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Subject: Proposal for a Decision of the European Parliament and the Council,
Establishing a **Space Surveillance and Tracking Support Programme**

With a view to the SPACE Working Party on 18 April 2013, delegations will find attached a draft Presidency compromise proposal on the Proposal for a Decision of the European Parliament and the Council, Establishing a Space Surveillance and Tracking Support Programme.

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**Establishing a space surveillance and tracking support programme**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 189(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In its Communication entitled "Towards a space strategy for the European Union that benefits its citizens"³ the Commission underlined that the shared competence in the field of space conferred upon the Union by the Treaty on the Functioning of the European Union (TFEU) goes hand in hand with a reinforced partnership with the Member States. The Commission also emphasised that all new actions must be based on existing resources and on identifying jointly where new resources are needed.
- (2) In its Resolution of 26 September 2008, 'Taking forward the European space policy'⁴, the Council recalls that space assets have become indispensable for our economy and that their security must be ensured. It underlined the 'need for Europe [...] to develop a capability for the monitoring and surveillance of its space infrastructure and space debris, initially based on existing national and European assets, taking benefit of relationships which may be established with other partner nations and their capabilities'.

¹ OJ C , , p. .

² OJ C , , p. .

³ COM (2011) 152 of 4 April 2011.

⁴ CS 13569/08, 29.09.2008.

- (3) In its Resolution 'Global challenges: taking full benefit of European space systems'⁵ of 25 November 2010, the Council recognises the need for a future space situational awareness (hereinafter referred to as 'SSA') capability as an activity at European level to develop and exploit existing national and European civil and military assets, and invites the European Commission and the Council to propose a governance scheme and data policy that will allow Member States to contribute with their relevant national capabilities in accordance with applicable security requirements and regulations. It further invites 'all European institutional actors to explore appropriate measures' which would build on defined civil and military user requirements, make use of relevant assets in accordance with applicable security requirements, and take into account the early developments from the SSA preparatory programme of the European Space Agency (ESA).
- (4) The Council conclusions of 31 May 2011 on the Communication of the Commission 'Towards a space strategy for the European Union that benefits its citizens'⁶ and the Council resolution of 6 December 2011 'Orientations concerning added value and benefits of space for the security of European citizens'⁷ reiterated the 'need for an effective SSA capability at European level', and called on the Union to make 'the widest possible use of assets, competences and skills that are already existing or being developed in Member States, at European level and as appropriate, international level'. Recognising the dual use nature of such a system and taking account its particular security dimension, the Council called on the Commission 'in close cooperation with the High Representative [of the Union for Foreign Affairs and Security Policy], in close cooperation with ESA and Member States, which own such assets and have capacities, and in consultation with all actors involved, to come forward with proposals to fully exploit and build on these assets and capacities in order to develop a SSA capability as an activity at European level, and in that context, to define an appropriate governance and data policy taking care of the high sensitivity of SSA data'.

⁵ CS 16864/10, 26.11.2010.

⁶ CS 10901/11, 31.05.2011.

⁷ OJ C 377, 23.12.2011, p. 1.

- (5) Space debris has become the most serious threat to the sustainability of space activities. A space surveillance and tracking (hereinafter referred to as 'SST') support programme should therefore be established with the aim to support the setting up and operation of services consisting of monitoring and surveying space objects with a view to preventing damage to spacecraft resulting from collisions, as well as to prevent damage to ground infrastructure or human population as a result of uncontrolled re-entries of entire spacecraft or space debris thereof into the Earth's atmosphere.
- (6) The provision of SST services will benefit all public and private operators of space-based infrastructures, including the Union in view of its responsibilities for its EU space programmes – European Geostationary Navigation Overlay Service (EGNOS) and Galileo being implemented by 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)⁸ and Copernicus/GMES established by Regulation (EU) No 911/2010 Of the European Parliament and of the Council of 22 September 2010 on the European Earth monitoring programme (GMES) and its initial operations (2011 to 2013)⁹. Re-entry warnings will also benefit national public authorities concerned with civil protection.
- (7) The SST services should be complementary to research activities related to the protection of space-based infrastructure carried out under the Horizon 2020 programme established by [reference to Horizon 2020 Regulation to be added once adopted], as well as to the European Space Agency's activities in this domain.

⁸ OJ L 196, 27.4.2008, p.1.

