



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 October 2013

14274/13

**Interinstitutional File:
2013/0022 (COD)**

**TRANS 503
MAR 145
AVIATION 167
CAB 38
ESPACE 74
FIN 583
CSC 111
CODEC 2171**

REPORT

from: General Secretariat
to: Council

No. prev. doc.: 14036/13 TRANS 491 MAR 140 AVIATION 159 CAB 36 ESPACE 69 FIN 562
CSC 105 CODEC 2115

No. Cion prop.: 6347/13 TRANS 60 MAR 17 AVIATION 20 CAB 6 ESPACE 11 FIN 82 CSC 12
CODEC 315

Subject: Proposal for a Regulation of the European Parliament and of the Council
amending Regulation (EU) No 912/2010 setting up the European GNSS Agency
- General approach

Introduction

1. On 6 February 2013, the Commission transmitted to the Council and the European Parliament the above mentioned proposal.

Content of the Proposal

2. This proposal aims at putting this Regulation in compliance with the new governance for the systems established under the Galileo and EGNOS programmes contained in the forthcoming Regulation on the implementation and exploitation of European satellite navigation systems¹, which will replace Regulation (EC) No 683/2008 on the further implementation of the European satellite navigation programmes.

In particular, it aims at providing for appropriate measures to ensure the separation between tasks relating to security accreditation and the other tasks of the EU GNSS Agency.

The Commission proposes also amendments in order to bring the text in line with the principles contained in the "Common approach of the European Parliament, Council and Commission on decentralised agencies" agreed on 12 June 2012.

Work within the Council bodies

3. The examination of the proposal by the Council preparatory bodies started on 15 April 2013. Following the in-depth discussions held at various meetings of the Working Party on Transport Intermodal Questions and Networks, 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.
4. On 2 October 2013, the Permanent Representatives Committee succeeded in solving all outstanding issues and reached an agreement on the draft Regulation which appears in the Annex.

¹ At the time of the Partial General Approach agreed on 7 June 2012, Member States made a statement on the activities relating to the security accreditation of the systems. This statement stressed that security accreditation should be performed in a manner which is strictly independent from the other tasks of the GSA and that the necessary arrangements need to be put in place, in particular to ensure a robust functional and structural separation between those activities.

5. However, the Commission could not support the Council's general approach and maintained its reservation, already expressed at Working Party level. The Commission objects to the decision to appoint two representative of the Commission on the Administrative Board instead of the five it proposed (Article 5(2)(b), footnote 12). It also has a reservation on the decrease of the renewal period of the Executive Director to four years instead of the five it proposed (Article 15b(3), footnote 29). In addition, the Commission has a reservation on the fact that the power to propose the dismissal of the Executive Director has been also granted to one third of the Members of the Administrative Board (Article 15b(4), footnote 30), on the grounds that, as indicated in the Common Approach on decentralised Agencies, the dismissal procedure should mirror the appointment procedure.

The Commission expresses a general reservation pending the position of the European Parliament.

6. UK entered a parliamentary scrutiny reservation.

Conclusions

7. In the light of the above, the Council is invited to adopt, at its meeting on 10 October 2013, a general approach on the text of the annexed draft Regulation.

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EU) No 912/2010 setting up the European GNSS Agency

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 forwarding of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

² OJ C , , p..

³ OJ C , , p..

Whereas⁴:

- (1) It follows from the combined provisions of Article 16 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)⁵ and Article 2 of Regulation (EU) No 912/2010 of the European Parliament and of the Council 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 Council⁶ that the European GNSS Agency (hereinafter the "Agency") must ensure the security accreditation of the European satellite navigation systems (the "systems") and, to this end, initiate and monitor the implementation of security procedures and perform security audits.
- (2) The provisions of Regulation (EU) no 912/2010, in particular those in Chapter III of the Regulation, expressly lay down the terms under which the Agency must perform its task concerning security accreditation of the systems. In particular, they stipulate, in principle, that security accreditation decisions must be taken independently of the Commission and the bodies responsible for implementing the European satellite navigation programmes (hereinafter the "programmes") and that the systems' security accreditation authority shall be a independent body within the Agency that makes decisions independently.
- (3) In accordance with this principle, Regulation (EU) No 912/2010 establishes the Security Accreditation Board for European GNSS systems (hereinafter the "Security Accreditation Board") which, alongside the Administrative Board and the Executive Director, is one of the three bodies of the Agency. This body performs the tasks entrusted to the Agency concerning security accreditation and is authorised to make security accreditation decisions on behalf of the Agency. It must adopt its rules of procedure and appoint its chairperson.

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

⁵ OJ L 196; 24.7.2008, p. 1.

⁶ OJ L 276; 20.10.2010, p. 11.

- (4) Regulation (EU) No xxx/2013 of the European Parliament and of the Council on the implementation and exploitation of European satellite navigation systems⁷, replacing Regulation (EC) No 683/2008, which will enter into force on 1 January 2014, defines the public governance arrangements for the programmes during 2014-2020. It extends the tasks entrusted to the Agency and provides, in particular, for the Agency to play a major role in the exploitation of the systems.
- (5) In this new context, it is essential to ensure that the Security Accreditation Board is able to carry out the task entrusted to it with complete independence, in particular *vis-à-vis* the other bodies and activities of the Agency. It is therefore essential to further separate, within the Agency itself, the activities associated with accreditation from its other activities, such as management of the security centre, contribution to the commercialisation of the systems and any activities that the Commission might entrust to the Agency by way of delegation, in particular those associated with exploitation of the systems. To this end, a tangible and effective structural division should be set up within the Agency between its various activities by 1 January 2014 at the latest.
- (6) In order to achieve this, Regulation (EU) No 912/2010 must be amended in order to increase the independence and powers of the Security Accreditation Board and its chairperson and to align these largely with the Administrative Board and the Executive Director of the Agency respectively, while providing for a cooperation requirement between the various bodies of the Agency.

⁷ OJ L ... of2013, p. ... [It should be noted that, as long as this Regulation and the Regulation implementing the future multiannual financial framework have not yet been adopted, the scope of the tasks entrusted to the European GNSS Agency and the budget appropriations assigned accordingly cannot be regarded as definitive].

