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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 4 September 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: ANNEX to the Proposal of a Council Decision on the signing on behalf of the
European Union and the provisional application of the Cooperation Agreement
between the European Union and its Member States, of the one part, and the
Swiss Confederation, of the other, on the European Satellite Navigation
Programmes

Delegations will find attached the Commission document COM(2012) 469 final - Volume 2.

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EUROPEAN COMMISSION

Brussels, 4.9.2012
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ANNEX

**to the Proposal of a
Council Decision**

on the signing on behalf of the European Union and the provisional application of the Cooperation Agreement between the European Union and its Member States, of the one part, and the Swiss Confederation, of the other, on the European Satellite Navigation Programmes

COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE ONE PART, AND THE SWISS CONFEDERATION, OF THE OTHER, ON THE EUROPEAN SATELLITE NAVIGATION PROGRAMMES

THE EUROPEAN UNION

and

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty on European Union and to the Treaty on the Functioning of the European Union, hereinafter referred to as "Member States", of the one part,

and

the SWISS CONFEDERATION, hereinafter referred to as "Switzerland", of the other part,

hereinafter referred to as "Party" or "Parties"

CONSIDERING the common interests in the development of a global navigation satellite system (hereinafter referred to as "GNSS") specifically designed for civilian purposes,

RECOGNISING the importance of the European GNSS programmes as a contribution to navigation and information infrastructure in the European Union and Switzerland,

CONSIDERING the increasing development of GNSS applications in the European Union, Switzerland and other areas in the world,

CONSIDERING the common interest in a long-term cooperation between the European Union, its Member States and Switzerland in the field of satellite navigation,

RECOGNISING Switzerland's close participation in the Galileo and EGNOS programmes since their definition phases,

CONSIDERING the resolutions of the Space Council, in particular on the "European Space Policy" adopted on 22 May 2007, and "Taking forward the European Space Policy" adopted on 29 September 2008 that recognize the European Union, the European Space Agency (hereinafter referred to as "ESA") and their respective Member States as the three key actors of the European Space Policy, as well as "Global Challenges: Taking Full Benefit of European Space Systems" adopted on 25 November 2010 that invites the European Commission and ESA to facilitate the process for Member States not members of both the EU and ESA to participate in all phases of collaborative programmes,

CONSIDERING the Communication from the Commission "Towards a space Strategy for the European Union that benefits its Citizens" of 4 April 2011,

DESIRING to formally establish collaboration in all aspects of European GNSS programmes,

RECOGNISING Switzerland's interest in all GNSS services, as provided by EGNOS and Galileo, including the Public Regulated Service (hereinafter referred to as "PRS"),

CONSIDERING the Agreement of 25 June 2007 on scientific and technological cooperation between the European Community and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part,

RECOGNISING the Agreement of 28 April 2008 between the Swiss Confederation and the European Union on the security procedures for the exchange of classified information (hereinafter referred to as "Security Agreement"),

CONSIDERING the benefits of an equivalent level of protection of the European GNSS and their services in the territories of the Parties,

RECOGNISING the obligations of the Parties under international law, in particular the obligations of Switzerland as a permanent neutral State,

RECOGNIZING that Regulation (EC) 683/2008 states that the European Community shall be the owner of all tangible and intangible asset created or developed under the European GNSS programmes as defined in regulation (EC) 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),

CONSIDERING the Regulation EU 912/2010 of 22 September 2010 setting up the European GNSS Agency,

CONSIDERING the Decision N°1104/2011/EU of 25 October 2011 on the rules for access to the Public Regulated Service,

HAVE AGREED AS FOLLOWS:

I. GENERAL PROVISIONS

Article 1

Objective

1. The objective of this Agreement is to encourage, facilitate and enhance long-term cooperation between the Parties in satellite navigation under civil control and in particular by the participation of Switzerland in the European GNSS programmes.
2. The form and conditions of the Swiss participation to the programmes shall be as laid down in this Agreement.

