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Subject: Proposal for a Regulation of the European Parliament and of the Council on the  
implementation and exploitation of European satellite navigation systems  
– Partial general approach

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***I. Introduction***

1. On 30 November 2011, the Commission transmitted to the Council and the European Parliament the above mentioned proposal. The purpose of this proposal is to establish a new financial and governance framework concerning the two European satellite navigation programmes, Galileo and EGNOS, for the period 2014-2020 and beyond. It replaces and repeals Regulation (EC) No 683/2008, the current basic act for European satellite navigation programmes.

## **II. Work within the Council bodies**

2. The Working Party on Transport Intermodal Questions and Networks (hereinafter referred to as the "Working Group") started the examination of the proposal under the Polish Presidency, in December 2011. The discussion has been pursued under the Danish Presidency. In January 2012, the Working Group also examined the impact assessment related to the proposal. Following the in-depth discussions held at various meetings of the Working Group, the Presidency has amended several provisions of the Commission proposal to take account of delegations' requests, thus allowing for a broad consensus on most of its articles.
3. On 16 May 2012, the Permanent Representatives Committee succeeded in solving almost all outstanding issues. The changes in the Annex to this report compared to the report to Coreper are indicated in **bold** and ~~striketrough~~.
4. Considering that Article 10, which contains the proposal for an amount of EUR 7 billion to be allocated to Galileo, is being currently discussed in the framework of the negotiations on the MFF 2014-2020, it was agreed to exclude the examination of this Article. Therefore, the general approach to be reached on this draft Regulation can only be partial.
5. As regards Member States, there is one sole issue open. AT considers that the wording currently proposed for Article 25(1) still needs some improvement. With the purpose of stressing the importance of subcontracting in order to foster competitiveness and the participation of SMEs in the programmes across Europe, AT proposes to add the words "with fair and open access at the appropriate levels of sub-contractors" before "competitive tendering".

FR, MT and UK have a parliamentary scrutiny reservation.

6. The Commission believes that broadly the attached text follows the lines of the Commission's legislative proposal and that, in some instances, the discussions in the Council preparatory bodies have even added precision to the draft Regulation.

However, the Commission maintains its general reservation pending the opinion of the European Parliament and progress on the MFF discussions. Furthermore, the Commission is still concerned about the following more specific issues:

- a) The systematic deletion of delegated acts and the adoption of implementing acts where, according to the Commission, measures of general application to supplement or amend certain non-essential elements of the legislative act are concerned, which could invalidate the decisions taken on the basis of these implementing acts.
- b) The need to pursue a detailed analysis of the overall pricing policy of the services offered by Galileo and EGNOS in order to maximise potential direct revenues and reduce the Union financial contribution to the programmes.
- c) The decision to move part of the text of Article 18 ("Application of the rules on classified information") to a recital, considering that the compromise text does not provide sufficient protection as regards industrial security.
- d) Concerning the schedule performance indicator, the Commission supports the need to monitor the schedule of the programmes' implementation, but it believes that the indicator proposed is much too complex and could be misleading.

- e) Agreement on the need to keep Member States appropriately informed of programmes of this size but it regrets the unnecessary bureaucratic and control measures introduced, considering that these provisions impose an administrative burden that might lead to increased delays and additional cost.
7. The new governance scheme proposed in the attached draft Regulation entails the need to reconsider how the activities relating to the security accreditation of the European GNSS systems, currently performed by the European GNSS Agency through the Security Accreditation Board (SAB), should be carried out in the future. During the discussions it emerged that, as soon as the GSA becomes the operational manager of the programmes, a watertight solution has to be found in order to avoid any conflict of interest. However, it was not possible to include any specific provision in the current proposal, as further analysis was deemed necessary. It was nonetheless acknowledged that the Commission should submit, in a timely manner, a proposal to amend Regulation (EU) No 912/2010<sup>1</sup> setting up the European GNSS Agency. In the light of the above, the Presidency intends to present a draft statement on security accreditation activities, to be made jointly by the Council and the Commission, if possible.

### III. Conclusion

8. The Council is invited to examine the text as set out in the Annex to this report, to resolve the remaining outstanding issues and adopt, at its meeting on 7 June 2012, a partial general approach.

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<sup>1</sup> OJ L 276, 20.10.2010, p. 11.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the implementation and exploitation of European satellite navigation systems**

THE EUROPEAN PARLIAMENT AND THE COUNCIL,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>2</sup> OJ C, , p. .

<sup>3</sup> OJ C , , p. .

- (1) The aim of the European satellite navigation policy is to provide the Union with two satellite navigation systems, the system established under the Galileo programme and the EGNOS system (hereinafter 'the systems'). These systems arise respectively from the Galileo and EGNOS programmes (hereinafter 'the programmes'). Each infrastructure is made up of satellites and a network of earth stations.
- (2) The aim of the Galileo programme is to establish and operate the first global satellite navigation and positioning infrastructure specifically designed for civilian purposes. The system established under the Galileo programme is completely independent of other existing or potential systems.
- (3) The aim of the EGNOS programme is to improve the quality of signals from existing global navigation satellite systems (hereinafter 'GNSS').
- (4) The European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions have consistently given their full support to the programmes.
- (5) Since the programmes are at an advanced development stage leading to systems in an exploitation phase, a specific legal basis is required which can meet their needs, particularly in terms of governance and to satisfy the requirement for sound financial management.
- (6) The systems established under the European satellite navigation programmes are infrastructures set up as trans-European networks of which the usage extends well beyond the national boundaries of the Member States. Furthermore, the services offered through these systems contribute, in particular, to the development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

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<sup>4</sup> The recitals will be dealt with once an agreement on the operative part (Articles) has been achieved.

- (7) The Galileo and EGNOS programmes are an industrial policy tool and are part of the Europe 2020 strategy, as illustrated by the Commission Communication of 17 November 2010 entitled 'An integrated industrial policy for the globalisation era: putting competitiveness and sustainability at centre stage'<sup>5</sup>. They also appear in the Communication adopted on 4 April 2011 by the Commission entitled 'Towards a space strategy for the European Union that benefits its citizens'<sup>6</sup>. These programmes provide many advantages for the economy and citizens of the Union, whose cumulative value has been estimated at approximately EUR 130 billion in the period 2014-2034.
- (8) Given the increasing usage of satellite navigation across a great number of fields of activity, an interruption in the supply of services could lead to significant harm to modern society. In addition, due to their strategic aspect, satellite navigation systems are sensitive infrastructures, that could be susceptible to malicious use. The abovementioned aspects could affect the security of the Union and its Member States. Security requirements must therefore be taken into account in the design, implementation and exploitation of the infrastructures established under the Galileo and EGNOS programmes.
- (9) The Galileo programme includes a definition phase which is complete, a development and validation phase due for completion in 2013, a deployment phase which was launched in 2008 and is due for completion in 2020 and an exploitation phase which should be launched progressively from 2014/15 for a fully operational system in 2020.
- (10) The EGNOS programme has been in the exploitation phase since its open service and 'Safety of Life' service were declared operational in October 2009 and March 2011 respectively.

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<sup>5</sup> COM(2010) 614 final/2.

<sup>6</sup> COM(2011) 152.

- (11) In order to optimise the use of the services provided, the systems, networks and services emerging from the Galileo and EGNOS programmes must be compatible and interoperable with one another and, insofar as possible, with other satellite navigation systems and conventional means of radio navigation.
- (12) Since the Union is responsible, in principle, for financing the programmes in full, provision should be made for it to own all tangible and intangible assets created or developed under these programmes. In order to comply fully with any fundamental rights relating to ownership, the necessary arrangements with existing owners should be made, particularly for essential elements of the infrastructures and their security. In order to facilitate adoption of satellite navigation by the markets, there is a need to ensure that third parties can make optimum use in particular of the intellectual property rights arising from the programmes which belong to the Union, in particular at social and economic level.
- (13) The deployment and exploitation phases of the Galileo programme and the exploitation phase of the EGNOS programme should, in principle, be entirely financed by the Union. However in accordance with Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the financial regulation applicable to the general budget of the European Communities<sup>7</sup>, the Member States should be able to provide additional funding to the programmes or a contribution in kind, on the basis of appropriate agreements, in order to fund additional programme elements requested by them, e.g. concerning the system architecture or particular security needs. Third countries and international organisations should also be able to contribute to the programmes.
- (14) In order to guarantee the continuation of the programmes, an appropriate financial framework must be established to allow the Union to continue to finance them. It is also necessary to indicate the amount of money required between 1 January 2014 to 31 December 2020 to finance completion of the deployment phase of the Galileo programme and exploitation of the systems.

