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REPORT FROM THE COMMISSION

**Progress report on establishing appropriate relations between the European Union and
the European Space Agency (ESA)**

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1. POLITICAL CONTEXT

The relations between the European Union and the European Space Agency (ESA) have been the subject of longstanding political discussions, one practical result of which has been the EU/ESA Framework Agreement¹ in force since May 2004. The Lisbon Treaty² has given a new impetus to these discussions by strengthening the political dimension of space matters in the EU and providing that the EU “shall establish any appropriate relations with the European Space Agency”.

The European Commission has addressed this issue in two subsequent communications. In its April 2011 communication “*Towards a space strategy for the EU that benefits its citizens*”³ the Commission expressed the view that ESA “*should continue to develop into an organisation with an intergovernmental and an EU dimension in which military and civil programmes can coexist*”, and should “*pursue closer ties with the EU and, according to need, will continue to have management structures geared solely towards EU programmes*”. And in the communication on “*Establishing appropriate relations between the EU and ESA*”⁴ adopted by the Commission in November 2012, it is stated that “*The need for greater operational efficiency, symmetry in defence and security matters, political coordination and accountability can only be resolved, in the long term, through the rapprochement of ESA towards the European Union. The Commission considers that a clear target date should be set between 2020 and 2025 for this long term objective*”.

The Council of the EU in its conclusions of 18 February 2013⁵ recognised that there may be a need to “*review and enhance the functioning of the relationship between the EU and ESA in view of the changed political context, the increasing role of the EU in the space domain, competitiveness challenges faced by the space sector and the growing importance of space activities for society*”. The Council also recognised that “the Framework Agreement and its governance elements may, in its present form no longer provide the most appropriate framework with which to ensure an efficient and effective European space policy that fully utilises in a coherent manner the respective competencies of both the EU and ESA.” The Council invited “the European Commission to work together with the Director General of ESA and in close cooperation with the respective EU and ESA Member States... to ensure coherence, convergence and complementarity with a view to preparing common proposals on the further evolution of EU/ESA relations on the basis of common analysis, for decision by the respective bodies by 2014”⁶.

¹ OJ L 261, 6.8.2004, p.64

² Art. 189 TFEU

³ COM(2011)152 of 4 April 2011

⁴ COM(2012)671 of 14 November 2012

⁵ ST6571/13

⁶ In a written statement to the Council conclusions, the European Commission wished to clarify that it “considers that the use of the term ‘common’ before ‘proposals’ conveys a notion that is not correct from a legal and institutional standpoint. In exercising its right of initiative, the Commission will determine the most adequate manner to ensure close cooperation with the Director-General of the

The growing financial involvement of the EU in space activities further strengthens the case for attention to the evolution of the EU/ESA relations. In the new Multi-annual Financial Framework 2014-2020, the EU is devoting close to €12bn to large-scale European space programmes such as Galileo, EGNOS and Copernicus, and to space research activities under Horizon 2020. This represents more than a doubling of the investment compared to the previous financial planning period, reflecting the growing importance which the EU attaches to space activities in addressing the economic and societal challenges facing the Union and its Member States.

The EU currently delegates a large part (about 75%) of its budget for space to ESA. As a consequence, the EU is the largest contributor to ESA and a major institutional source of funding for space activities in Europe. The amount of EU budget delegated to ESA in the next seven-year period will exceed the individual contributions of all ESA Member States.

The funds managed by ESA provided by the EU are subject to the EU Financial Regulation. From the Commission's perspective, which retains the overall political responsibility for the delivery of EU space programmes, there is a need for mechanisms that will guarantee that activities entrusted to ESA deliver the expected results and are being conducted and managed in the most efficient, effective and accountable manner, strictly following EU rules and procedures, in an "EU-like" environment. This view has been endorsed by the co-legislator in the new Galileo Regulation⁷. As pointed out in the November 2012 communication, the European Commission seeks to establish such relations with ESA that can deliver "*greater operational efficiency, symmetry in defence and security matters, political coordination and accountability*"⁸.