Article 2

Definitions

For the purposes of this Agreement:

1. "European global navigation satellite systems" (European GNSS) means the system established under the Galileo programme and the European Geostationary Navigation Overlay Service (EGNOS);
2. "Augmentation" means regional or local mechanisms such as EGNOS, which enable users of global GNSS to obtain enhanced performance, such as increased accuracy, availability, integrity and reliability;

3. "Galileo" means an autonomous European global satellite navigation and timing system under civil control, for the provision of GNSS services designed and developed by the European Union, the ESA and their respective Member States. The operation of Galileo may be transferred to a private party. Galileo envisages open, commercial, safety of life and search and rescue services in addition to a secured public regulated service with restricted access specifically designed to meet the needs of authorised public sector users;
4. "Galileo local elements" are local mechanisms that provide the users of Galileo satellite-based navigation and timing signals with input information, extra to that derived from the main constellation in use. Local elements may be deployed for additional performance around airports, seaports and in urban or other geographically challenging environments. Galileo will provide generic models for local elements;
5. "Global navigation, positioning and timing equipment" means any civil end user equipment designed to transmit, receive, or process satellite-based navigation or timing signals to provide a service, or to operate with a regional augmentation;
6. "Public Regulated Service" (PRS) means a service provided by the system established under the Galileo programme which is restricted to government authorised users for sensitive applications which require effective access control and a high level of service continuity;
7. "Regulatory measure" means any law, regulation, policy, rule, procedure, decision or similar administrative action by a Party;
8. "Interoperability" means the ability of global and regional navigation satellite systems and augmentations, and of the services they provide, to be used together to provide better capabilities at the user level than would be achieved by relying solely on the open service of one system;
9. "Intellectual property" shall have the meaning as in Article 2 (viii) of the Convention Establishing the World Intellectual Property Organisation signed at Stockholm on 14 July 1967;
10. "Classified information" is information, in any form, that requires protection against unauthorised disclosure, which could harm in various degrees the essential interests, including national security, of the Parties or of individual Member States. Its classification is indicated by a classification marking. Such information is classified by the Parties in accordance to applicable laws and regulations and must be protected against any loss of confidentiality, integrity and availability.

Article 3

Principles of cooperation

The Parties agree to apply the following principles to cooperation activities covered by this Agreement:

1. Mutual benefit based on an overall balance of rights and obligations including contributions and access to all services as laid down in Article 15;
2. Reciprocal opportunities to engage in cooperative activities in the European Union and Swiss GNSS projects;

3. Timely exchange of information that may affect cooperative activities;
4. Adequate and effective protection of intellectual property rights as referred to in Article 9 of this Agreement;
5. Freedom to provide satellite navigation services in the territories of the Parties;
6. Unrestricted trade in European GNSS goods in the territories of the Parties.

II. PROVISIONS ON COOPERATION

Article 4

Cooperation activities

1. The sectors for cooperation activities in satellite navigation and timing are namely radio-spectrum, scientific research and training, procurement, industrial cooperation, intellectual property rights, export control, trade and market development, standards, certification and regulatory measures, security, exchange of classified information, staff exchanges and access to services. The Parties may amend this list of sectors in accordance with Article 25 of this Agreement.
2. This Agreement shall not affect the institutional autonomy of the European Union to regulate the European GNSS programmes nor the structure established by the European Union for the purpose of the operations of the European GNSS programmes. Nor does this Agreement affect the applicable regulatory measures implementing non-proliferation commitments, export control, controls of intangible transfers of technology nor does it affect national security measures.
3. Subject to their applicable regulatory measures, the Parties shall foster, to the fullest extent practicable, the cooperation activities under this Agreement with a view to providing comparable opportunities for participation in their activities in the sectors listed under paragraph 1.

Article 5

Radio spectrum

1. The Parties agree to continue cooperation and mutual support in radio-spectrum issues in the framework of the International Telecommunication Union (hereinafter referred to as "ITU"), taking into account the Memorandum of Understanding on the Management of ITU filings of the Galileo radio-navigation satellite service system of 5 November 2004.
2. In this context the Parties shall exchange information on frequency filings and protect adequate frequency allocations for Galileo in order to ensure the availability of Galileo services for the benefit of users worldwide and notably in Switzerland and in the European Union.
3. Moreover, the Parties recognise the importance to protect radio navigation spectrum from disruption and interference. To this end they shall identify sources of interference and seek mutually acceptable solutions to combat such interference.

4. Nothing in this Agreement shall be construed so as to derogate from the applicable provisions of the ITU, including the ITU Radio Regulations.

Article 6

Scientific research and training

1. The Parties shall promote joint research and training activities in the field of European GNSS through European Union and Swiss research programmes and other relevant research programmes of the Parties. The joint research activities shall contribute to planning the future developments of European GNSS.

