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COVER NOTE

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

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

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Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of 12.7.2013
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

Delegations will find attached document C(2013) 4311 final.

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EUROPEAN
COMMISSION

Brussels, 12.7.2013
C(2013) 4311 final

COMMISSION DELEGATED REGULATION (EU) No .../..

of 12.7.2013

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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The GMES programme has been established under Regulation (EU) 911/2010¹. This programme contributes to the funding of the European Earth observation infrastructure collecting new data and producing value added information needed by public authorities. Article 9 (1) of Regulation (EU) 911/2010 provided the following objectives for a GMES data and information policy:

- (a) promoting the use and sharing of GMES information and data;
- (b) full and open access to information produced by GMES services and data collected through GMES infrastructure, subject to relevant international agreements, security restrictions and licensing conditions, including registration and acceptance of user licences;
- (c) strengthening Earth observation markets in Europe, in particular the downstream sector, with a view to enabling growth and job creation;
- (d) contributing to the sustainability and continuity of the provision of GMES data and information;
- (e) supporting the European research, technology and innovation communities.

For the purpose of providing a framework to ensure the attainment of the GMES information and data policy objectives, Article 9 (2)² authorised the Commission to adopt, by means of delegated acts, the following measures:

- (a) measures establishing registration and licensing conditions for GMES users;
- (b) measures defining criteria for restricting access to the information produced by the GMES services and to data collected through the GMES dedicated infrastructure.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

During the process of drafting the delegated act, the Commission conducted intensive consultations of stakeholders. The Commission also invited experts from the Parliament and Member States to take part in the discussion. A scene setting document was sent in December 2011 to prepare for a two day workshop open to all interested stakeholders, organised in January 2012. During this workshop, Member States experts, public authority users, Industry representatives and officials from international organisations (e.g. ESA, EUMETSAT, the UN

¹ 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). OJ L 276, 20.10.2010, p. 1.

² Regulation (EU) 911/2010.

for the GEOSS initiative) and the European institutions and agencies took the opportunity to exchange views and ideas on the future GMES data and information policy. This workshop led to the drafting of a detailed working document on the future provisions of the delegated act. This working document and its successor were discussed at two meetings in May and July 2012. The next two iterations of the detailed working document, sent on the 1st of August 2012 and 25 of October 2012 were commented on in writing by the same experts.

The two main points of discussion were related to the legal status of input data provided to GMES as well as the protection of security interests of Member States.

The first point was addressed by limiting the scope of the delegated act to GMES dedicated data and GMES service information, excluding input data and information from third parties. It was further addressed by including a provision in the delegated act limiting the open dissemination of GMES dedicated data and GMES service information in case of legal conflict with third party intellectual rights (Article 11).

The second point was addressed by opening the security criteria of the Regulation to the protection of security interests of Member States. It was further addressed by authorising Member States to call for a reassessment of the sensitivity of GMES dedicated data and GMES service information, using all available security criteria, where requested by the evolution of the situation. The security criteria retained for the present Regulation are inspired from Member States' current Regulations on remote sensing activities.

The fact that GMES data and information would be provided free of charge was supported by a strong majority of experts. This support became even clearer when the scope of the delegated act was limited to GMES dedicated data and GMES service information excluding input data and information from third parties.

Industry, represented through the European Association of Remote Sensing Companies (EARSC)³ expressed its support to the free, full and open access to GMES dedicated data and GMES service information. It is understood that the very broad authorisation to use GMES dedicated data and GMES service information will support the efforts of innovative companies to produce value-adding services making use of GMES data and information. However, the industry is most concerned with the scope of the services financed through GMES, as a modification of this scope may endanger private investment in new services. This issue is in fact not a matter for this Regulation but for Regulation (EU) 911/2010 creating the GMES services.

The research community expressed its interest in a free, full and open access with the additional need to receive complete and updated documentation on the source and the processing of the data and information.

