Commission Delegated Regulation (EU) No 1159/2013 of 12 July 2013 supplementing Regulation (EU) No 911/2010 of the European Parliament and of the Council on the European Earth monitoring programme (GMES) by establishing registration and licensing conditions for GMES users and defining criteria for restricting access to GMES dedicated data and GMES service information (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 1159/2013

of 12 July 2013

supplementing Regulation (EU) No 911/2010 of the European Parliament and of the Council on the European Earth monitoring programme (GMES) by establishing registration and licensing conditions for GMES users and defining criteria for restricting access to GMES dedicated data and GMES service information

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 911/2010 of the European Parliament and of the Council of 22 September 2010 on the European Earth monitoring programme (GMES) and its initial operations (2011 to 2013)[(1)], and in particular Article 9(2) thereof,

Whereas:

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

(2) GMES data and information policy should strongly contribute to the open data policy promoted by the Union, initiated by Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information[(3)] and reinforced by Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents[(4)] adopted in the context of the Commission Communication of 26 August 2010 entitled 'A Digital Agenda for Europe'[(5)].

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

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

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

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

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

(8) To serve the objectives of GMES data and information policy stated in Article 9 of Regulation (EU) No 911/2010, users should be provided with the necessary authorisation to use GMES dedicated data and GMES service information to the fullest extent possible. Users should also be allowed to re-distribute GMES dedicated data and GMES service information, with or without modifications.

(9) GMES dedicated data and GMES service information should be free of charge for the users to capitalise on the social benefits arising from an increased use of GMES dedicated data and GMES service information.

(10) The GMES open dissemination policy may be reviewed and where necessary adapted, taking into consideration the needs of users, the needs of the Earth observation industry and technological developments.

(11) In the interest of a wide distribution of GMES data and information, it is appropriate not to provide for any express or implied warranty, including as regards quality and suitability for any purpose.

(12) The Commission should apply restrictions on the GMES open dissemination, where the free, full and open access to some GMES dedicated data and GMES service information would affect the rights and principles enshrined in the Charter of Fundamental Rights of the EU such as the right for private life privacy, the protection of personal data or intellectual property rights on data used as inputs in the production process of GMES services,.

(13) Where necessary, restrictions should protect the security interests of the Union, as well as the national security interests of the Member States. As far as national security interests are concerned, such restrictions should respect the obligations of Member States that have adhered to a common defence organisation under international treaties. The assessment of the sensitivity criteria for restricting the dissemination of GMES dedicated data and GMES service information should ensure the *ex-ante* clearance of

security issues allowing for the uninterrupted delivery of GMES dedicated data and GMES service information.

(14) The sensitivity criteria should capture the different parameters which are likely to constitute a risk for the security of the Union or its Member States. The threats to critical infrastructure, as defined under Article 2(a) of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection[8], 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,

HAS ADOPTED THIS REGULATION:

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1159/2013. (See end of Document for details)*

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.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 1159/2013. (See end of Document for details)*

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;