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<sup>7</sup> OJ L 248, 16.09.02, p. 1.

- (15) The European Parliament and the Council, on the basis of the Commission proposal of 29 June 2011, [decided] to allocate a maximum sum of EUR [7897] million at current prices for the financing of activities associated with the programmes for the period from 1 January 2014 to 31 December 2020. It should be specified that these activities also cover the protection of the systems and their operation, including during the launch of satellites. In this respect, a contribution to the costs required to benefit from services capable of providing this protection, such as those provided by the 'Space Situational Awareness' (SSA) programme among others, could be financed by the budget allocated to the programmes insofar as possible following rigorous cost management and full compliance with the abovementioned total sum established in the Article [x] of Council Regulation XYZ determining the financial framework for the period 2014-2020. The present Regulation lays down, for the continuation of the programmes, a financial envelope constituting the prime reference, within the meaning of point [17] of the Interinstitutional Agreement of xx/yy/201z between the European Parliament, the Council and the Commission on budget cooperation and sound financial management, and within the meaning of Article 14 [of the Council Regulation Proposal of 29 June 2011] determining the multiannual financial framework for 2014-2020<sup>8</sup>].
- (16) The activities should be specified for which the Union budget appropriations allocated to the programmes for the period 2014-2020 under this Regulation shall be granted. These appropriations should be granted mainly for activities associated with the deployment phase of the Galileo programme, including management and monitoring activities for this phase, and activities associated with the exploitation of the system established under the Galileo programme, including actions preceding or in preparation for this phase, and the exploitation of the EGNOS system. They should also be granted for funding of certain other activities required to manage and achieve the objectives of the programmes.

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<sup>8</sup> COM(2011) 398 final.

- (17) It is important to note that the investment and operating costs of the systems as estimated for the period 2014-2020 do not take account of unforeseen financial obligations which the Union may be obliged to bear, in particular those relating to non-contractual liability arising from the public ownership of the systems, especially with regard to force majeure and catastrophic failure. These obligations are the subject of a specific analysis by the Commission.
- (18) It should also be noted that the budgetary resources planned under this Regulation do not cover work financed by funds allocated to the Horizon 2020 programme, a Framework Programme for Research and Innovation, such as that associated with the development of applications derived from the systems. This work will help to optimise the use of the services provided in the context of the programmes, to ensure a good social and economic return on the investments made by the Union and to increase the know-how of businesses in the Union with regard to satellite navigation technology.
- (19) In addition the revenue generated by the systems should accrue to the Union in order to compensate for the investments that it has made previously. A revenue-sharing mechanism might also be provided for in contracts concluded with private sector companies.
- (20) In order to avoid the cost over-runs and delays which have affected the progress of the programmes over the last few years, efforts need to be stepped up to control risks which might lead to excess costs as requested by the Council and the Parliament in their respective conclusions and resolutions of 31 March 2011 and 8 June 2011, and as shown by the Commission's Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions of 29 June 2011 entitled 'A budget for Europe 2020'<sup>9</sup>.
- (21) Sound public governance of the Galileo and EGNOS programmes assumes, firstly, that there is a strict division of tasks, in particular between the Commission, the European GNSS Agency and the European Space Agency, and, secondly, that the governance is progressively adapted to the operational requirements of the systems.

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<sup>9</sup> COM(2011) 500 final.

- (22) Given that it represents the Union, which, in principle, provides financing for the programmes alone and owns the systems, the Commission must be responsible for the progress of the programmes and their political supervision. It must manage the funds allocated to the programmes under the current Regulation, supervise the implementation of all activities of the programmes and a clear division of tasks, in particular between the European GNSS Agency and the European Space Agency. Accordingly, in addition to the tasks associated with these general responsibilities and the other tasks incumbent upon it under this Regulation, it should be assigned a non-exhaustive set of specific tasks. In order to optimise the resources and competences of the various stakeholders, it should be able to delegate certain tasks by means of delegation agreements, in accordance with Regulation (EC, Euratom) No 1605/2002 and, in particular, Article 54 thereof.
- (23) The European GNSS Agency was established by Regulation (EU) No 912/2010 of the European Parliament and of the Council of 22 September 2010 setting up the European GNSS Agency, repealing Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes and amending Regulation (EC) No 683/2008 of the European Parliament and of the Council<sup>10</sup> in order to achieve the objectives of the Galileo and EGNOS programmes and implement certain tasks associated with the progress of the programmes. It is an agency of the Union which, as a body within the meaning of Article 185 of Regulation (EC, Euratom) No 165/2002, is subject to the obligations applicable to Union agencies. It should be assigned certain tasks associated with programme security, its potential designation as a competent PRS authority and its contribution to the marketing of the systems. It should also perform tasks which the Commission may confer on it by means of one or more delegation agreements covering other various specific tasks associated with the programmes, including tasks associated with the exploitation phases of the systems and promotion of the applications and services on the satellite navigation market. In order for the Commission, representing of the Union, to exercise its power of control fully, these delegation agreements should include the general conditions governing the management of funds entrusted to the European GNSS Agency.

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<sup>10</sup> OJ L 276, 20.10.10, p. 1.

- (24) The Union should conclude a multiannual delegation agreement with the European Space Agency covering the technical and planning aspects of the programmes. In order for the Commission, representing the Union, to exercise its power of control fully, the delegation agreement should include the general conditions for managing the funds entrusted to the European Space Agency. Concerning activities exclusively financed by the Union, these conditions must ensure a degree of control comparable to that required if the European Space Agency was an Agency of the Union.
- (25) Responsibility for the progress of the programmes includes, in particular, responsibility for their security and the security of their systems and operation. Except in the case of application of Joint Action 2004/552/CFSP of 12 July 2004 on aspects of the operation of the European satellite radio-navigation system affecting the security of the European Union<sup>11</sup>, which could be adapted if necessary to changes in the programmes, their governance and the Lisbon Treaty, the Commission is responsible for security, even if certain security-related tasks are entrusted to the European GNSS Agency. It is the responsibility of the Commission to establish mechanisms to ensure suitable coordination between the various entities responsible for security.
- (26) Given the specific expertise of the European External Action Service and its regular contact with administrations of third countries and international organisations, it is in a position to assist the Commission in performing certain of its tasks relating to security of systems and programmes in the field of external relations, in accordance with Council Decision 2010/427/EU of 26 July 2010 determining the organisation and functioning of the European External Action Service<sup>12</sup> and, in particular, Article 2(2) thereof.

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<sup>11</sup> OJ L 246, 20.7.2004, p. 30.

<sup>12</sup> OJ L 201, 03.08.10, p. 30.

- (27) In order to allocate the Union funds attributed to the programmes with a ceiling total that the Commission must not exceed, effective public procurement procedures must be applied and, in particular, contracts negotiated so as to ensure optimum use of resources, satisfactory services, smooth running of programmes, good risk management and compliance with the proposed schedule. The contracting authority must make every effort to meet these requirements.
- (28) As the programmes will be, in principle, financed by the Union, public procurement under the programmes should comply with Union rules on public contracts and should aim, first and foremost, to obtain best value for money, control costs, mitigate risks, improve efficiency and reduce reliance on a single supplier. Open access and fair competition throughout the supply chain and the balanced offering of participation opportunities to industry at all levels, including, in particular, new entrants and small and medium-sized enterprises (hereinafter 'SMEs'), should be ensured. Possible abuse of dominance and of long-term reliance on single suppliers should be avoided. In order to mitigate programme risks, to avoid reliance on a single source of supply and to ensure better overall control of the programmes and their costs and schedules, multiple sourcing should be pursued, wherever appropriate. Union industries should be permitted to rely on non-Union sources for certain components and services where substantial advantages in terms of quality and costs are demonstrated, taking account, however, of the strategic nature of the programmes and of Union security and export control requirements. Advantage should be taken of public sector investment and industrial experience and competence, including that acquired during the definition and development and validation phases of the programmes, while ensuring that the rules on competitive tendering are not contravened.

