



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

**amending the Statutes of the Galileo Joint Undertaking annexed to Council Regulation
(EC) No 876/2002**

(presented by the Commission)

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal aims to amend the Statutes of the Galileo Joint Undertaking in order to provide that the undertaking will cease to operate on 31 December 2006.

General context

1) The Galileo programme

The aim of the Galileo programme is to put in place the first global satellite radio navigation and positioning infrastructure designed for civilian purposes. There are technological, political and economic aspects to the programme.

The programme is divided into the following four successive phases:

a definition phase, which took place from 1999 to 2001, during which the system architecture was developed and the services to be offered were determined;

a development and validation phase which was initially intended to run from 2002 to 2005 and included the development of the system's satellites and components and validation in orbit;

a deployment phase initially intended to cover 2006 and 2007 with the construction and launching of satellites and the full establishment of the earth segment of the infrastructure;

an operating phase initially intended to start in 2008 and including the management of the system and its regular maintenance and upgrading.

2) The Galileo Joint Undertaking

The Galileo Joint Undertaking was set up by Council Regulation (EC) No 876/2002 of 21 May 2002 under Article 171 of the Treaty to carry out the development phase and to prepare for the successive phases of the Galileo programme. Its founding members are the European Community and the European Space Agency. A Chinese State-run company and an Israeli State-run company are also members. The arrangements adopted ensure that the programme has a single, efficient management structure.

The Galileo Joint Undertaking has two main tasks. Firstly, it directs and coordinates the necessary research and development activities. To this end, it has concluded an agreement with the European Space Agency, to which the implementation of these activities has been assigned. It also develops activities relating to the applications and services which Galileo may offer. Secondly, it manages the procedure for selecting the system's future concession holder, which will be responsible for managing the deployment and operating phases, providing the necessary private capital and ensuring the commercial success of operation.

3) The Supervisory Authority

The European Global Navigation Satellite System (GNSS) Supervisory Authority (“Supervisory Authority”) was set up by Council Regulation (EC) No 1321/2004 of 12 July 2004 on structures for the management of the European satellite radio navigation programmes. It has been gradually established since the summer of 2005 and will be fully operational during 2006. Its aim is to ensure the management of the public interests relating to the European satellite radio navigation programmes, Egnos and Galileo, and to act as awarding authority for the future concession holder. It should be noted that the two systems, Egnos and Galileo, will be owned by the Supervisory Authority and that their ownership will remain entirely public: only the management of the deployment and operational phases will be awarded to the concession holder for a period of about twenty years.

4) The lifetime of the Galileo Joint Undertaking as provided for in the current Statutes

The Galileo Joint Undertaking was set up to implement the development phase and its lifetime is based on the duration of that phase, which was initially intended to cover the years 2002 to 2005 inclusive.

The first paragraph of Article 20 of the Statutes of the Joint Undertaking annexed to Council Regulation No 876/2002 provides that “the Joint Undertaking shall be established for a period of four years from the publication of these Statutes in the Official Journal of the European Communities”. As the Statutes were published in the Official Journal on 28 May 2002, the period of four years referred to in the abovementioned text expires at midnight on 28 May 2006.

However, to take account of any extension of the development phase, the second paragraph of Article 20 of the Statutes reads: “According to the progress in achieving the tasks of the Joint Undertaking, as defined in Article 2, that period may be extended by amending these Statutes in accordance with the provisions of Article 23. The period shall, in any event, be extended until such time as the obligations arising from the agreement referred to in Article 3 are met.” Article 3 of the Statutes provides that the Joint Undertaking will conclude an agreement with the European Space Agency under which the Agency is responsible for the “carrying-out of the activities required during the development phase with regard to the space segment and the earth segment associated with the system”.

It therefore follows that the existence of the Galileo Joint Undertaking must be extended until the activities required during the development phase as regards the space segment and the earth segment of the system have been completed, i.e. de facto until the completion of the development phase. The imperative nature of the extension is due to the fact that, as indicated above, the lifetime of the Joint Undertaking is based on the duration of the development phase.

