



Council of the European Union  
General Secretariat

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**Brussels, 03 December 2020**

**WK 14151/2020 INIT**

**LIMITE**

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

### **WORKING PAPER**

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### **WORKING DOCUMENT**

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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 13810/20

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Delegations will find attached table with MS comments received on the four-column document of 30/11/2020 (WK 13810/20).

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WK 14151/2020 INIT

**LIMITE**

**EN**

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 : proposal from European Parliament in 4-column document

Green background: parts that are agreed in the Common Understanding.

Yellow background: modifications from EP

<i>Proposal from European Parliament in 4-column document</i>	<b>MS drafting suggestions and comments (CZ - DK - ES - FR - IT - MT - NL - SE)</b>
<i>Recitals</i>	
<p>(13) Reflecting the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the United Nations Sustainable Development Goals, this Programme will contribute to mainstream climate actions and to the achievement of an overall target of <del>25</del> <b>at least 30</b> % of the EU budget expenditures supporting climate objectives. Relevant actions will be identified during the Programme's preparation and implementation, and reassessed in the context of the relevant evaluations and review processes.</p> <p><b><u>The European Parliament, the Commission and the Council will cooperate on an effective, transparent and comprehensive methodology, to be set out by the Commission, in order to assess the spending under the MFF to biodiversity objectives.</u></b></p>	<p>ES (Comments): Spain supports the EP proposal concerning the climate objectives and may support the additional text proposed.</p> <p>SE (Drafting): (13) Reflecting the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the United Nations Sustainable Development Goals, this Programme will contribute to mainstream climate actions and to the achievement of an overall target of <del>25</del> <b>at least 30</b> % of the EU budget expenditures supporting climate objectives. Relevant actions will be identified during the Programme's preparation and implementation, and reassessed in the context of the relevant evaluations and review processes. <del><u>The European Parliament, the Commission and the Council will cooperate on an effective, transparent and comprehensive methodology, to be set out by the Commission, in order to assess the spending under the MFF to biodiversity objectives.</u></del></p> <p>SE (Comments): <b><u>SE comment:</u></b> The deleted sentence does not belong in the Space regulation.</p> <p>DK (Comments): Against due to horizontal concerns. The overall figures of climate mainstreaming from the EU budget is decided at EUCO level. Unless, the last addition to the text can be found in a horizontal text, DK remains against this addition.</p>

	<p>NL (Comments): The Netherlands can be flexible on the addition of “at least”. We wonder if the other addition of the EP is needed, since this is a horizontal issue.</p> <p>MT (Comments): MT would like to seek clarity as which actions under the EU Space Programme could contribute towards the biodiversity objectives. Moreover, MT would like to ask the Presidency and the Commission whether the EP’s proposed text relating to the EU Space Programme’s contributions towards the biodiversity objectives could impact the operational implementation of the Space Programme.</p>
<i>Article 7</i>	
<b>Third countries and international organisations associated to the Programme</b>	<p>ES (Comments): Spain considers the PGA provides a clearer formulation. The EP proposal introduces ambiguities that need to be avoided.</p> <p>DK (Comments): Against due to horizontal concerns. The article in the Council’s general approach fully respects the categorisation of countries as decided by EUCO. DK will not be in a position to support altering of this categorisation. Due to the sensitive compromise in Council, DK would also be very reluctant to accept other changes to the text. Perhaps, it would be sensible to clarify the reasons behind the EP suggestions in the text and see if any linguistic accommodations can be made.</p> <p>IT (Comments): <b><u>The comment refers to the whole article 7:</u></b>  <b>The changes proposed by the EP do not appear to easier the reading of the text rather they introduce substantial modifications. In view of the sensitivity of the article and the challenging discussions at the Council, Italy recommends to keep the text of the Council mandate</b></p>

	<p>MT</p> <p>(Comments):</p> <p>MT supports retaining the text of Article 7 in its entirety as per the COREPER mandate, and thus does not support the EP's amendments.</p>
<p><b>1. The programme's components <u>Galileo, EGNOS and Copernicus</u> and sub-components <u>SWE and NEO</u> shall be open to the participation of the 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></p>	<p>DK</p> <p>(Comments):</p> <p>Against, as explained above.</p> <p>NL</p> <p>(Comments):</p> <p>The Netherlands does not support the changes to Article 7 as proposed by the EP. The proposed changes, in our view, do not improve clarity. Moreover, the Council Text is a delicate political compromise.</p> <p>CZ</p> <p>(Comments):</p> <p>CZ prefers the text in the CRP mandate as it reflects better the EUCO conclusions and also clearly states that SST is not open for third countries.</p> <p>FR</p> <p>(Comments):</p> <p>France strongly recommends to stick to the Council version as it was a difficult-to-obtain balanced compromise version of article 7. In particular, the EP version does not include explicitly the conditions for SST (to clearly exclude third countries participation to SST).</p>
<p><b><u>For Copernicus, and sub-components SWE and NEO</u></b> the following countries may participate under the following conditions:</p>	
<p><b><u>(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;</u></b></p>	<p>DK</p> <p>(Comments):</p> <p>Against, as explained above.</p>