- (29) Satellite navigation is a new, complex and constantly changing technology. This results in uncertainty and risk for public contracts concluded under the programmes, insofar as these contracts may involve long-term commitments to equipment or services. These characteristics require specific measures to be implemented concerning public contracts which apply in addition to the rules laid down in Regulation (EC, Euratom) No 1605/2002. In this way, the contracting authority should be able to restore a level playing field when one or more companies have, prior to a call for tenders, privileged information on the activities associated with this call for tender. It should be possible to award a contract in the form of a conditional stage-payment contract, introduce an amendment, under certain conditions, in the context of its performance, or even impose a minimum level of subcontracting. Finally, due to the technological uncertainties that are a feature of the programmes, contract prices cannot always be forecast accurately and it is therefore desirable to conclude contracts in a specific form that do not stipulate a firm fixed price and include clauses to safeguard the financial interests of the Union.
- (30) It should be reiterated that, in accordance with Article 4(3) of the Treaty on the European Union, the Member States should not take measures which could harm the progress of the programmes, in particular concerning intellectual property rights and the continuity of infrastructure operation. It should also be clarified that the Member States concerned should take all necessary measures so that the systems' earth stations are designated as European critical infrastructures.
- (31) In view of the global nature of the systems, it is essential that the Union can enter into agreements with third countries and international organisations in the context of programmes under Article 218 of the Treaty on the Functioning of the European Union, in particular to ensure their smooth implementation, optimise services provided to citizens of the Union and meet the needs of third countries and international organisations. It is also useful, where necessary, to adapt existing agreements to changes in the programmes. When preparing or implementing these agreements, the Commission may have recourse to the assistance of the European External Action Service, the European Space Agency and the European GNSS Agency, within the limits of the tasks allocated to them under this Regulation.

- (32) It should be confirmed that the Commission, in performing certain of its tasks of a non-regulatory nature, may have recourse, as required and insofar as necessary, to the technical assistance of certain external parties. Other bodies involved in the public governance of the programmes may also make use of the same technical assistance in performing tasks entrusted to them under this Regulation.
- (33) Protection of personal data and private life should be ensured under the programmes.
- (34) The financial interests of the Union must be protected using proportionate measures throughout the expenditure cycle, in particular, by means of prevention and detection of irregularities, carrying out surveys, recovering lost, unduly paid or poorly administered funds and, if necessary, applying penalties.
- (35) It is necessary to ensure that the European Parliament and the Council are kept regularly informed about the implementation of the programmes. In addition, the European Parliament, the Council and the Commission will meet in the Galileo Interinstitutional Panel in accordance with the Joint declaration on the Galileo Interinstitutional Panel of 9 July 2008.
- (36) Assessments should be carried out by the Commission in order to evaluate the effectiveness and efficiency of the measures taken to achieve the objectives of the programmes.
- (37) In order to set out the necessary measures to ensure compatibility and interoperability of systems with other satellite navigation systems as well as with conventional means of radio navigation and to ensure the security of the systems and their operation, the power should be delegated to the Commission to adopt acts under Article 290 of the Treaty on the Functioning of the European Union concerning these two areas of competence. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure that the relevant documents are forwarded to the European Parliament and Council in a simultaneous, timely and appropriate fashion.

- (38) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>13</sup>.
- (39) As sound public governance requires uniform management of the programmes, faster decision-making and equal access to information, representatives of the European GNSS Agency and the European Space Agency should be able to take part as observers in the work of the European GNSS Programmes Committee in accordance with Article 19 of Regulation (EC) No 683/2008 of the European Parliament and of the Council of 9 July 2008 on the further implementation of the European satellite navigation programmes (EGNOS and Galileo)<sup>14</sup>. For the same reasons, representatives of third countries and international organisations who have concluded an international agreement with the Union should be able to take part in the work of the European GNSS programmes' committee. These representatives of the European GNSS Agency, the European Space Agency, third countries and international organisations cannot take part in Committee voting procedures.
- (40) Since the objective of this Regulation, namely the establishment and exploitation of satellite navigation systems, cannot be sufficiently achieved by the Member States since it exceeds the financial and technical capacities of any single Member State, and can therefore be better achieved by action at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

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<sup>13</sup> OJ L 55, 28.02.11, p. 13.

<sup>14</sup> OJ L 196, 24.7.2008, p.1.

- (41) The Galileo Joint Undertaking created by Council Regulation (EC) No 876/2002 <sup>15</sup> ceased its operations on 31 December 2006 and the proceedings involved in winding up the undertaking are now complete. It follows that Regulation (EC) No 876/2002 should be repealed.
- (42) Given the need to evaluate the programmes, the importance of the changes to be made to the text and in the interests of clarity and legal certainty, Regulation (EC) No 683/2008 must be repealed,

HAVE ADOPTED THIS REGULATION:

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<sup>15</sup> OJ L 138, 28.05.02, p. 1.

CHAPTER I  
**GENERAL PROVISIONS**

*Article 1*

**Subject**

This Regulation lays down the rules in relation to the implementation and exploitation of the systems under the European satellite navigation programmes, in particular those relating to the governance and the financial contribution of the Union.

*Article 2*

**European satellite navigation systems and programmes**

1. The Galileo and EGNOS programmes shall cover all the activities needed to define, develop, validate, construct, operate, renew and improve the two European satellite navigation systems, namely the system established under the Galileo programme and the EGNOS system, and to ensure their security.
2. The system established under the Galileo programme shall be an autonomous global navigation satellite system (GNSS) infrastructure consisting of a constellation of satellites and a global network of ground stations.
3. The EGNOS system shall be an infrastructure monitoring and correcting open signals emitted by existing global satellite navigation systems, as well as those of the open service offered by the system established under the Galileo programme, when they become available, within a geographic area centered on Europe, in particular on the territory of the Member States. It consists of ground stations and several transponders installed on geosynchronous satellites.

4. The specific objectives of the Galileo programme shall be to ensure that the signals emitted by the system under this programme can be used to fulfil the following functions:
- (a) to offer an open service (OS), which is free of charge to the user and provides positioning and synchronisation information intended mainly for high-volume satellite navigation applications;
  - (b) to contribute, by means of Galileo open service signals and/or in cooperation with other satellite navigation systems, to integrity monitoring services aimed at users of safety-of-life applications in compliance with international standards;
  - (c) to offer a commercial service (CS) for the development of applications for professional or commercial use by means of improved performance and data with greater added value than those obtained through the open service;
  - (d) to offer a public regulated service (PRS) restricted to government-authorized users, for sensitive applications which require a high level of service continuity, free of charge for EU Member States, the Council, the Commission, the EEAS and Union agencies; this service uses strong, encrypted signals;
  - (e) to contribute to the search and rescue support service (SAR) of the COSPAS-SARSAT system by detecting distress signals transmitted by beacons, locating these beacons and relaying messages to them.

5. The specific objectives of the EGNOS programme shall be:
- (a) to ensure that the signals emitted by the EGNOS system can be used to fulfil the following functions:
    - (i) to offer an open service (OS), which is free of charge to the user, and provides positioning and synchronisation information intended mainly for high-volume satellite navigation applications in the area covered by the EGNOS system;
    - (ii) to offer a service for the dissemination of commercial data, the EGNOS Data Access Service (EDAS), to promote the development of applications for professional or commercial use by means of improved performance and data with greater added value than those obtained through its open service;
    - (iii) to offer a safety-of-life (SoL) service aimed at users for whom safety is essential; this service, which is provided free of direct user charges, fulfils in particular the requirements of certain sectors for continuity, availability and accuracy and includes an integrity message alerting the user to any failure or "out of tolerance" signals in systems augmented by the EGNOS system over the coverage area;
  - (b) as a priority, to provide these functions throughout the area as referred to in paragraph 3 as soon as possible.<sup>16</sup>

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<sup>16</sup> The following explanatory recital will be added to provide for the extension of EGNOS to other regions of the world: "Subject to technical and financial constraints and on the basis of international agreements, the geographic coverage of the services provided by the EGNOS system may be extended to other regions of the world, in particular territories of third countries covered by the single European sky. Such extension to other regions of the world shall not be financed by the budgetary appropriations allocated to the programmes as referred to at Article 10 and shall not delay the extension of the coverage throughout the area as referred to in paragraph 3".

*Article 3*

**Galileo programme phasing**

The Galileo programme shall consist of the following phases:

- (a) a definition phase during which the structure of the system was designed and its elements determined, which ended in 2001;
- (b) a development and validation phase, until 2013, comprising the construction and launch of the first satellites<sup>17</sup>, the establishment of the first ground-based infrastructures and all the work and operations necessary to validate the system in orbit;
- (c) a deployment phase consisting of the construction, establishment and protection of all space and ground-based infrastructures as well as related evolutive maintenance and operations which include preparations for the exploitation phase; the aim is for this phase, begun in 2008, to be completed in 2020;
- (d) an exploitation phase comprising infrastructure management, maintenance, ongoing improvement, evolution and protection of the system, certification and standardisation operations associated with the programme, the provision and marketing of services, cooperation with other GNSS and all other activities needed to develop that system and ensure that the programme runs smoothly; the aim is for this phase to begin progressively between 2014 and 2015 with provision of the initial services for the open service, search and rescue service, public regulated service. Those initial services shall be gradually improved and the other functions specified in the objectives referred to in Article 2(4) shall be gradually implemented with the aim of reaching full operational capability by 2020.

