

**REGULATION (EU) No 912/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 September 2010**

setting up the European GNSS Agency, repealing Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes and amending Regulation (EC) No 683/2008 of the European Parliament and of the Council

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 172 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The European satellite radio-navigation policy is presently implemented through the EGNOS and Galileo programmes (hereinafter the 'programmes').
- (2) 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 ⁽³⁾, established a Community agency, called the European GNSS Supervisory Authority (hereinafter the 'Authority').
- (3) 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) ⁽⁴⁾ defines the new framework for the public governance and financing of the programmes. It sets out the principle of the strict division of responsibilities between the European Union, represented by the Commission, the Authority and the European Space Agency (hereinafter the 'ESA'), granting the Commission responsibility for the management of

the programmes and attributing to it the tasks originally assigned to the Authority. It also provides that the Authority, when accomplishing the tasks entrusted to it, will ensure that the role of the Commission as manager of the programmes is respected and that the Authority acts in accordance with guidelines issued by the Commission.

- (4) In Regulation (EC) No 683/2008 of the European Parliament and of the Council invited the Commission to put forward a proposal to align formally the management structures of the programmes as set out in Regulation (EC) No 1321/2004 with the new roles of the Commission and the Authority as set out in Regulation (EC) No 683/2008.

- (5) In view of its reduced sphere of activity, the Authority should no longer be called the 'European GNSS Supervisory Authority', but rather the 'European GNSS Agency' (hereinafter the 'Agency'). However, the continuity of the activities of the Authority, including continuity as regards rights and obligations, staff and the validity of any decisions taken, should be ensured under the Agency.

- (6) The aims and objectives of Regulation (EC) No 1321/2004 should also be adjusted in order to reflect the fact that the Agency is no longer responsible for the management of public interests relating to the European Global Navigation Satellite System (GNSS) programmes and for regulating such programmes.

- (7) The legal status of the Agency should be such as to enable it to act as a legal person in the discharge of its tasks.

- (8) It is also important to modify the tasks of the Agency, and, in this regard, to ensure that its tasks are defined in accordance with those set out in Article 16 of Regulation (EC) No 683/2008, including the possibility for the Agency to accomplish other activities that may be entrusted to it by the Commission, in order to support the Commission in the implementation of the programmes. In accordance with Article 54(2)(b) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽⁵⁾, such activities could for example include following the

⁽¹⁾ OJ C 317, 23.12.2009, p. 103.

⁽²⁾ Position of the European Parliament of 16 June 2010 (not yet published in the Official Journal) and decision of the Council of 13 September 2010.

⁽³⁾ OJ L 246, 20.7.2004, p. 1.

⁽⁴⁾ OJ L 196, 24.7.2008, p. 1.

⁽⁵⁾ OJ L 248, 16.9.2002, p. 1.

development of coordination and consultation procedures on security-related matters, carrying out research of benefit to the development and promotion of the programmes and providing support in the development and implementation of the Public Regulated Service (PRS) pilot project.

