



Council of the European Union
General Secretariat

**Interinstitutional files:
2018/0236(COD)**

Brussels, 26 October 2020

WK 11801/2020 INIT

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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 - Draft Presidency compromise proposal on Article 7 and 8 and Recitals (24), (24aa), (24a) and (24b).

Delegations will find below a draft Presidency compromise proposal on Article 7 and 8 and Recitals (24), (24aa), (24a) and (24b).

Deletions are in strikethrough and additions in bold underline.

Modifications compared to WK 10916/20 are marked in yellow background.

The text on green background is part of the Common Understanding.

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Delegations will find below a draft Presidency compromise proposal on Article 7 and 8 and Recitals (24), (24aa), (24a) and (24b).

Deletions are in ~~strike through~~ and additions in **bold underline**.

Modifications compared to WK 10916/20 are marked in yellow background.

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Explanatory note

- Recital (24): updated in line with Art. 7(1) and 7(2)

- Recital (24aa): the subject matter of this recital is different from the subject matter of Recital (24a) and is already part of the Common Understanding, therefore it should be split.

- Recital (24b): the objective of Art. 8(1b) and this Recital is to clarify that collision avoidance, re-entry and fragmentation SST services are publicly available so they do not require to conclude an agreement under Art. 218 TFEU.

- Article 7(1): the participation for countries listed in categories (a), (b), (c) are provided for in a framework agreements concluded under Art. 218 TFEU (which already exist). In addition, specific agreements under a simplified procedure need to be concluded by the Commission for their implementation. The article builds on comments from delegations (using the a-b-c-d structure) and is in line with the current situation for all (sub)components. EEA countries may participate in Galileo/EGNOS on the basis of Protocol 31 to the EEA agreement.

- Article 7(2): Participation under this paragraph requires an agreement under Art. 218 TFEU. This also applies to components or sub-components not covered by §1.

- Article 7(2a) (deleted): The Commission has confirmed that all existing international agreements remain in force, including the Switzerland agreement on Galileo/EGNOS and all existing security of information agreements. Switzerland can therefore continue its participation in the Galileo and EGNOS components on that basis.

- Art. 8(1a) and (1b): the modifications only concern drafting and not substance. Three publicly available SST services defined in points (a), (b) and (c) of Art. 54(1) should be accessible through a request for access, only access to services under point (d) of Art. 54(1) should be subject to an agreement under Art. 218 TFEU. As a consequence, point (1b) provides that access requires a request (as was already indicated in the Recital (24b)) for publicly available SST services.

(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 provides 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. Any ~~Third~~ countries may also participate in the Programme with the exception of SST on the basis of ~~other legal instruments~~ an agreement to be concluded in accordance with Article 218 TFEU (Galileo, EGNOS, Copernicus, GOVSATCOM, NEO and Space Weather).]

(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.

(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.~~

(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.

Article 7

Third countries and international organisations associated to the Programme

1. The participation to the Programme's components or sub-components referred to in Article 3, with the exception of the SST, GOVSATCOM and the SSTGOVSATCOM, shall be open to the participation of the following third countries, as follows:
 - (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, **in Galileo, EGNOS, Copernicus, NEO and Space Weather**;
 - (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, **in Copernicus, NEO and Space Weather**;
 - (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 accordance with the specific conditions laid down in agreements between the Union and those countries, **in Copernicus, NEO and Space Weather**.
2. The participation to the Programme's components or sub-components, with the exception of the SST, shall also be open to (d) 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, **with the exception of SST**, provided that the agreement:
 - (ai) ensures a fair balance as regards the contributions and benefits of the third country or international organisation participating in the Union programmes;
 - (bii) 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};

(eiii) does not confer to the third country or international organisation a decisional power on the programme;

(div) 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** ¶

[Article 8

Access to services SST, GOVSATCOM and PRS by third countries or international organisations

(SST service, GOVSATCOM service and Galileo Public Regulated Service)

1. Third countries or international organisations may ~~become~~ **have access to** GOVSATCOM **services** 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, **GOVSATCOM** capacities and services, and **they comply with the provisions of Article 42** the framework for exchanging and protecting classified information.

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 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 42 the framework for exchanging and protecting classified information.

- 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 Council¹.]

Text of the articles in clean version:

[Article 7

Third countries and international organisations associated to the Programme

1. The participation to the shall be open to the participation of third countries, as follows:
 - (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, in Galileo, EGNOS, Copernicus, NEO and Space Weather;
 - (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, in Copernicus, NEO and Space Weather;
 - (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

¹ OJ L 287, 4.11.2011, p. 1–8.

association council decisions, or similar agreements, and in accordance with the specific conditions laid down in agreements between the Union and those countries, in Copernicus, NEO and Space Weather.

- (d) 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, with the exception of SST, provided that the agreement:
- (i) ensures a fair balance as regards the contributions and benefits of the third country or international organisation participating in the Union programmes;
 - (ii) 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;
 - (iii) does not confer to the third country or international organisation a decisional power on the programme;
 - (iv) guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.
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 protection of classified information under Article 42.]

[Article 8

Access to services by third countries or international organisations

(SST service, GOVSATCOM service and Galileo Public Regulated Service)

1. Third countries or international organisations have access to GOVSATCOM services 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 for access to GOVSATCOM services, and they comply with the provisions of Article 42.
- 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 TFEU, they enter into an agreement laying down the terms and conditions for access to such services, and they comply with the provisions of Article 42.

- 1b. No agreement under Article 218 TFEU shall be required 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.
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 Council².]

² OJ L 287, 4.11.2011, p. 1–8.