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<sup>17</sup> An explanatory recital will be added.

*Article 4*

**EGNOS exploitation phase**

EGNOS exploitation phase mainly includes management of the infrastructure, maintenance, ongoing improvement, evolution and protection of the system, certification and standardisation activities associated with the programme, all elements justifying the reliability of the system and its exploitation as well as provision and marketing of services.

*Article 5*

**Compatibility and interoperability of the systems**

1. The systems as well as the networks and services resulting from the Galileo and EGNOS programmes shall be compatible and interoperable from a technical point of view.
2. The systems as well as the networks and services resulting from the Galileo and EGNOS programmes shall, as far as possible, be compatible and interoperable from a technical point of view with relevant satellite navigation systems and with conventional means of radio navigation. Where necessary this shall be subject to an international agreement in accordance with Article 28.
3. [...].

## Article 6

### Ownership

The Union shall be the owner of all tangible and intangible assets created or developed under the programmes, to which effect agreements shall be concluded with third parties, wherever appropriate, with regard to existing ownership rights.

The Commission shall ensure the optimal use of the assets referred to in this Article; in particular, it shall manage the intellectual property rights related to the programmes as effectively as possible, taking into account the need to protect and give value to the EU intellectual property rights, the interests of all stakeholders, and the necessity of harmonious development of the markets and of the new technologies and, to this end, it shall ensure in its contractual relations the possibility to provide licences to third parties in order to enable use of those licences.<sup>18 19</sup>

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<sup>18</sup> In order to encourage development of new technology outside the programmes the following recital will be added: "While it is evident that assets created or developed outside the programmes financed by the Union are not affected by the provisions on ownership in this Regulation, the Commission should encourage third parties to highlight any intangible assets created or developed outside the programmes that are relevant to the performance of the programmes and may negotiate appropriate use of such."

<sup>19</sup> Recital 12 will be modified as follows: "Since the Union is responsible, in principle, for financing the programmes in full, provision should be made for it to own all tangible and intangible assets created or developed under these programmes. In order to comply fully with any fundamental rights relating to ownership, the necessary arrangements with existing owners should be made, particularly for essential elements of the infrastructures and their security, **being understood that the provision regarding ownership of intangible assets does not cover intangible rights that are not transferable under relevant national laws.** This ownership by the Union should be without prejudice to the possibility for the Union, in conformity with this Regulation and where this is deemed appropriate on the basis of a case by case assessment, to make these assets available to third parties or to dispose thereof, in particular by providing licences or by transferring the ownership of intellectual property rights. In order to facilitate adoption of satellite navigation by the markets, there is a need to ensure that third parties can make optimum use in particular of the intellectual property rights arising from the programmes which belong to the Union, in particular at social and economic level."

CHAPTER II  
**BUDGETARY CONTRIBUTION AND MECHANISMS**

*Article 7*

**Activities concerned**

1. The Union budgetary appropriations allocated to the programmes for the period 2014-2020 under this Regulation shall be granted to finance:
  - (a) activities relating to the completion of the deployment phase of the Galileo programme, including actions to manage and monitor this phase;
  - (b) activities relating to the exploitation phase of the Galileo programme, including advance or preparatory actions for this phase;
  - (c) activities associated with the exploitation phase of the EGNOS programme.
  
2. Commission expenditure relating to preparation, monitoring, inspection, audit and assessment activities required for the management of the programmes and the implementation of the objectives shall be covered by the Union budget appropriations assigned to the programmes. This expenditure may cover in particular:
  - (a) studies and meetings with experts;
  - (b) information and communication activities, including institutional communication on the policy priorities of the Union where they are directly linked to the objectives of this Regulation;
  - (c) IT technology networks, with the objective of processing or transferring data;

- (d) any other technical or administrative assistance given to the Commission for the management of programmes.
3. The costs of the programmes and of the different phases of the programmes shall be clearly identified. The Commission, in accordance with the principle of transparent management, shall inform the Budgetary Authority and the Committee referred to in Article 35(1) of the allocation and use of Union funds, including the contingency reserve, to each of the activities specified in paragraphs 1 and 2, on an annual basis.

#### *Article 8*

### **Financing of the EGNOS and Galileo programmes**

1. The Union shall finance the exploitation phase of the EGNOS programme as well as the deployment and exploitation phases of the Galileo programme, to fulfil the objectives as set out in Article 2, in accordance with Article 10(1) without prejudice to any contribution from any other funding source, including those referred to in paragraphs 2 and 3 of this Article.
2. Member States may provide additional funding to the EGNOS and Galileo programmes to cover additional elements in particular cases, on the condition that it does not create any financial or technical burden or any delays in respect of the programme. To that effect, Member States concerned shall address a request to the Commission. On the basis of this request, the Commission shall decide whether those conditions have been met. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(3).<sup>20</sup>

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<sup>20</sup> Recital 13, linked to this Article, will be modified as follows: "The deployment and exploitation phases of the Galileo programme and the exploitation phase of the EGNOS programme should be entirely financed by the Union. However in accordance with Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the financial regulation applicable to the general budget of the European Communities, the Member States should be able to provide additional funding to the programmes or a contribution in kind, on the basis of appropriate agreements, in order to fund additional programme elements related to their potential particular objectives. Third countries and international organisations should also be able to contribute to the programmes."

3. The additional funding referred to in paragraph 2 shall constitute assigned revenue in accordance with Article 18(2) of the Regulation (EC, Euratom) No 1605/2002.
4. Third countries and international organisations may also provide additional funding to the Galileo and EGNOS programmes. The international agreements-referred to in Article 28 shall stipulate the conditions and arrangements for their involvement.

*Article 9*

[...]

*[Article 10<sup>21</sup>*

**Resources**

1. The maximum amount allocated by the Union to implement the activities specified in Article 7(1) and (2) shall be EUR [7897] million at current prices for the period from 1 January 2014 to 31 December 2020.
2. The appropriations shall be implemented in accordance with the provisions of this Regulation and Regulation (EC, Euratom) No 1605/2002.
3. Budgetary commitments for the programmes shall be appropriated in annual instalments.]

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<sup>21</sup> This Article will be dealt with in the framework of the discussions on the multiannual financial framework (MFF) 2014-2020.

*Article 11*

**Revenue generated by the programmes**

1. Revenue generated by the exploitation of the systems shall be collected by the Union, paid to the Union budget and allocated to the programmes. If the income proves to be more than required to fund the programme exploitation phases, any adaptation of the principle of allocation shall be approved by the budgetary authority on the basis of a proposal from the Commission.
2. A revenue-sharing mechanism may be provided for in contracts concluded with private sector entities.
3. The interest generated by pre-financing payments made to entities responsible for implementing the budget indirectly shall be assigned to activities subject to the delegation agreement or the contract concluded between the Commission and the entity concerned. In accordance with the principle of sound financial management, the entities responsible for indirect implementation of the budget, shall open accounts enabling the funds and corresponding interest to be identified.

CHAPTER III  
**PUBLIC GOVERNANCE OF THE PROGRAMMES**

*Article 12*

**General governance framework of the programmes**

The general governance framework for the programmes shall be as follows:

- a) the bodies performing tasks under this Regulation shall, in addition to the Commission, be in particular the European GNSS Agency and the European Space Agency;
- b) the Commission shall have the overall responsibility for the programmes. It shall manage the funds allocated under this Regulation, oversee the implementation of all programmes activities, in particular with respect to the cost, schedule and performance, and perform the specific tasks referred to in Article 13 and the other provisions of this Regulation;
- c) the European GNSS Agency shall ensure the tasks referred to in Article 15 and be accountable for their implementation. The operational management of the programmes shall be based on delegation agreements between the Commission and the European GNSS Agency.
- d) the European Space Agency, through appropriate arrangements with the Commission and the European GNSS Agency, shall be requested to execute certain tasks associated with the design, development and procurement in accordance with Article 16 during the specific phases of the programmes as referred to in Articles 3 and 4.

