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WORKING PAPER

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From:	General Secretariat of the Council
To:	Working Party on Space
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the space programme of the Union and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014/EU - MS comments on WK 10916/20 (Articles 7 and 8)

Delegations will find attached table with MS comments received on articles 7 and 8 (WK 10916/20).

<i>Presidency compromise text - WK 10916/20</i>	MS drafting suggestions and comments (AT - BG - CZ - HR - HU - EL - ES - IT - NL - PT - SE -SI -SK)
<p>(24) [Third countries which are members of the EEA may participate in Union the space programmes in the framework of the cooperation established under the EEA international cooperation agreement, which providesss for the implementation of the programmes by a decision under that agreement. Acceding countries, candidate countries and potential candidates as well as countries covered by the European Neighbourhood Policy may participate subject to their respective framework agreements. Third countries may also participate on the basis of other legal instruments an agreement to be concluded in accordance with Article 218 TFEU.]</p>	<p>AT (Comments): <u>Needs to be aligned with the final wording of Art 7.</u></p> <p>CZ (Comments): Needs to be aligned with the final wording of Art 7.</p> <p>IT (Comments): Adjust consistently with changes proposed in art. 7 para. 1</p>
<p>(24aa) A specific provision should be introduced in this Regulation to grant the necessary rights for and access to the authorizing officer responsible, OLAF, as well as the European Court of Auditors to comprehensively exert their respective competences.</p>	<p>AT (Drafting): A specific provision should be introduced in this Regulation to grant the necessary rights for and access to the authorizing officer responsible, OLAF, as well as the European Court of Auditors to comprehensively exert their respective competences.</p> <p>AT (Comments): <u>As Art 26 already includes OLAF and the Court of Auditors, this recital can also be deleted.</u></p>

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<p>(24a) International organisations which do not have their headquarters in the Union should require an agreement concluded under Article 218 TFEU with the Union to ensure that they have access to SST services which are not publicly available. International organisations which have their headquarters in the Union and are public spacecraft owners and operators should be considered SST core users due to the fact that they are identified as public and private spacecraft owners with their operations established in the Union.</p>	
<p>(24b) Publicly available information for SST subcomponent services should mean any information that a user has a reasonable basis for finding lawfully accessible. Collision avoidance, re-entry and fragmentation SST subcomponent services are based on external the United States SST publicly accessible SST information which is available after a request for access. Consequently, collision avoidance, re-entry and fragmentation SST subcomponent services should be understood as publicly available services and should not require an agreement under Article 218 TFEU. Access to them should be available through a request from the potential users.</p>	
<p><i>[Article 7</i></p>	
<p>Third countries and international organisations associated to the Programme</p>	<p>AT (Comments): <u>Taking into account the red lines of some MS, we suggest to change the order of paragraph 1 and 2 and limit paragraph 2 (new) to Copernicus.</u></p>

1. The **participation to the** Programme's components **or sub-components referred to in Article 3**, with the exception of the **SSTGOVSATCOM** and **the SSTGOVSATCOM**, shall be open to the following third countries:

HU

(Comments):

HU supports the current wording of PRES. compromise text with regard to the substance of Article 7.1 (a-c).

CZ

(Drafting):

1. The **participation to Copernicus the Programme's component_s or sub-components referred to in Article 3**, with the exception of **the SSTGOVSATCOM** and **the SSTGOVSATCOM of the Programme referred to in Article 3**, shall be open to the following third countries:

CZ

(Comments):

Copernicus should remain open to third countries as it is now. Therefore, the horizontal guidelines of the European Council regarding the categories of third countries should be applied here. On the other hand, CZ shares the concerns of other delegation regarding the participation of third countries in categories b) and c) in Galileo.

SE

(Comments):

Sweden supports the comments made by ES and FR that concerns referring to direct access to Galileo to countries under categories (b) and (c) without the need of proceed in accordance with Art. 218 as it is the practice now. If this stands unregulated the EU will be in breach of art 218 TFEU as well as with the delegated act 1104/2011 and the Common Minimum Standards. Sweden also reminds the WP that Com is at the moment in negotiation with both NO and US in order to follow art. 218 TFEU concerning Galileo and leaving this loophole in the regulation would be detrimental to our common goals. Not to mention this is also an ongoing discussion with the UK.