Existing provisions in the area of the proposal

1) The need to amend the Statutes of the Joint Undertaking in order to wind it up before completion of the development phase

As the Galileo programme currently stands, the development phase will not be

completed before the end of 2008. Only at that time will the four satellites to be constructed and launched by the European Space Agency in the framework of the “validation in orbit” phase become operational. The entry into service of these four satellites represents the completion of the space segment of the development phase and for them to become operational requires the earth segment of this phase to be in service as well.

As the Statutes currently stand, the Galileo Joint Undertaking would therefore not normally complete its activities before the end of 2008, a lifetime of three years more than that originally planned.

Such an extension of the Joint Undertaking’s lifetime beyond 2006 would be pointless and costly as the Supervisory Authority will be in a position to gradually take over, during the course of 2006, and complete all the activities currently being carried out by the Joint Undertaking. It would be equivalent to a duplication of structures and costs at a time when it also seems that the programme development phase will be more expensive than initially envisaged.

Before the end of 2006, the Supervisory Authority will have the necessary resources, in particular in terms of staff, to complete the tasks of the Joint Undertaking, namely to complete the development phase and prepare for the programme phases which follow. In order to enable the Supervisory Authority to take over the activities of the Joint Undertaking in an optimum manner, it would be desirable for the two structures to co-exist for a few months and for the Supervisory Authority to be closely associated with the activities of the Joint Undertaking during this period. The latter has experience and knowledge which it is essential to pass on to the Supervisory Authority, in particular as regards the process of negotiating the concession contract, which must be continued and completed by the Joint Undertaking in 2006. It is therefore reasonable to provide for the Joint Undertaking to cease operating on 31 December 2006 and then to be wound up.

Consequently, the Statutes of the Galileo Joint Undertaking should be amended to provide that the undertaking will cease to operate on 31 December 2006. The amendment consists of revoking the abovementioned provisions of Article 20 of the Statutes of the Joint Undertaking and replacing them by a new Article 20 to read: “The Joint Undertaking shall be established for a period starting on 28 May 2002 and ending on 31 December 2006”.

Continuing the activities of the Joint Undertaking until 31 December 2006 has no financial implications for the Community budget for 2006. Financing the activities of the Joint Undertaking for the whole year is already provided for in the approved Community budget.

2) The need to amend the Statutes of the Joint Undertaking to correct the erroneous use of the word “capital”

Articles 1 and 8 of the Statutes of the Galileo Joint Undertaking contain the word “capital” five times and once, respectively, to designate the funds made available to the Joint Undertaking by its members. This term is incorrect in that it does not reflect the real economic nature of the sums in question. Assets brought in by members to the Joint Undertaking are not recoverable and are not returned since, when the Joint

Undertaking is wound up, its tangible and intangible assets will be transferred free of charge to the Supervisory Authority pursuant to the first paragraph of Article 3 of Council Regulation No 1321/2004. These assets are in fact financial contributions or contributions in kind to a research programme since the Joint Undertaking is required to spend all sums placed at its disposal and furthermore has no profit-making objective.

Therefore, in order to remove any ambiguity regarding the nature of the funds made available to the Joint Undertaking, it is necessary, before it is wound up, to correct the Statutes and, where it is used in the text, to replace the word “capital” by “contribution” or “funds”.

3) The need to amend the Statutes of the Joint Undertaking to enable it to finance additional costs during the development phase

The second subparagraph of Article 1(4) of the Statutes of the Galileo Joint Undertaking specifies that the financial contributions from the founding members of the Joint Undertaking are, respectively, €520 million for the European Community and €50 million for the European Space Agency. These figures are obtained from the initial estimate of the cost of the development phase of the programme, namely €1.1 billion.

It is now certain that the actual cost of the development phase will be about €400 million more than the initially estimated cost of €1.1 billion. Therefore, in order to enable the Joint Undertaking to finance some of these additional costs before it is wound up on 31 December 2006, it is necessary to amend the Statutes of the Joint Undertaking by adding the following sentence at the end of the second subparagraph in question: “They (the founding members) may, as necessary, make additional contributions to finance the development phase”.