- (7) The Security Accreditation Board and not the Administrative Board prepares and approves the part of the Agency work programmes describing the operational activities associated with security accreditation of the systems as well as the part of the annual report concerning the activities and prospects of the Agency with regard to the systems' security accreditation activities and submits them in good time to the Administrative Board so that they can be incorporated in the Agency's work programme and annual report. It must also exercise disciplinary authority over its Chairperson.
- (8) It would be desirable to assign a role in relation to security accreditation activities to the Chairperson of the Security Accreditation Board comparable to that of the Executive Director in other Agency activities. Therefore, in addition to the function of representing the Agency, already provided for under Regulation (EU) No 912/2010 in its draft of 22 September 2010, the Chairperson of the Security Accreditation Board should manage the security accreditation activities under the direction of the Security Accreditation Board and ensure the implementation of the part of the Agency work programmes associated with accreditation. At the request of the Parliament or the Council, it should also submit a report on the performance of its tasks and make a declaration before these institutions.
- (9) In addition, in the interests of preserving the independence of the Security Accreditation Board and avoiding any conflicts of interest, it would also be useful for the Security Accreditation Board and the Agency staff under its control to carry out their work in a location ensuring their autonomy and independence with regard to the Agency's other activities, in particular *vis-à-vis* the operational activities associated with the exploitation of the systems and for the Agency's internal rules on staff to ensure the autonomy and independence of the staff performing the security accreditation activities *vis-à-vis* staff carrying out other Agency activities.
- (10) Furthermore, given the involvement of a number of third countries in the European GNSS programmes, including in security matters, express provision should be made for representatives of third countries to be able to participate under conditions to be specified in the work of the Security Accreditation Board.

- (11) Regulation (EU) No 912/2010 must be made consistent with the principles contained in the shared approach of the Parliament, Council and Commission to the decentralised agencies, adopted by the three institutions on 5 July, 26 June and 12 June 2012 respectively, particularly with regard to the rules for adopting decisions of the Administrative Board, the terms of office of the members of the Administrative Board and Security Accreditation Board and those of their chairpersons, the existence of a multiannual work programme, the powers of the Administrative Board concerning staff management, assessment and revision of the Regulation, prevention of conflicts of interest and handling of non-classified sensitive information.
- (12) 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.
- (13) Finally, given that Article [8] of Regulation (EU) No xxx/2013 (future GNSS Regulation) allows the Member States to contribute extra funds in order to finance certain programme features, the Agency should be permitted to award joint contracts with the Member States when appropriate for performance of its tasks.
- (14) Regulation (EU) No 912/2010 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

CHAPTER I
SUBJECT, TASKS, BODIES

Article 1

Subject matter

This Regulation sets up a Union agency called the European GNSS Agency (hereinafter the "Agency").

Article 2

Tasks

The tasks of the Agency shall be as set out in Article 15 of Regulation (EU) No xxx/2013.

Article 3

Bodies

1. The bodies of the Agency shall be:
 - a) the Administrative Board⁸;
 - b) the Executive Director;
 - c) the Security Accreditation Board for European GNSS systems.

2. The bodies of the Agency shall accomplish their tasks, as specified in Articles 6, 8 and 11 respectively.

⁸ To be in coherence with the "Common approach on decentralised agencies, "administrative board" should be changed into "management board".

3. The Administrative Board and the Executive Director, the European GNSS System Security Accreditation Board and its Chairperson, shall cooperate to ensure the operation of the Agency and the coordination of its bodies in accordance with the procedures determined by the Agency's internal rules, such as the rules of procedure of the Administrative Board, the rules of procedure of the Security Accreditation Board, the financial rules applicable to the Agency, the implementing rules for the status of staff and the rules governing access to documents.

Article 4

Legal status, local offices

1. The Agency shall be a body of the Union. It shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency may decide to establish local offices in the Member States, subject to their consent, or in third countries participating in the work of the Agency, in accordance with Article 23.
- 3a. The choice of the location of these offices shall be made on the basis of objective criteria defined to ensure its smooth operation⁹.

⁹ An explanatory recital detailing the "objective criteria" will be added and will include the following criteria:

- a) accessibility of the premises,
- b) the existence of suitable educational infrastructures for the children of members of staff and seconded national experts,
- c) access to the employment market, social security system and healthcare for the families of members of staff and seconded national experts.
- d) costs for implementation and operating costs.

The provisions relating to the installation and operation of the Agency in the Member States and host third countries and those relating to advantages accorded by the latter to the Executive Director, members of the Administrative Board, Agency staff and members of their families are subject to specific arrangements made by the Agency with those Member States and countries. The specific arrangements shall be approved by the Administrative Board.

- 3b. The host State shall provide, through the above mentioned arrangements, the necessary conditions for the smooth operation of the Agency^{10 11}.
4. Subject to Article 11a (1)(d), the Agency shall be represented by its Executive Director.

Article 5

Administrative Board

1. An Administrative Board is hereby set up to carry out the tasks listed in Article 6.
2. The Administrative Board shall be composed of:
 - a) one representative appointed by each Member State;
 - b) two¹² representatives appointed by the Commission;

¹⁰ A recital could be added giving clarifications on the necessary conditions for the smooth operation of the Agency.

¹¹ A recital could be added mentioning that the seat of the Agency is located in Prague and that the hosting agreement is considered to fulfil the requirements of this Regulation.

¹² The Commission expresses a strong reservation and maintains its proposal of "five" representatives.

- c) one non-voting representative appointed by the European Parliament.

The duration of the term of office of the Administrative Board members shall be 4 years and the term shall be renewable.

A representative of the Security Accreditation Board of the European GNSS systems, namely its Chairperson or Deputy Chairperson, a representative of the High Representative for Foreign Affairs and Security Policy (the "HR") and a representative of the European Space Agency (the "ESA") shall be invited to attend the meetings of the Administrative Board as observers, under the conditions laid down in the rules of procedure of the Administrative Board.

3. Where appropriate, the participation of representatives of third countries or international organisations and the conditions thereof shall be established in the agreements referred to in Article 23(1) and shall be compliant with the rules of procedure of the Administrative Board.
4. The Administrative Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall automatically take the place of the Chairperson when the Chairperson is prevented from attending to his/her duties. The term of office of the Chairperson and of the Deputy Chairperson shall be 2 years, renewable once, and shall expire when they cease to be members of the Administrative Board.
5. The meetings of the Administrative Board shall be convened by its Chairperson.

The Executive Director shall normally take part in the deliberations, unless the Chairperson decides otherwise.

The Administrative Board shall hold an ordinary meeting twice a year. In addition, it shall meet on the initiative of its Chairperson or at the request of at least a third of its members.

The Administrative Board may invite any person whose opinion may be of interest to attend its meetings as an observer. The members of the Administrative Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

The secretariat of the Administrative Board shall be provided by the Agency.

6. Unless otherwise provided in this Regulation, the Administrative Board shall take its decisions by an absolute majority of its voting members.

A majority of two thirds of all voting members is required for election of the Chairperson of the Administrative Board and the Deputy Chairperson, and adoption of the budget and work programmes.

7. Each representative of the Member States and of the Commission shall have one vote. Decisions based on Article 6(2)(a) and (b) and 6(4), except for matters covered in Chapter III, shall not be adopted without a favourable vote of the representatives of the Commission. The Executive Director shall not vote¹³.