- (9) Within its scope, its objectives and in the performance of its tasks, the Agency should comply in particular with the provisions applicable to Union institutions.
- (10) The Commission should, in the context of its mid-term review of the Galileo programme planned for 2010 as referred to in Article 22 of Regulation (EC) No 683/2008, also address the issue of the governance of the programmes in the operating and exploitation phase and the role of the Agency in this context.
- (11) In order to ensure effectively the accomplishment of the tasks of the Agency, the Member States and the Commission should be represented on an Administrative Board entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency, approve its work programme and appoint the Executive Director.
- (12) It is also appropriate to include a representative of the European Parliament in the Administrative Board as a non-voting member, in view of the fact that Regulation (EC) No 683/2008 highlighted the usefulness of close cooperation between the European Parliament, the Council and the Commission.
- (13) In order to ensure that the Agency accomplishes its tasks whilst respecting the role of the Commission as manager of the programmes and in accordance with guidelines issued by the Commission, it is also important to state explicitly that the Agency should be managed by an Executive Director under the supervision of the Administrative Board, in accordance with the guidelines issued to the Agency by the Commission. It is equally important to specify that the Commission should have five representatives on the Administrative Board and that decisions regarding a limited number of tasks of the Administrative Board should not be adopted without the favourable vote of the representatives of the Commission.
- (14) The smooth functioning of the Agency requires that its Executive Director be appointed on the grounds of merit and documented administrative and managerial skills, as well as relevant competence and experience, and that he performs his duties with complete independence and flexibility in relation to the organisation of the internal functioning of the Agency. Except as regards certain activities and measures relating to security accreditation, the Executive Director should prepare and take all necessary measures to ensure the proper accomplishment of the work programme of the Agency, should prepare each year a draft general report to be submitted to the Administrative Board, should draw up a draft statement of estimates of revenues and expenditure of the Agency and implement the budget.
- (15) The Administrative Board should be empowered to take any decision which may ensure that the Agency is able to accomplish its tasks with the exception of the security accreditation tasks, which should be entrusted to a Security Accreditation Board for European GNSS systems (hereinafter the 'Security Accreditation Board'). In respect of such accreditation tasks the Administrative Board should be responsible only for resource and budget matters. Sound governance of the programmes also requires that the tasks of the Administrative Board be compliant with the new missions assigned to the Agency under Article 16 of Regulation (EC) No 683/2008, notably regarding the operation of the Galileo security centre and the instructions given pursuant to Council Joint Action 2004/552/CFSP of 12 July 2004 on aspects of the operation of the European satellite radio-navigation system affecting the security of the European Union ⁽¹⁾.
- (16) Procedures for the appointment of office-holders should be transparent.
- (17) In view of the scope of the tasks entrusted to the Agency, which include security accreditation, the Scientific and Technical Committee set up in accordance with Article 9 of Regulation (EC) No 1321/2004 should be disbanded and the System Security and Safety Committee established in accordance with Article 10 of that Regulation should be replaced by the Security Accreditation Board, which will be responsible for security accreditation, and composed of representatives from the Member States and the Commission. The High Representative for Foreign Affairs and Security Policy (hereinafter the 'HR') and the ESA should have an observer role in the Security Accreditation Board.
- (18) Security accreditation activities should be carried out independently of the authorities responsible for managing the programmes, notably the Commission, the other bodies of the Agency, the ESA, and other entities responsible for implementing provisions with regard to security. In order to ensure such independence, the Security Accreditation Board should be established as the security accreditation authority for the European GNSS systems (hereinafter the 'systems') and for receivers containing PRS technology. It should be an autonomous body which, within the Agency, takes its decisions independently and objectively, in the interest of the citizens.

⁽¹⁾ OJ L 246, 20.7.2004, p. 30.

- (19) Given that the Commission, in accordance with Regulation (EC) No 683/2008, manages all aspects relating to system security, and in order to ensure efficient governance of security issues and compliance with the principle of strict division of responsibilities provided for under that Regulation, it is essential that the activities of the Security Accreditation Board be strictly limited to the security accreditation activities of systems and that they do not under any circumstances encroach on the tasks entrusted to the Commission under Article 13 of Regulation (EC) No 683/2008.
- (20) The decisions taken by the Commission in accordance with procedures involving the European GNSS Programmes Committee will in no way affect the existing rules on budgetary matters or the specific competence of Member States on security matters.
- (21) In accordance with Article 13(4) of Regulation (EC) No 683/2008, in cases where the security of the Union or of the Member States may be affected by the operation of the systems, the procedures set out in Joint Action 2004/552/CFSP apply. In particular, in the event of a threat to the security of the Union or of a Member State arising from the operation or use of the systems, or in the event of a threat to the operation of the systems, in particular as a result of an international crisis, the Council, acting unanimously, is able to decide on the necessary instructions to give to the Agency and to the Commission. Any member of the Council, the HR or the Commission is able to request a Council discussion to agree on such instructions.
- (22) In application of the principle of subsidiarity, security accreditation decisions should, following the process defined in the security accreditation strategy, be based on local security accreditation decisions taken by the respective national security accreditation authorities of the Member States.
- (23) In order for it to carry out all of its activities quickly and effectively, the Security Accreditation Board should be able to set up appropriate subordinate bodies acting on its instructions. It should accordingly set up a panel to assist it in preparing its decisions and a Crypto Distribution Authority, managing and preparing crypto material issues, including a Flight Key Cell dedicated to operational flight keys for launches, as well as other bodies, if necessary, to deal with specific issues. In doing so, special consideration should be given to the necessary continuity of the work in those bodies.
- (24) It is also important for security accreditation activities to be coordinated with the work of the authorities responsible for managing the programmes and other entities responsible for implementing security provisions.
- (25) Given the specific nature and complexity of the systems, it is essential for the security accreditation activities to be carried out in a context of collective responsibility for the security of the Union and of the Member States, by making efforts to reach a consensus and by involving all parties with an interest in security, and for permanent risk monitoring. It is also imperative that technical security accreditation activities be entrusted to professionals who are duly qualified in the field of accrediting complex systems and who have an adequate level of security clearance.
- (26) In order to ensure that the Security Accreditation Board is able to accomplish its tasks, it should also be provided that Member States supply that Board with any necessary documentation, grant access to classified information and to any areas falling within their jurisdiction to duly authorised persons, and that they should be responsible at local level for the accreditation of the security of areas that are located within their territory.
- (27) The systems established within the framework of the programmes are infrastructures the use of which extends well beyond the national boundaries of the Member States, and which are set up as trans-European networks in accordance with the provisions of Article 172 of the Treaty on the Functioning of the European Union. Furthermore, the services provided via such systems contribute to the development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.
- (28) The Commission is to assess the budgetary implications of the financing of the Agency for the expenditure heading concerned. On the basis of the information and without prejudice to the relevant legislative procedure, the two arms of the budgetary authority need to achieve, in the framework of budgetary co-operation, a timely agreement on the financing of the Agency. The Union budgetary procedure is applicable to the Union contribution charged to the general budget of the European Union. In addition, auditing of accounts are to be undertaken by the European Court of Auditors in accordance with Title VIII of Regulation (EC, Euratom) No 1605/2002.
- (29) The Agency should apply the relevant Union legislation concerning public access to documents and the protection of individuals with regard to the processing of personal data. It should also comply with the security principles applicable to the Council and the Commission services.
- (30) It should be possible for third countries to participate in the Agency, provided that they have concluded a prior agreement to this effect with the Union, particularly when such countries have been involved in the previous phases of the Galileo programme through their contribution to the Galileosat programme of the ESA.

