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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT**

Establishing appropriate relations between the EU and the European Space Agency

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The entry into force of the Lisbon Treaty established the European Union's competence over space matters, without prejudice to the Member States' own competences. Space has become an instrument for the achievement of the EU objectives and an EU policy in its own right.

Article 189 of the Treaty on the Functioning of the European Union calls for the EU to establish any appropriate relations with ESA.

The present Communication builds on the April 2011 Communication¹ "Towards a space strategy for the EU that benefits its citizens" where the Commission put forward initial ideas regarding the evolution of relations between EU and ESA.

1. BACKGROUND

Over the last decade, the European Union has become a major player in space. EGNOS and Galileo, GMES and Space research under the 7th Framework Programme have become major landmarks in the European space landscape.

The Commission's space-related proposals for the next Multiannual Financial Framework imply a further increase in the European Union's involvement in space.

The growing role of the EU in space goes hand in hand with an increasingly close relationship with the Member States and ESA, the other two main actors of the European Space Policy. In this context the Commission has entrusted ESA with certain responsibilities in implementing specific EU space programmes. In the case of the European Global Navigation Satellites Systems (GNSS), ESA is currently responsible for the design, development and procurement of the systems' ground and space segments while the responsibility for operational management related to the exploitation of the systems is intended to be entrusted to the European GNSS Agency (GSA)². A closer relationship with the ESA would enable a further development of divisions of tasks.

ESA is a world-class organisation which deserves credit for the successes that Europe has achieved over the last four decades. Thanks to the activities conducted by ESA and Member States through their national space programmes, Europe now has a strong technological and industrial base and is recognised as a reliable partner in international programmes.

The EU relies heavily on ESA's technical excellence and a large part of the EU space budget is delegated to ESA, to the extent that the EU is today among the largest contributors to ESA.

However, the emergence of space as an EU policy, the growing importance of EU space programmes and the European Union's reliance on ESA's technical expertise have not yet

¹ COM(2011)152

² COM(2011)814

translated into an evolution of the governance of space matters at European level. In line with the provision of Article 189, the present communication outlines possible short and long term avenues for EU relations with ESA with a view to continuing an efficient cooperation. This communication presents initial ideas. Further proposals will have to be substantiated by a solid cost-benefit analysis and impact assessment.

2. STRUCTURAL OBSTACLES IN THE CURRENT EU/ESA RELATIONS

2.1. Mismatch of financial rules

The management of EU funding by ESA is too complex given the fact that the European Union and ESA have different rules which must co-exist within ESA. ESA's largest programmes are funded primarily through Member States' subscriptions. The industrial procurement for those programmes follows the objective of geographical return and ESA financial procedures are primarily designed to fit this rule. For the implementation of EU programmes ESA is obliged to follow EU rules and the strict principle of best value embodied in the EU Financial Regulation³. This has given rise to difficulties, particularly whenever programmes are funded through mixed ESA and EU appropriations. .

2.2. Membership asymmetry

At present, 17 EU Member States are Members of ESA⁴. ESA's members include Norway and Switzerland, which are not EU members. Canada has a bilateral cooperation agreement with ESA. As the collaboration between the EU and ESA grows, this asymmetry combined with a voting system where each Member State has one vote in the ESA Council and the key decisions within this body are adopted by unanimity gives ESA members, which are not members of the EU, disproportionate leverage over matters that may affect the EU. In addition the asymmetry complicates discussions particularly as regards security and defence matters as indicated below.

2.3. Asymmetry in security and defence matters

The EU's competence over security and defence matters has grown stronger with the adoption of the Lisbon Treaty and the setting up of the European External Action Service. Space capacities have often the potential to be used for civil and defence purposes. In order to contribute towards objectives of the Common Security and Defence Policy, the EU has to establish ever closer and stronger links and synergies between the civil and defence dimensions of space. The collaboration of the Member States and ESA is essential in this endeavour. However, the relations between EU and ESA are constrained by the fact that ESA's membership includes States not members of the EU, which poses an obvious problem in general and an even more acute problem when it comes to security and defence matters.

³ Regulation (EC, Euratom) No 1605/2002, as amended by Regulation (EC, Euratom) No 1081/2010

⁴ Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Romania, Spain, Sweden and the United Kingdom. Poland is finalising the ratification process to become ESA's 20th Member State.

2.4. Absence of mechanisms for policy coordination

ESA's space activities lack a structural connection and coordination mechanism within the wider policy-making of the European Union. The 2004 EU/ESA Framework Agreement⁵, in spite of its wide scope, does not provide for them. Specific mechanisms for coordination and cooperation need to be agreed in time-consuming negotiations at programme level. There is no formal mechanism at policy level to ensure that initiatives taken within ESA are consistent with EU policies. This is of particular concern regarding international relations.

2.5. Missing political accountability for ESA

Finally, the relations between the EU and ESA are affected by the asymmetry regarding political accountability. The fact that ESA as a European agency has no formal link with the European Parliament deprives ESA of the direct link with citizens that any EU policy enjoys.

3. THE WAY AHEAD

The EU can provide political dimension (including at the international level) and legitimacy, as well as links with other policy areas. 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 Commission, working closely with ESA could present to Member States several possible options for such rapprochement before the end of 2013. These options would include: improved cooperation under the “status quo”, bringing ESA as an intergovernmental organisation under the authority of the European Union (following, to a certain extent, the model of the European Defence Agency), or transforming ESA into an EU agency (following the model of existing regulatory agencies). The Commission, working closely with ESA, will carry out a detailed cost benefit and risk analysis of the different options, with a view to maximising synergies between the different actors including the GSA.

These options would preserve the current essential features of ESA (i.e. optional programmes subscribed by Member States) while giving ESA key EU features – such as qualified majority decision-making or accountability vis-à-vis the European Parliament.

In the meantime, it is possible to ensure a well-functioning cohabitation between EU and ESA that can help achieving the long-term objective of rapprochement. The delegation agreements concluded between the EU and ESA have already contributed to a rapprochement of ESA towards the EU, the leading example being ESA's Navigation Directorate in the framework of Galileo.

In its April 2011 Communication⁶ the Commission suggested that ESA should continue to develop into an organisation with an intergovernmental and an EU dimension in which military and civil programmes can coexist. It should continue to develop management structures geared solely towards EU programmes. A flexible membership structure should

⁵ OJ L no 261 of 6.08.2004, p. 64.

⁶ COM(2011)152

also be established in order to enable Switzerland and Norway to take part in some programmes, subject to an agreement with the EU.

Building on those initial ideas, the Commission suggests that the EU could:

- Work through the Council of the EU, using as appropriate the open method of coordination to ensure coherence within the EU and consistency of EU Member States' positions in ESA with EU policies;
- Have systematic recourse to ESA for the design and development of EU space infrastructures, whereas exploitation activities will be carried out by other entities, such as the GSA.;
- Ensure a homogeneous approach in line with the EU Financial Regulation for delegating responsibilities over EU space programmes to ESA as a way to prepare ESA to working within the EU environment, and for establishing partnerships with Member States when appropriate.

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);
- Make the necessary changes allowing unrestricted access to the European Commission to ESA's relevant statutory bodies (e.g. ESA Council and its subordinate bodies) in order to give the Commission the possibility to provide input and ensure coordination with EU policies using existing mechanisms within ESA.

4. CONCLUSION

The Commission invites the Council and the European Parliament to provide feedback on these suggestions concerning the relationship between the EU and ESA, the long term goal of rapprochement of ESA towards the EU framework. On this basis the Commission could provide a detailed cost benefits analysis of the possible options.