernicus information, including the dissemination means;
 - (b) the specific technical criteria necessary to prevent the disruption of Copernicus data and Copernicus information, including priority of access;

- (c) the criteria and procedures for the restriction of acquisition or dissemination of Copernicus data and Copernicus information due to conflicting rights.

1bis The Commission, respecting third party data and information policies and without prejudice to rules and procedures applicable to space and in-situ infrastructure under national control or under control of international organisations, may adopt measures in accordance with the examination procedure referred to in Article 20(3), concerning:

- (a) the conditions and procedures for the transmission and use of dedicated mission data transmitted to receiving stations or via dedicated high bandwidth connections not part of Copernicus;
- (b) the conditions and procedures for the archiving of Copernicus data and Copernicus information;
- (c) the criteria for the performance assessment.

2. The Commission shall establish the relevant licensing conditions and procedures for dedicated missions data and Copernicus information, and the transmission of satellite data to receiving stations or via dedicated high bandwidth connections not part of Copernicus in compliance with this Regulation and applicable third-party rights.

Article 16

Protection of security interests

1. Security issues shall be dealt with by the Copernicus Committee (Security Board) referred to in Article 20(1).

2. The Commission shall evaluate the security framework of Copernicus, taking into account the objectives referred to in Article 2. ⁹To that end, the Commission shall assess the necessary security measures which must be designed to avoid any risks or threats for the interest or security of the Union or its Member States, notably to ensure compliance with the principles set out in the Commission Decision 2001/844/EC¹⁰ and Council Decision 2013/488/EU¹¹.
3. On the basis of the evaluation, the Commission shall establish the necessary security-related technical specifications for Copernicus through an implementing act in accordance with the procedure referred to in Article 20(3).
4. The Commission may be assisted by independent experts from Member States in order to define the technical specifications of the security framework referred to in paragraph 3.
5. ¹²Notwithstanding paragraph 3, the Council shall adopt the measures to be taken whenever the security of the Union or its Member States may be affected by data and information provided by Copernicus.

⁹ An accompanying new recital will be added replacing recital 22 and stating the following:
"[Whereas]: Since Copernicus is a civil programme under civil control, priority should be given to the acquisition of data and the production of information, including high-resolution images, that do not constitute a risk or threat for the security of the Union or its Member States. However, as some Copernicus data and Copernicus information may require protection, to ensure the secure circulation of such information, within the scope of this Regulation, all participants in Copernicus should ensure a degree of protection of EU classified information equivalent to that provided by the rules on security as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom and by the security rules of the Council set out in the Annex to Council Decision 2013/488/EU."

¹⁰ Commission Decision 2001/844/EC amending its internal Rules of Procedure (OJ L 317, 03/12/2001, p. 1)

¹¹ Council Decision 2013/488/EU on the security rules for protecting EU classified information (OJ L 274, 15/10/2013, p. 1)

¹² An accompanying new recital will be added stating the following:
"[Whereas]: As some Copernicus data and Copernicus information, including high-resolution images, may have an impact on the security of the Union or its Member States, the Council should be empowered to adopt the measures in order to deal with risks and threats to the security of the Union or its Member States."

6. Where EU classified information is generated or handled within Copernicus, all participants shall ensure a degree of protection equivalent to that provided by the rules set out in the Annex to Commission Decision 2001/844/EC and in the Annex to Council Decision 2013/488/EU.

CHAPTER V

MISCELLANEOUS

Article 16bis

International cooperation

1. The following countries or international organisations may participate in Copernicus, on the basis of appropriate agreements:
 - (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 candidate countries in accordance with the respective Framework Agreements or a Protocol to an Association Agreement establishing the general principles and conditions for the participation of those countries in Union programmes;
 - (c) Switzerland, other third countries not referred to in points (a) and (b), 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.

2. The countries or international organisations referred to in paragraph 1 may provide financial support or contributions in kind to Copernicus. The financial support shall be treated as external assigned revenue, in accordance with Article 21(2) of Regulation (EU, Euratom) No 966/2012. Financial support and contributions in kind shall be admissible under the terms and conditions of the agreement concluded with the respective third country or international organisation.
3. The international coordination of observation systems and related exchanges of data may be addressed by Copernicus, in order to strengthen its global dimension and complementarity taking account of existing international agreements and coordination processes.

Article 17

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under Copernicus are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.
2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds under the Programme.

3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under Copernicus.
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and with international organisations, contracts, grant agreements and grant decisions, resulting from the implementation of Copernicus shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

Article 18

Ownership

1. The Union shall be the owner of all tangible and intangible assets created or developed under Copernicus subject to agreements concluded with third parties, wherever appropriate, with regard to existing ownership rights.
2. The terms and conditions relating to the transfer of ownership to the Union shall be laid down in the agreements referred to in paragraph 1.

