REPORT
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Subject: Preparation of the Council meeting (Transport, Telecommunications and Energy) on 2 December 2010
Proposal for a Decision of the European Parliament and of the Council on the detailed rules for access to the public regulated service offered by the global navigation satellite system established under the Galileo programme
– Progress report

1. Introduction

On 8 October 2010, the Commission transmitted to the Council and the European Parliament the above mentioned proposal. The purpose of this proposal is to give a legal framework to one of the five services that will be offered by the European Satellite Navigation programmes. In fact, the annex to Regulation No 683/2008 on the further implementation of the European satellite navigation programmes (EGNOS and Galileo) contains as specific objective of the European Satellite Navigation programmes "to offer a public regulated service (PRS) restricted to government-authorised users, for sensitive applications which require a high level of service continuity".
The main objective of the proposal for a decision on PRS access rules is to define the modalities according to which states and international organisations will have access to the PRS provided by the European GNSS system (EGNOS and Galileo). The legal basis of the Commission's proposal is Article 172 of the Treaty on the Functioning of the European Union. It takes the form of a proposal for a decision of the European Parliament and of the Council, since the text is addressed to the Member States only.

2. **Content of the proposal**

The proposal contains the following key elements:

- general principles on the detailed rules for access to the PRS, so that the Council, the Commission and the Member States shall have unlimited, uninterrupted access to the PRS anywhere in the world, while agreements will be required to define the conditions for granting access to the PRS to European Union agencies, non-member countries and international organisations;
- it shall be for the Council, the Commission and each individual Member State, to decide whether to use the PRS within their respective competences;
- the requirement for PRS participants to designate a "Competent PRS Authority" to be responsible for the management and monitoring of the manufacture, ownership and use of PRS receivers, in compliance with minimum common standards to be established;
- the establishment of a framework of conditions for the manufacture and security of PRS receivers;
- provisions on export control, control centres worldwide, and the implementation of joint actions according to the relevant provisions of the Treaty on European Union.
3. **Work within Council bodies**

The examination of the Commission proposal by the Council Working Party on Transport, Intermodal Questions and Networks started with its presentation and a first exchange of views on 20 October 2010 and continued on 26 October and 10 November 2010.

4. **General comments**

All Member States have stated their support to the general objective of the Commission proposal of giving a legal framework and establishing clear rules for the access to one of the essential services to be provided by the European Satellite Navigation programmes. In this context, several delegations underlined the need to reiterate, also in this text, the principle that "Galileo is a civil system under civil control", as stated in Regulation N° 683/2008 (recital 2). Delegations could accept the inclusion of this principle in current recital 3.

One delegation expressed concerns as regards the legal base and it is still examining whether the proposed Article 172 is appropriate. Some delegations pointed out that the Commission proposal combines rules both for PRS technology and for the service itself, often in the same paragraph, and argued that these two issues should be clearly separated to avoid any possible confusion.
5. Comments on specific issues:

a) Protection of classified information

Several delegations raised the question of the interaction between Article 4 of the proposal, on the "Protection of classified information", which aims at ensuring that Member States guarantee such protection, and Commission's security provisions laid down in the Annex to decision 2001/844/CE, CECA, EURATOM\(^1\) as well as in the Council's security regulations laid down in the Annex to decision 2001/264/CE of the Council\(^2\). Furthermore, they wondered whether this text would introduce additional specific rules on access to classified information for the PRS and if this would be really necessary. This issue needs further discussion, in order to clarify how the provisions of the above legal texts apply to the protection of classified information in the specific framework of this decision and how the Commission and the National Security Authorities (NSA) will interact in this framework.

b) Creation of Competent PRS Authorities and the manufacture of PRS receivers

From the debate, it emerged that a clearer description of the tasks of the Competent PRS Authorities is needed with regard to the manufacture of receivers and security modules. As regards the manufacture of receivers and/or associated security modules, some Member States considered that a Member State could be allowed to manufacture receivers even if it has not designated a PRS Authority on its territory and suggested more flexibility on this issue. Some Member States are also in favour of allowing PRS receivers and/or associate security modules to be manufactures in non-member countries.

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As regards the "Common minimum standards" to be complied with by the PRS authorities responsible for the management and monitoring of PRS receiver owners, users and manufacturers", set out in the annex to the proposal, the majority of Member States considered that the list was too vague and too limited. Such common minimum standards should be further developed and clarified, and be agreed first by the GNSS Security Board (the GNSS-SN under Regulation No 912/2010/EC)\(^3\) and its PRS-working group of national security experts. The Commission indicated its willingness to present a statement reaffirming its commitment to consult the GNSS Security Board.

c) **European GNSS Agency as competent PRS Authority**

The proposal foresees that "several PRS participants may designate a common competent PRS Authority" and that "the European GNSS Agency may be designated as competent PRS Authority by a PRS participant". Many Member States wanted to make clear that the functioning costs of a PRS authority are to be borne by the participants who have designated it, in particular as regards the tasks performed by the GNSS Agency as PRS Authority, in order to make sure that there is no additional financial burden to the EU budget. In addition, some Member States raised the question whether the GNSS Agency should act as "Competent Authority" for other bodies, taking into account the very limited resources available. In the same context, many Member States invited the Commission to provide an analysis of costs regarding the functioning of a PRS Authority. The Commission indicated that it would be ready to provide an indicative preliminary analysis.

d) **Delegated acts**

Several delegations have serious doubts about the recourse to delegated acts in the proposal. These acts would enable the Commission to lay down rules relating to the protection of classified information concerning the PRS, in particular those relating to a natural or legal person's need for access to classified information, and would allow the Commission to modify the common minimum standards contained in the Annex of the proposed Decision. They fear that this might give the Commission powers impinging on the security competence of the Council or of Member States NSA. The Commission explained that the possible use of delegated acts would only concern aspects of the operational management. This delegation of powers would not empower the Commission to change security rules via delegated acts. However, this issue has to be seen in the more general framework of the ongoing horizontal discussion on delegated acts and it is closely linked to the final outcome of such discussion.

6. **Conclusions**

Coreper and Council are invited to take note that this discussion is still ongoing and that a number of issues need to be further clarified. Therefore, the competent Council preparatory bodies intend to pursue the examination of the proposal in order to achieve significant progress and reach an agreement on it under the incoming Hungarian Presidency.