For its part, ESA has started reflections about the further evolution of the Agency. As stated in the political declaration⁹ adopted by the ESA Council at Ministerial level on 20 November 2012, this evolution should take full benefit of and encompass, among others, the "EU competence in space, in accommodating the consequences in ESA's operation and thus providing efficient management of EU funded programmes under EU rules". The ESA Member States have mandated the Director-General of ESA "to work with the European Commission in order to provide a common analysis of the situation of the European space sector and a common vision on its evolution aiming at building up coherence, convergence and complementarity among the different actors".

It is against this background that the Commission has conducted a preliminary assessment of four options for the evolution of the EU-ESA relations and their likely impact in terms of costs, benefits and institutional and legal implications. This report presents the current status of reflections within the Commission and possible next steps. The report is the first stage in continuing open and transparent processes of analyses and reflection, and of discussions with Member States and with the Director-General of ESA, which should lead towards coherent

European Space Agency (ESA) and with the EU Member States during the preparation of its proposals for future appropriate relations between the EU and ESA".

⁷ For example, in referring to the delegation agreement to be concluded by the Union with ESA for the deployment phase of the Galileo programme, recital 30 of the Regulation states that "*In order for the Commission to exercise its power of control fully, the delegation agreement should include the general conditions for managing the funds entrusted to the European Space Agency. Concerning activities exclusively financed by the Union, these conditions must ensure a degree of control comparable to that required if the European Space Agency was an Agency of the Union.*" (Regulation No 1285/2013 of the European Parliament and of the Council on the implementation and exploitation of the European satellite navigation systems; OJ L 247, 20.12.2013)

⁸ Towards the European Parliament

⁹ Political declaration towards the European Space Agency that best serves Europe, ESA/C-M/CCXXXIV/Res. 4 (final) of 20 November 2012

and shared conclusions between the EU, ESA and Member States towards the end of 2014, early 2015. Much of the preliminary assessment presented in this progress report builds on the results of an external technical study¹⁰, which has provided some useful elements of analysis.

The Commission services have maintained contacts with the Director-General of ESA in order to ensure coordination and coherence of the analyses and options considered on both sides, even though the starting points and assessment criteria might be different for each organisation. During this preparatory phase the Commission has also maintained a dialogue with representatives of the Member States at expert level through its Space Policy Expert Group.

2. THE STRUCTURAL ISSUES TO BE ADDRESSED

The Commission's communication of November 2012 identified five structural issues in the EU/ESA relations, which have provided the starting point for the analysis. These issues included the differences in financial rules, the asymmetric membership, the asymmetry in security and defence matters, the absence of mechanisms for policy coordination and the missing layer of political accountability within ESA vis-à-vis the European Parliament. The analysis conducted by the external consultant has demonstrated that these issues lead to inefficiencies which vary in intensity and impact. For example:

- The mismatch of financial rules and different procedures increases the lead time to decision-making. This could add cost to the programmes and impact the overall system delivery, particularly when activities are on a critical path¹¹. For example, the current procurement approach creates a need for multiple validation steps (to correct shortcomings or complement and improve the files as needed) which could generate longer decision times.
- According to the external consultant's report, the membership asymmetry is assessed as less problematic in the experience to date but could nevertheless pose issues in the future. For example, risks may arise from the limited leverage on non-EU Member States to impose duty of loyalty to the EU programmes in which they participate. This could potentially lead to sensitive technologies being sold to third countries. Furthermore, important decisions concerning the future of EU programmes (such as launches of satellites or transfer of ownership of assets) could potentially be blocked by non-EU member states, because of different voting rules in the ESA intergovernmental system.
- The asymmetry in security and defence matters could generate issues too. The potential sale of sensitive technology to third countries could pose strategic security issues for the EU. The handling of EU classified data may increase the level of complexity of programme management at ESA. For certain security sensitive functions ESA may be required to recruit only EU nationals with the necessary level of security accreditation.
- The lack of policy coordination mechanisms means that programmes are not necessarily aligned to support the larger policy objectives of the Union. ESA industrial policy objectives may diverge from EU service provision objectives. The mechanisms envisaged in the existing EU/ESA framework agreement are not perceived as an effective tool for such coordination. The current framework does not foresee explicit mechanisms for concerted decision-making. Policies are thus coordinated only on programme level, through mechanisms which need to be agreed upon programme per programme in a time-

