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To:	Permanent Representatives Committee
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No. Cion doc.:	6952/13 ESPACE 18 COMPET 120 IND 54 RECH 52 TRANS 83 COSDP 187 CSC 19 CIVCOM 88 CODEC 547 + COR1
Subject:	Proposal for a Decision of the European Parliament and the Council, Establishing a Space Surveillance and Tracking Support Programme - Presidency debriefing on the outcome of the informal trilogue - Analysis of the final compromise text with a view to agreement

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**I. INTRODUCTION**

1. On 28 February 2013, the Commission adopted the proposal for a Decision of the European Parliament and the Council – Establishing a Space Surveillance and Tracking (SST) Support Programme, with a legal basis in Article 189(2) of the Treaty on the Functioning of the European Union (TFEU).

2. The proposed Decision aims at the establishment of a European SST service which will seek to ensure the security of European and national space infrastructures and services, and to increase the safety of satellite operations by reducing collision risks and helping to better predict uncontrolled re-entries of inactive satellites or space debris.
3. The European Parliament's Committee on Industry, Research and Energy (ITRE) has appointed Mrs Amelia Andersdotter (Greens-SE) as rapporteur and voted on the amendments to her draft report on 16 December 2013, thus giving the rapporteur the negotiation mandate. The plenary vote is expected to take place in April 2013.
4. The European Economic and Social Committee adopted and delivered its opinion on 10 July 2013, while the Committee of the Regions decided not to issue an opinion.

## **II. WORK WITHIN THE COUNCIL AND WITH THE EUROPEAN PARLIAMENT**

5. The proposal was presented and discussed at several meetings of the Space Working Party both under the Irish and Lithuanian Presidencies, and two progress reports have been examined by the Council in May 2013<sup>1</sup> and December 2013<sup>2</sup> respectively.
6. The Council Legal Service (CLS) was requested to provide opinions with regard to the proposed financing scheme of the SST support programme as well as to the role of European Union Satellite Center (EUSC) in the context of SST.

The CLS written opinion on the financing scheme was issued on 6 November 2013<sup>3</sup> and presented to the Working Party on 8 November 2013.

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<sup>1</sup> Doc. 9986/13  
<sup>2</sup> Doc. 16537/13  
<sup>3</sup> Doc. 15766/13

The CLS presented its opinion on the EUSC role in SST orally to the Working Party on 14 November 2013. Also the RELEX Working Party discussed the EUSC role issue in its meeting on 16 January 2014. In order to take account of the CLS opinions and the discussion in the RELEX working party, the text was redrafted for the consideration of the delegations.

7. The first informal trilogue took place on 21 January 2014 and all parties confirmed the objective of arriving at an agreement in principle on 31<sup>st</sup> January 2014 provided, of course, there is political support. The trilogue also took note of the two Institutions' positions in order to define which issues would be most substantial in view of the further negotiations. The Presidency went to this trilogue with a text agreed by the Coreper at its meeting on 17 January 2014, as its mandate. The outcome of the first trilogue was reported back to Coreper on 22 January and to the Working Party on 24 January 2014. The latter examined draft compromise proposals at the same meeting.
8. Technical meetings with the Parliament took place on 21 and 22 January 2014, and on 27 January 2014.
9. The Presidency discussed all elements of the compromise proposals with the EP at the technical meetings and presented them to the Coreper on 29 January 2014. On that basis, the Committee agreed to give the Presidency a fresh mandate in view of the conclusive trilogue on 31 January 2014.
10. At this informal trilogue, the two co-legislators confirmed, *ad referendum*, the agreement reached at technical level on the entire text, with no changes to the text as approved by Coreper on 29 January.

#### IV. **CONCLUSION**

11. The Permanent Representatives Committee is invited to:

- examine and approve the final compromise text, included in Annex to this note, with a view to reaching an agreement at first reading with the European Parliament;
  - allow the Presidency to send a letter to the European Parliament stating that if the plenary of the European Parliament were to adopt, subject to previous revision of the text by the legal-linguist experts, the amended text of the draft Decision in the same form as set out in the Annex to this note, the Council would adopt the Decision in the form of the Commission proposal as thus amended by the Parliament.
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Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**Establishing a Space Surveillance and Tracking Support Framework**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 189(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

Having regard to the opinion of the Committee of the Regions<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>4</sup> OJ C , , p. .