2. The Parties agree to define the appropriate mechanism aimed at ensuring effective contacts and participation in the relevant research programmes.

Article 7

Procurement

1. For acquisitions relating to the European GNSS programmes, the Parties shall apply their commitments under the Agreement of Government Procurement (hereinafter referred to as "GPA") of the World Trade Organization (hereinafter referred to as "WTO") and under the Agreement of 21 June 1999 between the European Community and the Swiss Confederation on certain aspects of government procurement.

2. Without prejudice to Article XXIII of the GPA (Article III of the revised GPA), Swiss entities shall have the right to participate in the procurement for the provision of services related to the European GNSS programmes.

Article 8

Industrial cooperation

The Parties shall encourage and support the cooperation between the industries of the Parties, including by the means of joint ventures and Swiss participation in relevant European industrial associations, as well as, participation from the European Union in relevant Swiss industrial associations, with the objective of the well-functioning of the European satellite navigation systems as well as promoting the use and development of Galileo applications and services.

Article 9

Intellectual property rights

To facilitate industrial cooperation the Parties shall grant and ensure an adequate and effective protection of intellectual property rights in the fields and sectors relevant to the development and operation of the European GNSS, in accordance with the highest international standards as set in the "Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)" of the WTO, including effective means of enforcing such standards.

Article 10

Export control

1. In order to ensure the application of a uniform policy of export control and non-proliferation concerning the European GNSS programmes between the Parties, Switzerland shall timely adopt and enforce, within its jurisdiction and in accordance with its national legislation and procedures, measures of export control and non-proliferation of technologies, data and items which are specially designed or modified for the European GNSS programmes. These measures shall provide a degree of export control and non-proliferation equivalent to that in force in the European Union.

2. In case an event occurs where such an equivalent degree of export control and non-proliferation cannot be achieved, the procedure of Article 22 applies.

Article 11

Trade and market development

1. The Parties shall encourage trade and investment in European Union and Swiss satellite navigation infrastructure, equipment, including local elements and applications relevant to the European GNSS programmes.

2. To this end the Parties shall raise the level of public awareness concerning the Galileo satellite navigation activities, identify potential barriers to growth in GNSS applications and take appropriate measures to facilitate this growth.

3. To identify and respond effectively to user needs, entities of the Parties may use the future GNSS User Forum.

4. This Agreement shall not affect the rights and obligations of the Parties under the Agreement establishing the WTO.

Article 12

Standards, Certification and Regulatory Measures

1. Recognising the value of coordinating approaches in international standardisation and certification *fora* concerning global satellite navigation services the Parties agree, in particular, to jointly support the development of Galileo and EGNOS standards and promote their application worldwide, emphasising interoperability with other GNSS.

One objective of the coordination is to promote a broad and innovative use of the Galileo services for open, commercial and safety of life purposes as a worldwide navigation and timing standard. The Parties agree to create favourable conditions for developing Galileo applications.

2. Consequently, to promote and implement the objectives of this Agreement, the Parties shall, as appropriate, cooperate on all GNSS matters that arise notably in the International Civil Aviation Organisation, the International Maritime Organisation and the ITU.

3. The Parties shall ensure that measures relating to technical standards, certification and licensing requirements and procedures concerning European GNSS do not constitute unnecessary barriers to trade. Domestic requirements shall be based on objective, non-discriminatory, pre-established transparent criteria.

4. The Parties shall take the necessary regulatory measures to allow the complete use of Galileo receivers, ground and space segments in the territories under their jurisdiction. In this regard, Switzerland shall grant Galileo treatment in the territory under its jurisdiction no less favourable than that accorded to any other like radionavigation-satellite services systems.

Article 13

Security

1. In view to protect the European GNSS programmes against threats such as misuse, interference, disruption and hostile acts, the Parties shall take all practicable steps to ensure the continuity, safety and security of the satellite navigation services and the related infrastructure and critical assets in their territories without prejudice of Article 4, paragraph 2.

2. In this context Switzerland shall timely adopt and enforce, within its jurisdiction and in accordance with its national legislation and procedures, measures providing an equivalent degree of security and safety as those applicable in the European Union as regards the protection, control and management of sensitive assets, information and technologies of the European GNSS programmes against threats and undesired divulgation.