¹⁰ Evolution of EU-ESA relations: Cost/benefit assessment of options, Roland Berger Strategy Consultants, November 2013.

¹¹ Past analyses conducted for the GNSS programmes demonstrate that one day of delay on the critical path equals a cost of roughly €1m.

consuming manner. This absence of specific mechanisms for policy coordination could result in delays in launch of programmes.

- The issue of political and financial accountability vis-à-vis the European Parliament is essential given the amount of EU funding being handled by ESA and its prominent role in the implementation of the programmes. As the institution responsible for the implementation of the budget under Article 317 of the Treaty on the Functioning of the European Union, the European Commission is fully accountable before the European Parliament and the Council of the European Union for any delays or cost overruns incurred in the EU flagship programmes, while ESA operationally manages these programmes on its behalf through delegation agreements. Since the Commission bears the final project risk, this reduces the incentive for ESA to deliver the programmes on time, on target cost and focussed on policy and user objectives. On co-funded programmes, the EU has had only limited impact on technical decisions made by ESA. If the initial phases of a space programme are funded by ESA only, it may be difficult for the Commission in later stages of the programme to ensure that EU funds are used to implement its policies.

The analysis of these limitations provides the necessary rationale for the configuration of the options presented below.

3. OUTLINE OF THE IDENTIFIED OPTIONS

In the November 2012 communication the European Commission outlined four options for further evolution of the EU-ESA relations towards an ultimate goal of rapprochement. While these options do not present an exhaustive list, they are the ones which the Commission identified as most pragmatic and feasible in addressing the structural limitations in the current EU-ESA relationship. The same options are being assessed by the Director-General of ESA, which ensures the necessity level of coherence between the two parallel processes. The four options are incremental, going from an option that would envisage improvements without changes in the current legal framework of EU/ESA relations, to an option where ESA would cease to exist as an intergovernmental organisation to become an EU agency.

3.1. Option 1: No change (baseline)

The situation remains unchanged under the terms of the existing EU/ESA Framework Agreement. The EU and ESA remain two separate entities without efficient mechanisms to ensure greater coherence or coordination. The EU will co-fund some space programmes with ESA and/or entirely fund others, for which the execution will be delegated to ESA. Programmes will be developed on the basis of specific agreements which will be negotiated phase-by-phase, making use of the general tools available in the EU financial regulations. Policy and mission objectives will be set by the EU and ESA according to their own institutional frameworks.

3.2. Option 2: Improved cooperation under the ‘status quo’

The EU and ESA remain two separate entities but the interface between them is adapted, based on amendments to the existing EU/ESA Framework Agreement and an improvement of delegation agreements. Policy and mission objectives will be set jointly by the EU and ESA, and coordination would be ensured through the development of a new framework agreement. This agreement would be adopted by the ESA Council and the EU Council, with the consent of the European Parliament. In programme execution, ESA would continue to develop internally the capabilities to master the nuances between the two financial regimes (EU and ESA) and work on a progressive alignment of its accounting, internal control and audit procedures with the corresponding EU rules. The new agreement would contain specific mechanisms for coordination.

3.3. Option 3: Establishing a programmatic structure solely dedicated to the management of EU programmes (i.e. “EU pillar”)

There is no pre-existing definition of this ESA/“EU pillar”. However, it follows from the Commission communications that this pillar should be a step towards “*greater operational efficiency, symmetry in defence and security matters, political coordination and accountability*”¹² and create “*an EU-like environment*”¹³.