(a) 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;	
(b) 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. <b><u>Galileo, EGNOS, Copernicus, GOVSATCOM, SWE and NEO</u></b> shall be open to <b><u>the participation of any other third countries other than already covered by paragraph 1</u></b> or international organisations, <b><u>and GOVSATCOM to European Free Trade Association members, which are members of the European Economic Area (EEA)</u></b> , in accordance with the conditions laid down in a specific agreement <del>in accordance with</del> <b><u>pursuant to Article 218 TFEU</u></b> covering the	

participation of the third country or of the international organisation to any Union programme, provided that the agreement:	
( <del>a</del> <b>i</b> ) ensures a fair balance as regards the contributions and benefits of the third country or international organisation participating in the Union programmes;	
( <del>b</del> <b>ii</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];	
( <del>e</del> <b>iii</b> ) does not confer to the third country or international organisation a decisional power on the programme;	
( <del>d</del> <b>iv</b> ) guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.	
3. The <b>participation to the</b> Programme's components <b>or sub-components</b> shall only be open to the third countries and international organisations referred to in <b>accordance with</b>	SE (Drafting): 3. The <b>participation to the</b> Programme's components <b>or sub-components</b> shall only be open to the third countries and international organisations referred to in <b>accordance with</b>

paragraphs 1 and 2 provided that the essential **strategic and sovereign** interests of the Union and its Member States are preserved, **including as regards European technological or industrial strategic autonomy and security interests such as the protection of sensitive or classified information under Article 42.**

paragraphs 1 and 2 provided that the essential **strategic and sovereign** interests of the Union and its Member States are preserved, **including as regards European technological or industrial strategic autonomy and security interests such as the protection of sensitive or classified information under Article 42.**

SE

(Comments):

**SE comment:** SE cannot accept the language suggested. The council agreement is as far as we can go. As has been clear during the council negotiations security interest is one thing (here the competence of the MS must be ensured) and protection of EUCI is something different.

Also, the Union cannot in accordance with international law claim to be sovereign, only states enjoy sovereignty. Moreover, strategic and sovereign interests are not defined as such and should therefore not be used as formal requisites.

CZ

(Drafting):

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 **accordance with** paragraphs 1 and 2 provided that the essential **strategic and sovereign** interests of the Union and its Member States are preserved, **including as regards European technological or industrial strategic autonomy and security interests such as the protection of sensitive or classified information under Article 42.**

CZ

(Comments):

CZ prefers general and more open wording. Moreover, sensitive information is not sufficiently defined at EU level.

FR

(Comments):

**FR supports the EP amendment** which reinforces the protection of European interests and the notion of strategic autonomy, in line with our previous comments on this article. In particular the notion of technological and industrial autonomy is key.

FR

(Comments):

	<p>Article 9.3</p> <p><b><u>AMD 95</u></b></p> <p>3. The Commission shall take the necessary steps to ensure that the contracts, agreements or other arrangements relating to the activities referred to in the <i>second</i> paragraph contain provisions setting out the appropriate ownership <i>and use</i> regime for those assets and, as regards point (c) that the Union can freely use <i>and grant the use of</i> the PRS receivers in accordance with Decision 1104/2011/EU.</p> <p>Added comment on article 9.3 / AMD 95 :</p> <p><b><u>FR is against AMD 95</u></b> on PRS which gives the Commission alone the right to grant use of PRS receivers without consultation/authorisation of the Member States. This point is not in accordance with 1104 decision that does not contain such a provision and which clearly establishes who can use the PRS and the associated conditions. In particular, The MS that have designated a CPA are allowed to use PRS receivers. Those MS are also in capacity to define freely the users within their jurisdiction.</p>
<i>Article 11</i>	
<b>Budget</b>	<p>MT</p> <p>(Comments):</p> <p>MT supports retaining the text of Article 11 as per the COREPER mandate, and thus does not support the EP's amendments.</p>
<p><b><u>1a. The Commission may reallocate funds between the categories of expenditure referred to in paragraph 1, up to a ceiling of 7.5 % of the category of expenditure of the smaller of the two categories concerned that receives the funds or the category that provides the funds. The Commission, by means of delegated acts adopted</u></b></p>	<p>ES</p> <p>(Comments):</p> <p>Spain considers the PGA provides a clearer formulation.</p> <p>SE</p> <p>(Drafting):</p> <p><b><u>1a. The Commission may reallocate funds between the categories of expenditure referred to in paragraph 1, up to a ceiling of 7.5 % of the category of expenditure</u></b></p>