The rules of procedure of the Administrative Board shall establish more detailed voting arrangements, in particular the conditions for a member to act on behalf of another member.

Article 6

Tasks of the Administrative Board

1. The Administrative Board shall ensure that the Agency carries out the work entrusted to it, under the conditions set out in this Regulation, and shall take any necessary decision to this end, without prejudice to the competences entrusted to the Security Accreditation Board for the activities under Chapter III.

¹³ An explanatory recital could be added to clarify that an appropriate voting procedure could be envisaged, in order to ensure that the part related to Chapter III will not be affected in case of a negative vote by the of the Administrative Board on the multiannual and annual work programmes and that security accreditation activities could be carried out without discontinuity.

2. The Administrative Board shall also:

- a) adopt, by 30 June of the first year of the multiannual financial framework provided for under Article 312 of the Treaty on the Functioning of the European Union, the multiannual work programme of the Agency for the period covered by the multiannual financial framework after incorporating, without any change, the section drafted by the Security Accreditation Board in accordance with Article 11(3a)(a) and after having received the Commission's opinion;
- b) adopt, by 15 November each year at the latest, the Agency work programme for the following year having incorporated, without any change, the section drafted by the Security Accreditation Board, in accordance with Article 11(3a)(b) and after having received the Commission's opinion;
- c) perform the budgetary functions laid down in Article 13(5), (6), (10) and (11) and Article 14(5);
- d) oversee the operation of the Galileo security centre (hereinafter the "Galileo Security Monitoring Centre" or the "GSMC") as referred to in Article 15(1)(a)(ii) of Regulation (EU) No xxx/2013;
- e) adopt arrangements to implement Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ¹⁴, in accordance with Article 21;
- ea) approve the arrangements referred to in Article 23(2), after consulting the Security Accreditation Board on those provisions of these arrangements concerning security accreditation;
- eb) adopt procedures necessary to perform its tasks;

¹⁴ OJ L 145, 31.5.2011, p. 43.

- f) adopt the annual report on the activities and prospects of the Agency, having incorporated without any change the section drafted by the Security Accreditation Board in accordance with Article 11(3a)(c) and forward it, by 1 July, to the European Parliament, the Council, the Commission and the Court of Auditors;
 - g) ensure adequate follow-up to the findings and recommendations stemming from the evaluations and audits referred to in Article 26, as well as those arising from the investigations conducted by the European Anti-Fraud Office (OLAF) and all internal or external audit reports, and forward to the budgetary authority all information relevant to the outcome of the evaluation procedures;
 - h) be consulted by the Executive Director on the delegation agreements made by the Commission and the Agency under Article 15(1a) of Regulation (EU) No xxx/2013 before they are signed;
 - ha) approve, on the proposal of the Executive Director, the working arrangements between the European GNSS Agency and the European Space Agency referred to in Article 15(1c) of Regulation (EU) No xxx/2013.
 - i) adopt its rules of procedure.
3. With regard to the Agency's staff, the Administrative Board shall exercise the powers conferred by the Staff Regulations of Officials of the European Union on the appointing authority and by the Conditions of Employment of other servants on the authority empowered to conclude employment contracts ("the appointing authority powers").

The Administrative Board shall adopt, in accordance with the procedure provided for in Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of other servants delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate these powers.

In application of the previous subparagraph, where exceptional circumstances so require, the Administrative Board may, by way of a decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

However, by way of derogation from the second paragraph, the Administrative Board shall be required to delegate to the Chairperson of the Security Accreditation Board the powers referred to in the first subparagraph with regard to recruitment, assessment and recategorising of staff involved in the activities covered in Chapter III and the disciplinary measures to be taken with regard to the abovementioned staff.

The Administrative Board shall adopt the implementing measures of the Staff Regulations of Officials of the Union and the Conditions of Employment of other servants in accordance with the procedure laid down in Article 110 of the Staff Regulations. It shall first consult the Security Accreditation Board and duly take into account its observations with regard to recruitment, assessment, reclassification of the staff involved in the activities under Chapter III and the relevant disciplinary measures to be taken.

It shall also adopt the measures concerning the secondment of the seconded national experts referred to in Article 15c, after consulting the Security Accreditation Board and duly taking into account its observations.

4. The Administrative Board shall appoint the Executive Director and may extend or end his term of office pursuant to Article 15b(3) and (4). It shall exercise disciplinary authority over the Executive Director in relation to his/her performance, in particular as regards security matters falling within the competence of the Agency, except in respect of activities undertaken in accordance with Chapter 3.

Article 7

Executive Director

The Agency shall be managed by its Executive Director, who shall carry out his/her duties under the supervision of the Administrative Board, without prejudice to the powers granted to the Security Accreditation Board and the Chairperson of the Security Accreditation Board in Articles 11 and 11a respectively.

Article 8

Tasks of the Executive Director

The Executive Director shall carry out the following tasks:

- (1) be responsible for representing the Agency, except in respect of activities and decisions undertaken in accordance with Chapters II and III, and shall be in charge of its management; he/she shall sign the delegation agreements made by the Commission and the Agency under Article 15(1a) of the Regulation (EU) No xxx/2013, in compliance with Article (6)(2)(h);
- 1a) prepare the working arrangements between the European GNSS Agency and the European Space Agency referred to in Article 15(1c) of Regulation (EU) No xxx/2013 and submit them to the Administrative Board in accordance with Article 6(2)(ha); he/she shall sign them after receiving the approval of the Administrative Board;
- (2) prepare the work of the Administrative Board and participate, without having the right to vote, in the work of the Administrative Board;
- (3) be responsible for implementing the annual work programmes of the Agency under the control of the Administrative Board, with the exception of the part of the programmes covered in Chapter III;

- (3a) prepare a progress report on the implementation of the annual work programme for each meeting of the Administrative Board, incorporating, without any change, the section prepared by the Chairperson of the Security Accreditation Board, in accordance with Article 11a(1)(ca);
- (4) take all necessary measures, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with this Regulation;
- (5) draw up a draft statement of the Agency's estimated revenue and expenditure in accordance with Article 13, and implement the budget in accordance with Article 14;
- (6) prepare a draft general report each year, duly taking into account the comments of the Chairperson of the Security Accreditation Board concerning the activities covered in Chapter III, and submit it to the Administrative Board;
- (7) ensure that the Agency, as the operator of the GSMC, is able to respond to instructions provided under Joint Action 2004/552/CFSP and to fulfil its role referred to in Article 6 of Decision No 1104/2011;
- (7a) ensure the circulation of relevant information, in particular as regards security matters, between the bodies of the Agency;
- (7b) communicate to the Commission the view of the Agency as regards potential technical and operational specifications necessary to implement systems evolutions referred to in Article 13(3)(e) of Regulation (EU) No xxx/2013, including for the definition of acceptance and review procedures, and research activities in support of these evolutions;
- (8) define the organisational structure of the Agency and submit it for approval to the Administrative Board;

