

COMMISSION OF THE EUROPEAN COMMUNITIES

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2009/0124 (ACC)

Proposal for a

COUNCIL DECISION

on the signing of the Cooperation Agreement on a Satellite Navigation between the European Community and its Member States and the Kingdom of Norway

A) EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

Technological, geographical and financial reasons have ensured Norway an important role in the European GNSS. Norway provides critical technology to Galileo and is the host for two important ground installations on Svalbard and Antarctica that contribute to the proper functioning of the system. This Agreement aims to settle the principles of cooperation in general and the rights and obligations of Norway mainly in relevant areas, such as security, that are not covered by existing Galileo acquis. The Agreement has been negotiated on the basis of negotiation directives adopted by the Council on 8 July 2005. The Agreement was initialled on 17 July 2009.

The Agreement will be complemented by a proposed EEA Joint Committee Decision (Doc No 25100, Case No. 25099) amending Protocols 31 and 37 to the EEA Agreement by which Norway subscribes to 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, Regulation (EC) No 1942/2006 of 12 December 2006 amending Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio-navigation programmes and 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). Articles 4 §5 and 6§4 of this Regulation open up the possibility for third countries to provide additional funding to the European GNSS programmes in accordance with conditions to be laid down in Agreements pursuant to Article 300 of the Treaty.

The Agreement is limited to topics that are necessary to allow close cooperation with Norway. The construction and management of Galileo and EGNOS as EC-wide programs highlight the need for common approaches and working methods between all the EU member states and some non-EU states (Norway and Switzerland). The rules for these topics need to be set by the governments and coherently enforced Europe-wide. The Commission as program manager acting on behalf of the Community, the owner of the system, needs to take all reasonable measures to induce this coherence. Failing to do this would increase security risks and the exposure of the EC and its Member States for liability claims in case of serious incidents.

1.2. General context

Norway is our closest non-EU cooperation partner in Galileo since the early days of the programme. Norway has contributed politically, technically and financially to all phases of Galileo through its membership in the European Space Agency and its informal participation in the Galileo-specific EC governance structures over the years. This Agreement and a parallel, related decision through the EEA Joint Committee will formalise and deepen this close integration of Norway in European GNSS Programs. Without this agreement, the participation of Norway would continue within the limits of the EEA agreement. This would cause uncertainty about the nature of the collaboration in the sectors of security, standardisation, certification and radio

spectrum. Moreover, the Agreement allows the EC on the one hand to set overall principles including a conditionality clause for cooperation in security. On the other hand the Agreement includes a political commitment from Norway to subscribe to future EC policy aimed to protect European GNSS.

1.3. Existing provisions in the area of the proposal

Cooperation of Norway in Galileo will be organised in two complementary instruments: an EEA Joint Committee decision to cover Galileo acquis and the enclosed mixed agreement to provide an umbrella for the cooperation including principles of future cooperation and complementary provisions concerning cooperation in security, standardisation and certification.

1.4. Consistency with the other policies and objectives of the Union

The proposal is in line with the policy of the EC of integrating Norway in Community programmes through the EEA Agreement. Moreover, it supports the objectives of the Commission in reinforcing the Community aspect of cooperation in policies relevant to non-proliferation.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

The Special Committee of the Council, security authorities of the Member States and Norway have been consulted through the Galileo Security Board Working Group 2 and through bilateral meetings with Norwegian authorities both at the stage of negotiation directives and during negotiations. The respondents included technical, security and transport experts of EU MS and Norwegian National Security Authorities, Ministries of Foreign Affairs, Defence and Interior, European Space Agency and national space agencies.

Summary of responses and how they have been taken into account

These stakeholders have supported the close integration of Norway in cooperation in Galileo relevant security matters and underlined the importance of including issues such as security of ground facilities in the Agreement.

2.2. Collection and use of expertise

Scientific/expertise domains concerned

Space technology/ ground facilities, Security/ Industrial and governmental security, information security and international law/ privileges and immunities

Methodology used

Meetings mainly

Main organisations/experts consulted

EU MS ministries and space agencies, EEA Secretariat, ESA, space industry

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

There was a broad consensus over the principles of cooperation foreseen in the Agreement and the objective of closely integrating Norway in the programme including rights and corresponding obligations. The security profile of Norway gave confidence to the experts.