⁹ OJ L 276, 20.10.2010, p. 1.

- (8) The SST support programme should also be complementary to existing mitigation measures such as the United Nations (UN) guidelines for space debris mitigation or other initiatives, such as the Union proposal for an international Code of Conduct on outer space activities.
- (9) Civil-military SSA user requirements were defined in the Commission staff working paper 'European space situational awareness high-level civil-military user requirements'¹⁰ endorsed by the Member States in the Political and Security Committee of the Council on 18 November 2011¹¹. The provision of SST services should serve only civilian purposes. Purely military requirements should not be addressed by this Decision.
- (10) The operation of SST services should be based on a partnership between the Union and the Member States and use existing as well as future national expertise and assets, such as mathematical analysis and modelling know-how, ground-based radars or telescopes made available by participating Member States. The Member States retain ownership and control over their assets and remain responsible for their operations, maintenance and renewal.
- (11) The European Union Satellite Centre (EUSC), an agency of the Union established by Council Joint Action of 20 July 2001 on the establishment of a European Union Satellite Centre (2001/555/CFSP)¹² which provides geospatial imagery information services and products with various levels of classification to civil and military users, could be responsible for the operation and provision of SST services. Its expertise in handling confidential information in a secure environment and its tight institutional links with the Member States is an asset facilitating the provision of SST services. A pre-condition for the EUSC participation in the SST support programme is the amendment of the Council Joint Action which does currently not provide for EUSC action in the field of SST.

¹⁰ SEC(2011) 1247 final, 12.10.2011.

¹¹ Council document 15715/11, 24.10.2011.

¹² OJ L 200, 25.7.2001, p.5.

- (12) Precise information on the nature, specifications and location of certain space objects may affect the security of the European Union or its Member States. Adequate security considerations should therefore be taken into account in the establishment and operation of the network of SST sensors, the capacity to process and analyse SST data and the provision of SST services. It is therefore necessary to lay down general provisions on the use and secure exchange of SST data and information between the Member States, the EUSC and the recipients of SST services in this Decision. Furthermore, the European Commission and the European External Action Service should define the coordination mechanisms needed to address matters related to the security of the SST support programme.
- (13) Participating Member States and the EUSC should be responsible for the negotiation and implementation of the provisions on the use and secure exchange of SST data and information. The provisions on the use and exchange of SST data and information set out in this Decision and in the agreement between the participating Member States and the EUSC should take into account the recommendations on SST data security endorsed by the Security Committee of the Council.¹³
- (14) The Security Committee of the Council recommended the creation of a risk management structure to ensure that data security issues are duly taken into account in the implementation of the SST support programme. For that purpose, the appropriate risk management structures and procedures should be established by the participating Member States and the EUSC.
- (15) The SST support programme should be financed by the Union in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union¹⁴. Union funding for the SST support programme should be drawn from relevant programmes provided for in the multiannual financial framework for 2014-2020.

¹³ Council document 14698/12, 09.10.2012

¹⁴ OJ L 298, 26.10.2012, p. 1.

- (16) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, penalties.
- (17) In order to ensure uniform conditions for the implementation of this Decision as regards the adoption of a multiannual work programme and the compliance by Member States with the criteria for their participation in the SST support programme, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹⁵.
- (18) Since the objectives of this Decision, namely to support actions aimed at the establishment and operation of the network of sensors, the establishment of the capacity to process and analyse SST data, and the establishment and operation of SST services, cannot be sufficiently achieved by the Member States because they exceed the financial and technical capacities of Member States acting alone, and therefore, by reason of the scale of the Decision, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union.

¹⁵ OJ L 55, 28.2.2011, p. 13.

HAVE ADOPTED THIS DECISION:

Article 1

Establishment of the programme

A space surveillance and tracking (hereinafter referred to as 'SST') support programme is established for the period from 1 January 2014 to 31 December 2020.

Article 2

Definitions

For the purposes of this Decision, the following definitions apply:

- (1) 'Space object' means any man-made or natural object in outer space.
- (2) 'Spacecraft' means any man-made space object serving a specific purpose, including artificial satellites;
- (3) 'Space debris' means spacecraft or parts thereof that no longer serve any specific purpose including parts of rockets or artificial satellites, or inactive artificial satellites;
- (4) 'SST sensor' means a device or a combination of devices, such as ground- or space-based radars and telescopes, that is able to measure physical parameters related to space objects, such as size, location and speed;
- (5) 'SST data' means physical parameters of space objects acquired by SST sensors.
- (6) 'SST information' is processed SST data which is readily meaningful to the recipient.