- (9) exercise, with regard to the Agency's staff, the powers referred to in the first subparagraph of Article 6(3), to the extent that these powers shall be delegated to him in accordance with the second subparagraph of the same paragraph;
- (10) adopt, after approval by the Administrative Board, the necessary measures to establish local offices in Member States in accordance with Article 4(3);
- (11) ensure that the secretariat and all the resources necessary for proper functioning are provided to the Security Accreditation Board, the bodies referred to in Article 11(11) and the Chairperson of the Security Accreditation Board;
- (12) prepare an action plan for ensuring the follow up of the findings and recommendations of the evaluations and audits referred to in Article 26, with the exception of the action plan covered by Chapter III, and submit, after having incorporated, without any change, the section drafted by the Security Accreditation Board, a twice-yearly progress report to the Commission. This report shall also be submitted to the Administrative Board for information;
- (13) takes the following measures to protect the financial interests of the Union:
 - i) take preventive measures against fraud, corruption or any other illegal activity and shall make use of effective supervisory measures;
 - ii) recover sums unduly paid where irregularities are detected and, where appropriate, apply effective, proportionate and dissuasive administrative and financial penalties;
- (14) draw up an anti-fraud strategy for the Agency and submit it to the Administrative Board for approval.

Article 8a

Work programmes and annual report

1. The multiannual work programme of the Agency, referred to in Article 6(2)(a) lays down the actions that the Agency must perform during the period covered by the multiannual financial framework provided for in Article 312 of the Treaty on the functioning of the European Union, including actions associated with international relations and the communication for which it is responsible. This programme shall set out overall strategic programming, including objectives, milestones, expected results and performance indicators, and resource programming, including the human and financial resources assigned to each activity. It shall take into account the evaluations and audits referred to in Article 26. For information purposes, this programme shall also include a description of the transfer of tasks from the Commission to the European GNSS Agency, including programme management tasks referred to in Article 15(1a)(b) of Regulation (EU) No xxx/2013.
2. Based on the multiannual work programme, the annual work programme referred to in Article 6(2)(b) lays down the actions that the Agency must perform during the coming year, including actions associated with international relations and the communication for which it is responsible. This programme shall comprise detailed objectives and expected results, including performance indicators. It shall clearly indicate which tasks have been added, changed or deleted in comparison to the previous financial year and changes in performance indicators and their targets values. This programme shall also determine the human and financial resources assigned to each activity¹⁵. For information purposes, it shall include the tasks that the Commission has delegated, as required, to the Agency pursuant to Article 15(1a) of Regulation (EU) No xxx/2013.¹⁶

¹⁵ A recital should be added to clarify that the expenditure associated with the new staff requirements of the Agency should be partially offset by a reduction of 30 posts in the Commission's establishment plan during the same period, i.e. from 2014 to 2020.

¹⁶ A recital should be added to clarify the need for performance management process, including performance indicators (effective assessment of the results achieved, efficiency etc.).

3. The annual general report referred to in Article 8(6) shall record the implementation of the Agency work programmes, including by means of the performance indicators referred to in paragraphs 1 and 2. It shall also include a review on the progress made in implementing management systems and techniques referred to in Article 12a of Regulation (EU) No xxx/2013.

CHAPTER II
***ASPECTS RELATING TO THE SECURITY OF THE EUROPEAN UNION OR OF THE
MEMBER STATES***

Article 9

Joint Action

1. In accordance with Article 17 of Regulation (EU) No xxx/2013, whenever the security of the Union or of the Member States may be affected by the operation of the systems, the procedures set out in Joint Action 2004/552/CFSP shall apply.

2. The security accreditation decisions taken pursuant to Chapter III, as well as the residual risks identified, shall be communicated by the Commission to the Council for information.

CHAPTER III
SECURITY ACCREDITATION FOR EUROPEAN GNSS SYSTEMS

Article 10

General principles

The security accreditation activities for European GNSS systems referred to in this Chapter shall be carried out in accordance with the following principles:

- (a) security accreditation activities and decisions are undertaken in a context of collective responsibility for the security of the Union and of the Member States;
- (b) efforts shall be made for decisions to be reached by consensus;
- (b0) security accreditation activities shall be carried out using a risk assessment and management approach, considering risks to the security of the systems as well as the impact on cost or schedule of any measure to mitigate the risks, taking into account the objective not to lower the general level of security of the systems;
- (b1) security accreditation decisions shall be prepared and undertaken by professionals who are duly qualified in the field of accrediting complex systems, who have an appropriate level of security clearance, and who shall act objectively;

- (b2) efforts shall be made for all relevant parties¹⁷ with an interest in security issues to be consulted;
- (b3) security accreditation activities shall be executed by all relevant stakeholders according to a security accreditation strategy without prejudice to the role of the European Commission defined in Regulation (EU) No xxx/2013;
- (b4) security accreditation decisions shall, following the process defined in the relevant security accreditation strategy, be based on local security accreditation decisions taken by the respective national security accreditation authorities of the Member States;
- (c) [...]
- (d) a permanent, transparent and fully understandable monitoring process shall ensure that security risks for European GNSS systems are known, that security measures are defined to reduce such risks to an acceptable level in view of the security needs of the Union and of its Member States and for the smooth running of the programmes and that these measures are applied in line with the concept of defence in depth¹⁸. The effectiveness of such measures shall be continuously evaluated. This process relating to security risk assessment and management shall be conducted as an iterative process jointly by the stakeholders of the programmes;
- (e) [...]

¹⁷ A recital could be added to clarify what are the relevant parties: the European satellite navigation systems referred to in Article 2 of Regulation (EU) No xxxx/2013 are complex systems; their establishment and operation involve numerous stakeholders with different roles. In that context, security accreditation would be facilitated by the appropriate consultation of all relevant parties, such as national authorities operating networks connected to the system established under the Galileo programme for the provision of PRS, the European Space Agency, relevant authorities of Member States or, if provided for in an international agreement, third countries hosting ground stations of the systems. This consultation should exclude industry and end users, as aspects relating to them will be coordinated by the panel supporting the work of the Security Accreditation Board.

¹⁸ A recital could be added to define the concept of defence in depth as the application of a range of security measures organized as multiple layers of defence.

