



Council of the European Union
General Secretariat

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

Brussels, 30 October 2020

WK 12098/2020 INIT

LIMITE

**ESPACE
TRANS
EU-GNSS
RECH
COMPET
IND
CSC**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

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 11861/20 (Art. 7 and 8 and Recitals (24), (24aa), (24a) and (24b))

Delegations will find attached MS comments received on articles 7 and 8 (WK 11861/20)

WK 12098/2020 INIT

LIMITE

EN

Member states (BE - BG - CY - CZ -DK - EL - ES - FR - HR - IT - LV - PL - PT - SI)
comments and drafting suggestions on draft Presidency compromise proposal on Article 7 and 8
and Recitals (24), (24aa), (24a) and (24b) (WK 11861/20)

BE comments

We would like to thank the Presidency for continuous efforts in providing a text for Article 7. We feel that this new version goes into a direction that deals with some of the major elements pointed out by the Member States.

Please note that, at this stage, we also have a positive scrutiny reservation on your text for the moment but we largely share the concerns expressed by Spain about article 7.1 and the category (d) which is close to the horizontal provisions EUCO 10/21 but is not exactly translating the provisions. The option 2 proposed by Spain seems to offer an elegant solution in this regard.

BG comments

Thank you very much for the hard efforts to address concerns expressed during Space WP meetings.

I will join others by informing of a scrutiny reservation from our side on Art.7 due to lack of time and COVID-19 constraints currently affecting my Ministry. Any amendments for improving the clarity, simplicity and legal stability would be welcome.

CY comments

We thank PCY for the effort to accommodate our previous comments. These comments aim at further enhancing the legal clarity of the text, as well as, to make some additions, that we believe better serve the strategic interests of the Union.

(24) European Free Trade Association (EFTA) members ~~Third countries~~ which are members of the EEA, acceding countries, candidate countries and potential candidates as well as countries covered by the European Neighbourhood Policy may participate in ~~Union~~ the space programme, with the exception of Galileo, Egnos, Gvsatcom and SST, subject to their respective framework agreements, in the framework of the cooperation established under the EEA international cooperation agreement, which provides for the implementation of the programme by a decision under that agreement. ~~Galileo, EGNOS, Copernicus, NEO and Space Weather.~~

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

Galileo, Egnos and Govsatcom shall only be open to third countries participation on the basis of an international agreement in accordance with article 218 TFUE.

~~On the same basis, EEA countries, acceding, candidate and potential candidate countries and European Neighbourhood Policy countries may also participate to GOVSATCOM, and, where applicable, to Galileo or EGNOS.~~

Commented [LS1]: As explained in our previous comments

(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

4. 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, with the exception of Galileo, Egnos, Gvsatcom and SST, 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, with the exception of SST, shall also be open to

- (d) any other third country or international organisation, in Galileo, EGNOS, Copernicus, GOVSATCOM, NEO and Space Weather, 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,

(-v) protects intellectual property rights :

- (vi) provides that a non proliferation regime of technologies, data and items specifically designed for the Programme's components or subcomponents is designed and in force via appropriate export control measures

~~[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. Galileo, Egnos and GOVSATCOM shall also be open to the participation of third countries referred to in points (a), (b) and (c) of paragraph 1 of this Article, and Galileo and EGNOS shall also be open to the participation of countries referred to in points (b) and (c) of paragraph 1 of this Article, in accordance with the conditions laid down in a specific agreement in accordance with Article 218 TFEU covering the participation of the third country to any Union programme, provided that the agreement lays down the conditions set out in point (d) of paragraph 1 of this Article.

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.

CZ comments

4

LIMITE

First of all, thank you very much for the efforts of the Presidency to find legally sound compromise on art. 7. CZ is convinced that the draft that you have sent yesterday goes in the right direction and is reflecting to a large extent the EUCO conclusions. But in order to be 100% sure (in particular regarding category d), my colleagues in Prague need more time to check your proposal. So unfortunately I have to place scrutiny reservation for the moment and I will come back to you at later stage.

DK comments

Denmark would like to thank the Presidency for the latest drafting's concerning art. 7. The last meeting indicated that we might not read the articles in the same way and that there is still room for discussion and to improve the text.