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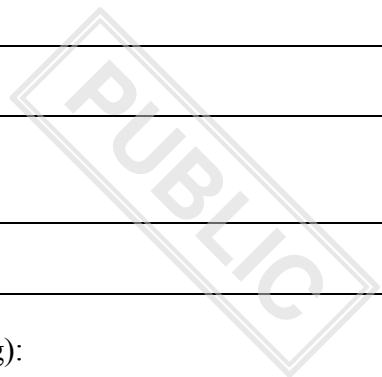
	<p>EL (Drafting): The participation to the Programme's Copernicus components or sub-components referred to in Article 3, with the exception of the GOVSATCOM and the SST, shall be open to the following third countries:</p> <p>IT (Drafting): 1. The <u>participation to the</u> Programme's components <u>or sub-components referred to in Article 3</u>, with the exception of <u>Galileo/EGNOS</u> the SST<u>GOVSATCOM</u> and <u>the SST</u>GOVSATCOM, shall be open to the following third countries:</p>
(a) European Free Trade Association (EFTA) members which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the EEA agreement;	
(b) acceding countries, candidate countries and potential candidates, in accordance with the general principles and general terms and conditions for their participation in Union programmes established in the respective framework agreements and Association Council decisions, or similar agreements, and in accordance with the specific conditions laid down in agreements between the Union and them;	
(c) countries covered by the European Neighbourhood Policy, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements and association council decisions, or similar agreements, and in	

<p>accordance with the specific conditions laid down in agreements between the Union and those countries.</p>	
	<p>EL (Drafting):</p> <p>(d) <u>any other third country or international organisation in accordance with the conditions laid down in a specific agreement in accordance with Article 218 TFEU covering the participation of the third country or of the international organisation to any Union programme, provided that the agreement:</u></p> <p>(a) <u>ensures a fair balance as regards the contributions and benefits of the third country or international organisation participating in the Union programmes;</u></p> <p>(b) <u>lays down the conditions of participation in the programmes, including the calculation of financial contributions to individual programmes and their administrative costs. These contributions shall constitute assigned revenues in accordance with Article 21(5) of the new Financial Regulation;</u></p> <p>(c) <u>does not confer to the third country or international organisation a decisional power nor control, directly or indirectly, on any part of the programme;</u></p> <p>(d) <u>guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.</u></p>
<p>2. The participation to the Programme's components or sub-components, with the exception of the SST, with the exception of SST, shall also be open to any third country or international organisation, in accordance with the conditions laid down in a specific agreement as provided in accordance with Article 218 TFEU covering the participation of the third country or of the international organisation to any Union programme, provided that the agreement:</p>	<p>CZ (Drafting):</p> <p>2. The participation to the other Programme's components or sub-components, with the exception of SST, shall also be open to any third country or international organisation, in accordance with the conditions laid down in a specific agreement in accordance with Article 218 TFEU covering the participation of the third country or of the international organisation to any Union</p>

	<p>programme, provided that the agreement:</p> <p>CZ (Comments): As it is case of GOVSATCOM, the participation of any third country in Galileo component of the Programme should be subject to the international agreement concluded in accordance with art. 218 TFEU.</p> <p>EL (Drafting): The participation to the <u>other</u> Programme's components or sub-components, <u>such as Galileo and GOVSATCOM</u>, with the exception of SST, shall also be open to any third country or international organisation, in accordance with the conditions laid down in a specific agreement in accordance with Article 218 TFEU covering the participation of the third country or of the international organisation to any Union programme, provided that the agreement:</p>
(a) ensures a fair balance as regards the contributions and benefits of the third country or international organisation participating in the Union programmes;	
(b) lays down the conditions of participation in the programmes, including the calculation of financial contributions to individual programmes and their administrative costs. These contributions shall constitute assigned revenues in accordance with Article {21(5)} of {the new Financial Regulation};	
(c) does not confer to the third country or international organisation a decisional power on the programme;	<p>EL (Drafting): (c) does not confer to the third country or international organisation</p>