- (31) Since the objectives of this Regulation, namely to establish and ensure the functioning of an agency with responsibility in particular for security accreditation of the systems, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (32) Since the name of the Agency is to be changed, Regulation (EC) No 683/2008 should be amended accordingly.
- (33) Regulation (EC) No 1321/2004 has previously been amended. Considering the amendments that are now being introduced, it is appropriate, for the sake of clarity, to repeal that Regulation and replace it with a new Regulation,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT, TASKS, BODIES

Article 1

Subject matter

This Regulation sets up a Union agency called the European GNSS Agency (hereinafter the 'Agency').

Article 2

Tasks

The tasks of the Agency shall be as set out in Article 16 of Regulation (EC) No 683/2008.

Article 3

Bodies

The bodies of the Agency shall be the Administrative Board, the Security Accreditation Board for European GNSS systems and the Executive Director. They shall accomplish their tasks in accordance with the guidelines issued by the Commission as set out in Article 16 of Regulation (EC) No 683/2008.

Article 4

Legal status, local offices

1. The Agency shall be a body of the Union. It shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency may decide to establish local offices in Member States subject to their consent, or in third countries participating in the work of the Agency in accordance with Article 23.
4. Subject to Article 11(9), the Agency shall be represented by its Executive Director.

Article 5

Administrative Board

1. An Administrative Board is hereby set up to carry out the tasks listed in Article 6.
2. The Administrative Board shall be composed of one representative appointed by each Member State, five representatives appointed by the Commission and a non-voting representative appointed by the European Parliament. The duration of the term of office of the Administrative Board members shall be 5 years. The term of office may be renewed for a maximum of 5 years. A representative of the HR and a representative of the ESA shall be invited to attend the Administrative Board's meetings as observers.
3. Where appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 23.
4. The Administrative Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall automatically take the place of the Chairperson where the Chairperson is prevented from attending to his duties. The term of office of the Chairperson and of the Deputy Chairperson shall be 2,5 years, renewable once, and shall expire when they cease to be members of the Administrative Board.
5. The meetings of the Administrative Board shall be convened by its Chairperson.

The Executive Director shall normally take part in the deliberations, unless the Chairperson decides otherwise.

The Administrative Board shall hold an ordinary meeting twice a year. In addition, it shall meet on the initiative of its Chairperson or at the request of at least a third of its members.

The Administrative Board may invite any person whose opinion may be of interest to attend its meetings as an observer. The members of the Administrative Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

The secretariat of the Administrative Board shall be provided by the Agency.