We propose to streamline and simplify paragraph 1 and 2 in Art. 7 in order to make the conditions for participation even more clear and to separate the exceptions in Paragraph 2.

Art. 7:

Paragraph 1 is now opening the Programme with the exceptions of Galileo, EGNOS, GOVSATCOM and SST just as discussed at SWP.

Category a – c countries already have a framework agreement.

Category d countries need a framework agreement for the participation in EU Programmes, which is in line with the European Council conclusions from July. This is also why the wording is changed to any other third countries.

We still think there is an element open for interpretation whether or not if countries in para 1d are able choose between participation in sub-components or that they enter an agreement concerning the Programme. This needs to be clarified.

Paragraph 2 is dealing with the exceptions through article 218 TUEF.

We remain available at your disposal if further explanations is needed.

(24) European Free Trade Association (EFTA) members ~~Third countries~~ which are members of the EEA, Acceding countries, candidate countries and potential candidates as well as countries covered by the European Neighbourhood Policy may participate in ~~Union~~ the space programme, with the exception of Galileo, Egnos, Govsatcom and SSTs subject to their respective framework agreements, 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 ~~Galileo, EGNOS, Copernicus, NEO and Space Weather~~. 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 ~~(Copernicus, NEO and Space Weather)~~ Any other third countries, may also participate **in the Programme**, with the exception of Galileo, Egnos, Govsatcom and SSTs ~~with the exception of SST~~ on the basis of other legal instruments **an international agreement to be concluded in accordance with Article 218 TFEU (Galileo, EGNOS, Copernicus, GOVSATCOM, NEO and Space Weather)** ~~On the same basis, EEA countries, acceding, candidate and potential candidate countries and European Neighbourhood Policy countries may also participate to GOVSATCOM, and, where applicable, to Galileo or EGNOS.~~ Galileo, Egnos and Govsatcom shall only be open to third countries participation on the basis of an international agreement in accordance with article 218 TFUE.

(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~~ participation to the Programme **s components or sub-components referred to in Article 3,** with the exception of the SST, GOVSATCOM and the ~~SSTGOVSATCOM,~~ **with the exception of Galileo, Egnos, Govsatcom and SST,** shall be open to **the participation of** the following third countries, **as follows:**

- PUBLIC
- (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, ~~with the exception of SST~~, shall also be open to

- (d) ~~any any other~~ third countries or international organisation, ~~in Galileo, EGNOS, Copernicus, GOVSATCOM, NEO and Space Weather;~~ 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.~~

2. Galileo, Egnos and GOVSATCOM shall also be open to the participation of countries referred to in points (a), (b) and (c) of paragraph 1 of this Article, and Galileo and EGNOS shall also be open to the participation of countries referred to in points (b) and (c) of paragraph 1 of this Article, in accordance with the conditions laid down in a specific agreement in accordance with Article 218 TFEU covering the participation of the third country to any Union programme, provided that the agreement lays down the conditions set out in point (d) of paragraph 1 of this Article.

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.**

EL comments

I would like to inform you that our position is similar to Italy's and I apologise for the delayed response in sending you our feedback.

ES comments

First of all, we thank the Presidency for the efforts in providing yesterday a new text for Article 7 with the aim of answering some fundamental elements pointed out by the majority

of delegations. With the intention to reply right on time to the deadline provided by the Presidency, we would like to share with you the Spanish position and the rationale for it:

- **We have a scrutiny reservation** on Article 7, and in particular Article 7.1. We are **positive** about the new Presidency text provided yesterday but:

a) We need some more time for our experts in the Ministries concerned to conclude their analysis.

b) From our perspective Art. 7.1, in particular for category (d) is close to the horizontal provisions EUCO 10/21 but is not exactly reproducing the provisions.

c) Recital 24 may need some additional work to streamline its content.

- For Art. 7.1, category (d) we consider that it should reflect one of the two options indicated below:

Option 1

(d) third countries and territories in accordance with the conditions laid down in a specific agreement covering the participation of the third country to any Union Programme, provided the agreement:

The four conditions included in the PRES text will follow

Option 2

(d) **any** other third countries ~~or international organisation~~, in Galileo, EGNOS, Copernicus, GOVSATCOM, NEO and Space Weather, 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:

The four conditions included in the PRES text will follow

From the understanding of our experts, the horizontal provisions and the framework agreements refers to countries and not to international organizations.