4) The procedure for amending the Statutes of the Joint Undertaking

The procedure for amending the Statutes of the Galileo Joint Undertaking derives from the provisions of Article 23 of the Statutes of the Joint Undertaking, which read as follows: “Any member of the Joint Undertaking may submit proposals for the amendment of these Statutes to the Administrative Board. If the Administrative Board agrees to such proposals by a majority of 75% of the votes, the Commission shall make a proposal to the Council for their approval in accordance with the procedure provided for in the first subparagraph of Article 172 of the Treaty establishing the European Community.” The first subparagraph of Article 172 of the Treaty is worded as follows: “The Council, acting by qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 171.”

As Article 171 of the Treaty provides for the creation of joint undertakings by the Community, it follows that the procedure for amending the Statutes of the Joint Undertaking is – after the Commission has presented a proposal to amend the Statutes – the same as the procedure for creating the Joint Undertaking. It requires the adoption of a Council regulation.

However, the Commission can only present a proposal for a regulation amending the Statutes of the Joint Undertaking if the administrative board of the Joint Undertaking has already agreed to the amendments in question by a majority of 75% of the votes. In

this particular case, the Commission, representing the European Community, founding member of the Joint Undertaking, submitted the draft amendments in question to the administrative board of the Joint Undertaking, and the item was put on the agenda of the administrative board's meeting of 2 June 2006. In accordance with the provisions of the third subparagraph of Article 3 of Council Regulation No 876/2002, the Commission had previously submitted this same item to the supervisory board of the Joint Undertaking. During its meeting of 13 March 2006, the supervisory board agreed to the proposed amendments. Then, on 2 June 2006, the administrative board of the Joint Undertaking agreed to the same amendments by the required majority. It follows that the Commission is now entitled to propose that the Council adopt the relevant amendments to the Statutes.

Consistency with the other EU policies and objectives

Not applicable.

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of stakeholders

Not applicable.

Collection and use of expertise

No recourse to external expertise was necessary.

Impact assessment

There is no solution other than to amend the regulation in order to achieve the desired result.

The impact of the Joint Undertaking ceasing to operate is low insofar as its activities will be taken over by the European GNSS Supervisory Authority.

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed measures

It is appropriate to wind up the Galileo Joint Undertaking on 31 December 2006. In order to do this, it is necessary to amend the Statutes of the Joint Undertaking. It is also necessary to amend the Statutes of the Joint Undertaking in order to correct the erroneous use, in the Statutes, of the word "capital", and to enable the Joint Undertaking to finance additional costs during the development phase. The procedure for amending the Statutes includes preceding stages which have been followed in the case in question; it concludes with the adoption of a Council regulation.

Legal basis

The legal basis has been indicated above.

Subsidiarity principle

The proposal concerns an area that falls under exclusive Community competence. The principle of subsidiarity does not therefore apply.

Proportionality principle

The proposal complies with the principle of proportionality, for the following reasons:

The proposed amendments do not go beyond what is necessary.

They do not involve an increase in the financial burden.

Choice of instruments

Proposed instrument: regulation.

Other instruments would not have been appropriate, for the following reasons:

Only a regulation can amend a regulation.

BUDGETARY IMPLICATION

The proposal has no implications for the Community budget.

ADDITIONAL INFORMATION**Repeal of existing legislation**

The adoption of this proposal will mean that some legislation must be repealed.

Review / revision / sunset clause

The proposal includes a sunset clause on all or part of the legislative act if predefined conditions are met.