- (f) [...]
- (g) security accreditation decisions shall be taken in a strictly independent manner, including with regard to the Commission and other bodies responsible for the implementation of the programmes and for service provision, as well as with regard to the Executive Director and the Administrative Board of the Agency;
- (h) security accreditation activities shall be carried out with consideration of the need for adequate coordination, between the Commission and the authorities responsible for implementing security provisions;
- (i) EU classified information shall be handled and protected by all stakeholders involved in the implementation of the Galileo and EGNOS programmes in accordance with the basic principles and minimum standards set out in the Commission's and the Council's security rules on the protection of EU classified information¹⁹;

Article 11

Security Accreditation Board²⁰

1. A Security Accreditation Board for European GNSS systems (hereinafter the "Security Accreditation Board") is hereby set up to carry out the tasks listed in this Article.
2. The Security Accreditation Board shall perform its tasks without prejudice to the responsibility entrusted to the Commission by Regulation (EU) No xxx/2013, in particular for matters relating to security, and without prejudice to the competences of the Member States as regards security accreditation.

¹⁹ A recital along the following lines could be added: 'Article 18 of Regulation (EU) No xxx/2013, which guarantees an equivalent level of protection for EU classified information, will apply, where appropriate, to all stakeholders involved in implementing the Galileo and EGNOS programmes'.

²⁰ A recital could be added to clarify that the activities of the Security Accreditation Board are performed without prejudice to the national competence and prerogatives of Member States as regards security accreditation.

3. As security accreditation authority, the Security Accreditation Board shall, with regard to security accreditation for the European GNSS systems, be responsible for:
- a0) defining and approving a security accreditation strategy setting out:
- i) the scope of the activities necessary to perform and maintain the accreditation of the European GNSS systems and their potential interconnection with other systems;
 - ii) a security accreditation process for the European GNSS systems with a degree of detail commensurate with the required level of assurance and clearly stating the approval conditions; this process shall be performed in accordance with the relevant requirements, in particular those referred to in Article 14 of Regulation (EU) No xxx/2013;
 - iii) the role of relevant stakeholders involved in the accreditation process^{21 22};
 - iv) an accreditation schedule compliant with the phases of the programmes, in particular as regards the deployment of infrastructure, service provision and evolution;

²¹ A recital along the following lines could be added to clarify who are the relevant stakeholders: "The stakeholders participating in the security accreditation process are the Commission, relevant Union Agencies, ESA, Member States and the players involved in the Joint Action".

²² A recital could be added to specify that the Commission should provide to the SAB all information necessary to perform its tasks.

- v) the principles²³ of the security accreditation for networks and PRS equipment connected to the systems to be performed by national entities of the Member States competent in security matters;
- a1) taking security accreditation decisions, in particular on the approval of satellite launches, the authorisation to operate the systems in their different configurations and for the various services up to and including the signal in space, and the authorisation to operate the ground stations. As regards the networks and PRS equipment connected to the system, it shall only take decisions on the authorisation of bodies to develop and manufacture PRS receivers or PRS security modules²⁴, taking into account the advice provided by national entities competent in security matters and the overall security risks;
- a23) examining and, except as regards documents which the Commission is to adopt under Article 14 of Regulation (EU) No xxx/2013 and Article 8 of Decision 2011/1104/EU, approving all documentation relating to security accreditation;
- (a23bis) advising, within its field of competence, the Commission in the elaboration of draft texts for acts referred to in Article 14 of Regulation (EU) No xxx/2013 and Article 8 of Decision 2011/1104/EU, including for the establishment of security operating procedures (SecOps), and providing a statement with its concluding position;

²³ A recital could be added to justify this addition: "Considering the potential high number of networks and equipment connected to the system established under the Galileo programme, in particular for PRS use, high level principles of security accreditation of these networks and equipment should be defined in the security accreditation strategy to ensure the homogeneity of this accreditation task without prejudicing the competence of national entities of the Member States competent in security matters. The application of these principles will allow for a consistent risk management and reduce the need to escalate all mitigation actions at system level, which has negative impact on cost, schedule and service provision".

²⁴ A recital along the following lines could be added: "The development, including the relevant research activities carried out for the purposes of such development, and manufacture of PRS receivers and PRS security modules constitutes a particularly sensitive activity. It is therefore essential that the Security Accreditation Board established its procedures to authorise the manufacturers of PRS receivers, PRS security modules and equipment necessary for their functioning and qualification".

- (a~~23~~^{ter}) examining and approving the security risk assessment developed in accordance with the process referred to in Article 10(d), taking into account compliance with the documents referred to in (a3) and those developed in accordance with Article 14 of Regulation (EU) No xxx/2013 and Article 8 of Decision 2011/1104/EU; cooperating with the Commission to define risk mitigation measures;
- (a~~34~~) checking implementation of security measures in relation to the security accreditation of the European GNSS systems by undertaking or sponsoring security assessments, inspections or reviews, in accordance with Article 12(b);
- (a~~46~~) endorsing the selection of approved products and measures which protect against electronic eavesdropping (TEMPEST) and of approved cryptographic products used to provide security for the European GNSS systems²⁵;
- (a~~57~~) approving, or where relevant, participating in the joint approval, together with the relevant entity competent in security matters, of the interconnection of the European GNSS systems with other systems;
- a~~68~~) agreeing with the relevant Member State the template for access control referred to in Article 12(c);
- a~~74~~) on the basis of the risk reports referred to in paragraph 11, informing the Commission of its risk assessment and providing advice to the Commission on residual risk treatment options for a given security accreditation decision;
- a~~81~~²) assisting, in close liaison with the Commission, the Council in the implementation of the Joint Action upon a specific request of the Council;
- a~~91~~³) carrying out the consultations which are necessary to accomplish its tasks.

²⁵ A recital could be added to clarify the approval process for cryptographic and TEMPEST products.

- 3a. The Security Accreditation Board shall also:
- a) prepare and approve the part of the multiannual work programme referred to in Article 8a(1) concerning the operational activities covered in this chapter and the financial and human resources needed to accomplish them, and submit it to the Administrative Board in good time so that it can be incorporated in the abovementioned multiannual work programme;
 - b) prepare and approve the part of the annual work programme referred to in Article 8a(2) concerning the operational activities covered in this chapter and the financial and human resources needed to accomplish them, and submit it to the Administrative Board in good time so that it can be incorporated in the abovementioned annual work programme;
 - c) prepare and approve the part of the annual report referred to in Article 6(2)(f) concerning the Agency's activities and prospects covered in this chapter and the financial and human resources needed to accomplish them, and submit it to the Administrative Board in good time so that it can be incorporated in the abovementioned report;
 - d) [...]
 - e) [...]
 - f) adopt its rules of procedure.
4. [...]
5. The Commission shall keep the Security Accreditation Board continuously informed of the impact of any envisaged decisions of the Security Accreditation Board on the proper conduct of the programmes and of the implementation of residual risk treatment plans. The Security Accreditation Board shall take note of any such opinion of the Commission.