in accordance with the article 105, may re-allocate funds between the categories of expenditure referred to in paragraph 1 when this allocation exceeds a cumulative amount greater than 7.5 % of the amount allocated to the category of expenditure of the smaller of the two categories concerned that receives the funds or the category that provides the funds.

~~that receives the funds or the category that provides the funds.~~~~of the smaller of the two categories concerned that receives the funds or the category that provides the funds.~~ The Commission, by means of implementing acts, acting in accordance with the examination procedure referred in Article 107(3)by means of delegated acts adopted in accordance with the article 105, may re-allocate funds between the categories of expenditure referred to in paragraph 1 when this allocation exceeds a cumulative amount greater than 7.5 % of the amount allocated to the category of expenditure that receives the funds or the category that provides the funds~~of the smaller of the two categories concerned that receives the funds or the category that provides the funds.~~

SE

(Comments):

**SE comment:** SE prefers the text as set out in the mandate for negotiations on Nov 5 2020 (doc.12594/20), and no delegated acts.

DK

(Comments):

DK requests more information on the intentions of the EP before forming a final opinion.

CZ

(Comments):

Preference for Council's text that gives more flexibility.

FR

(Comments):

It is essential that the MS remain involved in sensitive and strategic areas via implementing acts

The changes introduced in Article 11 considerably limit the budgetary flexibility available to the Commission. We would then be very careful when considering this amendment.

IT

(Comments):

The proposed modification fixes limits that penalize the categories with a smaller budget with no clear rationale. Italy recommends to keep the text of the Council mandate

**Implementing acts that the EP wants to**

ES

(Comments):

<b>transform into Delegated acts</b>	<p>Spain does not support transforming Implementing acts into Delegated acts.</p> <p>FR (Comments): It is essential that the MS remain involved in sensitive and strategic areas via <u>implementing</u> acts</p> <p>MT (Comments): MT is against all of the EP's proposals to transform Implementing acts into Delegated acts. We consider all of the instances cited by the EP, examples of procedure putting into effect already existing rules/contents as articulated within the legal act of the Space Regulation.</p>
<i>Article 31 a</i>	
<b>Role of the European Space Agency</b>	
<p><b>2. The Commission shall decide on the financial framework partnership agreement by means of implementing act, acting in accordance with the examination procedure.</b></p> <p><i>[replace with delegated act]</i></p>	<p>SE (Drafting): <b><u>2. The Commission shall decide on the financial framework partnership agreement by means of implementing act, acting in accordance with the examination procedure.</u></b></p> <p><del><i>{replace with delegated act}</i></del></p> <p>SE (Comments): <b>SE comment:</b> SE prefers the text as set out in the mandate for negotiations on Nov 5 2020 (doc.12594/20), and no delegated acts.</p> <p>DK (Comments): Imod NL (Comments):</p>

	<p>The Netherlands does not support the proposed changes by the EP in art 31a. Changing implementing act to delegated act will not improve the operability.</p> <p>CZ (Comments): CZ has strong preference for implementing act.</p> <p>FR (Comments): <b>FR asks to maintain implementing acts.</b> As explained during the SWP, these acts are crucial for the programme (FFPA, high level requirements, SST consortium, work program) and MS should be properly involved in the elaboration of these documents.</p> <p>IT (Comments): Italy recommends to keep the mean of implementing act as it appears more consistent with the implementation nature of the provision</p> <p>MT (Comments): MT would like to illustrate its disagreement to the proposed transformation of implementing acts to delegated acts, and thus, conveys its preference towards retaining the implementing acts by way of ensuring adequate control by MS of the EC's exercise of implementing powers.</p>
<p><b><u>3. Under the Financial Framework Partnership Agreement referred to in paragraph 1 of this Article, the tasks referred to in Article 30(2) and (3) shall be entrusted to the Agency and the tasks referred to in Article 31(1) shall be entrusted to ESA by means of contribution agreements. The Commission shall adopt the contribution decision regarding the contribution agreement by means of implementing act. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 107(2). The</u></b></p>	<p>SE (Drafting): <b><u>3. Under the Financial Framework Partnership Agreement referred to in paragraph 1 of this Article, the tasks referred to in Article 30(2) and (3) shall be entrusted to the Agency and the tasks referred to in Article 31(1) shall be entrusted to ESA by means of contribution agreements. The Commission shall adopt the contribution decision regarding the contribution agreements by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 107(2). The European Parliament and the Council shall be informed in advance of the contribution agreements to be concluded.</u></b></p>