Article 3

Objectives of the SST support programme

The objectives of the SST Support Programme shall be to support actions aimed at establishing a SST capability at European level and, in particular:

- (a) the establishment and operation of a sensor function consisting of a network of ground-based and/or space-based existing national sensors to survey and track space objects;
- (b) the establishment and operation of a processing function to process and analyse the SST data captured by the sensors, including the capacity to detect and identify space objects and to build and maintain a catalogue thereof;
- (c) the setting up and operation of a service function to provide SST services to spacecraft operators and public authorities the bodies referred to in Article 4(2).

Article 4

SST services

1. The SST services referred to in point (c) of Article 3 shall comprise of the following:
 - (a) the risk assessment of a collision between spacecraft or between spacecraft and space debris and the generation of collision avoidance alerts during the launch, the early orbit phase and in-orbit operation of spacecrafts;

- (b) the detection and risk assessment of on-orbit explosions or break-ups or collisions;
 - (c) the risk assessment of and alerts related to the re-entry of space objects and space debris into the Earth's atmosphere and the prediction of the time and location of impact.
2. SST services shall be provided to **all** Member States, the Council, the Commission, the EEAS, public and private spacecraft operators, and public authorities concerned with **civil protection**. The SST services shall be provided in compliance with the provisions on the **use and exchange of SST data and information** set out in Article 9.
 3. Participating **Member States, the EUSC, and the Commission shall not be held liable for any damage resulting from the lack or interruption of the provision of SST services**, a delay in the provision thereof or the inaccuracy of the **information** provided through the SST services.

Article 5

Actions to be supported by the programme

1. The SST support programme shall provide **support for the actions** aimed at achieving the objectives set out in Article 3, provided for in the work programme referred to in Article 6(2) and under the specific conditions referred to in Article 7.
2. **The SST Support Programme shall not provide support for the development of new SST sensors.**
3. The Union shall co-finance the actions referred to in paragraph 1, including by means of grants in accordance with Regulation (EU) No XXX/2012.

Article 6

Role of the European Commission

1. The Commission shall:
 - (a) manage the funds to be drawn to the SST support programme and ensure the implementation of the SST support programme;
 - (b) take the measures necessary to identify, control, mitigate and monitor risks associated with the programme;
 - (c) establish, in cooperation with the European External Action Service, the necessary coordination mechanisms to ensure the security of the SST support programme-;
 - (d) ensure the update of SST user requirements as appropriate.

2. The Commission shall adopt implementing acts establishing a multiannual work programme for the SST support programme complementing, as appropriate, the work programmes foreseen under the programmes referred to article 11(1). The work programme shall specify the objectives pursued, the expected results, the actions to be financed, the timetable for the implementation of these actions, the method of implementation, including the practical modalities for the provision of the SST services, the maximum rate of Union co-financing, and the specific conditions applicable to Union grants under the SST support programme. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

Article 7

Participation of Member States

1. Member States wishing to participate in the implementation of the objectives set out in Article 3 shall submit an application to the Commission demonstrating compliance with the following criteria:
 - (a) ownership of **or access to SST sensors available or under development** and adequate technical and human resources to operate them **and/or SST analysis and** data processing capacities;
 - (b) establishment of an **action plan** for the implementation of the objectives set out in Article 3 **including the modalities of cooperation with other Member States.**
2. The Commission shall adopt implementing decisions regarding compliance of the Member States with the criteria set out in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).
3. The Member States which comply with the criteria set out in paragraph 1 shall conclude the agreement referred to in Article 10.
4. The Member States which **comply with the criteria** set out in paragraph 1 and which are parties to the **agreement** referred to in Article 10 **shall be eligible for financial contribution from the SST support programme.** The Commission shall publish and update on its website the list of Member States.

5. **The responsibility for the operation of sensors and the processing of data shall lie with the participating Member States. The assets of participating Member States shall remain fully under national control.**

Article 8

Participation and role of the European Union Satellite Centre

The European Union Satellite Centre (EUSC) shall participate in the implementation of the objective set out in point (c) of Article 3 and shall be eligible for financial contribution from the SST support programme subject to the conclusion of the agreement referred to in Article 10.