*Article 12a*

**Principles for governance of the programmes**

Public governance of the programmes shall be based on the principles of:

- (a) a strict division of tasks **and responsibilities** between the bodies referred to in Article 12, under the overall responsibility of the Commission;
- (b) sincere cooperation between the bodies referred to in Article 12 and the Member States;
- (c) strong control of programmes, including for strict adherence to cost and schedule by all the bodies involved, within their fields of responsibility, with respect to the objectives of the programmes;
- (d) optimisation and rationalisation of the use of existing structures, in order to avoid any duplications of technical expertise.

### *Article 13*

#### **Commission's role**

1. [...]
2. In addition to the overall responsibility referred to in Article 12 and other provisions of this Regulation, the Commission shall:
  - (a) in view of ensuring a strict division of tasks between the various bodies involved in the programmes, allocate the tasks referred to in Articles 15(1a) and 16, in particular by means of delegation agreements, to the European GNSS Agency and the European Space Agency;
  - (b) ensure the timely implementation of the programmes within the allocated resources and in accordance with the programme objectives referred to in Article 2 and to that end establish the appropriate instruments and structural measures necessary to identify, control, mitigate and monitor the risks associated with the programmes;
  - (c) manage, on behalf of the Union and in its field of competence, relationships with third countries and international organisations;
  - (d) provide to Member States, in a timely manner, all relevant information pertaining to the programmes, in particular in terms of risk management, overall cost, annual operating costs of each significant item of Galileo infrastructure, revenues, schedule and performance.

3. For the smooth progress of the phases of the Galileo programme and the exploitation phase of the EGNOS programme referred to respectively in Articles 3 and 4, the Commission shall lay down the measures, where necessary, required to:
- (a) define the priorities for the implementation of the programmes relating, in particular, to service provision including risk management, cost, revenues, schedule, performance and necessary mission evolution.
  - (b) reduce and manage the risks inherent in the progress of the programmes;
  - (c) define the key decision stages to evaluate and monitor the implementation of the programmes;
  - (d) determine the location of the ground-based infrastructure of the systems in accordance with security requirements, following an open and transparent process and ensure its operation<sup>22</sup>;
  - (e) further elaborate necessary high level technical and operational specifications as regards the functions referred to in Article 2 (4) and 2 (5);

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<sup>22</sup> The following recital 22a will be added to explain how the location of ground stations is identified and decided: "Considering the programmatic importance of the ground-based infrastructure of the systems and its impact on their security, the determination of the location of this infrastructure should be one of the specific tasks assigned to the Commission. The deployment of the ground-based infrastructure of the systems should continue to follow an open and transparent process. The determination of the location of such infrastructure should be made by taking into account geographical and technical limitations associated with the optimum geographical distribution of this ground-based infrastructure and the possible presence of existing installations and equipment suitable for the relevant tasks, as well as by ensuring compliance with the security needs of each ground station and with the national security requirements of each Member State."

- (f) define a framework ensuring the optimal use of intellectual property rights referred to in Article 6.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(3).

- 4. In order to ensure the compatibility and interoperability referred to in Article 5 the Commission shall lay down the necessary technical requirements and standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(3).

#### *Article 14*

#### **Security of the systems and their operation**

- 1. The Commission shall ensure the security of the programmes, including the security of the systems and their operation and shall establish coordination mechanisms between the various bodies involved.
- 2. Without prejudice to Articles 15 and 17 of this Regulation and Article 8 of Decision 1104/2011/EU of the European Parliament and of the Council<sup>23</sup>, the Commission shall lay down the requirements and standards necessary to ensure the security of the systems and their operation referred to in paragraph 1, in particular the necessary technical requirements and guidelines. When adopting those implementing acts the Commission shall respect the following conditions:
  - a) it shall take into account the need for the oversight and integration within all the programmes of security-related requirements,

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<sup>23</sup> OJ L 287, 04.11.11, p. 1.

- b) it shall ensure that the overall effect of these requirements will support the successful progress of the programmes, in particular in terms of costs, risk management and timetable.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(3).

3. [...] <sup>24</sup>

#### *Article 15*

### **The role of the European GNSS Agency**

1. The European GNSS Agency shall, in accordance with the guidelines laid down by the Commission:
  - (a) ensure, with regard to the security of the programmes, and without prejudice to Articles 14 and 17:
    - (i) through its Security Accreditation Board, until **1st January 2014** ~~30 June 2016~~, security accreditation in accordance with Chapter III of Regulation (EU) No 912/2010; accordingly, it shall initiate and monitor the implementation of security procedures and perform system security audits;
    - (ii) the operation of the Galileo Security Monitoring Centre, as referred to in Regulation (EU) n° 912/2010, Article 6(d), in accordance with the standards and requirements referred to in Article 14 and the instructions provided under Joint Action 2004/552/CFSP referred to in Article 17;

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<sup>24</sup> Recital 26 which explains the role of the EEAS will be amended with the addition of the following sentence: "The Commission should ensure that the European External Action Service is fully associated with its activities in implementing security-related tasks in the field of external relations".

- (b) perform the tasks provided for in Article 5 of Decision No 1104/2011/EU and it shall assist the Commission in accordance with Article 8(6) of that Decision;
  - (c) contribute, in the context of the exploitation of the systems, to the marketing of services, including the necessary market analysis;
- 1a. In addition, the European GNSS Agency shall perform other tasks relating to the implementation of the programmes, including programme management tasks, which are entrusted to it by the Commission by means of a delegation agreement adopted on the basis of a delegation decision, in accordance with Article 54(2)(b) of Regulation (EC, Euratom) No 1605/2002 with the appropriate level of autonomy and authority, with particular reference to contracting authority, within the scope of Article 54 of Regulation (EC, Euratom) No 1605/2002.
- a) Such an agreement shall, insofar as necessary for the delegated tasks and budget implementation, lay down the general conditions for the management of the funds entrusted to the European GNSS Agency and, in particular, the actions to be implemented, the relevant financing, management procedures, monitoring and control measures, the measures applicable in the event of inadequate implementation of contracts in terms of costs, time and performance as well as the rules regarding ownership of all tangible and intangible assets.

The monitoring and control measures, in particular, shall provide for a provisional cost forecast, systematic information to the Commission on costs and schedule, and, in the event of a discrepancy between the planned budgets, performance and timetable, corrective action ensuring the implementation of the infrastructures within the limits of the budgets allocated.

- b) The Commission shall inform the Committee referred to in Article 35(1) of the interim and end results of the evaluation of the procurement tenders, of the contracts with private sector entities, **including the information related to subcontracting**, and of any working arrangements with the European Space Agency to be concluded by European GNSS Agency.
- c) The European GNSS Agency shall enter into the working arrangements with the European Space Agency that are necessary for the fulfillment of their respective tasks under this Regulation for the exploitation phase of the programmes as referred to in Article 16(2). It may consider the use of other public or private sector entities, whenever necessary to fulfil the task assigned to it in this Article.
- d) In the context of the exploitation phase of the programmes, and in accordance with Article 13(3), the tasks referred to in this paragraph shall include, in particular:
  - (i) operational activities of the Galileo and EGNOS programmes including system infrastructure management, maintenance, ongoing improvement, certification and standardisation, as well as service provision;
  - (ii) development and deployment activities of the evolution and future generations of the systems, including procurement activities;<sup>25</sup>
- e) The tasks referred to in this paragraph shall also include promotion of applications and services in the satellite navigation market.

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<sup>25</sup> An explanatory recital will be introduced in order to identify a milestone from which the European GNSS Agency will be responsible for the management of these activities. As and when required, appropriate transitional periods shall be put in place by the Commission to ensure the continuity of the programmes and of service provision.

2. In addition to the tasks referred to in paragraphs 1 and 1a and within the scope of its mission, the European GNSS Agency shall provide the Commission with its technical expertise and supply any information necessary for the performance of its tasks under this Regulation.
3. The Committee referred to in Article 35(1) shall be consulted on the delegation decision referred to in paragraph 1a of this Article, in accordance with the examination procedure referred to in Article 35(3). The Committee shall be informed of the delegation agreements to be concluded by the Union, represented by the Commission, and the European GNSS Agency.