<p><b><u>European Parliament and the Council shall be informed in advance of the contribution agreements to be concluded.</u></b></p> <p><i>[replace with delegated act]</i></p>	<p><del><i>[replace with delegated act]</i></del></p> <p>SE (Comments): <b>SE comment:</b> SE prefers the text as set out in the mandate for negotiations on Nov 5 2020 (doc.12594/20), and no delegated acts.</p> <p>DK (Comments): Against all suggestions for delegated acts.</p> <p>CZ (Comments): CZ has strong preference for implementing act.</p> <p>FR (Comments): <b><u>FR asks to maintain implementing acts.</u></b></p> <p>IT (Comments): Italy recommends to keep the mean of implementing act as it appears more consistent with the implementation nature of the provision</p> <p>MT (Comments): MT would like to illustrate its disagreement to the proposed transformation of implementing acts to delegated acts, and thus, conveys its preference towards retaining the implementing acts by way of ensuring adequate control by MS of the EC's exercise of implementing powers.</p>
	<p>FR (Comments): <b><u>Article 32.2</u></b></p> <p><i><u>Difference in Common understanding EP/CONS</u></i></p> <p>2. The criteria for the selection of such entrusted entities shall, in particular, reflect their ability to ensure the continuity and, where appropriate, the security of the operations with no [or minimal] disruption of Programme activities.</p>

	<p>Difference in common understanding EP/CONS :</p> <p>It is essential to keep the notion of "no disruption". Indeed, a minimum service interruption is not appropriate for operational programmes which should ensure service continuity.</p>
<i>Article 100</i>	
<b>Work programme</b>	
<p>The Programme shall be implemented by the work programmes referred to in Article 110 of the Financial Regulation, which <del>may</del> <b>shall</b> be specific <b><u>and fully separate work programmes for</u></b> to each component of the Programme. Work programmes shall set out <b><u>the actions and associated budget required to meet the objectives of the programme and</u></b>, where applicable, the overall amount reserved for blending operations.</p> <p><b><u>Those implementing measures shall be adopted in accordance with the examination procedure referred to in Article 107(3).</u></b></p> <p><i>[replace with delegated act]</i></p>	<p>SE (Drafting): The Programme shall be implemented by the work programmes referred to in Article 110 of the Financial Regulation, which <del>may</del> <b>shall</b> be specific <b><u>and fully separate work programmes for</u></b> to each component of the Programme. Work programmes shall set out <b><u>the actions and associated budget required to meet the objectives of the programme and</u></b>, where applicable, the overall amount reserved for blending operations. <b><u>Those implementing measures shall be adopted in accordance with the examination procedure referred to in Article 107(3).</u></b></p> <p><del><i>[replace with delegated act]</i></del></p> <p>SE (Comments): <b>SE comment:</b> SE prefers the text as set out in the mandate for negotiations on Nov 5 2020 (doc.12594/20), and no delegated acts.</p> <p>DK (Comments): Against all suggestions for delegated acts.</p> <p>NL (Comments): The Netherlands does not support the proposed changes by the EP. Changing implementing act to delegated act will not improve the operability.</p> <p>CZ (Comments):</p>

	<p>CZ has strong preference for implementing act. We also insist on having separate work programmes for each component of the EU Space Programme. In our view it gives more flexibility in situations when there is a problem in one component – it does not block the adoption of the remaining ones.</p> <p>FR (Comments): <b><u>FR asks to maintain implementing acts.</u></b></p> <p>IT (Comments): Italy recommends to keep the mean of implementing act as it appears more consistent with the implementation nature of the provision.</p> <p>Italy recommends to keep the text of the Council mandate.</p> <p>MT (Comments): MT is against the use of Delegated acts. The Work Programmes are adopted through Implementing Acts.</p>
<b>Other delegated acts</b>	
<i>Article 29(4)</i>	
<p><b>AMD 119</b></p> <p>4. When necessary for the smooth functioning of the Programme and the smooth provision of the services provided by the Programme's components, the Commission shall, by means of <i>delegated</i> acts, determine the <b>high-level requirements</b> for the implementation of and evolution of those components and of the services they provide after having consulted users and all the other relevant stakeholders, <b>including the downstream sector</b>.</p>	<p>SE (Drafting): <b>AMD 119</b></p> <p>4. When necessary for the smooth functioning of the Programme and the smooth provision of the services provided by the Programme's components, the Commission shall, by means of <del>delegated implementing</del> acts, determine the <b>technical and operational requirements needed high-level requirements</b> for the implementation of and evolution of those components and of the services they provide after having consulted users, <u>including through the User Forum referred to in Article 107, -and all the other relevant stakeholders, including the downstream sector.</u> When determining those <b>technical and operational</b></p>