Proposal for a

COUNCIL REGULATION

**amending the Statutes of the Galileo Joint Undertaking annexed to Council Regulation
(EC) No 876/2002**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 171 thereof,

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the European Parliament,²

Having regard to the opinion of the European Economic and Social Committee,³

Whereas:

- (1) The Galileo Joint Undertaking was set up by Council Regulation (EC) No 876/2002 of 21 May 2002⁴ to complete the development phase and prepare for the successive phases of the Galileo programme.
- (2) Article 20 of the Statutes of the Galileo Joint Undertaking provides that the Joint Undertaking has a lifetime based on the duration of the development phase, which was initially intended to cover the years 2002 to 2005 inclusive.
- (3) However, as the Galileo programme currently stands, the development phase will not be completed before the end of 2008. As the Statutes currently stand, the Galileo Joint Undertaking would therefore not normally complete its activities before the end of 2008, a lifetime of three years more than that originally planned.
- (4) Moreover, it seems pointless and costly to extend the Galileo Joint Undertaking beyond 2006 since the European GNSS Supervisory Authority set up by Council Regulation (EC) No 1321/2004 of 12 July 2004⁵ will be able to gradually take over during the course of 2006 and then complete all the activities currently being carried out by the Joint Undertaking.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ L 138, 28.5.2002, p. 1.

⁵ OJ L 246, 20.7.2004, p. 1.

- (5) In order to enable the European GNSS Supervisory Authority to take over the activities of the Joint Undertaking in an optimum manner, it would, however, be desirable for the two structures to co-exist for a few months and for the European Supervisory Authority to be closely associated with the activities of the Joint Undertaking during this period. Under these conditions it seems reasonable to provide for the Joint Undertaking to cease operating on 31 December 2006.
- (6) The provisions of Article 20 of the Statutes of the Galileo Joint Undertaking therefore need to be amended.
- (7) In addition, in order to correct the erroneous use of the word “capital” in the Statutes of the Joint Undertaking and to remove any ambiguity regarding the real economic nature of the funds made available to the Joint Undertaking by its members, it is necessary to amend the Statutes of the Joint Undertaking and to replace the word “capital” by “contribution” or “funds” in Articles 1 and 8 of the Statutes.
- (8) In addition, in its current wording, Article 1 of the Statutes of the Joint Undertaking refers to contributions from the founding members of the Joint Undertaking, the amounts of which are calculated based on the initial estimate of the cost of the development phase. The amounts do not take account of the additional costs of this phase. Therefore, in order to enable the Joint Undertaking to finance the additional costs of the development phase, it is necessary to amend the Statutes of the Joint Undertaking to provide that the founding members of the Joint Undertaking may, as necessary, make additional contributions.
- (9) After the proposed amendments have been agreed by the administrative board of the Joint Undertaking, the procedure for amending the Statutes of the Galileo Joint Undertaking, provided for in Article 23 of these Statutes, requires the adoption of a Council regulation following the same procedure as that for creating the Joint Undertaking.
- (10) As the administrative board of the Joint Undertaking agreed to the amendments in question of Article 20 of the Statutes of the Joint Undertaking during its meeting of 2 June 2006, the Council is in a position to adopt the regulation amending the Statutes of the Galileo Joint Undertaking,

HAS ADOPTED THIS REGULATION:

Article 1

The Statutes of the Galileo Joint Undertaking annexed to Council Regulation (EC) No 876/2002 are amended as follows:

- (1) Article 1(4) is amended as follows:
 - (a) in the first subparagraph, the first sentence is replaced by the following sentence:

“The funds of the Joint Undertaking shall be made up of the contributions of its members”.

- (b) the second subparagraph is replaced by the following text:

"The founding members shall subscribe their shares of the financial contributions to the extent of the amounts indicated in their respective commitments of €20 million for the European Community and €50 million for the European Space Agency. They may, as necessary, make additional contributions to finance the development phase".

- (c) in the fourth subparagraph, the first sentence is replaced by the following sentence:

"The Administrative Board shall decide on the amounts of these contributions which should be released in proportion to the share of the financial contributions subscribed by each member".

- (d) the fifth subparagraph is replaced by the following text:

"The financial commitments of the Joint Undertaking shall not exceed the amount of the contributions at its disposal."

- (2) In Article 8(1)(b), the second sentence is replaced by the following sentence:

"Each member of the Joint Undertaking shall have a number of votes in proportion to the share of the contributions subscribed by them."

- (3) Article 20 is replaced by the following text:

"Article 20

The Joint Undertaking shall be established for a period starting on 28 May 2002 and ending on 31 December 2006".

Article 2

This Regulation shall enter into force on the [third] day of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*