The workshop and the expert consultations were essential for defining a balanced compromise in the Commission working document. Finally, there was a broad consensus on the idea that the free, full and open access was the best approach for the success of the GMES programme if it was coupled with effective mechanisms that would protect legitimate rights.

³ EARSC is the European organization coordinating and promoting the activities of its members in the area of services based on the delivery of geo-information products.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Chapter 1: General provisions

Article 1 defines the subject matter of the delegated act in conformity with the delegation of power to the Commission to adopt a delegated act for the purpose of providing for a framework to ensure the attainment of the GMES information and data policy objective referred to in Article 9.1.(b) of Regulation (EU) 911/2010. It limits the scope of the delegated act, on the one hand to the data collected by infrastructure dedicated to the GMES programme, the data from the Sentinel satellites built under ESA GMES space component programme, and on the other hand to information produced by GMES services as established under the GMES programme by Article 2.2.(a) of Regulation (EU) 911/2010. The input data and information from third parties used to produce GMES service information are effectively excluded from the delegated Regulation leaving to the owner of the rights of these input data and information the responsibility to define their conditions of access.

Chapter 2: Open Dissemination for GMES dedicated data and GMES service information

The Commission has considered the arguments for disseminating GMES data and information at no cost to the user and for granting to the user as many rights as needed to exploit them extensively. This approach fully achieves the objectives stated for the GMES data and information policy in Article 9 (1) of Regulation (EU) 911/2010. It is in line with the current EU legal framework with Directive 2007/2/EC⁴ (INSPIRE) requiring from Member States the setting up of free discovery and viewing services for their spatial data. It is also in line with Directive 2003/98/EC on the reuse of public sector information⁵ (PSI) and with Commission Decision 2011/833/EU on the reuse of Commission documents⁶ authorising at no cost the reuse of public documents produced by the Commission or by public and private entities on its behalf.

The economic benefits of a free and open access to public information have been analysed⁷ in the context of the revision of the Directive 2003/98/EC proposed by the Commission on 12 December 2011⁸. The release of public information for reuse is known to trigger innovative uses of the information, increasing social welfare, economic activities, growth, job creation and tax income. It is therefore not economically efficient to limit the use of public information through charging and enforcing restrictive licensing of intellectual property rights. Furthermore, the cost of making data and information available to the public free of charge has been reduced with the advent of electronic media and efficient broadband networks.

A recent study by EARSC⁹ conducted an analysis of the release of GMES Sentinel data under a free and open policy. This analysis confirms promising results of such a policy. Another

⁴ 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).

⁵ Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the reuse of public sector information.

⁶ Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents.

⁷ <http://ec.europa.eu/digital-agenda/en/news/review-recent-studies-psi-reuse-and-related-market-developments>

⁸ http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive_proposal/2012/en.pdf

⁹ To be available on EARSC web site <http://earsc.org/>

study, made by SpaceTEC¹⁰, examined the economic consequences of a free, full and open data and information policy and concluded that it would produce considerable economic benefits including some 83,000 jobs.

This approach is shared by ESA as expressed in the ESA document 'The Joint Principles for a Sentinel Data Policy' (ESA/PB-EO(2009)98, rev. 1). The latter document states that access to Sentinel data should be free, full and open. Following the principles of this document, ESA has considerably liberalised the licensing terms for satellite missions under its control (e.g. ERS-1, ERS-2, Envisat, GOCE, SMOS, CryoSat).

This approach was pioneered in the US with the dissemination of Landsat data at no cost to the user in 2008. As soon as the US authorities stopped charging for Landsat data, the download of Landsat scenes soared from 38 to over 5700 scenes per day. The Landsat Advisory Group of the National Geospatial Advisory Committee recently authored a paper providing strong arguments for pursuing the no cost policy and a second paper presenting estimates of the productivity savings achieved by using Landsat data in 10 domains of application¹¹. In the view of the Landsat Advisory Group, the success of the free and open policy comforts the argument that Landsat is a critical part of the US infrastructure providing a huge return on the taxpayers' investment like the GPS or meteorological satellites. Any different approach for GMES would considerably lessen the impact of GMES both in the world and in Europe as users would continue to rely on the most accessible data and information sources, i.e. Landsat.