3. In case an event occurs where such an equivalent degree of security and safety cannot be achieved, the procedure of Article 22 applies.

Article 14

Exchange of classified information

1. Exchange and protection of European Union classified information shall be in accordance with the Security Agreement as well as the Implementing Arrangements of the Security Agreement.

2. Switzerland may exchange classified information with national classification marking on European GNSS programmes with those Member States of the European Union with which it has concluded bilateral agreements to that effect.

3. The Parties shall seek to establish a comprehensive and coherent legal framework allowing exchanges between all the Parties to this Agreement of classified information concerning the Galileo programme.

Article 15

Access to services

Switzerland shall have access to all European GNSS services subject to this Agreement and to the PRS subject to a separate PRS Agreement.

Switzerland has expressed its interest in the PRS, considering it an important element of its participation in the European GNSS programmes. The Parties endeavour to conclude a PRS Agreement to ensure the Swiss PRS participation as soon as a request to this regard is submitted by Switzerland and the procedure provided for in Article 218 of the Treaty on the Functioning of the European Union has been completed.

Article 16

Participation in the European GNSS Agency

Switzerland shall have the right to participate in the European GNSS Agency under the conditions to be laid down by an Agreement between the European Union and Switzerland. These negotiations will start as soon as a request to this regard is submitted by Switzerland and the necessary procedures on the side of the European Union have been completed.

Article 17

Participation in Committees

Representatives of Switzerland shall be invited to participate as observers in the committees established for the management, development and implementation of the activities under the European GNSS programmes in accordance with the relevant rules and procedures and without the right to vote. This includes in particular participation in the GNSS Programme Committee and the GNSS Security Board including their working groups and task forces.

III. FINANCIAL PROVISIONS

Article 18

Funding

Switzerland shall contribute to the funding of the European GNSS programmes. The Swiss contribution shall be calculated on the basis of the proportionality factor which is obtained by establishing the ratio between Switzerland's gross domestic product, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union.

For the period 2008-2013 the Swiss financial participation to the European GNSS programmes amounts to 80.050.870 euro.

This amount will be paid as follows:

2012: 20.000.000 euro

2013: 40.000.000 euro

2014: 20.050.870 euro

For the period 2014 and following, the Swiss contribution shall be paid annually.

IV. FINAL PROVISIONS

Article 19

Liability

As Switzerland will not be the owner of the European GNSS, it will not face any liability resulting from the ownership.

Article 20

Joint Committee

1. A Joint Committee known as the "European Union/Switzerland GNSS Committee" is hereby established; it shall be made up of representatives of the Parties and be responsible for the management and proper application of this Agreement. To this end, it shall draw up recommendations. It shall take decisions in the cases provided for in this Agreement; these decisions shall be carried out by the Parties in accordance with their own rules. The Joint Committee shall reach its decisions by common agreement.

2. The Joint Committee shall establish its rules of procedure, which shall contain, inter alia, provisions on the convening of meetings, the appointment of the chairman and the latter's term of office.

3. The Joint Committee shall meet as and when necessary. The European Union or Switzerland may request the convening of a meeting. The Joint Committee shall meet within 15 days of a request under Article 22 paragraph 2.

4. The Joint Committee may decide to set up such working groups or groups of experts as it sees fit to assist it in the accomplishment of its tasks.

5. The Joint Committee may decide to amend the Annex.

Article 21

Consultations

1. In order to ensure the satisfactory implementation of this Agreement, the Parties shall exchange information on a regular basis and, at the request of one of them, shall hold consultations within the Joint Committee.

2. The Parties shall promptly consult, at the request of one of them, on any question arising out of the interpretation or application of this Agreement.

Article 22

Safeguard measures

1. Each Party may, after consultations within the Joint Committee, take appropriate safeguard measures, including the suspension of one or several cooperation activities, if it finds that an equivalent degree of export control or security is no longer assured between the Parties.

Where any delay could jeopardise the good functioning of GNSS, provisional protective measures may be taken, without prior consultation, provided that consultations are held immediately after their adoption.

2. The scope and duration of such measures shall be limited to what is necessary in order to remedy the situation and to secure a fair balance of rights and obligations under this Agreement. The other Party may ask the Joint Committee to hold consultations about the proportionality of these measures. If it is not possible to settle this dispute within 6 months, the dispute may be submitted by either Party for binding arbitration in accordance with the procedure laid down in the Annex. No question of interpretation of provisions of this Agreement that are identical to corresponding provisions of European Union law may be resolved within this framework.