Means used to make the expert advice publicly available

The conclusions of security experts have not been made publicly available.

2.3. Impact assessment

The action aims at ensuring a close involvement of Norway in the construction and operations phases of Galileo and EGNOS. These two initiatives contain significant industrial, economic and strategic components. The governance of the European GNSS Programmes has been reformed in Regulation (EC) No 683/2008 whereby the focus has been shifted from a Public-Private-Partnership to programmes managed and systems owned by the Community. This evolution and the content of the cooperation with security implications require formal regulatory measures. Consequently, three options were considered to achieve this goal:

The first one was an association of Norway to the programme through a specific international cooperation body (Galileo International Board) grouping all third countries interested in Galileo. After long discussions over this body with Norway and other third countries, the option was abandoned. Norway felt it was unjust to treat it the same way as considerably less integrated non-European third countries that have not contributed financially to the programme.

The second option was to use the EEA framework as the only instrument to formalise the cooperation. This was closely studied including the possibilities in legal terms to cover all the scope of cooperation desired. At the end it was concluded that the EEA was the best option for incorporating existing EC acquis concerning Galileo. This includes committees, decision shaping without voting rights, ownership rules, procurement, financial contributions etc. However, EEA was considered insufficient in certain sectors such as security, spectrum and standardisation. Also, from the EC point of view, it was not practical to introduce principles and conditionality provisions that are not present in Galileo acquis.

The third option was a combination of the EEA Joint Committee decision and the enclosed mixed agreement. This combination allowed practically differentiating between Norway and Iceland (members of the EEA), to introduce additional commitments/obligations for Norway, to reinforce provisions on security and to provide principles and messages paving way for a mutually beneficial long term cooperative relationship.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The Commission proposes to the Council to authorise the signature and provisional application of a Cooperation agreement on satellite navigation between EC its Member States and the Kingdom of Norway. Provisional application is a necessary measure to speed up the application of the Agreement due to the provisions concerning in particular the security of Galileo ground facilities on Norwegian territories.

3.2. Legal basis

Articles 133 and 170, in conjunction with the first sentence of the first subparagraph of Article 300(2) of the Treaty establishing the European community.

3.3. Subsidiarity principle

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

Galileo, whose costs are estimated at several billions of Euro, is a European initiative that no single state alone is willing to finance. The content of the proposed Agreement cannot be limited to any single Member State or a group of Member States but affects the EU as a whole and in some aspects (e.g. ground station services) has even a worldwide impact.

The industrial and technical (including security) knowledge in the space sector is spread over several European countries including Norway with no one state capable of mastering all of it. Without a coordinated effort and information sharing, the risks of agreeing on sub-optimal solutions with Norway would increase. Errors in the area of security could compromise the security of supply of export controlled components to the European GNSS in particular from the United States. This would drive up the costs of the programmes.

Community action will better achieve the objectives of the proposal for the following reason(s).

The infrastructure of European GNSS is being deployed over the whole world and its security will largely depend on the enforcement of coherent protection measures by all Member States and non-EU states hosting this critical infrastructure.

The size and complexity of the European GNSS require centralised and simple management structures and clear interfaces between the EU side and third countries. A large network of bilateral relations with Norway would bear a high risk of inefficiencies, delays and contradictions which in an industrial project quickly translate into higher costs to be born by the Community budget. Also, Member States acting individually might have smaller chances to impose principles and conditionality towards Norway than what is achieved through cooperation.

The Agreement is limited to the common principles and commitments of cooperation and to the specific issues covering ground infrastructure forming a part of the EC owned GNSS. The agreement relies on existing capabilities of the Member States (e.g. in export control, exchange of sensitive information) in the implementation of most

provisions of the Agreement.

The proposal therefore complies with the subsidiarity principle.

3.4. Proportionality principle

The proposal complies with the proportionality principle for the following reasons.