This approach is also in line with international initiatives like the Global Earth Observation System of Systems (GEOSS) developed within the framework of the Group on Earth Observations (GEO). GEO has adopted the data sharing principles and is implementing them for the GEOSS data-CORE. According to recital 28 of Regulation (EC) 911/2010, GMES should be considered as a European contribution to GEOSS. It should therefore follow the data sharing principles for the GEOSS data-CORE.

Of course, the free, full and open data policy should not be detrimental to the overall European Earth observation industry. The market for satellite images is heavily segmented and the high commercial value is concentrated in the higher resolution images not provided by the Sentinel missions. The GMES programme through the data access activities will continue to buy licensing rights on very high resolution images from satellite data providers, contributing strongly to their development. GMES services are built and operated through public procurement or grant procedures, thereby supporting providers of value-added Earth observation services. The considerable investments made by the Union in the build-up of GMES infrastructure and operations have strengthened this sector in Europe. A free, full and open access to GMES dedicated data and services information should further develop the market with more data and services available to downstream service providers and users. The development of the Earth observation user market will also trigger the procurement of new satellite systems both for public and commercial uses. Thus, GMES is effectively reinforcing every segment of the Earth observation activities.

¹⁰ Assessing the Economic Value of GMES: "European Earth Observation and GMES Downstream Services Market Study". Executive summary available at this web location: <http://copernicus.eu/pages-principales/library/study-reports/>

¹¹ <http://www.fgdc.gov/ngac/meetings/september-2012/ngac-landsat-cost-recovery-paper-FINAL.pdf>
<http://www.fgdc.gov/ngac/meetings/september-2012/ngac-landsat-economic-value-paper-FINAL.pdf>

The free, full and open access to GMES data would have a positive impact on the freedom of art and science as recognized in Article 13 of the Charter of Fundamental Rights of the EU, as well as on the freedom to conduct business, recognized in Article 16 of the Charter.

Therefore, Article 3 expresses the overall principle of a free, full and open dissemination. This article summarises the main aspects of the Regulation to help the reader to understand the impact of the Regulation.

Article 4 defines the conditions under which GMES data and information are provided free to the users. Article 5 and 6 specify the technical conditions under which the data and information will be delivered under the free, full and open dissemination. Article 5.2. ensures that there is technical compatibility between the GMES programme and the Infrastructure for Spatial Information in the European Community established under the (INSPIRE) Directive 2007/2/EC¹² and its Implementing Rules¹³. This provision will ensure coherence between the way in which GMES data and information will be made available and the corresponding activities of the Member States.

Article 7 gives to users all the necessary authorisations to exploit extensively GMES dedicated data and GMES services information.

Article 8 requires the user to respect commonly imposed obligations in the context of an open data policy.

As the data and information are provided at no cost to the users, Article 9 indicates that they are provided 'as is' without any kind of warranty. The absence of warranty is standard in such a large scale dissemination of public information. It is an important element of the open data policy implemented at EU and Member State levels.

Chapter 3: Restrictions to the Open Dissemination

Under Article 3, the open dissemination shall be the rule. However, as foreseen under Article 9(1) point (b) of Regulation 911/2010, this rule is subject to exceptions arising from conflicting rights (covered under Article 11 of the present Regulation) or from the protection of security interests (covered under Articles 12 to 16).

Article 11 aims at resolving legal conflicts between the GMES open dissemination rule and international treaties or other obligations including the rights protected under the Charter of Fundamental Rights of the EU. This Article prevents, for example, the open dissemination from violating intellectual property rights owned by third parties on data and information used in the production processes of GMES service information. The restrictions to the open dissemination must be proportional and can only modify the conditions of dissemination defined in Articles 3 to 9 to the extent strictly necessary to resolve the legal conflict.

