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to : Council

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Subject: Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio-navigation programmes

- *General approach*

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***Introduction***

1. On 24 March 2009, the Commission transmitted to the Council and the European Parliament the above mentioned proposal.

2. The purpose of the proposed Regulation is to bring the provisions of Council Regulation (EC) No 1321/2004 of 12 July 2004, on the establishment of structures for the management of the European satellite radio-navigation programmes, into line with those of Regulation (EC) No 683/2008 on the further implementation of the European satellite navigation programmes (EGNOS and Galileo).

### *State of play*

3. The examination of the proposal by the Council preparatory bodies started under the Czech Presidency on 24 March 2009. A progress report was presented to the TTE Council on 30 March 2009.
4. The discussion of the above proposal has been pursued under the Swedish Presidency. Following the in-depth discussions held at various meetings of the Working Party, the Presidency has amended several provisions of the Commission proposal to take account of delegations' requests allowing for a broad consensus on most of its articles. The outcome of these discussions was presented to Coreper on 2 December 2009, which succeeded in solving almost all outstanding issues.

In line with the Inter-institutional Approach to Impact Assessments<sup>1</sup> the Working Party also discussed and evaluated the Commission's impact assessment.

5. At this stage, delegations can broadly support the Presidency's compromise proposal as it appears in the Annex.
6. On 2 December, following an AT request, COREPER agreed in principle to add this new paragraph 4 to Article 16, which states that the texts mentioned in paragraphs 1 and 3 of the same Article 16 also apply to agents working in the Galileo Security Monitoring Centre. All delegations and the Commission have a scrutiny reservation on paragraph 4 of Article 16 (footnote 15, page 29).

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<sup>1</sup> Better Regulation: Inter-Institutional Common Approach to Impact Assessment (IA)  
14901/05 JUR 486 COMPET 263

The Commission holds a reservation regarding the deletion of the status of observer on the Administrative Board for the European Parliament (footnotes 8 and 9, pages 7 and 12).

FR and MT indicated they have Parliamentary scrutiny reservations.

7. The text of the draft Directive, which is annexed to this report, reflects the results of the debate at Coreper.

### ***Conclusions***

8. Once adopted, the text of this general approach will have to be reviewed in the light of the entry into force of the Lisbon Treaty and be adapted accordingly.
9. The Council is invited to examine the text as set out in the Annex to this report, in particular the above outstanding reservations, and to agree on a general approach on the text of the draft Directive.

**Proposal**  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**amending Council Regulation (EC) No 1321/2004**  
**on the establishment of structures for the management of the European satellite**  
**radio-navigation programmes<sup>2</sup>**

*THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,*

*Having regard to the Treaty establishing the European Community, and in particular Article 156 thereof,*

*Having regard to the proposal from the Commission<sup>3</sup>,*

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

*Acting in accordance with the procedure laid down in Article 251 of the Treaty,*

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<sup>2</sup> In relation to the consolidated version, the text of the regulation currently in force (and left unchanged by the Commission proposal) is in normal characters while the changes applied are in *italics*.

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

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

Whereas:

- (1) *Council Regulation (EC) No 1321/2004 of 12 July 2004 on the establishment of structures for the management of the European satellite radio-navigation programmes<sup>5</sup>, as amended by Council Regulation (EC) No 1942/2006 of 12 December 2006<sup>6</sup> in order to reflect the fact that the Galileo Joint Undertaking would cease activities on 31 December 2006, established a Community agency, called the European GNSS Supervisory Authority, hereinafter referred to as the 'Authority'.*
- (2) *The role and the tasks of the Authority, set out in Articles 1 and 2 respectively of Regulation (EC) No 1321/2004, were defined in order to meet the requirements of the system for the concession of the management and financing of the deployment and operational phases of the Galileo programme. This system was discontinued in 2007, and responsibility for management and financing of the deployment phase of the programme will no longer be awarded to the private sector.*
- (3) *Regulation (EC) No 683/2008 of the European Parliament and of the Council of 9 July 2008 on the further implementation of the European satellite navigation programmes (EGNOS and Galileo)<sup>7</sup> defines the new framework for the public governance and financing of the Galileo and EGNOS programmes. It sets out the principle of the strict division of responsibilities between the European Community, represented by the Commission, the Authority and the European Space Agency (hereinafter referred to as 'ESA'), granting the Commission responsibility for the management of the programmes and setting out the tasks given at that time to the Authority. It also provides that the Authority, when accomplishing such tasks entrusted to it, will ensure that the Commission's role as manager of the programmes is respected and that the Authority will act in accordance with guidelines issued by the Commission.*

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<sup>5</sup> OJ L 246, 20.7.2004, p. 1.