### *Article 16*

#### **The role of the European Space Agency**

1. For the deployment phase of the Galileo programme, the Commission shall conclude a delegation agreement with the European Space Agency detailing the latter's tasks, in particular as regards the design and procurement of the system. The agreement with the European Space Agency shall be concluded on the basis of a delegation decision adopted by the Commission in accordance with Article 54(2) of Regulation (EC, Euratom) No 1605/2002.
  - (a) The delegation agreement shall, insofar as necessary for the tasks and budget implementation delegated under paragraph 1, lay down the general conditions for the management of the funds entrusted to the European Space Agency, and, in particular, the actions to be implemented as regards the design and procurement of the system, the relevant financing, management procedures and monitoring and control measures, the measures applicable in the event of inadequate implementation of contracts in terms of costs, time and performance as well as the rules regarding ownership of all tangible and intangible assets.

The monitoring and control measures, in particular, shall provide for a provisional cost forecast system, systematic information to the Commission on costs and schedule, and, in the event of a discrepancy between the planned budgets, performance and timetable, corrective action ensuring the implementation of the infrastructures within the limits of the budgets allocated.

- (b) The Committee referred to in Article 35(1) shall be consulted on the delegation decision referred to in paragraph 1 of this Article, in accordance with the examination procedure referred to in Article 35(3). The Committee shall be informed of the delegation agreement to be concluded by the Commission and the European Space Agency.
- (c) The Commission shall inform the Committee referred to in Article 35(1) of the interim and end results of the evaluation of the procurement tenders and of the contracts with private sector entities to be concluded by European Space Agency, **including the information related to subcontracting.**

2. For the exploitation phase of the programmes, the European GNSS Agency shall enter into the working arrangements with the European Space Agency that are necessary for the fulfilment of their respective tasks under this Regulation in this phase. These arrangements shall also address the European Space Agency's role during this phase and its co-operation with the European GNSS Agency, in particular as regards:

- (a) conception, design, monitoring and validation in the framework of the development of future generations of the systems;

- (b) technical support in the framework of operation and maintenance of the existing generation of the systems.

These arrangements shall respect the measures laid down by the Commission in accordance with Article 13(3).<sup>26</sup>

3. Without prejudice to the delegation agreement and the working arrangements referred to in paragraphs 1 and 2, the Commission may request from the European Space Agency technical expertise and information necessary for the performance of its tasks under this Regulation.

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<sup>26</sup> To clarify the role of the European Space Agency in the overall evolution with activities related to research and technology development, the financing of which takes place outside the programmes through the Horizon 2020 initiative, recital 24 will be modified as follows: "For the deployment phase of the programmes, the Union should conclude a delegation agreement with the European Space Agency covering the technical and planning aspects of the programmes. In order for the Commission, representing the Union, to exercise its power of control fully, the delegation agreement should include the general conditions for managing the funds entrusted to the European Space Agency. Concerning activities exclusively financed by the Union, these conditions must ensure a degree of control comparable to that required if the European Space Agency was an Agency of the Union". Furthermore, a new recital 24a should be added: "For the exploitation phase of the programmes, the European GNSS Agency should enter into the appropriate working arrangements with the European Space Agency. These working arrangements should, among others, detail the role of the European Space Agency during this phase, in particular as regards the development of future generation of systems and the provision of technical expertise to operate existing generation of systems. These arrangements should not cover the role of the European Space Agency as regards activities relating to research and technology, as well as early phases of evolution and research activities relating to the Galileo and EGNOS system infrastructures. Such activities should be financed outside the scope of the budget allocated to the programmes by funds allocated to the Horizon 2020 programme, a Framework Programme for Research and Innovation".

CHAPTER IV  
ASPECTS RELATING TO THE SECURITY OF THE UNION OR OF THE MEMBER  
STATES

*Article 17*

**Joint Action<sup>27</sup>**

Whenever the security of the Union or its Member States may be affected by the operation of the systems, the procedures set out in Council Joint Action 2004/552/CFSP shall apply.

*Article 18*

**Application of the rules on classified information**

Within the scope of this Regulation:

1. each Member State shall ensure that its national security regulations offer a degree of protection of EU classified information equivalent to that provided by the rules on security as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom<sup>28</sup> and by the security rules of the Council set out in the Annex to Council Decision 2011/292/EU<sup>29</sup>;
2. Member States shall without delay inform the Commission of the national security regulation as referred to in paragraph 1;

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<sup>27</sup> The second sentence of recital 25 will be modified as follows: "Except in the case of application of Joint Action 2004/552/CFSP of 12 July 2004 on aspects of the operation of the European satellite radio-navigation system affecting the security of the European Union, which needs to be reviewed to reflect the changes in the programmes, their governance and the Lisbon Treaty, the Commission is responsible for security, even if certain security-related tasks are entrusted to the European GNSS Agency."

<sup>28</sup> OJ L 317, 03.12.01, p. 1.

<sup>29</sup> OJ L 141, 27.05.11, p. 17.

3. natural persons resident in third countries and legal entities established in third countries may deal with EU classified information (EUCI) regarding the programmes only where they are subject, in those countries, to a security regulation ensuring a degree of protection at least equivalent to that guaranteed by the Commission's rules on security set out in the Annex to Decision 2001/844/EC, ECSC, Euratom and by the security rules of the Council set out in the Annex to Decision 2011/292/EU. The equivalence of the security regulation applied in a third country or international organisation shall be defined in a security of information agreement between the EU and that third country or international organisation, in accordance with the procedure provided for in Article 218 of the Treaty on the Functioning of the European Union and taking into account Article 12 of the Decision 2011/292/EU;
4. [...] <sup>30</sup>
5. without prejudice to Article 12 of Council Decision 2011/292/EU and to the rules governing the field of industrial security as set out in the Annex to Commission Decision 2001/844/EC, a natural person and private legal entity, third State or international organisation may be given access to EU classified information where deemed necessary on a case by case basis, according to the nature and content of such information, the recipient's need-to-know and the measure of advantage to the EU. <sup>31</sup>

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<sup>30</sup> An explanatory recital will be introduced regarding the equivalence of the security regulations of the European Space Agency and of Decision 2011/C 304/05 of the High Representative of the Union for Foreign Affairs and Security Policy with Council and Commission security rules.

<sup>31</sup> The following explanatory recital will be added: "This Regulation is without prejudice to existing and future rules on access to documents adopted in accordance with Article 15(3) TFEU. **Furthermore, this Regulation should not be understood as imposing an obligation on Member States to disregard their constitutional requirements in respect of access to documents**".

*CHAPTER V*  
**PUBLIC PROCUREMENT**

*SECTION I*

**General provisions applicable to public procurement conducted as part of the deployment  
and exploitation phases of the programmes**

*Article 19*

**General principles**

Without prejudice to measures required to protect the essential interests of the security of the Union or public security or to comply with Union export control requirements, the Regulation (EC, Euratom) No 1605/2002, and in particular open access and fair competition throughout the industrial supply chain, tendering on the basis of the provision of transparent and timely information, clear communication of the applicable procurement rules, selection and award criteria and any other relevant information allowing a level-playing field for all potential bidders, shall apply to the deployment phase of the Galileo programme and the exploitation phases of the programmes.

*Article 20*

**Specific objectives**

During the procurement, the following objectives shall be pursued:

- a) to promote the widest and most open participation possible throughout the Union by all economic operators, in particular by new entrants and SMEs, including through encouraging the recourse to sub-contracting by the tenderers;

- b) to avoid possible abuse of dominance and long-term reliance on a single supplier;
- c) to take advantage of prior public sector investments and lessons learned as well as industrial experience and competences, including that acquired in the definition, development and validation and deployment phases of the programmes, while ensuring that competitive tendering rules are complied with;
- d) to pursue dual sourcing wherever appropriate in order to ensure better overall control of the programmes, their costs and time-schedule;
- e) to take into account wherever appropriate the total cost over the useful life-cycle of the product, service or work being tendered<sup>32</sup>.

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<sup>32</sup> An explanatory recital will be introduced to clarify the methodology to use: "In order to better evaluate the total cost of a product, service or work being tendered, including their long term operational cost, the total cost over the useful life-cycle of the product, service or work being tendered should be taken into account wherever appropriate during the procurement, by using a cost effectiveness approach such as life-cycle costing when pursuing procurement based on the most economically advantageous tender award criterion. To this aim, the contracting authority should make sure that the methodology intended to compute the costs for a product, service or work's useful life is expressly mentioned in the contract documents or the contract notice and that it allows the verification of the accuracy of the information supplied by the tenderers."

*SECTION 2*<sup>33</sup>

**Specific provisions applicable to public procurement conducted as part of the deployment and exploitation phases of the programmes**

*Article 21*

**Establishing fair competition conditions**

The contracting authority must take the appropriate measures to ensure fair competition conditions when previous involvement of a company in activities associated with the subject of the call for tender:

- (a) may confer significant advantages on that company in terms of privileged information and therefore may give rise to concerns as to compliance with equal treatment; or
- (b) affect normal competition conditions or the impartiality and objectivity of the award or performance of the contracts.