Hope this will be useful to clarify our position at this moment.

FR comments

France would like to thank the presidency for the new draft version released yesterday on article 7.

France expresses satisfaction that our concern on Galileo seems now understood and covered.

Nevertheless, we still think that some rewording is needed in order to streamline the text and avoid any misinterpretation or loopholes as a legally sound text is a security for all of us in the forthcoming implementation of the Space Programme.

In that sense, France can subscribe to the DK remarks and proposal for drafting in para 1.

Please find accordingly our proposal attached, adding also the conditions FR would like to see on IPR and non proliferation regime.

France keeps its scrutiny reservation on the text.

(24) **European Free Trade Association (EFTA) members** ~~Third countries~~ which are members of the EEA, **acceding countries, candidate countries and potential candidates as well as countries covered by the European Neighbourhood Policy** may participate in ~~Union~~ **the space** programme, with the exception of Galileo, Egnos, Govsatcom and SST, ~~subject to their respective framework agreements.~~ **Any other** ~~Third countries,~~ may also participate **in the Programme**, with the exception of Galileo, Egnos, Govsatcom and SST, ~~on the basis of other legal instruments, an~~ **international agreement to be concluded in accordance with Article 218 TFEU** (Galileo, Egnos and Govsatcom shall only be open to third countries participation on the basis of an international agreement in accordance with article 218 TFUE).

(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.

~~4~~Article 7

Third countries and international organisations associated to the Programme

1. The participation to 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~~, **with the exception of Galileo, Egnos, Govsatcom and SST**, shall be open to ~~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;
 - (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 accordance with the specific conditions laid down in agreements between the Union and those countries
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~~
 - (d) ~~any any other~~ third countries ~~iesy~~ 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,

(v) protects intellectual property rights ;

(vi) provides that a non proliferation regime of technologies, data and items specifically designed for the Programme's components or subcomponents is designed and in force via appropriate export control measures

~~[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.~~

2. Galileo, Egnos and GOVSATCOM shall also be open to the participation of third countries in accordance with the conditions laid down in a specific agreement in accordance with Article 218 TFEU covering the participation of the third country to any Union programme, provided that the agreement lays down the conditions set out in point (d) of paragraph 1 of this Article.

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 paragraph 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.**

Commented [A62]: Both added conditions take into account existing international agreement, namely the cooperation agreement between the EU and its member states, of the one part, and the Swiss Confederation, of the other, on the European satellite navigation programmes. Those conditions are reinforcing the core objectives of the programme, as defined in article 4.

HR comments

please note I will also have to place a positive scrutiny reservation on your text for the moment as we are still consulting and analysing it horizontally.

IT comments

we'll not add up further proposals for Art. 7.

Italy is happy with the intended approach of the PCY draft and we'll be flexible to changes that go in the direction of improving clarity and unambiguity, as proposed by colleagues, including DK, FR, ES and others.

Italy strongly recommends a legal check of the text.

LV comments

Thank you for your good work and flexibility.

- Latvia appreciates that the text of the article 7 is now much better. It is comprehensible and pretty much in line with horizontal decisions of the European Council in paragraph 1(d). As Latvia understands it, para 1(d) now refers to "as if" category D countries. With this in mind, we consider that recital 24 also has to be adjusted accordingly.
- Therefore we ask Presidency to correct the **3rd sentence in recital 24**, as follows: **Any Other** tThird 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)**.
- Now we have only one question left, which is Coreper2 relevant: Here we refer to the **Draft text of the Agreement on the New Partnership with the United Kingdom and proposed Protocol I**, which intends to list programmes in which UK participates and specific conditions for the participation.
- We would appreciate if **Presidency (and the Commission) would be able to confirm, that approach, which is chosen for Space programme had been coordinated with Coreper2 and across services of the Commission**.
- Additionally, we draw your attention that **ANNEX to COUNCIL DECISION authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement (doc 5870/20 ADD 1 REV 2) had not been changed**. The para 14 of the negotiation mandate clearly states: *"The envisaged partnership should establish general principles, terms and conditions for the United Kingdom's participation in and contribution to Union and Euratom programmes, subject to the conditions set out in the corresponding instruments, in areas such as science and innovation, youth, culture and education, development and international cooperation, defence capabilities, civil protection, space and other relevant areas when in the Union's interest. This will include the general rules for the financing and the control and audit of the implementation of the programmes, and the appropriate consultation of the United Kingdom"*.