<sup>6</sup> OJ L 367, 22.12.2006, p. 18.

<sup>7</sup> OJ L 196, 24.7.2008, p. 1.

- (4) *As a result, the provisions of Council Regulation (EC) No 1321/2004 must be brought into line with those of Regulation (EC) No 683/2008 of the European Parliament and of the Council.*
- (5) *Firstly, the title of the regulation should therefore be changed, as it should no longer generally refer to the structures for the management of European satellite radio-navigation programmes, but should only make reference to the creation of a Community agency. Furthermore, the name of this agency, in view of its reduced sphere of activity, should no longer be called the ‘European GNSS Supervisory Authority’, but rather the ‘European GNSS Agency’ (hereinafter ‘Agency’).*
- (6) *It is also necessary to amend the first article of Regulation (EC) No 1321/2004 on its aim and objectives, which must be exclusively the institution of the Agency, with no provision made for the Agency being responsible for the management of public interests relating to GNSS European programmes and for regulating such programmes.*
- (7) *It is also important to amend Article 2 of Regulation (EC) No 1321/2004 on the tasks of the Agency, and, in this regard, to ensure that its missions, as referred to in Article 16 of Regulation (EC) No 683/2008, are defined.*
- (7a) *The Commission should also in the context of its mid-term review of the Galileo programme foreseen for 2010 as referred to in Article 22 of Regulation (EC) No 683/2008 address the issue of the governance of the programme in the operating and exploitation phase and the role that the Agency will play in this context”.*
- (8) *The new title of Regulation (EC) No 1321/2004 and the new name of the Agency mean that all parts of the text of this regulation mentioning the previous title and name should be amended.*
- (9) *Furthermore, since Regulation (EC) No 683/2008 makes the European Community the owner of all tangible and intangible assets created or developed under the programmes, the provisions of Regulation (EC) No 1321/2004 concerning the ownership of the systems are no longer applicable and should be deleted.*

(10) *In order to ensure that the Agency accomplishes its tasks whilst respecting the Commission's role as manager of the programmes and in accordance with guidelines issued by the Commission, it is also important, firstly, to state explicitly that the Agency be managed by its Executive Director under the supervision of the Administrative Board, in accordance with the guidelines provided to the Agency by the Commission, and secondly, to provide that the Commission has five representatives on the Agency's Administrative Board and that decisions regarding a limited number of tasks of the Board cannot be adopted without the assent of the representatives of the Commission.*

(10a) *The Agency's Administrative Board must be able to take any decision which may ensure that the Agency can accomplish its task with the exception of the accreditation tasks, entrusted to the Security Accreditation Committee defined in Article 10a, and for which it will only perform its duties in relation to resource and budget matters. A sound governance of the programmes requires also that the tasks of the Administrative Board be compliant with the new missions assigned to the Agency by virtue of Article 16 of Regulation (EC) No 683/2008, notably regarding the functioning of the Security Monitoring Centre and the instructions given pursuant Joint Action 2004/552. Similarly, in order to ensure sound administrative management, the date on which the Administrative Board of the Agency should send the various Community institutions the annual report on the activities and perspectives of the Agency (after adoption thereof) in accordance with Article 6(g) of Regulation (EC) No 1321/2004, must be the same as that on which the Executive Director of the Agency sends the final Agency accounts to these institutions in accordance with Article 12(6) of that Regulation.*

(11) [...] <sup>8</sup>

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<sup>8</sup> The Commission expresses a reservation regarding the deletion of the status of observer on the Administrative Board for the European Parliament.