A pragmatic approach has been taken in defining this option, starting with the problems which it is meant to solve in order to define its ideal contours and then examine the legal instrument necessary to implement it. It is considered essential that the “EU pillar” is designed to operate with EU rules. This would allow addressing the issue of misalignment of financial rules. Within the “EU pillar”, which would operate as an “EU-like” environment, issues of membership asymmetry would not arise.

The “EU pillar” would be “hosted” within ESA, also physically within ESA premises, and could share certain services common to the “EU pillar” and ESA intergovernmental.

The creation of an “EU pillar” within ESA would not affect the functioning of the remaining departments of the intergovernmental ESA as it exists today. This option would necessitate a more in-depth analysis of the legal and institutional aspects, in particular with regard to political accountability and discharge procedures. Finally, the pragmatic approach described above will have to be implemented in full compliance with the applicable financial rules and in particular the budgetary principles enshrined in the Financial Regulation¹⁴.

3.4. Option 4: ESA becomes an EU agency while preserving some of its intergovernmental features

In this option ESA becomes an agency of the EU. This European Union space agency would maintain certain structures to facilitate intergovernmental cooperation (i.e. optional programmes, different from EU programmes, funded directly by Member States outside the EU budget). The agency would have an EU legal basis and be governed according to EU rules.

4. COMPARISON OF THE OPTIONS

The four outlined options address the limitations in the current EU-ESA relations to a different degree and present different advantages and disadvantages. The efforts needed to implement each one of the options would vary significantly as well.

The options have been assessed from two main perspectives: (i) their “effectiveness”, which is understood as the ability to address the structural issues and operational inefficiencies currently identified, and the savings generated in terms of personnel costs and impact on

¹² To the European Parliament

¹³ The notion of an “EU pillar” within ESA has been part of the Commission’s reflections on its relations with ESA as a step towards the long-term objective of rapprochement. In its communication of April 2011, the Commission stated that ESA “*will continue to have management structures geared solely towards EU programmes*”. In the communication of November 2012, the Commission further states that, in working towards the long-term objective of rapprochement, ESA could “*Make the necessary structural adaptations (financial and internal decision-making) to ensure that activities delegated to ESA by the Commission are managed within an EU-like environment (e.g. through a dedicated directorate managing EU programmes within ESA)*”. This option is also being examined by ESA in the context of the reflection on its possible future evolution (a reflection launched at the ESA Council at Ministerial level of November 2012).

¹⁴ Regulation No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union; OJ L 298, 26.10.2012 (see Part I, Title II).

decision-making lead time; and (ii) the “costs” associated with the options, which is assessed from the perspective of ease to implement the required legal adaptations and the expected speed of implementation. On this basis the options have been ranked.

A qualitative analysis of the ability of the options to resolve the identified structural limitations shows that Option 1 cannot address any of the limitations at structural level; Option 2 addresses some of them, but only to a limited degree; while Option 3 and 4 solve these limitations to the largest extent (fully solved in option 4 and almost fully solved in option 3). In particular:

- The mismatch of financial rules is tackled almost entirely in option 4 and option 3. Option 2 alleviates the misalignment to a large extent, but offers slightly less confidence in the application of financial procedures which are equivalent to the ones applied by the EU.
- The membership asymmetry is tackled to a large extent by ESA as an EU agency and by the ESA/“EU pillar”. Improved cooperation under the status quo solves this obstacle to a much lesser extent.
- Asymmetry in security and defence matters is alleviated to an equally large extent by option 3 and 4, and solved to a limited extent by option 2. The threat of sale of sensitive technology remains an issue in all options, although leverage on Member States is higher in option 3 and 4.
- The absence of mechanisms for policy coordination is tackled almost entirely in option 4, and to some extent in options 3 and 2. Policy coordination and alignment of industrial policy objectives will increase with a rapprochement between ESA and the EU. Concerted decision making is expected to remain an issue unless ESA becomes an EU agency.