- We draw your attention to the fact that approach which is chosen by Presidency in Space regulation now contradicts the abovementioned negotiation mandate and makes Annex I redundant. We repeat our question, whether this approach had been coordinated with Coreper 2 and across services of the Commission?

For this reason we keep our reservation on article 7.

PL comments

Please find enclosed the Poland's position on the last compromise version - generally we can support it, details included.

WK 11861/2020 - PL Comments

The current version of art. 7 is quite difficult to understand, but sometimes it comes at the cost of compromises. It seems that the interests of the EU and MS will be secured, nonetheless it should be borne in mind that the Regulation will constitute the basis for the continuation of the development of the Galileo, EGNOS and Copernicus programs and the transformation of the GSA Agency, therefore it is in the EU's interest that the work on the project is completed as soon as possible, so that the new provisions can enter into force from 1 January 2021.

Having that in mind, PL can accept the latest draft of the German Presidency concerning Articles 7 and 8.

The current wording takes into account the possibility of participation in the EU space program of the countries mentioned in Art. 7.1 points b and c, at least in the Copernicus component, as well as adjusts the provisions of recital 24 to the current wording of Art. 7 and 8.

The proper security of the GovSatCom and Galileo and EGNOS programs is also ensured, notably by adding paragraph 2 to Article 7. For example, such provisions leave Member States' control over which countries can participate in the implementation of the Galileo program, which is a dual use program.

Of course, one have to keep in mind the universality of Galileo Open Service - High Accuracy Service and Search and Rescue Service.

PT comments

Thank you very much for your efforts in finding a compromise regarding article 7 and related recitals which is bringing us closer to an agreement.

We are flexible regarding the proposal that has been circulated by FR. We enclose nonetheless an alternative proposal for article 7. As for recital 24 we could support the FR suggestion.

(24) **European Free Trade Association (EFTA) members** ~~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 **(Galileo, EGNOS, Copernicus, NEO and Space Weather)**. **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 **(Copernicus, NEO and Space Weather)**. **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)**. **On the same basis, EEA countries, acceding, candidate and potential candidate countries and European Neighbourhood Policy countries may also participate to GOVSATCOM, and, where applicable, to Galileo or EGNOS.**]

(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 ~~components or sub-components referred to in Article 3~~ with the exception of the SST, GOVSATCOM and the SSTGOVSATCOM, ~~with the exceptions of SST~~ listed in paragraph 2 shall be open to ~~the participation of the following~~ third countries, ~~as follows~~:

Commented [A3]: We propose not to delete the participation to the Programme and list the exceptions of components and sub-components in paragraph 2, with a cross reference.

- (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, with the exception of SST, shall also be open to~~

- (d) ~~any other~~ third country ~~ies~~ or international organisation, ~~in Galileo, EGNOS, Copernicus, GOVSATCOM, NEO and Space Weather;~~ 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.~~

2. The components and subcomponents that are not open to association of third countries are SST subcomponent, GOVSATCOM shall also be open to the participation of countries referred to in point(a), (b) and (c) (d) of paragraph 1 of this Article, and Galileo and EGNOS shall also be open to the participation of countries referred to in points (b) and (c) (d) of paragraph 1 of this Article, in accordance with the conditions laid down in a specific agreement in accordance with Article 218 TFEU covering the participation of the third country to any Union programme, provided that the agreement lays down the conditions set out in point (d) of paragraph 1 of this Article.

- 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 paragraph 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.

SI comments

First of all we would like to thank the Presidency for hard work in trying to reach a compromise text of the Art. 7. Even though we have a positive outlook on the overall text, we would like to express

our scrutiny reservation on Article 7.1, parts that deal with category (d) to be more precise. Text which should be streamlined and brought in line with the horizontal provisions of EUCO 10/21 and fully aligned with the CLS opinion, that was expressed during the last SWP. We can also support comments made by Spain and proposed wording.