<sup>5</sup> OJ C , , p. .

- (1) In its Communication entitled "Towards a space strategy for the European Union that benefits its citizens"<sup>6</sup> the Commission underlined that the shared competence in the field of space conferred upon the Union by the Treaty on the Functioning of the European Union (TFEU) goes hand in hand with a reinforced partnership with the Member States. The Commission also emphasised that all new actions must be based on existing resources and on identifying jointly where new resources are needed.
- (2) In its Resolution of 26 September 2008, 'Taking forward the European space policy'<sup>7</sup>, the Council recalls that space assets have become indispensable for our economy and that their security must be ensured. It underlined the 'need for Europe [...] to develop a capability for the monitoring and surveillance of its space infrastructure and space debris, initially based on existing national and European assets, taking benefit of relationships which may be established with other partner nations and their capabilities'.
- (3) In its Resolution 'Global challenges: taking full benefit of European space systems'<sup>8</sup> of 25 November 2010, the Council recognises the need for a future space situational awareness (hereinafter referred to as 'SSA') capability as an activity at European level to develop and exploit existing national and European civil and military assets, and invites the European Commission and the Council to propose a governance scheme and data policy that will allow Member States to contribute with their relevant national capabilities in accordance with applicable security requirements and regulations. It further invites 'all European institutional actors to explore appropriate measures' which would build on defined civil and military user requirements, make use of relevant assets in accordance with applicable security requirements, and exploit the developments from the SSA preparatory programme of the European Space Agency (ESA).

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<sup>6</sup> COM (2011) 152 of 4 April 2011.

<sup>7</sup> CS 13569/08, 29.09.2008.

<sup>8</sup> CS 16864/10, 26.11.2010.

- (4) The Council conclusions of 31 May 2011 on the Communication of the Commission 'Towards a space strategy for the European Union that benefits its citizens'<sup>9</sup> and the Council resolution of 6 December 2011 'Orientations concerning added value and benefits of space for the security of European citizens'<sup>10</sup> reiterated the 'need for an effective SSA capability at European level', and called on the Union to make 'the widest possible use of assets, competences and skills that are already existing or being developed in Member States, at European level and as appropriate, international level'. Recognising the dual use nature of such a system and taking account its particular security dimension, the Council called on the Commission 'in close cooperation with the High Representative [of the Union for Foreign Affairs and Security Policy], in close cooperation with ESA and Member States, which own such assets and have capacities, and in consultation with all actors involved, to come forward with proposals to fully exploit and build on these assets and capacities in order to develop a SSA capability as an activity at European level, and in that context, to define an appropriate governance and data policy taking care of the high sensitivity of SSA data'.
- (4bis) SSA is generally understood as covering three main areas, which aim at protecting infrastructures both in space and from space: Space Surveillance and Tracking (SST), Space Weather Monitoring and Forecasting (SWE); and Near-Earth Objects (NEO). This decision, which covers SST, should foster synergies across these areas.
- (4 ter) With a view to reducing risks of collision, the Union would also seek synergies with initiatives of active removal and passivation measures of space debris, such as that developed by ESA.

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<sup>9</sup> Doc.10901/11

<sup>10</sup> OJ C 377, 23.12.2011, p. 1.