6. Unless otherwise provided in this Regulation, the Administrative Board shall take its decisions by a two-thirds majority of its members.

7. Each representative of the Member States and of the Commission shall have one vote. Decisions based on Article 6(b) and (e) shall not be adopted without a favourable vote of the representatives of the Commission. The Executive Director shall not vote.

The rules of procedure of the Administrative Board shall establish more detailed voting arrangements, in particular the conditions for a member to act on behalf of another member.

Article 6

Tasks of the Administrative Board

The Administrative Board shall ensure that the Agency carries out the work entrusted to it, under the conditions set out in this Regulation, and shall take any necessary decision to this end. In respect of security accreditation tasks and decisions provided for in Chapter III, the Administrative Board shall be responsible only for resources and budgetary matters. The Administrative Board shall also:

- (a) appoint the Executive Director pursuant to Article 7(2);
- (b) adopt by 15 November each year, and after receiving the Commission's opinion, the work programme of the Agency for the coming year;
- (c) perform its duties in relation to the Agency's budget pursuant to Articles 13 and 14;

(d) oversee the operation of the Galileo security centre (hereinafter the 'Galileo Security Monitoring Centre' or the 'GSMC') as referred to in Article 16(a)(ii) of Regulation (EC) No 683/2008;

(e) exercise disciplinary authority over the Executive Director;

(f) adopt the special provisions necessary for the implementation of the right of access to the documents of the Agency, in accordance with Article 21;

(g) adopt the annual report on the activities and prospects of the Agency and forward it, by 1 July, to the Member States, the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee; the Agency shall forward to the budgetary authority all information relevant to the outcome of the evaluation procedures;

(h) adopt its rules of procedure.

Article 7

Executive Director

1. The Agency shall be managed by its Executive Director, who shall carry out his duties under the supervision of the Administrative Board.

2. The Executive Director shall be appointed by the Administrative Board on the grounds of merit and documented administrative and managerial skills, as well as relevant competence and experience, from a list of at least three candidates proposed by the Commission, after an open competition, following publication in the *Official Journal of the European Union* and elsewhere of a call for expressions of interest. The Administrative Board shall take its decision to appoint the Executive Director by a three-quarters majority of its members.

The Administrative Board shall have the power to dismiss the Executive Director and shall adopt its decision to that effect by a three-quarters majority of its members.

The term of office of the Executive Director shall be 5 years. This term of office may be renewed once for a further 5-year period.

3. The European Parliament or the Council may call upon the Executive Director to submit a report on the performance of his tasks, and to make a statement before those institutions.

Article 8

Tasks of the Executive Director

The Executive Director:

- (a) shall be responsible for representing the Agency, except in respect of activities and decisions undertaken in accordance with Chapters II and III, and shall be in charge of its management;
- (b) shall prepare the work of the Administrative Board. He shall participate, without having the right to vote, in the work of the Administrative Board;
- (c) shall be responsible for implementing the annual work programme of the Agency under the control of the Administrative Board;
- (d) shall take all necessary measures, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with this Regulation;
- (e) shall draw up estimates of the Agency's revenue and expenditure in accordance with Article 13, and shall implement the budget in accordance with Article 14;
- (f) shall prepare a draft general report each year and submit it to the Administrative Board;
- (g) shall ensure that the Agency, as the operator of the GSMC, is able to respond to instructions provided under Joint Action 2004/552/CFSP;
- (h) shall define the organisational structure of the Agency and submit it for approval to the Administrative Board;
- (i) shall exercise, in respect of staff, the powers laid down in Article 18;
- (j) may adopt, after approval of the Administrative Board, the necessary measures to establish local offices in Member States in accordance with Article 4;
- (k) shall ensure that the secretariat and all the resources necessary for proper functioning are provided to the Security Accreditation Board and to the bodies set up under its authority referred to in Article 11(11).

CHAPTER II

ASPECTS RELATING TO THE SECURITY OF THE EUROPEAN UNION OR OF THE MEMBER STATES

Article 9

Joint Action

1. In accordance with Article 13(4) of Regulation (EC) No 683/2008, whenever the security of the Union or of the Member States may be affected by the operation of the systems, the procedures set out in Joint Action 2004/552/CFSP shall apply.

2. The security accreditation decisions taken pursuant to Chapter III, as well as the residual risks identified, shall be communicated by the Commission to the Council for information.