6. The decisions of the Security Accreditation Board shall be addressed to the Commission.
7. The Security Accreditation Board shall be composed of one representative per Member State, a Commission representative and an HR representative. The duration of the term of office of the members of the Security Accreditation Board shall be four years and the term shall be renewable. A representative of ESA shall be invited to attend the meetings of the Security Accreditation Board as an observer. On an exceptional basis, representatives of third countries or international organisations may also be invited to attend these meetings as observers for matters directly relating to them. Such participation of representatives of third countries or international organisations and the conditions thereof shall be established in the agreements referred to in Article 23(1) and shall be compliant with the rules of procedure of the Security Accreditation Board.
8. The Security Accreditation Board shall elect a Chairperson and Deputy Chairperson from among its members by a two-thirds majority of all members with the right to vote. The Deputy Chairperson shall automatically take the place of the Chairperson when the Chairperson is prevented from attending to his/her duties.

The Security Accreditation Board shall have the power to dismiss the Chairperson, the Deputy Chairperson or both. It shall adopt the decision to dismiss by a two-thirds majority.

The duration of the term of office of the Chairperson and of the Deputy Chairperson of the Security Accreditation Board shall be two years and the term shall be renewable once. The term shall end when the Chairperson or Deputy Chairperson ceases to be a member of the Security Accreditation Board.

9. [...]

10. The Security Accreditation Board shall have access to all the human and material resources required to provide appropriate administrative support functions and to enable it, together with the bodies referred to in paragraph 11, to perform its tasks independently, in particular when handling files, initiating and monitoring the implementation of security procedures and performing system security audits, preparing decisions and organising its meetings. It shall also have access to any information needed for the performance of its tasks in the possession of the Agency, without prejudice to the principles of autonomy and independence referred to in Article 10(g).
- 10a. The Security Accreditation Board and the Agency staff under its supervision shall perform their work in a manner ensuring autonomy and independence in relation to the other activities of the Agency, particularly operational activities associated with the exploitation of the systems, in line with the objectives of the programme. To that end, an effective organisational division shall be established within the Agency between the staff involved in activities covered in this Chapter and the other staff of the Agency.
11. The Security Accreditation Board shall set up special subordinate bodies, acting on its instructions, to deal with specific issues. In particular, while ensuring necessary continuity of work, it shall set up a panel to conduct security analysis reviews and tests to produce the relevant risk reports in order to assist it in preparing its decisions. The Security Accreditation Board may set up or disband expert groups to contribute to the work of this panel.
- 11a. Without prejudice to the competence of the Member States and of the role entrusted to the European GNSS Agency referred to in Article 15(1)(a)(i) of the Regulation (EU) No xxx/2013, during the deployment phase of the Galileo Programme²⁶, a group of experts of the Member States shall be set up under the supervision of the Security Accreditation Board to perform the tasks of the Crypto Distribution Authority (CDA) relating to the management of EU crypto material in particular for:

²⁶ A recital should be added to clarify that this set-up is established to ensure continuity of COMSEC items management during the deployment phase of the Galileo Programme. It should also clarify that after the deployment phase a sustainable solution in this respect should be found for carrying out these operational tasks.

- (i) the management of flights keys and other keys necessary for the functioning of the system established under the Galileo programme;
 - (ii) the verification of the establishment and the enforcement of procedures for accounting, secure handling, storage and distribution of PRS keys.
12. If consensus according to the general principles referred to in Article 10 of this Regulation cannot be reached, the Security Accreditation Board shall take decisions on the basis of majority voting, as provided for in Article 16 of the Treaty on European Union and without prejudice to Article 9 of this Regulation. The representative of the Commission and the representative of the HR shall not vote. The Chairperson of the Security Accreditation Board shall sign, on behalf of the Security Accreditation Board, the decisions adopted by the Security Accreditation Board.
13. The Commission shall keep the European Parliament and the Council informed, without undue delay, about the impact of the adoption of the security accreditation decisions on the proper conduct of the programmes. If the Commission considers that a decision taken by the Security Accreditation Board may have a significant effect on the proper conduct of the programmes, for example in terms of costs and schedule, it shall immediately inform the European Parliament and the Council.
14. Taking into account the views of the European Parliament and of the Council, which should be expressed within 1 month, the Commission may adopt any adequate measures in accordance with Regulation (EU) No xxx/2013.
15. The Administrative Board shall be regularly kept informed of the evolution of the work of the Security Accreditation Board.
16. The timetable for the work of the Security Accreditation Board shall respect the GNSS work programme of the Commission.
17. [...]

Article 11a

Tasks of the Chairperson of the Security Accreditation Board

1. The Chairperson of the Security Accreditation Board shall perform the following tasks:
 - a) manage security accreditation activities under the supervision of the Security Accreditation Board;
 - b) ensure the implementation of part of the Agency's work programmes covered in this Chapter under the supervision of the Security Accreditation Board;
 - c) cooperate with the Executive Director to help to draw up the draft establishment plan referred to in Article 13(3);
 - (ca) prepare the part of the progress report referred to in Article 8(3a) concerning the operational activities covered in this Chapter, and submit it to the Security Accreditation Board and the Executive Director in good time so that it can be incorporated in the abovementioned report;
 - (cb) prepare the part of the action plan and the progress report referred to in Article 8(12), concerning the operational activities covered in this Chapter, and submit it to the Executive Director in good time;
 - d) represent the Agency for the activities and decisions covered in this chapter;
 - e) exercise, with regard to the Agency's staff involved in the activities concerned by this chapter, the powers referred to in Article 6(3), first subparagraph, delegated to it in accordance with the fourth subparagraph of the abovementioned paragraph.
2. The Chairperson of the Security Accreditation Board may be called upon by the European Parliament or the Council to submit a report on the performance of his tasks, and to make a statement before those institutions.

Article 12

Role of Member States

Member States shall:

- (a) transmit to the Security Accreditation Board all information they consider relevant for the purposes of security accreditation;
- (b) permit duly authorised persons appointed by the Security Accreditation Board, in agreement with and under the supervision of national entities competent in security matters in that Member State, to have access to any information and to any areas/sites related to the security of systems falling within their jurisdiction, in accordance with their national laws and regulations, and without any discrimination on ground of nationality of nationals of Member States, including for the purposes of security audits and tests as decided by the Security Accreditation Board and of the security risk monitoring process referred to in Article 10(d). These audits and tests shall be performed in accordance with the following principles:
 - i) the importance of security and effective risk management within the entities inspected shall be emphasised;
 - ii) countermeasures to mitigate the specific impact of loss of confidentiality, integrity or availability of classified information should be recommended.
- (c) each be responsible for devising a template for access control, which is to outline or list the areas/sites to be accredited, and which shall be agreed in advance between the Member States and the Security Accreditation Board, thereby ensuring that the same level of access control is being provided by all Member States;
- (d) be responsible, at local level, for the accreditation of the security of areas that are located within their territory and form part of the security accreditation area for European GNSS systems, and report, to this end, to the Security Accreditation Board.