- (12) *Furthermore, in view of the scope of the tasks entrusted to the Agency, which include security accreditation, the Agency's Scientific and Technical Committee should be disbanded and its System Security and Safety Committee replaced by a security accreditation committee for European GNSS systems, to be responsible for security accreditation, and formed of representatives from the Member States, the Commission, and the SG/HR, the ESA having an observer role.*
- (13) *Accreditation activities should be carried out independently of the authorities responsible for managing the programmes, notably the Commission, the other bodies of the Agency, ESA and other entities responsible for implementing provisions with regard to security. As a result, the Security Accreditation Committee for European GNSS systems should be the security accreditation authority for the systems and for the receivers containing PRS technology. It should be, within the Agency, an autonomous body that takes its decisions independently.*
- (14) *Given that the Commission, in accordance with Regulation (EC) No 683/2008, manages all aspects relating to system security, in order to ensure efficient governance of security issues and so that the principle of strict division of responsibilities provided for under that Regulation is complied with, it is essential for the Security Accreditation Committee's activities to be strictly limited to the security accreditation activities of systems and under no circumstances could it replace the work entrusted to the Commission under Article 13 of Regulation (EC) No 683/2008.*
- (14a) *The decisions taken by the Commission according to procedures involving the European GNSS Programmes Committee will in no way affect the existing rules on budgetary matters or the competence of Member States on security matters.*
- (14aa) *A Panel should be established to assist the Security Accreditation Committee with the purpose of facilitating a regular handling of the security accreditation files of the European GNSS systems. It should be composed of one representative per Member State, one representative from the Commission, one representative of the SG/HR and one representative of the ESA.*

*The activities of the Panel fall within the scope of the continuation of the accreditation activities already undertaken. In particular, the representatives from the Member States already acting to this end for the Agency at the date of the entry into force of this regulation become members of the Panel, unless otherwise decided by the Member States they represent.*

*(14b) Similarly, a Crypto Distribution Authority (CDA) should be established to assist the Committee to ensure security in particular for key procedures before the launch of the satellites.*

*(15) It is also important for accreditation activities to be coordinated with the work of authorities responsible for managing the programmes and other entities responsible for implementing security provisions.*

*(16) Given the specific nature and complexity of the systems, it is essential for the accreditation activities to be carried out in a context of collective responsibility for the security of the EU and its Member States, by making efforts to reach a consensus and by involving all parties with an interest in security, and for permanent risk monitoring. It is also imperative that technical accreditation activities be entrusted to professionals, duly qualified in the field of accrediting complex systems and with an adequate level of security clearance.*

*(17) In order to ensure that this Security Accreditation Committee can accomplish its tasks, it should also be provided that Member States supply the Committee with any necessary documentation, permit access to classified information and to any areas falling within their jurisdiction to duly authorised persons and that they should be responsible at local level for the accreditation of the security of areas located within their territory.*

*(18) The systems established within the framework of the European satellite radio-navigation programmes are infrastructures whose use extends well beyond the national boundaries of the Member States, and are infrastructures set up as trans-European networks in accordance with the provisions of Article 156 of the Treaty. Furthermore, the services provided via such systems contribute to the development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.*

*(19) Regulation (EC) No 1321/2004 should be amended accordingly,*

HAS ADOPTED THIS REGULATION:

## **Chapter 1**

### **Subject, tasks, bodies**

#### *Article 1*

#### **Subject matter**

This Regulation sets up a Community agency, called *the European GNSS Agency (hereinafter ‘the Agency’)*.

#### *Article 2*

#### **Tasks**

*The tasks of the Agency shall be as set out in Article 16 of Regulation (EC) No 683/2008 of 9 July 2008.*

#### *Article 3*

#### **Bodies**

*The bodies of the Agency shall be the Administrative Board, the Security Accreditation Committee for European GNSS systems and the Executive Director. They shall accomplish their tasks in accordance with the guidelines given by the Commission as set out in Article 16 of Regulation 683/2008.*

#### *Article 4*

#### **Legal status, local offices**

1. The *Agency* shall be a body of the Community. 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 Member States subject to their consent, or in other countries participating to the programme in accordance with Article 21.
4. The *Agency* shall be represented by its Executive Director, *subject to Article 10a, paragraph 9.*

#### *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 one representative appointed by each Member State and *five* representatives appointed by the Commission. The duration of the term of office of the Board members shall be five years. The term of office may be renewed once. *A representative of the SG/HR and a representative of the ESA<sup>9</sup> shall be invited to attend the Administrative Board's meetings as observers.*
3. When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 21.
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 if he/she is prevented from attending to his/her duties. The term of office of the Chairperson and of the Deputy Chairperson shall be two and a half years and shall expire when they cease to be members of the Administrative Board. The terms of office may be renewed once.