CHAPTER III

SECURITY ACCREDITATION FOR EUROPEAN GNSS SYSTEMS

Article 10

General principles

The security accreditation activities referred to in this Chapter shall be carried out in accordance with the following principles:

- (a) security accreditation activities and decisions are undertaken in a context of collective responsibility for the security of the Union and of the Member States;
- (b) efforts shall be made for decisions to be reached by consensus and for all relevant parties with an interest in security issues to be involved;
- (c) tasks shall be carried out in respect of relevant security rules applicable to the Council and the Commission⁽¹⁾;
- (d) a permanent monitoring process shall ensure that security risks are known, security measures are defined to reduce such risks to an acceptable level in accordance with the basic principles and minimum standards set out in the security rules applicable to the Council and the Commission and that these measures are applied in line with the concept of defence in depth. The effectiveness of such measures shall be continuously evaluated;

⁽¹⁾ Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations (OJ L 101, 11.4.2001, p. 1). Commission's rules on security set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure (OJ L 317, 3.12.2001, p. 1).

- (e) security accreditation decisions shall, following the process defined in the security accreditation strategy, be based on local security accreditation decisions taken by the respective national security accreditation authorities of the Member States;
- (f) the technical security accreditation activities shall be entrusted to professionals who are duly qualified in the field of accrediting complex systems, who have an appropriate level of security clearance, and who shall act objectively;
- (g) security accreditation decisions shall be taken independently of the Commission, without prejudice to Article 3, and of the entities responsible for implementing the programmes. As a result, a security accreditation authority for European GNSS systems shall be, within the Agency, an autonomous body that takes its decisions independently;
- (h) security accreditation activities shall be carried out while reconciling the requirement for independence with the need for adequate coordination, between the Commission and the authorities responsible for implementing security provisions.

Article 11

Security Accreditation Board

1. A Security Accreditation Board for European GNSS systems (hereinafter the 'Security Accreditation Board') shall be established within the Agency. In relation to the European GNSS systems, the Security Accreditation Board shall have the tasks of the security accreditation authority, as referred to in the relevant security rules applicable to the Council and the Commission.

2. The Security Accreditation Board shall perform the tasks entrusted to the Agency with regard to security accreditation under Article 16(a)(i) of Regulation (EC) No 683/2008 and take 'security accreditation decisions' as provided for in the present Article, in particular on the approval of the security accreditation strategy and of satellite launches, the authorisation to operate the systems in their different configurations and for the various services, the authorisation to operate the ground stations and in particular the sensor stations located in third countries, as well as the authorisation to manufacture receivers containing PRS technology and their components.

3. The security accreditation of the systems by the Security Accreditation Board shall consist of the establishment of compliance of the systems with the security requirements referred to in Article 13 of Regulation (EC) No 683/2008 and in accordance with the relevant security rules and regulations applicable to the Council and the Commission.

4. On the basis of the risk reports referred to in paragraph 11, the Security Accreditation Board shall inform the Commission of its risk assessment and provide advice to the Commission on residual risk treatment options for a given security accreditation decision.

5. The Commission shall keep the Security Accreditation Board continuously informed of the impact of any envisaged decisions of the Security Accreditation Board on the proper conduct of the programmes and of the implementation of residual risk treatment plans. The Security Accreditation Board shall take note of any such opinion of the Commission.

6. The decisions of the Security Accreditation Board shall be addressed to the Commission.

7. The Security Accreditation Board shall be composed of one representative per Member State, one representative from the Commission and one from the HR. A representative of ESA shall be invited to attend the meetings of the Security Accreditation Board as an observer.

8. The Security Accreditation Board shall establish its rules of procedure and shall appoint its Chairperson.

9. The Chairperson of the Security Accreditation Board shall be responsible for representing the Agency insofar as the Executive Director, according to Article 8, is not responsible.

10. The Security Accreditation Board shall have access to all the human and material resources required to provide appropriate administrative support functions and to enable it, together with the bodies referred to in paragraph 11, to perform its tasks independently, in particular when handling files, initiating and monitoring the implementation of security procedures and performing system security audits, preparing decisions and organising its meetings.

11. The Security Accreditation Board shall set up special subordinate bodies, acting on its instructions, to deal with specific issues. In particular, while ensuring necessary continuity of work, it shall set up:

— a panel to conduct security analysis reviews and tests to produce the relevant risk reports in order to assist it in preparing its decisions,

— a Crypto Distribution Authority (CDA) to assist the Security Accreditation Board in particular with regard to questions related to flight keys.