- (5) Space debris has become a serious threat to the security, safety and sustainability of space activities. A space surveillance and tracking (hereinafter referred to as 'SST') support framework should therefore be established with the aim to support the setting up and operation of services consisting of monitoring and surveying space objects with a view to preventing damage to spacecraft resulting from collisions and proliferation of space debris, as well as to predict trajectories and re-entry paths in order to provide the best information to governmental and civil protection services in case of uncontrolled re-entries of entire spacecraft or space debris thereof into the Earth's atmosphere.
- (5bis) The SST support framework should contribute to ensuring the long-term availability of European and national space infrastructure facilities and services essential for the safety and security of the economies, societies and citizens in Europe.
- (6) The provision of SST services will benefit all public and private operators of space-based infrastructures, including the Union in view of its responsibilities for its EU space programmes, in particular those established by the Regulation (EU) No [...] <sup>11</sup> of the European Parliament and the Council on the implementation and exploitation of European satellite navigation systems as well as the Copernicus Programme established by Regulation (EU) No [...] <sup>12</sup> of the European Parliament and of the Council. Uncontrolled re-entry warnings and estimation of timeframe and area of impact will also benefit national public authorities concerned with civil protection. Moreover these services might also be of interest to other users, such as private insurers to estimate potential liabilities resulting from collision during the life of a satellite. In addition, a freely available and re-usable public information service on orbital elements of space objects orbiting the Earth should be envisaged in the long term.

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<sup>11</sup> Reference to be added

<sup>12</sup> Reference to be added

- (7) The SST services should be complementary to research activities related to the protection of space-based infrastructure carried out under the Horizon 2020 programme established by Regulation (EU) No 1291/2013<sup>13</sup>, the Union's flagship space programmes, Copernicus and Galileo, the Digital Agenda initiative<sup>14</sup>, other telecommunication infrastructures, which aid the realisation of the information society, security-related initiatives, as well as to the European Space Agency (ESA)'s activities.
- (7a) The SST support framework should contribute to ensuring the peaceful use and exploration of outer space.
- (8) The SST support framework should have regard to cooperation with international partners, particularly the USA, international organisations and other third parties, particularly with a view to avoiding collision in space and preventing proliferation of space debris, and should also be complementary to existing mitigation measures such as the United Nations (UN) guidelines for space debris mitigation or other initiatives, to ensure safety, security and sustainability of outer space activities, and be consistent with the Union proposal for an international Code of Conduct on outer space activities.
- (8a) The SST support framework consists in networking and using national SST assets to provide SST services. Once this has been achieved, the development of new sensors or the upgrading of existing sensors operated by Member States should be encouraged.
- (8b) The Commission and the SST consortium, in close cooperation with the European Space Agency and other stakeholders, should continue to lead on technical SST dialogues with its strategic partners, in line with their respective competence.

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<sup>13</sup> Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC.  
OJ L 347, 20.12.2013, p. 104

<sup>14</sup> Reference to be added

- (9) Civil-military SSA user requirements were defined in the endorsed Commission staff working paper 'European space situational awareness high-level civil-military user requirements'. The provision of SST services should be driven by civilian requirements. Purely military purposes should not be addressed by this Decision. The Commission should ensure a mechanism for the regular review and update of user requirements as appropriate, involving representatives of the user community. To that end, it should continue the necessary dialogue with relevant actors such as EDA and ESA.
- (10) The operation of SST services should be based on a partnership between the Union and the Member States and use existing as well as future national expertise and assets, including those developed through ESA. Member States would retain ownership and control over their assets and remain responsible for their operations, maintenance and renewal. The SST support framework would not provide financial support for the development of new SST sensors. If a need for new sensors arises in order to meet the user requirements, this could be addressed either nationally or through a European R&D programme, where appropriate. The Commission and Member States should promote and facilitate participation by the greatest number of Member States during the support framework, subject to compliance with eligibility criteria.
- (11) The European Union Satellite Centre (EUSC), an agency of the Union established by Council Joint Action of 20 July 2001 on the establishment of a European Union Satellite Centre (2001/555/CFSP)<sup>15</sup> which provides geospatial imagery information services and products with various levels of classification to civil and military users, could contribute to the provision of SST Services. Its expertise in handling classified information in a secure environment and its tight institutional links with the Member States is an asset facilitating the handling and delivery of SST services. [A pre-condition for the EUSC role in the SST support framework is the amendment of the Council Joint Action which does currently not provide for EUSC action in the field of SST.] The Commission should cooperate, where appropriate, with the EEAS given its supporting role to the High Representative's operational direction of the EUSC.