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	a decisional power nor control, directly or indirectly, on any part the programme
(d) guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.	
[In the case of participation of third countries or international organisations in the SST, particular attention shall be given to the objective of enhancing the reach and capabilities of the SST sub-component necessary for ensuring the safety of European space infrastructure as well as to supporting European autonomy in that respect. Such participation shall recognize the substantial interest of Member States in participating in the SST as well as require that the respective third country or international organisation concludes relevant agreements with the participating Member States.]	
2a. — Third countries which have a long term agreement to participate in at least one component shall continue to participate in accordance with the conditions laid down in that agreement.	
3. The participation to the Programme's components or sub-components shall only be open to the third countries and international organisations referred to in paragraphs 1 and 2 provided that the essential security interests of the Union and its Member States are preserved, including as regards the handling protection of classified information under Article 42.]	
<i>[Article 8</i>	



Access to <u>services</u> SST, GOVSATCOM and PRS by third countries or international organisations	
(SST <u>service</u>, GOVSATCOM <u>service</u> and <u>Galileo Public Regulated Service</u>)	AT (Drafting): <u>(SST <u>services</u>, GOVSATCOM <u>services</u> and Galileo Public Regulated Service)</u> AT (Comments): <u>In accordance with the rest of the regulation.</u>
1. Third countries or international organisations may become <u>have access to</u> GOVSATCOM <u>services</u> participant referred to in Article 67 or obtain access to the services provided by the SST only where, in accordance with the procedure provided for in Article 218 of the Treaty on the Functioning of the European Union, they enter into an agreement laying down the terms and conditions of the detailed rules for access to such data, information, <u>GOVSATCOM</u> capacities and services, and <u>they comply with the provisions of Article 42</u> the framework for exchanging and protecting classified information.	
<u>1a. Third countries and international organisations not having their headquarter in the Union may have access to SST services referred to in point (d) of Article 54(1) only where, in accordance with the procedure provided for in Article 218</u>	

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<u>TFEU of the Treaty on the Functioning of the European Union, they enter into an agreement laying down the terms and conditions for access to such services, and they comply with the provisions of Article 42the framework for exchanging and protecting classified information.</u>	
1b. By way of derogation from paragraph 1a of this Article, No agreement under Article 218 TFEU shall be required where an for SST services which are publicly available, as referred to in points (a), (b) and (c) of Article 54(1). Access to those services shall be subject to a request from the potential users. is publicly available. The services referred to in points (a), (b) and (c) of Article 54(1) shall be understood as publicly available services.	
2. The access of third countries or international organisations to the Public Regulated Service provided by Galileo shall be governed by Article 3(5) of Decision No 1104/2011/EU of the European Parliament and of the Council ¹ . <u>]</u>	
	<u>General comments</u>
	AT (Comments): <u>AT is of the opinion that the future space programme should be as open as possible and as closed as necessary to safeguard the interests of the MS and EU. In any circumstances, a special agreement is the pre-condition for participation of third countries/international organisations. Nevertheless, we can agree to limit a third country participation to all space components but SST.</u>

¹ OJ L 287, 4.11.2011, p. 1–8.