12. If consensus according to the general principles referred to in Article 10 of this Regulation cannot be reached, the Security Accreditation Board shall take decisions on the basis of majority voting, as provided for in Article 16 of the Treaty on European Union and without prejudice to Article 9 of this Regulation. The representative of the Commission and the representative of the HR shall not vote. The Chairperson of the Security Accreditation Board shall sign, on behalf of the Security Accreditation Board, the decisions adopted by the Security Accreditation Board.

13. The Commission shall keep the European Parliament and the Council informed, without undue delay, about the impact of the adoption of the security accreditation decisions on the proper conduct of the programmes. If the Commission considers that a decision taken by the Security Accreditation Board may have a significant effect on the proper conduct of the programmes, for example in terms of costs and schedule, it shall immediately inform the European Parliament and the Council.

14. Taking into account the views of the European Parliament and of the Council, which should be expressed within 1 month, the Commission may adopt any adequate measures in accordance with Regulation (EC) No 683/2008.

15. The Administrative Board shall be regularly kept informed of the evolution of the work of the Security Accreditation Board.

16. The timetable for the work of the Security Accreditation Board shall respect the GNSS work programme of the Commission.

Article 12

Role of Member States

Member States shall:

- (a) transmit to the Security Accreditation Board all information they consider relevant for the purposes of security accreditation;
- (b) permit duly authorised persons appointed by the Security Accreditation Board to have access to any classified information and to any areas/sites related to the security of systems falling within their jurisdiction, in accordance with their national laws and regulations, and without any discrimination on ground of nationality, including for the purposes of security audits and tests as decided by the Security Accreditation Board;
- (c) each be responsible for devising a template for access control, which is to outline or list the areas/sites to be accredited, and which shall be agreed in advance between the Member States and the Security Accreditation Board, thereby ensuring that the same level of access control is being provided by all Member States;
- (d) be responsible, at local level, for the accreditation of the security of areas that are located within their territory and form part of the security accreditation area for European GNSS systems, and report, to this end, to the Security Accreditation Board.

CHAPTER IV

BUDGETARY AND FINANCIAL PROVISIONS

Article 13

Budget

1. Without prejudice to other resources and dues yet to be defined, revenue of the Agency shall include a Union subsidy entered in the general budget of the European Union in order to ensure a balance between revenue and expenditure.
2. The expenditure of the Agency shall cover staff, administrative and infrastructure expenditure, operating costs and expenditure associated with the functioning of the Security Accreditation Board, including the bodies referred to in Article 11(11), and the contracts and agreements concluded by the Agency in order to accomplish the tasks entrusted to it.
3. The Executive Director shall draw up a draft statement of estimates of the revenue and expenditure of the Agency for the following year and shall forward it to the Administrative Board, together with a draft establishment plan.
4. Revenue and expenditure shall be in balance.
5. Each year the Administrative Board, on the basis of the draft statement of revenue and expenditure, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year.
6. This statement of estimates, which shall include a draft establishment plan together with the provisional work programme, shall, by 31 March, be forwarded by the Administrative Board to the Commission and to the third countries with which the Union has concluded agreements in accordance with Article 23.
7. The statement of estimates shall be forwarded by the Commission to the European Parliament and to the Council (hereinafter the 'budgetary authority') together with the draft general budget of the European Union.

8. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 of the Treaty on the Functioning of the European Union.

9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency and shall adopt the establishment plan for the Agency.

10. The budget shall be adopted by the Administrative Board. It shall become final following definitive adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

11. The Administrative Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which will have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

12. Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Administrative Board within a period of 6 weeks from the date of notification of the project.

Article 14

Implementation and control of the budget

1. The Executive Director shall implement the budget of the Agency.

2. By 1 March following each financial year, the accounting officer of the Agency shall communicate the provisional accounts to the Commission's accounting officer, together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Regulation (EC, Euratom) No 1605/2002.

3. By 31 March following each financial year, the Commission's accounting officer shall forward the provisional accounts of the Agency to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report shall also be forwarded to the European Parliament and the Council.

4. On receipt of the Court of Auditors' observations on the provisional accounts of the Agency, under Article 129 of Regulation (EC, Euratom) No 1605/2002, the Executive Director shall draw up the final accounts of the Agency under his own responsibility and submit them to the Administrative Board for an opinion.