The Agreement sets the objectives and principles but includes a clause referring to the definition of details of actions in separate arrangements that will be defined in cooperation with Member State experts and Norway.

The Agreement is a traditional well-known instrument in international relations defined in collaboration with existing expert working groups and to be approved by the existing decision-making structures. It does not establish new administrative structures.

3.5. Choice of instruments

An international agreement is the sole instrument which ensures EU-wide coherency in relations with Norway in satellite navigation. Uniformity in application is particularly important in security which forms a major part of the Agreement. At the same time the Agreement allows flexibility as to the implementing measures in particular in the area of standardisation and certification where the Member States are key actors in the international organisations. The Treaty does not provide other viable options for regulating the relationships with a third country.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

The proposal includes a review clause.

B) PROPOSAL

The Commission proposes to the Council, on the basis of (Articles 133 and 170), in conjunction with the first sentence of the first subparagraph of Article 300(2) of the Treaty establishing the European community, to authorise the signature and the provisional application of the Cooperation Agreement on Satellite Navigation between the European Community and its Member States and the Kingdom of Norway.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 133 and 170, in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission[1],

Whereas:

(1) The Commission has negotiated an Agreement with the Kingdom of Norway

(2) The Agreement has been initialled on 17 July 2009,

(3) Pursuant to Article 12(3) thereof, the Agreement should be provisionally applied by the Parties pending its entry into force.

(4) The Agreement should be signed on behalf of the Community and accompanied by a Decision on provisional application,

HAS ADOPTED THIS DECISION:

Article 1

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the European Community, the Cooperation Agreement on Satellite Navigation between the European Community and its Member States, and the Kingdom of Norway.

The text of the Agreement is attached to this Decision

Article 2

The Agreement shall be applied on a provisional basis pending its entry into force. The provisional application begins on the first day of the first month following the date on which the Parties have notified each other of the completion of the necessary procedures for this specific purpose. This date will be published in the Official Journal of the European Union.

This Decision is addressed to the Member States.

[1] OJ C , , p. .

Done at Brussels,

For the Council
The President

ANNEX

COOPERATION AGREEMENT
ON SATELLITE NAVIGATION BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES AND THE KINGDOM OF NORWAY

THE EUROPEAN COMMUNITY hereinafter referred to as the "Community",

and

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting parties to the Treaty establishing the European Community, hereinafter referred to as "Member States", of the one part,

and

THE KINGDOM OF NORWAY, hereinafter referred to as “Norway”, of the other part,

hereinafter jointly referred to as "the Parties"

RECOGNISING Norway’s close participation in the Galileo and EGNOS programmes since the definition phases of the programmes,

CONSCIOUS of the evolution in the governance, ownership and financing of the European GNSS programs by virtue 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, its amendments and 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),

CONSIDERING the benefits of an equivalent level of protection of European GNSS and their services in the territories of the Parties,

RECOGNISING Norway’s intention to timely adopt and enforce within its jurisdiction measures providing an equivalent degree of security and safety as those applicable in the European Union,

RECOGNISING the obligations of the Parties under international law,

RECOGNISING Norway's interest in all Galileo services, including PRS,

RECOGNISING the Agreement between Norway and the European Union on security procedures for the exchange of classified information,

DESIRING to formally establish close collaboration in all aspects of European GNSS Programmes,

CONSIDERING the Agreement on the European Economic Area as an appropriate legal and institutional basis to develop cooperation between the European Community and Norway in satellite navigation,

DESIRING TO complement the provisions of the EEA through a bilateral agreement on satellite navigation in matters of specific relevance to Norway, the Community and its Member States

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Objective of the agreement

The main objective of the agreement is to further strengthen the cooperation between the Parties by complementing the provisions of the Agreement on the European Economic Area applicable to satellite navigation.

ARTICLE 2

Definitions

For the purposes of this Agreement:

“European Global navigation satellite systems (GNSS)" include the GALILEO system and the European Geostationary Navigation Overlay System (EGNOS).

"Augmentation" means regional mechanisms such as the European Geostationary Navigation Overlay System (EGNOS). These mechanisms enable users of GNSS to obtain enhanced

performance, such as increased accuracy, availability, integrity, and reliability.