Article 23

Settlement of disputes

Without prejudice to Article 22, any disputes concerning the interpretation or application of this Agreement shall be settled by consultations within the Joint Committee.

Article 24

Annexes

The Annexes to this Agreement shall form an integral part thereof.

Article 25

Revision

This Agreement may be amended and developed at any time by mutual agreement between the Parties.

Article 26

Termination

1. The European Union or Switzerland may terminate this Agreement by notifying the other Party. This Agreement shall cease six months after the receipt of such notification.

2. The termination of this Agreement shall not affect the validity or duration of any arrangements made under it or any specific rights and obligations that have accrued in the field of intellectual property rights.

3. In case of termination of this Agreement the Joint Committee shall make a proposal in order to enable the Parties to settle any outstanding questions including financial consequences taking into account the principle of *pro rata temporis*.

Article 27

Entry into force

1. This Agreement shall be approved by the Parties in accordance with their own internal procedures. This Agreement shall enter into force the first day of the second month following the date of the last notification of approval.
2. Notwithstanding paragraph 1, Switzerland and the European Union, as regards elements falling within its competence, agree to apply provisionally this Agreement from the first day of the month following the date of the second notification confirming the completion of the procedures necessary for this purpose.
3. This Agreement is concluded for an indefinite period.
4. This Agreement is drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish and Swedish languages, all texts being authentic.

ANNEX I

ARBITRATION PROCEDURE

- (1) If a dispute has been referred to arbitration there shall be three arbitrators, unless the Parties decide otherwise.
- (2) Each Party shall appoint one arbitrator within 30 days.
- (3) The two arbitrators so appointed shall nominate by common agreement one umpire who shall not be a national of either of the Parties. If they cannot agree within two months of their appointment, the umpire shall be chosen by them from seven persons on a list established by the Joint Committee. The Joint Committee shall draw up and update this list in accordance with its rules of procedure.
- (4) Unless the Parties decide otherwise, the arbitration tribunal shall adopt its rules of procedure. It shall take its decisions by majority vote.

ANNEX II

Financial contribution of Switzerland to the European GNSS programmes.

1. For the period 2008-2013, the financial contribution to be made by Switzerland to the budget of the European Union in order to participate in the European GNSS programmes, shall be as follows (in €):

2012	2013	2014
20 000 000	40 000 000	20 050 870

For the period 2014 and following, the Swiss contribution shall be paid annually.

2. The Financial Regulation applicable to the general budget of the European Communities¹ and its implementing rules² shall apply, in particular to the management of Switzerland's contribution.

3. The travel and subsistence expenses of representatives and experts from Switzerland in connection with their participation in meetings organised by the Commission in conjunction with implementation of the programmes shall be reimbursed by the Commission on the same basis and in accordance with the procedures currently in force for experts from the Member States of the Union.

4. Following the provisional application of this Agreement, and at the beginning of each subsequent year, the Commission will send to Switzerland a request for funds corresponding to its contribution to the budget for the programmes, in accordance with this Agreement.

This contribution shall be expressed in euro and shall be paid into a euro bank account held by the Commission.

5. Switzerland shall pay its contribution by 1 April, if the request for funds is sent by the Commission before 1 March, or no later than 30 days after the request for funds if this is sent by the Commission after that date.

Any delay in the payment of the contribution will entail the payment of interest by Switzerland on the outstanding amount from the due date. The interest rate shall correspond to the rate applied by the European Central Bank, on the due date, for its operations in euro, increased by 3,5 percentage points.

¹ Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248 of 16.9.2002, p.1), as last modified by Regulation 1525/2007 of 17 December 2007 (OJ L 343, 27.12.2007, p.9).

² Commission Regulation (EC, EURATOM) N°2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) N°1605/2002 (OJ L 357 of 31.12.2002, p.1) as last modified by Commission Regulation (EC, Euratom) N°478/2007 of 23 April 2007 (OJ L 111, 28.4.2007, p.13).

JOINT DECLARATION

on Switzerland's participation in Committees

The Contracting Parties declare that Switzerland's participation in committees established within the EU for the management, development and implementation of the activities under the European GNSS programmes by virtue of Article 17 should not be considered as a precedent for other agreements between the EU and Switzerland.