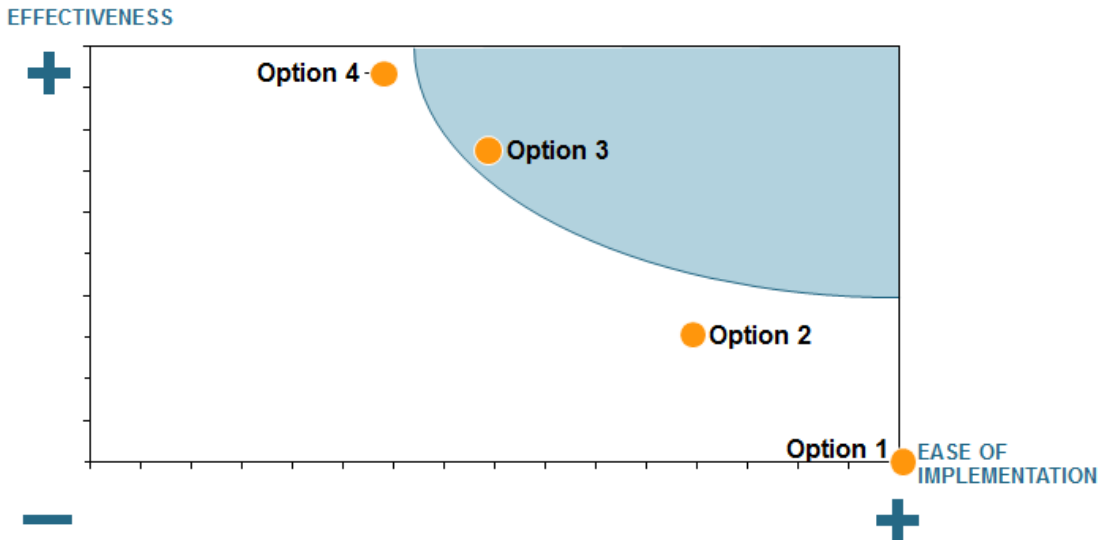
The options can further generate positive impacts (benefits) in terms of cost-savings resulting from potential reduction in decision-making lead time for programmes implementation and from optimisations in staff levels at the Commission and ESA.

With regard to the legal adaptations that would be necessary to implement the different options, the analysis leads to the conclusions that Option 2 would be relatively easy to implement. Option 2 would require either amendments to the current EU/ESA Framework Agreement, or a new agreement. The Commission is of the view that option 3 would require an EU legislative act which should contain, inter alia, the definition of the “EU pillar” tasks, structure and financial requirements, subject to a detailed quantitative cost-benefit analysis and an assessment of the complex institutional and legal implications of this option, possibly including modifications to the ESA legal framework.

Option 4 appears to be more complex. In this option ESA would cease to exist as an intergovernmental organisation, followed by the creation of an EU Agency. Staff regulation (including transitional provisions) and financial regulation of the new agency should be adopted. This option is also seen as the least feasible one as it implies a heavy implementation process and requires political consensus which may be difficult to reach in the foreseeable future.

Based on a combination of the various assessment criteria, the figure below provides a preliminary map of the options in terms of trade-off between “cost” and “effectiveness”. Since the contemplated options are not mutually exclusive, multiple options could be considered depending on the timeframe adopted.

Figure: Preliminary cost-effectiveness ranking of options



Source: Roland Berger Strategy Consultants, “Evolution of EU-ESA relations: cost/benefit assessment of options”