¹⁶ **Article 9**

Use and exchange of SST data and information

The use and exchange of SST data and information for the purposes of the implementation of the objectives referred to in Article 3 shall be subject to the following rules:

- (a) **Unauthorised disclosure of data and information shall be prevented** while allowing efficient operations and maximising the use of the generated information;
- (b) SST data security shall be ensured;
- (c) Information generated in the framework of the SST support programme shall be made available **on a need-to-know basis to the recipients of the SST services defined in Article 4(2)**, in accordance with the instructions and security rules of the originator of the information and of the owner of the space object concerned.

¹⁶ UK scrutiny reservation

¹⁷ Article 10

Coordination of operational activities

The Member States which comply with the criteria set out in Article 7(1) and the EUSC shall conclude an agreement laying down the rules and mechanisms for their cooperation in the implementation of the objectives set out in Article 3. In particular, that agreement shall include provisions on the following:

- (a) the use and exchange of SST data and information taking into account the recommendations 'Space Situational Awareness data policy – recommendations on security aspects' endorsed by the Security Committee of the Council¹⁸;
- (b) the establishment of a risk management structure to ensure the implementation of the provisions on the use and secure exchange of SST data and information.

¹⁹ Article 11

Financing of the SST support programme

1. Union funding for the SST support programme shall be drawn from other programmes provided for in the multiannual financial framework for 2014-2020 in full compatibility with their legal base.

The relevant programmes from which funding could be drawn include the programmes established by the following acts:

¹⁷ UK scrutiny reservation
¹⁸ CS 14698/12, 09.10.2012
¹⁹ UK scrutiny reservation.

- (a) Regulation (EU) No [...] of the European Parliament and the Council on the implementation and exploitation of **European satellite navigation systems**²⁰, Articles 1, 3 (c) and (d) and 4;
 - (b) Council Decision No [...] establishing the Specific Programme implementing **Horizon 2020**²¹, Article 2(2)(b) and (c), annex part II, point 1.6.2 (d) and annex part III, point 6.3.4;
 - (c) Regulation (EU) No [...] of the European Parliament and the Council establishing, as part of the **Internal Security Fund**, **the instrument for financial support for police cooperation, preventing and combating crime, and crisis management**²², Article 3(2)(b) and (3)(e).
2. The annual appropriations shall be authorised by the budgetary authority within the limits foreseen for this activity under the programmes from which funding has been drawn.

Article 12

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures to ensure that, when actions financed under this Decision are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and deterrent penalties.

²⁰ COM(2011) 814 final, 31.11.2011. Reference to be updated after adoption.

²¹ COM(2011) 811 final, 30.11.2011. Reference to be updated after adoption.

²² COM(2011) 753 final, 15.11.2011. Reference to be updated after adoption.

2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks, over all beneficiaries, contractors and subcontractors who have received Union funds under the Programme.

The European Anti-fraud Office (OLAF) may carry out on-the-spot checks and inspections on economic operators concerned directly or indirectly by such funding in accordance with the procedures laid down in Council Regulation (Euratom, EC) No 2185/96²³ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the European Union in connection with a grant agreement or grant decision or a contract concerning Union funding.

Without prejudice to the first and second subparagraphs, cooperation agreements with third countries and international organisations and grant agreements, grant decisions and contracts resulting from the implementation of this Decision shall expressly empower the Commission, the Court of Auditors and OLAF to conduct such audits, on-the-spot checks and inspections.

3. The beneficiary of financial support for the actions referred to in Article 3 shall keep available to the Commission, for a period of five years following the last payment in respect of any action, all supporting documents regarding the expenditure on that action.

Article 13

Monitoring and evaluation

1. The Commission shall monitor the implementation of the SST Support Programme.

²³ OJ L 292, 15.11.1996, p. 2.

2. By 1 July 2018, the Commission shall submit an evaluation report on the implementation of the SST Support Programme to the European Parliament and the Council. That report shall include recommendations on the renewal, modification or suspension of the actions supported by the SST Support Programme taking into account the following:
 - (a) achievement of the objectives of the SST Support Programme, from the point of view of both results and impacts of the actions supported by the SST Support Programme;
 - (b) effectiveness of the use of resources.

Article 14

Committee Procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where a reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 15

Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.