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<sup>15</sup> OJ L 200, 25.7.2001, p.5.

- (12) Precise information on the nature, specifications and location of certain space objects may affect the security of the European Union or its Member States and third countries. Adequate security considerations should therefore be taken into account by the Member States and, where appropriate, through the Security Committee of the Council in the establishment and operation of the network of relevant capabilities, including SST sensors, the capacity to process and analyse SST data and the provision of SST services. It is therefore necessary to lay down general provisions on the use and secure exchange of SST information between the Member States, the recipients of SST services and, where relevant, the EUSC in this Decision. Furthermore, the European Commission, the European External Action Service and the Member States should define the coordination mechanisms needed to address matters related to the security of the SST support framework.
- (13) Participating Member States should be responsible for the negotiation and implementation of the provisions on the use and secure exchange of SST data and information. The provisions on the use and exchange of SST information set out in this Decision and in the agreement between the participating Member States and, where appropriate, the EUSC should take into account the endorsed recommendations on SST data security.
- (13a) The potential sensitivity of SST data calls for cooperation based on efficiency and confidence, including in the way in which SST data are processed and analysed. The potential use of open source software allowing the secure access of authorised SST data contributors to the source code for operational modifications and improvements should contribute to that objective.
- (14) The Security Committee of the Council recommended the creation of a risk management structure to ensure that data security issues are duly taken into account in the implementation of the SST support framework. For that purpose, the appropriate risk management structures and procedures should be established by the participating Member States and, where relevant, the EUSC, having regard to the recommendations of the Security Committee of the Council.

- (16) In order to ensure uniform conditions for the implementation of this Decision, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>16</sup>.
- (17) The objectives of this Decision, namely to support actions aimed at the establishment and operation of the network of sensors, the establishment of the capacity to process and analyse SST data, and the establishment and operation of SST services, cannot be sufficiently achieved the Member States acting alone as the provision of such services by a consortium of participating Member States would benefit the Union, notably in its role as major owner of space assets. By reason of the scale of the Decision, its objectives can be better achieved at the level of the Union. Therefore the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union.

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<sup>16</sup> OJ L 55, 28.2.2011, p. 13.

- (18) The objectives of this Decision are similar to the objectives foreseen by the programmes established by the Regulation (EU) No [...] <sup>17</sup> of the European Parliament and the Council on the implementation and exploitation of European satellite navigation systems , in [Articles 1, 3 (c) and (d) and 4]; by the Council Decision of 3 December 2013 establishing the specific programme implementing Horizon 2020 <sup>18</sup> , in Article 2(2)(b) and (c), annex I part II, point 1.6.2 (d) and annex I part III, points 7.5 and 7.8, and by the Regulation (EU) No [...] <sup>19</sup> of the European Parliament and of the Council establishing the Copernicus Programme, in Article [5(2)(c)], which allocates an amount up to Euro 26.5 million <sup>20</sup> . The overall financial effort for the implementation of the objectives of the SST support framework, notably the networking of existing assets, is estimated to be Euro 70 million. Taking into account the similarity of the objectives of this Decision and the above-mentioned programmes, the actions established by this Decision might be financed by these programmes, in full compatibility with their basic act.
- (18bis) Securing an acceptable level of European autonomy in SST activities could require the adoption of a basic act within the meaning of the Regulation No. 966/2012 <sup>21</sup> for SST. Such possibility should be examined in the context of the mid-term review of the current Multiannual Financial Framework.
- (19) Recognising the sensitive nature of space situational awareness, the operation of sensors and the processing of data leading to the provision of SST services should remain with the participating Member States. The national SST assets will remain under the authority of the Member States responsible for their control and operation.

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<sup>17</sup> Reference to be added

<sup>18</sup> Council Decision of 3 December 2013 establishing the specific programme implementing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decisions 2006/971/EC, 2006/972/EC, 2006/973/EC, 2006/974/EC and 2006/975/EC.