CHAPTER IV
BUDGETARY AND FINANCIAL PROVISIONS

Article 13

Budget

1. Without prejudice to other resources and dues yet to be defined, revenue of the Agency shall include a Union subsidy entered in the general budget of the European Union in order to ensure a balance between revenue and expenditure.
2. The expenditure of the Agency shall cover staff, administrative and infrastructure expenditure, operating costs and expenditure associated with the functioning of the Security Accreditation Board, including the bodies referred to in Article 11(11), and the contracts and agreements concluded by the Agency in order to accomplish the tasks entrusted to it.
3. The Executive Director shall, in close collaboration with the Chairperson of the Security Accreditation Board for activities covered in Chapter III, draw up a draft estimate of expenditure and revenue of the Agency for the next financial year, making clear the split between those elements of the draft which relate to security accreditation activities and the other activities of the Agency. The Chairperson of the Security Accreditation Board shall write a statement on this draft and the Executive Director shall forward both the draft estimate and this statement to the Administrative Board and the Security Accreditation Board, accompanied by a draft establishment plan.
4. Revenue and expenditure shall be in balance.
5. Each year, the Administrative Board, based on the draft estimate of expenditure and revenue and in close cooperation with the Security Accreditation Board for activities covered in Chapter III, shall draw up the estimate of the Agency's revenue and expenditure for the next financial year.

6. This statement of estimates, which shall include a draft establishment plan together with the provisional work programme, shall, by 31 March, be forwarded by the Administrative Board to the Commission and to the third countries or international organisations with which the Union has concluded agreements in accordance with Article 23(1).
7. The statement of estimates shall be forwarded by the Commission to the European Parliament and to the Council (hereinafter the "budgetary authority") together with the draft general budget of the European Union.
8. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 of the Treaty on the Functioning of the European Union.
9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency and shall adopt the establishment plan for the Agency.
10. The budget shall be adopted by the Administrative Board. It shall become final following definitive adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
11. The Administrative Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which will have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.
12. Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Administrative Board within a period of 6 weeks from the date of notification of the project.

Article 14

Implementation and control of the budget

1. The Executive Director shall implement the budget of the Agency.
2. By 1 March following each financial year, the accounting officer of the Agency shall communicate the provisional accounts to the Commission's accounting officer, together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Regulation (EC, Euratom) No 1605/2002.
3. By 31 March following each financial year, the Commission's accounting officer shall forward the provisional accounts of the Agency to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report shall also be forwarded to the European Parliament and the Council.
4. On receipt of the Court of Auditors' observations on the provisional accounts of the Agency, under Article 129 of Regulation (EC, Euratom) No 1605/2002, the Executive Director shall draw up the final accounts of the Agency under his own responsibility and submit them to the Administrative Board for an opinion.
5. The Administrative Board shall deliver an opinion on the final accounts of the Agency.
6. The Executive Director shall, by 1 July following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.
7. The final accounts shall be published.
8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. He shall also send this reply to the Administrative Board.

9. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of Regulation (EC, Euratom) No 1605/2002.

10. The European Parliament, on a recommendation from the Council acting on a qualified majority, shall, before 30 April of the year N + 2, grant discharge to the Executive Director in respect of the implementation of the budget for year N, with the exception of the part of the budget implementation covering tasks which are, where appropriate, entrusted to the Agency under Article 15(1a) of the Regulation (EU) No xxx/2013 to which shall apply the procedure referred to in Articles 164 and 165 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002²⁷.

Article 15

Financial provisions

The financial rules applicable to the Agency shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities²⁸ unless such departure is specifically required for the operation of the Agency and the Commission has given its prior consent.

²⁷ OJ L 298, 26.10.12, p.1.

²⁸ OJ L 357, 31.12.2002, p. 72.

CHAPTER IVa
HUMAN RESOURCES

Article 15a

Staff

1. The Staff Regulations of Officials of the Union, the Conditions of Employment of other servants and the rules adopted jointly by the institutions of the Union for the purposes of the application of those Staff Regulations and conditions of employment shall apply to the staff employed by the Agency.
- 1a. The staff of the Agency shall consist of servants recruited by the Agency as necessary to perform its tasks. They shall have security clearances appropriate to the classification of the information they are handling.
2. The Agency's internal rules, such as the rules of procedure of the Administrative Board, the rules of procedure of the Security Accreditation Board, the financial rules applicable to the Agency, the rules for the application of the staff regulations and the rules for access to documents, shall ensure the autonomy and independence of staff performing the security accreditation activities vis-à-vis staff performing the other activities of the Agency, pursuant to Article 10(g).

Article 15b

Appointment and Term of Office of the Executive Director

1. The Executive Director shall be recruited as a temporary member of staff of the Agency in accordance with Article 2(a) of the Conditions of Employment of other servants.
2. The Executive Director shall be appointed by the Administrative Board on the grounds of merit and documented administrative and managerial skills, as well as relevant competence and experience, from a list of candidates proposed by the Commission, after an open and transparent competition, following publication a call for expressions of interest in the Official Journal of the European Union and elsewhere.

The Chairperson of the Administrative Board shall represent the Agency for the purpose of concluding the Executive Director's contract.

The Administrative Board shall take its decision to appoint the Executive Director by a two-thirds majority of its members.

3. The term of office of the Executive Director shall be five years. At the end of this term of office, the Commission shall carry out an assessment taking into account the Executive Director's performance and the future tasks and challenges of the Agency.

Based on a Commission proposal taking into account the assessment referred to in the first subparagraph, the Administrative Board may extend the term of office of the Executive Director once for a period of up to four years²⁹.

The decision to extend the term of office of the Executive Director shall be adopted by a two-thirds majority of members of the Administrative Board.

An Executive Director whose term of office has been extended may not take part in a selection procedure for the same post following the extension of the term of office.

4. The Administrative Board may dismiss the Executive Director, on the basis of a proposal of the Commission or of one third of its members³⁰, by means of a decision adopted by a two-thirds majority of its members.
5. The European Parliament or the Council may call upon the Executive Director to submit a report on the performance of his tasks, and to make a statement before those institutions.

²⁹ The Commission expresses a reservation and maintains its proposal of five years.

³⁰ The Commission expresses a reservation on investing one third of the Members of the Administrative Board with the power to propose the dismissal of the Executive Director and maintains its proposal in which, in line with the Common Approach on decentralised Agencies, only the Commission can propose such dismissal.

Article 15c

Seconded national experts

The Agency may also use national experts. These experts shall have security clearances appropriate to the classification of the information they are handling. The Staff Regulation and the Conditions of Employments of other servants shall not apply to such staff.

The Administrative Board shall adopt a decision laying down rules on this secondment to the Agency of national experts.