Article 12 introduces a series of articles devoted to the protection of security interests of the Union or its Member States.

¹² OJ L 108, 25.4.2007, p. 1.

¹³ OJ L 326, 4.12.2008, p. 12; OJ L 328, 15.12.2009, p. 83; OJ L 83, 30.3.2010, p. 8; OJ L 31, 5.2.2011, p. 13; OJ L 274, 20.10.2009, p. 9; OJ L 323, 8.12.2010, p. 11; OJ L 323, 8.12.2010, p. 1; OJ L 148, 11.6.2009, p. 18; OJ L 322, 9.12.2009, p. 40 .

Article 13 provides the criteria for assessing the sensitivity of GMES dedicated data from space-based observation systems. These criteria apply where the data are collected by a space-based observation system meeting at least one of the characteristics listed in the Annex. These criteria also apply to the reassessment foreseen in Article 15.

Article 14 provides the criteria for assessing the sensitivity of GMES service information.

Article 15 includes criteria for a reassessment of the sensitivity of GMES dedicated data or GMES service information either under request from a Member States or under the Commission's own initiative. This reassessment aims at reassuring Member States with regard to the protection of their security interests. It provides a possibility to block the dissemination of harmful data and information. This possibility exists under one form or another in most legislations regulating remote sensing activities and is usually known as "shutter control". In the US, a commercial satellite image provider "may be required by the Secretary [of Commerce] to limit data collection and/or distribution by the system as determined to be necessary to meet significant national security or significant foreign policy concerns..."¹⁴. The French decree n° 2009-640¹⁵ implements similar mechanisms in its Article 5.

Article 16 completes the set of criteria for restricting access with the necessary balance of interests between the protection of security interests and the environmental, societal and economic benefits arising from the continuous provisions of GMES data and information to users.

The restrictions on access to GMES dedicated data and GMES service information based on the criteria contained in Article 12 to 16 shall be implemented according to Article 13 of Regulation (EU) 911/2010. In particular, the 'Security Board' referred to in Article 16 (2) of Regulation (EU) 911/2010 may be involved in the decision making procedure.

Chapter 4: **Reservation of access and registration**

The operational nature of GMES requires that the infrastructure is protected against disruption of services. The choice of a free, full and open dissemination could lead to an overload of the system, triggered by a massive surge of international demands. Article 17 provides for a transparent solution mitigating this risk. The public services, industry, research organisations and citizens of the Union countries and of third countries or international organisations contributing to the operations of GMES may benefit from a reservation of access to GMES data and information.

With regard to registration conditions, a four-pronged approach is provided under Articles 10, 17.2 and 18 allowing the users to access as quickly as possible the data and service information requested. Registration is not needed for the use of 'discovery' or 'viewing' services, as defined under Article 11 of the INSPIRE Directive. A light registration is however possible where the GMES dedicated data and service information are downloaded as files. An intermediate level of registration should ensure a satisfactory implementation of the possible reservation of access foreseen under Article 17 while finally a strict registration procedure shall be implemented where access to the data and information must be made subject to tight controls for security reasons.

¹⁴ US Licensing of Private Land Remote-Sensing Space Systems, 15 C.F.R. § 960.11(b)(4) (2009).

¹⁵ Décret n° 2009-640 du 9 juin 2009 portant application des dispositions prévues au titre VII de la loi n° 2008-518 du 3 juin 2008 relative aux opérations spatiales.

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(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 information³ and reinforced by Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents⁴ 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

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.

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 Policy⁷ 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.
- (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,.

⁶ COM(2009) 589 final

⁷ ESA/PB-EO(2009)98, rev. 1

- (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 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 protection⁸, 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,

⁸ 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, 12.7.2013

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.