"GALILEO" means an autonomous civil European global satellite navigation and timing system under civil control, for the provision of GNSS services designed and developed by the Community and its Member States. The operation of GALILEO may be transferred to a private party.

GALILEO envisages open, commercial, safety of life and search and rescue services in addition to a secured public regulated service (PRS) with restricted access to meet the needs of authorised public sector users.

"Regulatory measure" means any law, regulation, policy, rule, procedure, decision, or similar administrative action by a Party.

"Classified information" means information, in any form, that requires protection against unauthorised disclosure, which could harm in various degrees the essential interests, including national security, of the Parties or of individual Member States. Its classification is indicated by a classification marking. Such information is classified by the Parties in accordance with applicable laws and regulations and must be protected against any loss of confidentiality, integrity and availability.

ARTICLE 3

Principles of the cooperation

(1) The Parties agree to apply the following principles to cooperation activities covered by this agreement:

(a) The EEA agreement shall be the basis for cooperation in satellite navigation between the Parties.

(b) Freedom to provide satellite navigation services in the territories of the Parties.

(c) Freedom to use all the Galileo and EGNOS services, including PRS, subject to fulfilling the conditions governing their use.

(d) Close cooperation in GNSS security matters through the adoption and enforcement of equivalent GNSS security measures in the EU and in Norway.

(e) Due respect of the international obligations of the Parties in respect of ground facilities of European GNSS.

(2) This Agreement shall not affect the institutional structure established by European Community law for the purpose of the operations of the GALILEO programme. Nor does this Agreement affect the applicable regulatory measures implementing non-proliferation commitments and export control, controls of intangible transfers of technology, or national security measures.

ARTICLE 4

Radio spectrum

(1) The Parties agree to cooperate on radio-spectrum issues concerning European satellite navigation systems in the International Telecommunication Union, taking account of the "Memorandum of Understanding on the Management of ITU filings of the Galileo radio-navigation satellite service system" signed on 5 November 2004.

(2) In this context the Parties shall protect adequate frequency allocations for European satellite navigation systems in order to ensure the availability of the services of these systems for the benefit of users.

(3) Moreover, the Parties recognise the importance of protecting radio navigation spectrum from disruption and interference. To this end they shall identify sources of interference and seek mutually acceptable solutions to combat such interference.

(4) Nothing in this Agreement shall be construed so as to derogate from the applicable provisions of the International Telecommunications Union, including the ITU Radio Regulations.

ARTICLE 5

Ground facilities of European GNSS

(1) Norway shall take all practicable measures to facilitate the deployment, maintenance and replacement of ground facilities of European GNSS ("ground facilities") in the territories under its jurisdiction.

(2) Norway shall take all practicable measures to ensure the protection and the continuous and undisturbed operation of ground facilities in its territories, including, where appropriate, by mobilising its law enforcement authorities. Norway shall take all means practicable to maintain the facilities free from local radio interference, hacking and eavesdropping attempts.

(3) The contractual relationships regarding the ground facilities will be agreed upon between the EC and the holder of the property rights. The Norwegian authorities will fully respect the special status of the ground facilities and seek prior agreement with the EC, whenever possible, before any action concerning ground facilities are taken.

(4) Norway shall allow continuous and unhindered access to the ground facilities to all persons designated or otherwise authorized by the European Community. For this purpose, Norway shall establish a contact point that shall receive information on persons travelling to the ground facilities and otherwise facilitate the movements and operations of such persons in practice.

(5) The archives and equipment of the ground facilities and documents in transit, whatever their form, under official seal or marking shall not be subject to inspections by customs or police.

(6) In the case of a threat or compromise against the security of ground facilities or its operations, Norway and the European Commission shall without delay inform each other of the event and steps to remedy the situation. The European Commission may designate another trusted entity to act as the contact point with Norway for such information.

(7) The Parties will establish more detailed procedures concerning the issues in paragraphs 1 to 6 above in a separate arrangement. Such procedures should cover inter alia clarifications concerning inspections, duties of the contact points, requirements for couriers and on measures against local radio frequency interference and hostile attempts.