It is important to note that the recent ESA report “Status of ESA/EU relations – Scenarios assessment” submitted to the ESA Council of 19th December 2013 as part of the on-going follow-up to the political declaration adopted by the ESA Council meeting at Ministerial level on 20 November 2012, presents as the most promising evolution scenarios a so-called “Improved Status quo” and an “EU Chamber”, which seem close to options 2 and 3 described in this report. According to ESA’s report the “Improved Status quo” would be implemented in the short-term through specific programme driven Agreements based on existing legal structures on the EU (e.g. Regulations) and on ESA (e.g. Convention) sides... In the medium-term this scenario could entail either a revision of the Framework Agreement or the conclusion of a new cooperation agreement”. The report states that “The ‘EU Chamber’ would be a dedicated, self-standing structure added to the current legal structure of ESA which remains unchanged... This scenario would imply that underneath the overall ESA roof, two parallel ‘Chambers’ would co-exist: an intergovernmental one and an EU one.” The report also presents a third scenario – “EU Agency” – as an option that would depend on a long-term vision beyond 2020, on which there is as yet no consensus amongst ESA Member States.

5. CONCLUSION AND NEXT STEPS

The elements of analysis presented above seek to offer an insight into the various options and their ability to reduce structural issues and bring improvements to the current set-up of EU-ESA relations. These elements are however not, at this stage, sufficient to justify a conclusive choice among the options.

According to the external study, “*the creation of a dedicated entity within ESA ... offers, in the medium term, the best compromise between expected effectiveness and ease of implementation*”. The Commission sees merits in this option, which needs to be further analysed and discussed with ESA in order to fully assess its legal, technical and human resource implications. The advantage of this option is that it would preserve the intergovernmental ESA structure, while creating an adequate framework to manage the financial resources brought by the EU.

While option 3 may be a better response to dealing with the structural issues in the EU/ESA relations, option 2 (the revision of the existing Framework Agreement) should be considered alongside with option 3.

It should also be underlined that, as the November 2012 Communication points out, the delegation agreements have contributed to the rapprochement between the EU and ESA and can further contribute to the improvement of the operational efficiency and the working relationship between the EU and ESA as regards the latter's involvement in the implementation of Galileo and Copernicus. Options 2 and 3 should therefore be considered in the light of improvements in the EU/ESA working arrangements that may be achieved through such delegation agreements.

The Commission considers that the selected way forward should bring added value to the benefit of both organisations, EU and ESA, and avoid a blurring of responsibilities. The chosen solution should be pragmatic and avoid a "big-bang" approach, but at the same time provide a solid and sustainable (legal) basis on which these relations can evolve in the long-term, looking at 2020 and beyond, in full compliance with applicable financial rules and in particular the budgetary principles enshrined in the Financial Regulation. The impact on on-going programmes should be carefully assessed in order to reduce any potential risk of disruption.

The present paper constitutes a step in the Commission's response to Council invitation (formulated in its conclusions of February 2013) to prepare proposals on the further evolution of EU/ESA relations. On the basis of this initial assessment, the European Commission will intensify discussions with Member States and with the Director-General of ESA with a view to further refine the regulatory and technical analyses of the options in order to arrive to coherent proposals by the Commission on one side, and the Director-General of ESA on the other, for a convergent approach defining the future framework of relations between both organisations.

ESA is expected to take a decision about the evolution of the Agency during its Council meeting at ministerial level in December 2014.

On the EU side, the present paper seeks to feed the discussion in Council with a view to obtaining political orientation for the next steps to be taken in close collaboration with the Director-General of ESA. Depending on the outcome of these discussions, the on-going dialogue with ESA and subject to further internal analysis of the options, the Commission may come forward with concrete proposals reshaping the current framework of EU-ESA relations towards the end of 2014, early 2015.

The paper does not prejudice any future proposals by the Commission which will be based on, and accompanied by a full-fledged impact assessment further detailing and quantifying the impacts of at least Options 2 and 3. In particular, additional work is necessary to assess the options in terms of effectiveness of policy coordination and implementation, as well as the impact of the combined EU and ESA action on the overall EU political objectives (e.g. strategic importance of space for Europe, contribution of space activities to societal challenges and competitiveness of the EU space industry). Analysis should also include elements of foresight regarding long-term technological, industrial and economic developments, as well as potential global developments which could have an influence on the EU relations with ESA.