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<sup>33</sup> Recital 28 will be modified as follows: "As the programmes will be, in principle, financed by the Union, public procurement under the programmes should comply with Union rules on public contracts and should aim, first and foremost, to obtain best value for money, control costs, mitigate risks, improve efficiency and reduce reliance on a single supplier. Open access and fair competition throughout the supply chain and the balanced offering of participation opportunities to industry at all levels, including, in particular, new entrants and small and medium-sized enterprises (hereinafter 'SMEs'), should be ensured. Possible abuse of dominance and of long-term reliance on single suppliers should be avoided. In order to mitigate programme risks, to avoid reliance on a single source of supply and to ensure better overall control of the programmes and their costs and schedules, multiple sourcing should be pursued, wherever appropriate. The risk of poor contract performance or of non-performance should be mitigated as much as possible. To this end, contractors should demonstrate the sustainability of their contractual performance with respect to the commitments undertaken and the duration of the contract. Therefore, contracting authorities should, wherever appropriate, specify requirements related to the the reliability of supplies and of the provision of services. In addition, in the case of purchases of goods and services of a sensitive nature, contracting authorities may subject such purchases to specific requirements, particularly with a view to ensuring security of information."

These measures must not distort fair competition, equal treatment and confidentiality of data collected about undertakings, their business relations and cost structure. In this context, these measures shall take into account the nature and particulars of the intended contract.

*Article 21a*

**Security of information**

When contracts involve, require and/or contain classified information, the contracting authority/entity shall specify in the tender documentation the measures and requirements necessary to ensure the security of such information at the requisite level.

*Article 21b*

**Reliability of supply**

The contracting authority shall specify in the tender documentation its requirements in relation to reliability of supplies or of the provision of services for the execution of the contract.

*Article 22*

**Conditional stage-payment contracts**

1. The contracting authority may award a contract in the form of a conditional stage-payment contract.
2. A conditional stage-payment contract shall include a fixed stage which is accompanied by a budgetary commitment and one or more conditional stages. The tender documents refer to the specific features of conditional stage-payment contracts. In particular, they specify the subject-matter of the contract, the price or the arrangements for determining the price and the arrangements for provision of supplies and services at each stage.

3. The fixed stage obligations must be part of a consistent whole; the same is true for the obligations under each conditional stage, taking into account the obligations under the previous stages.
  
4. Performance of each conditional stage shall be subject to a decision by the contracting authority, notified to the contractor in accordance with the contract. When a conditional stage is confirmed belatedly or is not confirmed, the contractor may benefit, if the contract so provides and under the conditions laid down therein, from a tideover allowance or a non-execution allowance.

### *Article 23*

#### **Cost-reimbursement contracts**

1. The contracting authority may opt for a full or partial cost-reimbursement contract up to a ceiling price, under the conditions laid down in paragraph 2.

The price to be paid for such contracts shall consist of reimbursement of all direct costs incurred by the contractor in performing the contract, such as expenditure on labour, materials, consumables, use of equipment and infrastructures necessary to perform the contract. These costs shall be increased by a fixed fee covering indirect costs and the profit, or a sum covering indirect costs and incentive fee compensation based on achieving objectives in respect of performance and delivery schedules.

2. The contracting authority may opt for a full or partial cost-reimbursement contract when it is objectively impossible to specify an accurate fixed price and if it can be reasonably shown that such a fixed price would be abnormally high due to the uncertainties inherent in performance of the contract because:
  - (a) the contract has very complex features or features which require the use of a new technology and, therefore, includes a significant number of technical risks; or
  - (b) the activities subject to the contract must, for operational reasons, start immediately even though it is not yet possible to determine a firm fixed price in full due to significant risks or because performance of the contract depends in part on the performance of other contracts.
3. The ceiling price for a full or partial cost-reimbursement contract shall be the maximum price payable. It may only be exceeded in duly justified exceptional circumstances subject to prior agreement by the contracting authority.
4. The tender documents of a procurement procedure for a full or partial cost-reimbursement contract shall specify:
  - (a) the type of contract, namely whether it is a full or partial cost-reimbursement contract up to a ceiling price;
  - (b) for a partial cost-reimbursement contract, the elements of the contract subject to cost-reimbursement;
  - (c) the total ceiling price;

- (d) the award criteria, which must enable evaluation of the plausibility of the estimated overall budget, of the reimbursable costs, of the mechanisms for determining these costs, and the profit referred to in the tender to be evaluated;
  - (e) the mechanics of the increase referred to in paragraph 1 to be applied to direct costs;
  - (f) the rules and procedures which determine the eligibility of the costs planned by the tenderer for performance of the contract, in accordance with the principles set out in paragraph 5;
  - (g) the accounting rules with which tenderers must comply;
  - (h) in the case of a partial cost-reimbursement contract to be converted into a firm fixed-price contract, the parameters for this conversion.
5. The costs declared by the contractor during performance of a full or partial cost-reimbursement contract shall only be eligible if they:
- (a) are actually incurred during the duration of the contract, with the exception of costs for equipment, infrastructures and intangible fixed assets necessary for performance of the contract which may be deemed eligible for the whole of their purchase value;
  - (b) are referred to in the estimated overall budget which may be revised by amendments to the initial contract;
  - (c) are necessary for performance of the contract;
  - (d) result from the performance of the contract and are attributable to this;

- (e) are identifiable, verifiable, recorded in the Contractor's accounting record and determined in accordance with the accounting standards referred to in the specifications and in the contract;
- (f) comply with the requirements of applicable tax and social legislation;
- (g) do not derogate from the terms of the contract;
- (h) are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The contractor shall be responsible for its own cost accounting, keeping sound accounting records or any other document required to show that the costs for which reimbursement is requested have been incurred and comply with the principles set out in this Article. Costs which cannot be substantiated by the contractor shall be deemed ineligible and their reimbursement shall be refused.

6. The contracting authority shall be responsible for the following tasks in order to ensure correct performance of cost-reimbursement contracts:
  - (a) it shall determine the most realistic possible ceiling price, while providing the necessary flexibility to account for technical difficulties;
  - (b) it shall convert a partial cost-reimbursement contract into a full firm fixed-price contract as soon as it is possible to determine such a firm fixed-price during performance of the contract. For this reason, it shall determine the conversion parameters to convert a contract concluded on a cost-reimbursement basis to a firm fixed-price contract;

- (c) it shall implement monitoring and inspection measures which provide, in particular, an estimated cost forecast system;
- (d) it shall determine suitable principles, tools and procedures for the implementation of contracts, in particular for identifying and checking the eligibility of costs declared by the contractor or its subcontractors during performance of the contract, and for entering amendments to the contract;
- (e) it shall check that the contractor and its subcontractors comply with the accounting standards stipulated in the contract and with the obligation to provide their accounting documents which should present a true and fair view of the accounts;
- (f) throughout performance of the contract, it shall ensure continuously the effectiveness of the principles, tools and procedures referred to in point (e).

#### *Article 24*

#### **Amendments**

The contracting authority and the contractors may change the contract by an amendment on condition that this amendment fulfils all of the following conditions:

- a) it does not alter the subject-matter of the contract,
- b) it does not disturb the economic balance of the contract,
- c) it does not introduce conditions which, if they had appeared initially in the contract documents, would have allowed for the admission of tenderers other than those initially admitted or would have allowed for the acceptance of a tender other than the one initially accepted.

*Article 25*

**Subcontracting**

1. The contracting authority shall request the tenderer to subcontract a share of the contract **by competitive tendering** to companies other than those that belong to the tenderer's group.
  - 1a. The contracting authority shall express the requisite share of the contract to be subcontracted in the form of a range from a minimum to a maximum percentage. In defining such percentages the contracting authority shall take into account that such percentages are in proportion to the objective and value of the contract, the nature of the sector of activity concerned, and in particular, the competitive conditions and industrial potential observed.
  - 1b. If the tenderer indicates in its tender that it intends not to sub-contract any share of the contract or to subcontract a share inferior to the minimum of the range referred to ~~at art. 25 in~~ paragraphs **1a** ~~2~~, it shall provide the reasons herefore to the contracting authority. The contracting authority shall submit this information to the Commission.
2. The contracting authority may reject subcontractors selected by the candidate at the stage of the main contract award procedure or by the tenderer selected for the performance of the contract. It shall justify this rejection in writing, which may only be based on the criteria used for selection of tenderers for the main contract.