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<sup>9</sup> The Commission expresses a reservation regarding the deletion of the status of observer for the European Parliament.

5. The meetings of the Administrative Board shall be convened by its Chairperson.

The Executive Director of the *Agency* shall *normally* take part in the deliberations, *unless the Chairperson decides to the contrary*.

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 can 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 a two-thirds majority of its members.
7. *Each representative of the Member States and of the Commission shall have one vote. Decisions based on Article 6 (b) and (e) shall not be adopted without a positive vote of the representative of the Commission.*

The Executive Director of the *Agency* shall not vote.

The rules of procedure shall establish the 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

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.*

*Regarding security accreditation tasks and decisions provided for in Chapter II, the Administrative Board shall be responsible only for resources and budgetary matters. The Administrative Board shall also:*

- (a) appoint the Executive Director pursuant to Article 7(2);
- (b) *adopt, in principle by 15 October each year, and after receiving the Commission's opinion, the work programme of the Agency for the coming year;*
- (c) perform its duties in relation to the *Agency's* budget pursuant to Articles 11 and 12;
- (d) *oversee the operation of the Galileo security center (referred to as “Galileo Security Monitoring Centre” or “the GSMC”) as referred to in Article 16(a)(ii) of Regulation (EC) No 683/2008;*
- (e) exercise disciplinary authority over the Executive Director;
- (f) adopt the special provisions necessary for the implementation of the right of access to the documents of the *Agency*, in accordance with Article 19;
- (g) adopt the annual report on the activities and prospects of the *Agency* and forward it, *by 1 July*, to the Member States, the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors; the *Agency* shall forward to the budgetary authority all information relevant to the outcome of the evaluation procedures;
- (h) adopt its rules of procedure.

## Article 7

### Executive Director

1. The *Agency* shall be managed by its Executive Director, who shall *carry out his/her duties under the supervision of the Administrative Board*.
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 at least three candidates proposed by the Commission, *after an open competition, following publication in the Official Journal of the European Union and elsewhere of a call for expressions of interest*. The Administrative Board shall take its decision by a three-quarters majority of its members. Power to dismiss the Executive Director shall lie with the Administrative Board, according to the same procedure.

*The Executive Director's term shall be five years. This term of office may be renewed once.*

3. The European Parliament or the Council may call upon the Executive Director to submit a report on the performance of his/*her* duties.

## Article 8

### Tasks of the Executive Director

The Executive Director:

- (a) shall be responsible for representing the *Agency*, *with the exception of activities and decisions undertaken in accordance with Articles of Chapter II*, and be in charge of its management;
- (b) shall prepare the work of the Administrative Board. He/she shall participate, without having the right to vote, in the work of the Board;
- (c) shall be responsible for implementing the annual work programme of the *Agency* under the control of the Administrative Board;

- (d) shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the *Agency* in accordance with this Regulation;
- (e) shall draw up estimates of the *Agency's* revenue and expenditure in accordance with Article 11, and shall implement the budget in accordance with Article 12;
- (f) shall prepare a draft general report each year and submit it to the Administrative Board;
- (g) *shall ensure that the Agency, as the operator of the GSMC, is able to respond to instructions provided under the Joint Action 2004/552/CFSP;*
- (h) shall define the organisational structure of the *Agency* and submit it for approval to the Administrative Board.
- (i) shall exercise, in respect of the staff, the powers laid down in Article 16;
- (j) may adopt, after approval of the Administrative Board, the necessary measures to establish local offices in Member States in accordance with Article 4.
- (k) *shall ensure that the secretariat and all the necessary resources are provided to the functioning of the Committee, the Panel and the Crypto Distribution Authority set up in Articles 10 a, 10 b and 10 bb.*

## **Chapter II**

### ***Aspects relating to the security of the European Union or its Member States***

#### *Article 9*

#### **Joint Action**

1. *In accordance with Article 13(4) of Regulation 683/2008, whenever the security of the Union or its Member States may be affected by the operation of the systems, the procedures set out in Joint Action 2004/552/CFSP of 12 July 2004 on aspects of the operation of the European satellite radio-navigation system affecting the security of the European Union<sup>10</sup> shall apply.*
2. *The security accreditation decisions taken in accordance with Chapter III, as well as the residual risks identified, shall be communicated by the Commission to the Council for information.*

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<sup>10</sup> OJ L 246, 20.7.2004, p. 30.