ARTICLE 6

Security

(1) The Parties are convinced of the need to protect Global Navigation Satellite Systems against threats such as misuse, interference, disruption and hostile acts. Consequently, the Parties shall take all practicable steps; including where appropriate separate agreements, to ensure the continuity, safety and security of the satellite navigation services and the related infrastructure and critical assets in their territories.
The European Commission intends to develop measures to protect, control and manage sensitive assets, information and technologies of the European GNSS Programmes against such threats and undesired proliferation.

(2) In this context Norway confirms its intention to timely adopt and enforce within its jurisdiction measures providing an equivalent degree of security and safety as those applicable in the European Union.
In recognition of this, the Parties will address GNSS security issues including accreditation in the relevant committees of the governance structure of European GNSS. The practical arrangements and procedures are to be defined in the rules of procedures of the relevant committees taking also into account the framework of the EEA Agreement.

(3) Should an event occur where such an equivalent degree of security and safety cannot be achieved the Parties shall hold consultations with a view to remedy the situation. Where appropriate, the scope of cooperation in this sector could be adjusted accordingly.

ARTICLE 7

Exchanges of classified information

(1) Exchange and protection of EU classified information shall be in accordance with the "Agreement between Norway and the European Union on Security Procedures for the Exchange of Classified Information" (hereinafter Security Agreement) as well as the Implementing Arrangements of the Security Agreement.

(2) Norway may exchange classified information with national classification marking on Galileo with those Member States of the EU with which it has concluded bilateral agreements to that effect.

(3) The Parties shall seek to establish a comprehensive and coherent legal framework allowing exchanges between all the Parties to this Agreement of classified information concerning the Galileo programme.

ARTICLE 8

Export control

(1) In order to ensure the application of a uniform policy of export controls and non-proliferation concerning Galileo between the Parties, Norway confirms its intention to timely adopt and enforce within its jurisdiction measures providing an equivalent degree of export control and non proliferation of Galileo technologies data and items as those applicable in the Community and its Member States.

(2) Should an event occur where such an equivalent degree of export control and non proliferation cannot be achieved the Parties shall hold consultations with a view to remedy the situation. Where appropriate, the scope of cooperation in this sector could be adjusted accordingly.

ARTICLE 9

Public Regulated Service

Norway has expressed its interest in the Galileo Public Regulated Service considering it an important element of its participation in the European GNSS Programs. The Parties agree to address this issue once the policies and operational arrangements governing access to the PRS have been defined.

ARTICLE 10

International Cooperation

(1) The Parties recognise the value of coordinating approaches in international standardisation and certification fora concerning global satellite navigation services. In particular, the Parties will jointly support the development of GALILEO standards and promote their application worldwide, emphasising interoperability with other GNSS .

(2) Consequently, to promote and implement the objectives of this Agreement, the Parties shall, as appropriate, cooperate on all GNSS matters that arise notably in the International Civil Aviation Organisation, the International Maritime Organisation and the International Telecommunications Union.

ARTICLE 11

Consultation and dispute resolution

The Parties shall promptly consult, at the request of any of them, on any question arising out of the interpretation or application of this Agreement. Any disputes concerning the interpretation or application of this agreement shall be settled by consultations between the Parties.

ARTICLE 12

Entry into force and termination

(1) This Agreement shall enter into force the first day of the month following that in which the Parties have notified the completion of the procedures necessary for this purpose. Notifications shall be sent to the Council of the European Union who shall be the depository of this agreement.

(2) The expiration or termination of this agreement shall not affect the validity or duration of any arrangements made under it or any specific rights and obligations that have accrued in the field of intellectual property rights.

(3) This Agreement may be amended by mutual agreement of the parties in writing. Any amendment shall enter into force on the date after the last diplomatic note informing the other Party that their respective internal procedures necessary for its entry into force have been completed.

(4) Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.

(5) Either Party may, by giving six months notice to the other in writing, terminate this Agreement.

This Agreement is drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese,

Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish, Swedish and Norwegian languages, all texts being equally authentic.