3. The Commission shall ensure, through an appropriate framework, the optimal use of the assets referred to in this Article; in particular, it shall manage the intellectual property rights relating to Copernicus as effectively as possible, taking into account the need to protect and give value to the Union's intellectual property rights, the interests of all stakeholders, and the necessity of harmonious development of the markets and of new technologies and the continuity of services. To that end, it shall ensure that the contracts entered into, under Copernicus, include the possibility of transferring or licensing intellectual property rights arising from work performed under Copernicus to third parties.

Article 19

Assistance to the Commission

1. The Commission may be assisted by independent experts, from different areas, related to the scope of Copernicus, from a broad constituency of stakeholders, including representatives of Copernicus users and national entities responsible for space, to provide it with the necessary technical and scientific expertise, as well as inter-disciplinary and cross-sectoral perspectives, taking account of relevant existing initiatives at Union, national and regional level.
2. The Copernicus Committee referred to in Article 20 shall be kept fully informed of the expert advice provided to the Commission.

Article 20

Committee procedure

1. The Commission shall be assisted by a committee (the "Copernicus Committee"). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

The Copernicus Committee shall meet in specific configurations notably with regard to security aspects ('Security Board').

- 1bis The Copernicus Committee shall set up the 'User Forum', as a working group to advise the Committee on user requirements aspects, in accordance with its rules of procedure.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
 3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
 4. Representatives of the entities to whom tasks of Copernicus are entrusted shall be involved, where appropriate, as observers in the work of the Copernicus Committee under the conditions laid down in its rules of procedure.
 5. The agreements concluded by the Union in accordance with Article 16bis may provide for the involvement, as appropriate, of representatives of third countries or international organisations in the work of the Copernicus Committee under the conditions laid down in its rules of procedure.
 6. The Copernicus Committee shall meet regularly, preferably on a quarterly basis. The Commission shall provide a report on Copernicus progress at each meeting. These reports shall give a general overview on Copernicus status and developments, in particular in terms of risk management, costs, schedule, performance, procurement and relevant advice provided to the Commission as referred to in Article 19.

Article 21

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to Article 15(1) shall be conferred on the Commission for the duration of Copernicus.
3. The delegation of power may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. The revocation shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. Delegated acts adopted pursuant to Article 15(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 22

Evaluation

1. By end of 2017 at the latest, an evaluation report shall be established by the Commission on the achievement of the objectives of all the tasks financed by Copernicus at the level of their results and impacts, their European added value and on the efficiency of the use of resources. The evaluation shall address the continued relevance of all objectives, as well as the contribution of the measures to the objectives described in Article 2. In particular, the evaluation shall assess the effects of the data and information policy on stakeholders, downstream users, the influence on business as well as on national and private investments in Earth observation infrastructures.

2. The Commission shall carry out the evaluation referred to in paragraph 1 in close cooperation with the operators and the Copernicus users shall examine the effectiveness and efficiency of Copernicus and its contribution to the objectives referred to in Article 2. The Commission shall communicate the result of these evaluations to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and shall, if necessary, propose appropriate measures to correct negative findings.
3. The Commission may, whenever necessary, be assisted by independent entities, undertake an evaluation of the methods of carrying out projects as well as the impact of their implementation, in order to assess whether the objectives, including those relating to environmental protection, have been attained.
4. The Commission may request a Member State to provide a specific evaluation of the actions and the linked projects financed under this Regulation or, where appropriate, to supply it with the information and assistance required to undertake an evaluation of such projects.

Article 23

Repeal

1. Regulation (EU) No 911/2010 is repealed.
2. Any measure adopted on the basis of Regulation (EU) No 911/2010 shall remain valid.
3. References to the repealed Regulation (EU) No 911/2010 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

Article 24¹³

Entry into force

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

It shall apply from 1 January 2014.

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

Done at Brussels,

For the European Parliament

For the Council

The President The President

¹³ An accompanying new recital (last recital) will be added stating the following
"[Whereas]: It is appropriate to align the duration of Copernicus with the Council regulation laying down the multiannual financial framework for the years 2014-2020 * [* OJ].
Therefore, this Regulation should apply as from 1 January 2014."

Correlation table

Former numbering (Regulation (EU) No 911/2010¹⁴)	New numbering (This regulation)¹⁵
Article 1	Article 1
Article 2	Article 4 to 6
Article 3	Article 2 and 3
Article 4	Article 11 and 12
Article 5	Article 3, 4 (2) and (3)
Article 6	
Article 7	Article 10
Article 8	Article 7
Article 9	Article 14 and 15
Article 10	Article 21 (1), (2) and (4)
Article 11	Article 21 (3)
Article 12	Article 21 (5)
Article 13	Article 16
Article 14	Article 22
Article 15	Article 7 (3) and 8
Article 16	Article 20
Article 17	Article 19
Article 18	Article 17
Article 19	Article 24
Annex	Article 2 to 6

¹⁴ OJ L 276, 20.10.2010, p. 1.

¹⁵ The numbering refers to the Commission's proposal and will have to be updated.