**Chapter III**  
**Security accreditation for European GNSS systems**

**Article 10**  
**General principles**

*The security accreditation activities referred to in this Chapter shall be carried out in accordance with the following principles:*

- security accreditation activities and decisions are undertaken in a context of collective responsibility for security of the EU and its Member States;*
- efforts shall be made for the decisions to be reached by consensus and involving all relevant parties with an interest in security issues;*
- tasks shall be carried out in respect of relevant security rules applicable to the Council and the Commission <sup>11</sup>;*
- a permanent monitoring process shall ensure that security risks are known, security measures are defined to reduce such risks to an acceptable level in accordance with the basic principles and minimum standards set out in the security rules applicable to the Council and the Commission and that these measures are applied in line with the concept of defence in depth. The effectiveness of such measures shall be continuously evaluated;*

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<sup>11</sup> Council Decision 2001/264/EC adopting the Council's security regulation (OJ L 101, 11.4.2001, p. 1), as last amended by Decision 2007/438/EC (OJ L 164, 26.6.2007, p. 24). This text will be replaced by the "Council decision on the security rules for protecting EU classified information" (doc. 13885/1/09 REV 1, OJ L, p. , .).  
Commission's rules on security set out in the Annex to Commission Decision 2001/844/EC, ECSC, EURATOM (OJ L 317, 31.12.2001, p. 1), as last amended by Decision 2006/548/EC (OJ L 215, 5.8.2006, p. 38).

- *security accreditation decisions shall, following the process defined in the security accreditation strategy, be based on local security accreditation decisions taken by the respective national security accreditation authorities of the Member States;*
- *the technical security accreditation activities shall be entrusted to professionals, duly qualified in the field of accrediting complex systems and with an appropriate level of security clearance;*
- *accreditation decisions shall be taken independently of the Commission, without prejudice to Article 3, and of the entities responsible for implementing the programmes. As a result, a security accreditation authority for European GNSS systems shall be, within the Agency, an autonomous body that takes its decisions independently.*
- *security accreditation activities shall be carried out while reconciling the requirement for independence with the need for adequate coordination, between the Commission and the authorities responsible for implementing security provisions.*

#### ***Article 10 a***

#### ***Security Accreditation Committee***

1. *A Security Accreditation Committee for European GNSS systems (hereinafter "the Committee") shall be established within the Agency. As regards the European GNSS systems, this body shall have the tasks of the security accreditation authority, as referred to in the relevant security rules applicable to the Council and the Commission.*

2. *The Committee shall perform the tasks entrusted to the Agency with regard to security accreditation under Article 16(a)(i) of Regulation (EC) No 683/2008 and take "security accreditation decisions" as provided for in this Article, in particular on the approval of the security accreditation strategy and of satellite launches, the authorisation to operate the systems in their different configurations and for the various services, the authorisation to operate the ground stations and in particular the sensor stations located in third States, as well as the authorisation to manufacture the receivers containing PRS technology and their components.*
3. *The security accreditation of systems by the Committee shall consist of the establishment of the compliance of the systems with the security requirements referred to in Article 13 of Regulation (EC) No 683/2008 and in accordance with the relevant security rules and regulations applicable to the Council and the Commission.*
4. *On the basis of the risk reports established in accordance with Article 10 b, paragraph 1, the Committee shall inform the Commission of its risk assessment and provide advice to the Commission on residual risk treatment options for a given security accreditation decision.*
5. *The Commission shall keep the Committee continuously informed of the impact of the possible Committee decisions on the proper conduct of the programmes and of the implementation of residual risk treatment plans.*
6. *The decisions of the Committee shall be addressed to the Commission.*
7. *The Committee shall be composed of one representative per Member State, one representative from the Commission and one from the SG/HR. A representative of ESA shall be invited to attend Committee meetings as an observer.*
8. *The Committee shall establish its rules of procedure and shall appoint its Chairperson.*