CHAPTER V
MISCELLANEOUS PROVISIONS

Article 16

Fraud prevention

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council³¹ shall apply without restriction. To this end, the Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)³² and shall issue the appropriate provisions to the staff of the Agency and to seconded national experts using the model decision in the Annex to the abovementioned Agreement.
2. The Court of Auditors shall have the authority to supervise beneficiaries of the Agency's funding as well as contractors and sub-contractors who have received Union funds via the Agency, on the basis of documents provided to it or on-the-spot checks.
3. With regard to grants financed or contracts awarded by the Agency, OLAF may carry out investigations, including on-the-spot checks and inspections in accordance with Regulation (EC) No 1073/1999 and Council Regulation (EURATOM, EC) No 2185/96³³, in order to combat fraud, corruption and any other illegal activity detrimental to the Union's financial interests.

³¹ OJ L 136, 31.5.1999, p. 1.

³² OJ L 136, 31.05.99, p. 15.

³³ OJ L 292, 15.11.96, p.2.

4. Without prejudice to paragraphs 1, 2 and 3 of this Article, the cooperation agreements concluded by the Agency with non-member countries or international organisations, contracts and grant agreements concluded by the Agency with third parties, and any financing decision taken by the Agency shall provide expressly that the Court of Auditors and OLAF may carry out checks and investigations in accordance with their respective powers.

Article 17

Privileges and immunities

The Protocol (No 7) on the Privileges and Immunities of the European Union shall apply to the Agency and to its staff referred to in Article 15a.

Article 18

[...]

Article 19

Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question. The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Agency.
2. In the event of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.
3. The Court of Justice shall have jurisdiction in any dispute relating to compensation for damage referred to in paragraph 2.

4. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

Article 20

Languages

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community³⁴ shall apply to the Agency.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the bodies of the European Union.

Article 21

Access to documents and protection of data of a personal character

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents³⁵ shall apply to documents held by the Agency.
2. The Administrative Board shall adopt arrangements for implementing Regulation (EC) No 1049/2001 within 6 months from the entry into force of this Regulation.
3. Decisions taken by the Agency in pursuance of Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or an action before the Court of Justice of the European Union, under Articles 228 and 263 of the Treaty on the Functioning of the European Union respectively.

³⁴ OJ 17, 6.10.1958, p. 385/58.

³⁵ OJ L 145, 31.5.2001, p. 43.

4. When processing data relating to individuals, the Agency shall be subject to the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data³⁶.

Article 22

Security rules on the protection of classified or sensitive information

1. The Agency shall apply the Commission's security rules regarding the protection of EU classified information.
2. The Agency may establish, in its internal rules, provisions for the handling of non-classified but sensitive information³⁷. This shall cover, inter alia, the exchange, handling and storage of this information.

Article 22a

Conflict of interest

1. Members of the Administrative Board and of the Security Accreditation Board, the Executive Director, as well as seconded national experts shall make a declaration of commitments and a declaration of interests indicating the absence or presence of any direct or indirect interests, which might be considered prejudicial to their independence. These declarations shall be accurate and complete. They shall be made in writing on their entry into service and shall be renewed annually. They shall be updated in the event of relevant changes in their personal circumstances and updated whenever necessary.

³⁶ OJ L 8, 12.1.2001, p. 1.

³⁷ A recital could be added to explain the concept of non classified but sensitive information. This recital should also clarify that these rules will apply to the handling of such information by the Agency only".

2. Before any meeting which they are to attend, Members of the Administrative Board and of the Security Accreditation Board, the Executive Director, as well as seconded national experts and external experts participating in ad hoc working groups shall accurately and completely declare the absence or presence of any interest which might be considered prejudicial to their independence in relation to items on the agenda, and shall abstain from participating in the discussion of and voting upon such points.
3. The Administrative Board and the Security Accreditation Board shall lay down, in their internal rules of procedure, the practical arrangements for the rule on declaration of interest referred to in paragraphs 1 and 2 and the management of conflict of interest.

Article 23³⁸

Participation of third countries and international organisations

1. The Agency shall be open to the participation of third countries and international organisations. Such participation and the conditions thereof shall be established in an agreement between the European Union and that third country or international organisation, in accordance with the procedure laid down in Article 218 TFEU.
2. In accordance with the relevant provisions of these agreements, arrangements shall be developed specifying the practical modalities of the participation of these countries or international organisation in the work of the Agency, including provisions relating to participation in the initiatives undertaken by the Agency, financial contributions and staff.

³⁸ Recital 10 could be modified along the following lines: 'Furthermore, given the involvement of a number of third countries and the potential future involvement of international organisations in the European GNSS programmes, including in security matters, express provision should be made for representatives of international organisations and of third countries, notably Norway and Switzerland, to be able to participate, on an exceptional basis and under conditions, in the work of the SAB. Such conditions should be specified in an international agreement to be concluded with the Union, taking into account security matters and, in particular, the protection of EU classified information.'

Article 23a

Joint procurement with the Member States

For the performance of its tasks, the Agency shall be authorised to award contracts jointly with the Member States in accordance with Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union ³⁹.

³⁹ OJ L 362, 31.12.2012, p. 1.

CHAPTER VI
FINAL PROVISIONS

Article 24

Amendments to Regulation (EC) No 683/2008

Throughout Regulation (EC) No 683/2008, the words "European GNSS Supervisory Authority" and "Authority" shall be replaced by "European GNSS Agency" and "Agency" respectively.⁴⁰

Article 25

Repeal and validity of measures taken

Regulation (EC) No 1321/2004 is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation. Any measure adopted on the basis of Regulation (EC) No 1321/2004 shall remain valid.

Article 26

Revision of this Regulation, evaluation and audit

1. By 2016 at the latest, and every five years thereafter, the Commission shall arrange an evaluation of the Agency, concerning, in particular, its impact, effectiveness, smooth running, working methods, requirements and use of the resources entrusted to it. This evaluation shall include, in particular, an assessment of any change in the Agency's tasks and the financial impact of such a change.
2. The Commission shall submit the evaluation report and its conclusions with regard to the content of this report to the European Parliament, the Council, the Administrative Board and the Security Accreditation Board of the Agency. The results of the evaluation shall be made available to the public.

⁴⁰ This Article should be deleted once the new GNSS Regulation will be adopted.

3. One evaluation in two shall include an inspection of the Agency's balance sheet in terms of its objectives and tasks. If the Commission considers that the continuation of the Agency is no longer justified with regard to the objectives and tasks assigned to it, the Commission may propose that this Regulation be repealed.
4. External audits on the performance of the Agency may be carried out at the request of the Administrative Board or the Commission.

Article 2⁴¹

Entry into force

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

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

Done at

For the European Parliament

The President

For the Council

The President

⁴¹ Article 2 establishes the rules applicable to the entry into force of this draft Regulation amending Regulation (EU) N° 912/2008 (doc. 6347/13).