OJ L 347, 20.12.2013, p. 965

<sup>19</sup> Reference to be added

<sup>20</sup> This amount is expressed at current prices.

<sup>21</sup> Reference to be added

HAVE ADOPTED THIS DECISION:

### *Article 1*

#### *Establishment of the framework*

A space surveillance and tracking (hereinafter referred to as 'SST') support framework is established.

### *Article 2*

#### *Definitions*

For the purposes of this Decision, the following definitions apply:

- (1) 'Space object' means any man-made object in outer space.
- (2) 'Spacecraft' means any space object serving a specific purpose, including active artificial satellites and launcher upper stages;
- (3) 'Space debris' means any space object including spacecraft or fragments and elements thereof in Earth orbit or re-entering the atmosphere, that are non-functional or no longer serve any specific purpose including parts of rockets or artificial satellites, or inactive artificial satellites;
- (4) 'SST sensor' means a device or a combination of devices, such as ground-based or space-based radars and telescopes, that is able to measure physical parameters related to space objects, such as size, location and speed;
- (5) 'SST data' means physical parameters of space objects acquired by SST sensors or orbital parameters of space objects derived from SST sensors observations.
- (6) 'SST information' is processed SST data which is readily meaningful to the recipient.

## *Article 2 bis (new)*

### *Objectives*

1. The general objective of the SST support framework shall be to contribute to ensuring the long-term availability of European and national space infrastructure, facilities and services essential for the safety and security of the economies, societies and citizens in Europe.
2. The specific objectives of the SST support framework shall be:
  - (a) assessing and reducing the risks to in-orbit operations of European spacecraft in terms of collisions, enabling spacecraft operators to more efficiently plan and carry out mitigation measures;
  - (b) reducing the risks relating to the launch of European spacecraft;
  - (c) surveying uncontrolled re-entries of spacecraft or space debris into the Earth's atmosphere and providing more accurate and efficient early warnings with the aim of reducing the potential risks to the safety of Union citizens and mitigating potential damage to terrestrial infrastructure;
  - (d) seeking to prevent the proliferation of space debris.

## *Article 3*

### *Actions of the SST support framework*

1. In order to attain the objectives laid down in Article 2bis, the SST support framework shall support the following actions aimed at establishing a SST capability at European level and with an appropriate level of European autonomy:
  - (a) the establishment and operation of a sensor function consisting of a network of Member State ground-based and/or space-based sensors, including national sensors developed through the ESA, to survey and track space objects and to produce a database thereof;

- (b) the establishment and operation of a processing function to process and analyse the SST data at the national level in order to produce SST information and services for transmission to the SST service provision function;
  - (c) the setting up of a function to provide SST services as defined in Article 4(1) to the bodies referred to in Article 4(2).
2. The SST support framework shall not cover the development of new SST sensors.

#### *Article 4*

##### *SST services*

1. The SST services referred to in Article 3 shall be of a civilian nature and shall comprise the following:
- (a) the risk assessment of a collision between spacecraft or between spacecraft and space debris and the generation of collision avoidance alerts during the launch, early orbit phase, in-orbit operation and disposal phase of spacecraft missions;
  - (b) the detection and characterisation of in-orbit fragmentations, break-ups or collisions;
  - (c) the risk assessment of the uncontrolled re-entry of space objects and space debris into the Earth's atmosphere and the generation of related information, including the estimation of the timeframe and likely location of possible impact.
2. SST services shall be provided to all Member States, the Council, the Commission, the EEAS, public and private spacecraft owners and operators, and public authorities concerned with civil protection. The SST services shall be provided in compliance with the provisions on the use and exchange of SST data and information set out in Article 9.

3. Participating Member States, the Commission and, where relevant, the EUSC, shall not be held liable for any damage resulting from the lack or interruption of the provision of SST services, a delay in the provision thereof or the inaccuracy of the information provided through the SST services, or any actions undertaken in response to the provision of SST services.