9. *The Chairperson of the Committee shall be responsible for representing the Agency insofar as the Executive Director, according to Article 8, is not responsible.*
10. *The Committee shall have access to all the human and material resources required to provide appropriate administrative support functions and to enable it, together with the Panel established under Article 10 b and the CDA established under Article 10 bb, 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.*
11. *If a consensus according to the general principles referred to in Article 10 cannot be reached, the Committee shall take decisions on the basis of majority voting, as provided for in Article 205(2) of the Treaty. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The representative of the Commission and the representative of the SG/HR shall not vote. The Chairperson of the Committee shall sign, on behalf of the Committee, the decisions adopted by the latter.*
12. *If the Commission considers that a decision taken by the Committee may have a significant effect on the proper conduct of the programmes, for example in terms of costs and schedule, it shall urgently inform the European Parliament and the Council.*
- 12a. *Taking into account the views of the European Parliament and of the Council, which should be expressed within one month, the Commission may adopt any adequate measure in accordance with the regulatory procedure referred to in Article 19(4) of Regulation 683/2008.*
13. *The Administrative Board shall be regularly kept informed about the evolution of the works of the Committee.*
14. *The timetable for the work of the Committee shall respect the GNSS work programme of the Commission.*

## **Article 10 b**

### **Panel for the Security Accreditation**

1. *A Panel for the Security Accreditation of European GNSS systems (hereinafter "the Panel") shall be established to assist the Committee in the preparation of the security accreditation decisions. It shall act under the authority of the Committee and in accordance with its instructions, in particular it shall conduct security analysis reviews and tests to produce the relevant risk reports.*
2. *The Panel shall be composed of one representative per Member State and one representative from the Commission, as well as a representative of the SG/HR and a representative of ESA, chosen from among acknowledged security accreditation experts. The Panel shall be chaired by a member of the staff of the Agency.*

## **Article 10 bb**

### **Crypto Distribution Authority**

*A Crypto Distribution Authority (referred to in this Regulation as "CDA") shall be established to assist the Committee, in particular for questions related to flight keys.*

*The CDA shall, under the authority of the Committee and in accordance with its instructions, be responsible for managing and accounting for European GNSS crypto material, ensuring that appropriate procedures are enforced and channels established for accounting, securely handling, storage and distribution of all European GNSS crypto material and ensuring the transfer of the European GNSS crypto material to or from individual or services using it.<sup>12</sup>*

*The CDA shall be composed of relevant representatives of Member States and shall be chaired by a member of the staff of the Agency.*

*Within the CDA and under its authority, a Flight Key Cell (FKC) shall be dedicated to the management of operational flight keys and be activated for each launch campaign.*

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<sup>12</sup> Cf. doc. 11501/09, Annex IV, page 74, point. 44.

*The FKC shall be composed of Agency staff, relevant representatives of Member States directly involved in the management of the flight keys and the launches, and observers from other Member States.*

**Article 10 c**  
**Role of Member States**

*The Member States shall:*

- transmit to the Committee all information they consider relevant for the purposes of security accreditation;*
- permit duly authorised persons appointed by the Committee to have access to any classified information and to any areas/sites related to the security of systems falling within their jurisdiction, in conformity with their national laws and regulations, and without any discrimination on ground of nationality, including for the purposes of security audits and tests as decided by the Committee;*
- each Member State shall be responsible for devising a template for access control, i.e. an outline or list of the areas/sites which have to be accredited, which shall be agreed in advance between the Member States and the Security Accreditation Committee, thereby ensuring that the same level of access control is being provided by all Member States;*
- be responsible, at local level, for the accreditation of the security of areas located within their territory and forming part of the security accreditation area for European GNSS systems; report, to this end, to the Committee.*

**Chapter IV**  
**Budgetary and financial provisions**

*Article 11*

**Budget**

1. Without prejudice to other resources and dues yet to be defined, revenue of the *Agency* shall include a Community 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 *Committee*, including any bodies set up to assist it, and the contracts and agreements concluded by the *Agency* in order to accomplish the tasks entrusted to it.
3. The Executive Director shall draw up a draft statement of estimates of the revenue and expenditure of the *Agency* for the following year and shall forward it to the Administrative Board, together with a draft establishment plan.
4. Revenue and expenditure shall be in balance.
5. Each year the Administrative Board, on the basis of the draft statement of revenue and expenditure, shall produce a statement of estimates of revenue and expenditure for the *Agency* for the following 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 States with which the Community has concluded agreements in accordance with Article 21.