	<p>NL</p> <p>(Comments):</p> <p>Thank you very much for all the work on the Space Regulation. NL can support your Presidency text on art 7,8 and the horizontal provisions.</p> <p>EL</p> <p>(Comments):</p> <p>Greece is not in a position to accept the process described in paragraph 1 of Article 7, as laid down in doc. WK-10916/20, for the participation of the third countries in components of the Space Programme. More specifically, we consider that components such as the Galileo and GOVSATCOM with pronounced security and defence aspects should all be dealt with in paragraph 2. The rationale is that we need to ensure a high level of security, not only for the PRS service, but for the whole system on which it relies, while ensuring the essential security interests of MS. Due to this fact, we are of the opinion that the participation of all third countries in Galileo and the GOVSATCOM shall only be assessed on a case by case basis via an international agreement to be concluded under unanimity – regarding both the participation and protection of classified information aspects – due to its defence and security aspects, in accordance with Article 218 TFEU, following a precise mandate from the Member States to the Commission. Furthermore, Greece considers that paragraph 3 is of crucial importance in determining the participation of third countries in all components of the Space Programme, including Copernicus, which should be agreed unanimously in accordance with para 8 of the Article 218 TFEU when the security and defence aspects of a MS in regards to a particular third state are involved. In this respect, Greece reserves the right to invoke its essential security interests for any third country, including candidate countries for accession</p> <p>ES</p>
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	<p>(Comments Art.7)</p> <p>As anticipated during our last meeting, we have major concerns about the implications for Galileo of PRES text in Art. 7.1. We send our written comments to the Presidency as requested, but I would like to share with you the problems we have identified, and insist once again to our full commitment with the Programme. We are fully aware that we are working under a very tight calendar but the question raised is of vital importance for our common future. In this vein, we are flexible and open to any suggestion you and your experts may have to solve the identified problem in a satisfactory way, which is not at this moment reflected in the text that we have. We feel confident that we may reach consensus during the next working party as suggested by the Presidency and be ready for COREPER the 30th.</p> <p>Based on current practice and procedures our main points of concern are:</p> <p>Galileo plays an essential role in preserving the strategic interests of the Union, and for such reason the current practice is to enter into third countries' association agreements on case by case basis.</p> <p>ES main concerns refer to direct access to Galileo to countries under categories (b) and (c) without the need of proceed in accordance with Art. 218 as it is the practice now. Current procedures/practice for Galileo imply:</p> <p>Specific association agreements in accordance with Art. 218 of TFEU, independently of being China, South Korea, Switzerland, Ukraine, etc.</p> <ul style="list-style-type: none"> • Often current specific association agreements also imply the protection in their territories of the
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	<p>frequencies in the spectrum to ensure a proper reception of the signal, and to avoid that third countries will authorize in their territories uses that will interfere with the signal.</p> <ul style="list-style-type: none"> • Additionally, they may include a reference to opening internal markets, and to facilitate commercial exchange of specific componentes, services and applications, because it has been the case that some of these third countries authorize and prioritize the use of systems competing with Galileo. • Furthermore, based on geographical proximity, third countries associated to Galileo are asked to protect GNSS installations in their own territories (Norway, Mediterranean and Eastern Europe). • In the case of Switzerland and NO, financial contributions are based in their GDP, and they have additional rights including their participation in meetings (without voting rights) with the exception of matters dealing with PRS or classified issues. • PRS access has not been part of any of these association agreements, since for PRS three different agreements are needed: (1) cooperation agreement; (2) exchange of information agreement, and (3) specific agreement for PRS. • Spain is aware of the extremely important that is to monitor and control any association agreement in the case of Galileo. Some of the previous agreements signed with third countries have been very problematic, including the 2004 cooperation agreement with China. Such agreement included the participation of China in specific technological developments, apparently neutral, but finally it was a major source of problems in terms of technological
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dependence.

- Since the China agreement above mentioned, any association agreement with GNSS is scrutinized and monitor by experts and should continue being done in the same way during the next coming programming period.

BG

(Comments Art.7)

We share the concerns expressed during the WP and what Spain just sent today about properly addressing access to Galileo in Art.7.

PT

(Comments Art.7)

We share as well the concerns expressed by FR and ES regarding the openness of Galileo as mentioned in art. 7.1. For us the procedure for association to have access to Galileo should be in accordance with Art. 218 of TFEU as it is current practice, which serves the purpose to protect the strategic interests of the Union.

SI

(Comments Art.7)

We would like to give our voice to the concerns that were expressed by France, Spain and many others regarding Art. 7.1 and referring to openness of the Galileo, which should be in accordance with Art. 218 of TFEU. But not to be too pessimistic, I know we can conclude a timely agreement on this issue.

Thank you for all the hard work you have done on the open articles.

SK

(Comments)

Slovakia joins the countries expressing the concerns regarding the

	<p>openness of Galileo to 3rd countries under categories b) and c) under art. 7.1.</p> <p>The process of association should follow the art. 218 of the TFTU. Strategic interests of the EU should be kept protected.</p> <p>IT (Comments)</p> <p>if it is necessary to reiterate it, please be confirmed that IT shares the opinion that, in view of protecting the security interest of the Union, the procedure for cooperating in the Galileo component of the Space Programme should be in accordance with Art. 218 of TFEU, as per current practice.</p> <p>This position is consistently reflected by the modification proposal to Art. 7 Par. 1 you received today from us. However, we are flexible on the way the provision is implemented in the Art. 7.</p> <p>HR (Comments)</p> <p>please add HR to the list of countries expressing the same concern on art. 7.</p> <p>Less relevant for your deadline now, but still relevant for the discussion to come.</p>
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