5. The Administrative Board shall deliver an opinion on the final accounts of the Agency.

6. The Executive Director shall, by 1 July following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.

7. The final accounts shall be published.

8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. He shall also send this reply to the Administrative Board.

9. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of Regulation (EC, Euratom) No 1605/2002.

10. The European Parliament, on a recommendation from the Council acting on a qualified majority, shall, before 30 April of the year N + 2, grant discharge to the Executive Director in respect of the implementation of the budget for year N.

Article 15

Financial provisions

The financial rules applicable to the Agency shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁽¹⁾ unless such departure is specifically required for the operation of the Agency and the Commission has given its prior consent.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

CHAPTER V

MISCELLANEOUS PROVISIONS

Article 16

Anti-fraud measures

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽¹⁾ shall apply without restriction.

2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti Fraud Office (OLAF) ⁽²⁾ and shall issue, without delay, appropriate provisions applicable to all staff of the Agency.

3. The decisions concerning funding, and the implementing agreements and instruments resulting there from, shall explicitly stipulate that the Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks on the recipients of funding of the Agency and the agents responsible for allocating it.

Article 17

Privileges and immunities

The Protocol on Privileges and Immunities of the European Union shall apply to the Agency.

Article 18

Staff

1. The Staff Regulations of Officials of the European Union, the Conditions of employment of other servants of the European Union and the rules adopted jointly by the institutions of the European Union for the purposes of the application of those Staff Regulations and Conditions of employment shall apply to the staff of the Agency. The Administrative Board, in agreement with the Commission, shall adopt the necessary detailed rules of application.

2. Without prejudice to Article 8, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of employment of other servants shall be exercised by the Agency with respect to its own staff.

3. The staff of the Agency shall consist of servants recruited by the Agency as necessary to perform its tasks, but may also include officials with the appropriate clearance who have been assigned or seconded by the Commission or the Member States on a temporary basis.

4. The provisions laid down in paragraphs 1 and 3 shall also apply to the staff of the GSMC.

Article 19

Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question. The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Agency.

2. In the event of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

3. The Court of Justice shall have jurisdiction in any dispute relating to compensation for damage referred to in paragraph 2.

4. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

Article 20

Languages

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community ⁽³⁾ shall apply to the Agency.

2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the bodies of the European Union.

Article 21

Access to documents and protection of data of a personal character

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽⁴⁾ shall apply to documents held by the Agency.

⁽¹⁾ OJ L 136, 31.5.1999, p. 1.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

⁽³⁾ OJ 17, 6.10.1958, p. 385/58.

⁽⁴⁾ OJ L 145, 31.5.2001, p. 43.

2. The Administrative Board shall adopt arrangements for implementing Regulation (EC) No 1049/2001 within 6 months from the entry into force of this Regulation.

3. Decisions taken by the Agency in pursuance of Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or an action before the Court of Justice of the European Union, under Articles 228 and 263 of the Treaty on the Functioning of the European Union respectively.

4. When processing data relating to individuals, the Agency shall be subject to the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.

Article 22

Security rules

The Agency shall apply the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom. This shall cover, inter alia, provisions for the exchange, handling and storage of classified information.

Article 23

Participation of third countries

1. The Agency shall be open to the participation of third countries that have entered into agreements with the European Union to this effect.

2. Under the relevant provisions of these agreements, arrangements shall be developed specifying, in particular, the

nature, extent and manner in which these countries will participate in the work of the Agency, including provisions relating to participation in the initiatives undertaken by the Agency, financial contributions and staff.

CHAPTER VI

FINAL PROVISIONS

Article 24

Amendments to Regulation (EC) No 683/2008

Throughout Regulation (EC) No 683/2008, the words 'European GNSS Supervisory Authority' and 'Authority' shall be replaced by 'European GNSS Agency' and 'Agency' respectively.

Article 25

Repeal and validity of measures taken

Regulation (EC) No 1321/2004 is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation. Any measure adopted on the basis of Regulation (EC) No 1321/2004 shall remain valid.

Article 26

Evaluation

By 2012, the Commission shall evaluate this Regulation, particularly as regards the Agency's tasks laid down in Article 2, and, if necessary, make proposals.

Article 27

Entry into force

This Regulation shall enter into force on the 20th day following 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 Strasbourg, 22 September 2010.

For the European Parliament

The President

J. BUZEK

For the Council

The President

O. CHASTEL

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.