7. The statement of estimates shall be forwarded by the Commission to the European Parliament and to the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft general budget of the European Union.
8. On the basis of the statement of estimates, the Commission shall enter in the preliminary 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 general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.
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 final 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 shall 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 six weeks after the date of notification of the project.

## Article 12

### **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/her 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/she 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, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

### Article 13

#### **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 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (1) unless such departure is specifically required for the operation of the *Agency* and the Commission has given its prior consent.

*Chapter V*  
*Miscellaneous provisions*

*Article 14*  
**Anti-fraud measures**

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 Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>13</sup> shall apply without restriction.
2. The *Agency* shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti Fraud Office (OLAF)<sup>14</sup> and shall issue, without delay, appropriate provisions applicable to all staff of the *Agency*.
3. The decisions concerning funding, and the implementing agreements and instruments resulting there from, shall explicitly stipulate that the Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks on the recipients of funding of the *Agency* and the agents responsible for allocating it.

*Article 15*  
**Privileges and immunities**

The Protocol on Privileges and Immunities of the European Communities shall apply to the *Agency*.

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<sup>13</sup> OJ L 136, 31.5.1999, p. 1.

<sup>14</sup> OJ L 136, 31.5.1999, p. 15.

## **Article 16**

### **Staff**

1. The Staff Regulations of Officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Community for the purposes of the application of those Staff Regulations and Conditions of employment shall apply to the staff of the *Agency*. The Administrative Board, in agreement with the Commission, shall adopt the necessary detailed rules of application.
2. Without prejudice to Article 8, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of employment of other servants shall be exercised by the *Agency* with respect to its own staff.
3. The staff of the *Agency* shall consist of servants recruited by the *Agency* as necessary to perform its tasks, but may also include officials *with the appropriate clearance* assigned or seconded by the Commission or the Member States on a temporary basis.
4. *The provisions laid down in paragraphs 1 and 3 of this Article shall also apply to the staff of the GSMC.*<sup>15</sup>

## **Article 17**

### **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.

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<sup>15</sup> Scrutiny reservation: all delegations (except for AT) and the Commission.

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 18

##### **Languages**

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community<sup>16</sup> 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 19

##### **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 documents<sup>17</sup> shall apply to documents held by the *Agency*.
2. The Administrative Board shall adopt arrangements for implementing Regulation (EC) No 1049/2001 within six months after 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 Communities, under Articles 195 and 230 of the EC Treaty respectively.

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<sup>16</sup> OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 2003 Act of Accession.

<sup>17</sup> 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 data<sup>18</sup>.

#### Article 20

#### **Security rules**

The *Agency* shall apply the security principles contained in Commission Decision 2001/844/EC, ECSC, EURATOM of 29 November 2001 amending its internal Rules of Procedure<sup>19</sup>. This shall cover, inter alia, provisions for the exchange, handling and storage of classified information.

#### Article 21

#### **Participation of third countries**

1. The *Agency* shall be open to the participation of third countries, which have entered into agreements with the European Community to this effect.
2. Under the relevant provisions of these agreements, arrangements shall be developed specifying, in particular, the nature, extent and manner in which these countries will participate in the work of the *Agency*, including provisions relating to participation in the initiatives undertaken by the *Agency*, financial contributions and staff.
3. The participation of any third country in the *Agency* shall be submitted for approval to the Council.

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<sup>18</sup> OJ L 8, 12.1.2001, p. 1.

<sup>19</sup> OJ L 317, 3.12.2001, p. 1.

## Article 22

*Regulation 683/2008 shall be amended as follows:*

*"The reference throughout the Regulation to the "European GNSS Supervisory Authority" or the "Authority" shall be replaced by a reference to "x" and by "Agency", respectively.*

**Chapter VI**  
**Final provisions**

*Article 23*

**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.*

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