## *Article 5*

### *Role of the European Commission*

1. The Commission shall:
  - (a) manage the SST support framework and ensure its implementation;
  - (b) take the measures necessary to identify, control, mitigate and monitor risks related to the support framework;
  - (c) ensure the update of SST user requirements as appropriate;
  - (d) define general guidelines of governance of the SST support framework, particularly with a view to facilitating the establishment and operation of the consortium;
  - (e) facilitate the broadest possible participation of Member States, whenever appropriate, in accordance with Article 6.
2. The Commission shall adopt implementing acts establishing a coordination plan and relevant technical measures for the SST support framework activities. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).
3. The Commission shall provide to the European Parliament and to the Council, in a timely manner, all relevant information pertaining to the implementation of the SST support framework, in particular with a view to providing transparency and clarity regarding:

- the indicative efforts and the different Union sources of funding;
- participation in the SST Support Framework and the actions supported thereby;
- the evolution of the networking of Member State SST assets and of SST service provision;
- the exchange and use of SST information.

## *Article 6*

### *Participation of Member States*

1. A Member State wishing to participate in the implementation of the actions referred to in Article 3 shall submit an application to the Commission demonstrating compliance with the following criteria:
  - (a) ownership of or access to adequate:
    - SST sensors available or under development and technical and human resources to operate them or
    - operational analysis and data processing capacities specifically designated for SST;
  - (b) establishment of an action plan for the implementation of the actions set out in Article 3 including the modalities of cooperation with other Member States.
2. The Commission shall adopt implementing acts regarding procedures for submission of applications and compliance of the Member States with the criteria set out in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).
3. All Member States which comply with the criteria referred to in paragraph 1 shall designate a national entity to represent them. The designated national entities shall constitute a consortium and shall conclude the agreement referred to in Article 9.

4. The Commission shall publish and update on its website the list of participating Member States.
5. The responsibility for the operation of sensors, the processing of data and the implementation of data policy shall lie with the participating Member States. The assets of participating Member States shall remain fully under national control.

### *Article 7*

#### *Role of the European Union Satellite Centre*

The European Union Satellite Centre (EUSC) may cooperate with the consortium to be established pursuant to Article 6(3). In that case, it shall conclude the necessary implementing arrangements with the participating Member States.

### *Article 8*

#### *SST data and SST information*

The use and exchange of SST information released by the consortium and the use of SST data within the context of the SST Support Framework for the purposes of the implementation of the actions referred to in Article 3 shall be subject to the following rules:

- (a) Unauthorised disclosure of data and information shall be prevented while allowing efficient operations and maximising the use of the generated information;
- (b) The security of SST data shall be ensured;

- (c) SST information and services shall be made available on a need-to-know basis to the recipients of the SST services defined in Article 4(2), in accordance with the instructions and security rules of the originator of the information and of the owner of the space object concerned.

## *Article 9*

### *Coordination of operational activities*

The designated national entities that constitute the consortium referred to in Article 6(3) shall conclude an agreement laying down the rules and mechanisms for their cooperation in the implementation of the actions referred to in Article 3. In particular, that agreement shall include provisions for:

- (a) the use and exchange of SST information taking into account the endorsed recommendations 'Space Situational Awareness data policy – recommendations on security aspects';
- (b) the establishment of a risk management structure to ensure the implementation of the provisions on the use and secure exchange of SST data and SST information;
- (c) cooperation with the EUSC to implement the action referred to in Article 3(c).

## *Article 10*

### *Monitoring and evaluation*

1. The Commission shall monitor the implementation of the SST support framework.
2. By 1 July 2018, the Commission shall forward a report on the implementation of the SST support framework to the European Parliament and the Council concerning the achievement of objectives, from the point of view of both results and impacts, the effectiveness of the use of resources and the European added value.

This report may be accompanied by proposals for amendments, where appropriate, including the possibility for a basic act within the meaning of the Regulation No. 966/2012<sup>22</sup> for SST.

### *Article 11*

#### *Committee Procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where a reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

### *Article 12*

#### *Entry into force*

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

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<sup>22</sup> Reference to be added.