When determining those <i>high-level requirements</i> , the Commission shall avoid reducing the general security level and to meet a backward compatibility imperative.	<p><del>high-level requirements</del>, the Commission shall avoid reducing the general security level and to meet a backward compatibility imperative.</p> <p><u>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 107(3).</u></p> <p>SE (Comments): <b>SE comment:</b> SE prefers the text as set out in the mandate for negotiations on Nov 5 2020 (doc.12594/20), and no delegated acts.</p> <p><u>Highlighted sentence is in the mandate, why has it been left out?</u></p> <p>NL (Comments): The Netherlands does not support the proposed changes by the EP. Changing implementing act to delegated act will not improve the operability.</p> <p>CZ (Comments): CZ has strong preference for implementing act but can support remaining changes in the text proposed by EP.</p> <p>FR (Comments): <b><u>FR asks to maintain for implementing acts.</u></b></p> <p>MT (Comments): MT is against the use of delegated acts. This is another instance related to the operational function of the Space Programme which does not require changes or updates to the legal acct.</p>
<i>Article 57(8)</i>	
<b><u>AMD 189</u></b> 8. The Commission shall adopt <i>delegated acts</i> <b><i>in accordance with Article 105 concerning the</i></b>	SE (Drafting): <b><u>AMD 189</u></b>

<p><i>specific provision</i>, detailed rules on the functioning of the organisational framework of the participation of Member States in SST. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 107(3).</p>	<p>8. The Commission shall adopt <del>by implementing acts</del><del>delegated acts in accordance with Article 105 concerning the specific provision</del>, detailed rules on the functioning of the organisational framework of the participation of Member States in SST. <u>Those rules shall also cover for the inclusion at a later stage of a Member State in the SST partnership agreement referred to in paragraph 2 of this Article.</u> Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 107(3).</p> <p>SE (Comments): <b>SE comment:</b> SE prefers the text as set out in the mandate for negotiations on Nov 5 2020 (doc.12594/20), and no delegated acts.</p> <p><u>Highlighted sentence is in the mandate, why has it been left out?</u></p> <p>DK (Comments): Against all suggestions for delegated acts.</p> <p>NL (Comments): The Netherlands does not support the proposed changes by the EP. Changing implementing act to delegated act will not improve the operability.</p> <p>CZ (Comments): CZ has strong preference for implementing act.</p> <p>FR (Comments): <b><u>FR asks for implementing acts.</u></b></p> <p>MT (Comments): MT is against the use of delegated acts. Again, this is an operational instance which should be determined through implementing acts.</p>
	<p><b><u>General comments</u></b></p>
	<p>SE</p>

	<p>(Comments):</p> <p>N.B. Some of the paragraphs in the first column, excluding the EP suggestions, were <u>not</u> identical to the mandate given by the Coreper. We have amended missing sentences/phrases in the second column.</p> <p>DK</p> <p>(Comments):</p> <p>DK will comment on other articles when the timeline for trilogues has been decided, and it will be clear in which lines the Presidency might advise Council to revise its mandate.</p> <p>FR</p> <p>(Comments):</p> <p><b>Comments on articles 9.3 and 32.2 that are still in yellow in the 4 column documents have been added here. We think that the issues on PRS and continuity of service are of utmost importance for the Council and that we should preserve the mandate on these critical points.</b></p> <p><b>As stated during the Coreper, France remains flexible on article 1 and recommends to take pragmatic decision in line with the operational objectives of the space program.</b></p> <p><b>France thanks the presidency for this opportunity for comments.</b></p> <p>IT</p> <p>(Comments):</p> <p>Italy will not oppose to modifications addressing the concerns expressed by the European Parliament and the Commission on the duration of the Regulation introduced by article 1.</p>
<b>END</b>	<b>END</b>