CHAPTER VI  
**MISCELLANEOUS PROVISIONS**

*Article 26*

**Programming**

The Commission shall lay down a multiannual work programme setting out the key actions, provisional budget and schedule required to meet the objectives of the Galileo programme laid down in Article 2(4) according to the phases set out in Article 3 and the objectives of the EGNOS programme laid down in Article 2(5).

On the basis of the multiannual work programme, the Commission shall adopt an annual work programme that includes the implementation plan for the multiannual programme and the corresponding funding.

These implementing measures shall be adopted in accordance with the examination procedure referred to in Article 35(3).

## *Article 27*

### **Member States' action**

1. [...]
2. The Member States shall take all necessary measures to ensure the good functioning of the programmes including measures to ensure the protection of the ground stations established on their territories which shall be at least equivalent to those required for the protection of European critical infrastructures within the meaning of Council Directive 2008/114/EC<sup>34</sup>. The Member States also shall not take measures which could be detrimental to the programmes or the services provided through their exploitation, in particular concerning the continuity of the operation of the infrastructures.<sup>35</sup>

## *Article 28*

### **International agreements**

The Union may enter into agreements with third countries and international organisations in the context of the programmes in accordance with the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union.

## *Article 29*

### **Technical assistance**

In order to complete the technical tasks referred to in Article 13(2), the Commission may have recourse to the necessary assistance, in particular the assistance of experts from the national agencies competent in the space sector, independent experts and bodies capable of providing impartial analyses and opinions on the progress of the programmes.

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<sup>34</sup> OJ L 345, 23.12.08, p. 75.

<sup>35</sup> A recital referring to Decision 243/2012/EU establishing a multiannual radio spectrum policy programme (see Article 8(1) of that Decision) will be added.

The bodies involved in the public governance of the programmes, other than the Commission, in particular, the European GNSS Agency and the European Space Agency, may also receive the same technical assistance in performing the tasks entrusted to them under this Regulation.

### *Article 30*

#### **Personal data and privacy protection**

1. The Commission shall ensure that personal data and privacy is protected during the design and implementation of the systems and that the appropriate guarantees are included therein.
2. All personal data handled in the context of the tasks and activities provided for in this Regulation shall be processed in accordance with the applicable legislation on personal data protection, in particular Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>36</sup> and Directive 95/46/EC of the European Parliament and of the Council<sup>37</sup>.

### *Article 31*

#### **Protection of the Union's financial interests**

1. The Commission shall take the appropriate measures to ensure that the financial interests of the Union are protected when actions financed under this Regulation are implemented, by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of amounts unduly paid and, if necessary, by effective, proportional and dissuasive penalties.

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<sup>36</sup> OJ L 8, 12.01.01, p. 1.

<sup>37</sup> OJ L 281, 23.11.95, p. 31.

2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of document and on-the-spot checks, over all grant beneficiaries, contractors and subcontractors who have received Union funds under this Regulation.

The European Anti-fraud Office (OLAF) may carry out on-the-spot checks and inspections on economic operators concerned directly or indirectly by such funding in accordance with the procedures laid down in Council Regulation (Euratom, EC) No 2185/96<sup>38</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the European Union in connection with a grant agreement or decision or a contract concerning Union financing.

Without prejudice to the first and second subparagraphs, international agreements with third countries and international organisations, grant agreements, grant decisions and contracts resulting from the application of this Regulation shall expressly entitle the Commission, the Court of Auditors and OLAF to conduct these audits and these on-the-spot checks and inspections.

### *Article 32*

#### **Information to the European Parliament and to the Council**

The Commission shall ensure the implementation of this Regulation. Each year, when it presents the preliminary draft budget, it shall present a report to the European Parliament and to the Council on the implementation of the programmes. This report shall include a review of costs and risks, as well as an assessment of intellectual property rights management. ~~It shall also include metrics for evaluating the progress status, according to the criteria referred to in Article 33.~~

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<sup>38</sup> OJ L 292, 15.11.96, p. 2.

*Article 33*

**Review of the implementation of this Regulation**

1. By 30 June 2017, the Commission shall present an evaluation report on the implementation of this Regulation to the European Parliament and the Council, with a view to a decision being taken on the renewal, modification or suspension of the measures taken pursuant to this Regulation concerning:
  - (a) achieving the objectives of these measures, from the point of view of both results and impacts;
  - (b) effectiveness of the use of resources;
  - (c) European added value.

The evaluation shall also address the scope for simplification, its internal and external coherence, the relevance of all objectives, as well as the contribution of the measures to the Union priorities of smart, sustainable and inclusive growth. It shall take into account evaluation results on the long-term impact of the previous measures.

2. The evaluation will take into account progress made with regard to the objectives of the Galileo and EGNOS programmes laid down in Article 2(4) and (5) on the basis of performance indicators such as:
  - (a) for Galileo and as regards:
    - i) its infrastructure deployment:
      - number and availability of operational satellites versus number of satellites planned;
      - number of sites deployment versus planned deployment;

- ii) service level:
  - service availability map per service versus service definition document;
- iii) cost:
  - cost performance index for each major cost item of the programme based on a ratio comparing actual cost with budgeted cost;

**iv) schedule:**

- **schedule performance index per each major item of the programme based on comparing budgeted cost of work performed with budgeted cost of work scheduled.**

(b) for EGNOS and as regards:

- i) its coverage extension:
  - progress of the coverage extension versus agreed coverage extension plan;
- ii) service level:
  - service availability index based on the number of airports with EGNOS-based approach procedures with an operational status versus the total number of airports with EGNOS-based approach procedures;
- iii) cost:
  - cost performance index based on a ratio comparing actual cost with budgeted cost;
- iv) **schedule:**
  - **schedule performance index based on comparing budgeted cost of work performed with budgeted cost of work scheduled.**

3. The bodies involved in the implementation of this Regulation shall provide the Commission with the data and information necessary to enable the actions concerned to be monitored and evaluated.

*Article 34*

[...]

*Article 35*

**Committee Procedure**

1. The Commission shall be assisted by a Committee. That Committee is a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Representatives of the European GNSS Agency and the European Space Agency may be involved as observers in the work of the Committee under the conditions laid down in its rules of procedure.
5. International agreements concluded by the Union in accordance with Article 28 may provide for the involvement, as appropriate, of representatives of third countries or international organisations in the work of the Committee under the conditions laid down in its rules of procedure.

6. The Commission shall provide the Committee referred to in paragraph 1 with all relevant information pertaining to the programmes in a timely manner.

This Committee shall meet at least four times per year, preferably on a quarterly basis. The Commission shall provide a report on programme progress at each meeting. These reports shall give a general overview on programme status and developments, in particular in terms of risk management, cost, schedule and performance. **At least once a year, these reports shall include the performance indicators referred to in Article 33.2.**

## CHAPTER VIII FINAL PROVISIONS

### *Article 36*

#### **Repeals**

1. Regulations (EC) No [876/2002<sup>39</sup> and] 683/2008 shall be repealed with effect from 1 January 2014.
2. Any measure adopted on the basis of Regulations (EC) No [876/2002 or] 683/2008 shall remain valid.
3. References to the repealed Regulation (EC) No 683/2008 shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in the Annex hereto.

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<sup>39</sup> Due to on-going legal proceedings relating to this Regulation, the Commission proposes to await the outcome of such proceedings before deciding on the repeal of this Regulation.

*Article 37*

**Entry into force**

This Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.

It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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**ANNEX TO ANNEX**

**Correlation table**

<b>Former numbering</b>	<b>New numbering</b>
Subject: (Regulation (EC) No 683/2008 <sup>40</sup> )	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation and exploitation of European satellite navigation systems
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 8
Article 5	Article 4
Article 6	Article 9
Article 7	Article 5
Article 8	Article 6
Article 9	Article 7
Article 10	Article 10
Article 11	Article 11
Article 12(1)	Article 12
Article 12(2) and (3)	Article 13
Article 13(1)	Article 13
Article 13(2) and (3)	Article 14
Article 13(4)	Article 17
Article 14	Article 18

<sup>40</sup> OJ L 196, 24.07.08, p. 1.

Article 15	Article 26
Article 16	Article 15
Article 17	Articles 19 to 25
Article 18	Article 16
Article 19	Article 35
Article 20	Article 30
Article 21	Article 31
Article 22	Article 32
Article 23	
Article 24	Article 37
Annex	Article 1

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