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Proposal for a

COUNCIL DECISION

on the extension of the Agreement on the promotion, provision and use of Galileo and GPS satellite-based navigation systems and related applications between the European Community and its Member States and the United States of America

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

The ‘Agreement on the promotion, provision and use of the Galileo and GPS (Global Positioning System) satellite-based navigation systems and related applications between the European Community and its Member States, of the one part, and the United States of America, of the other part’¹ (hereafter, the ‘Agreement’) was signed in 2004. It entered into force in 2011, after ratification by the U.S., the EU and all the Member States.

The objective of the Agreement is to provide a framework for cooperation between the Parties in the promotion, provision and use of civil GPS and Galileo navigation and timing signals and services, value-added services, augmentations, and global navigation and timing goods.

Article 20(5) of the Agreement provides that ‘This Agreement shall remain in force for ten years. At least three months before the end of the initial 10-year period, the Parties shall inform each other of their intention whether to extend the Agreement for a period of five years.’ The Agreement is due to expire on 12 December 2021.

In June 2021, the U.S. signalled its interest in seeking authority to pursue an extension of the Agreement. The Commission replied in September that it would seek authorisation from the Council of the European Union to extend the Agreement

The evaluation carried out by the European Commission clearly demonstrates that the Agreement provides an important framework for conducting and facilitating cooperation in satellite navigation between the EU and the U.S. leading to mutual benefits.

The Agreement is essential to understand each other’s satellite navigation landscape and establish together priority areas of mutual interest on international cooperation. It offers also a useful forum to assess past cooperation and determine future actions.

It is in the interest of the EU to renew this Agreement in order to continue to further engage in satellite navigation cooperation with the U.S..

• **Consistency with existing policy provisions in the policy area**

This initiative is fully in line with Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1284/2013 and (EU) No 377/2014 and Decision No 541/2014/EU.

Regulation (EU) 2021/696 stipulates:

- In recital (67), that in order to optimise the use of the services provided, Galileo should be compatible and interoperable as far as possible with other satellite navigation systems, without prejudice to the objective of strategic autonomy of the Union.

- In Article 48(2), that Galileo and EGNOS (European Geostationary Overlay Service), and the services they provide, shall be compatible and interoperable with other satellite navigation

¹ OJ L348 of 31.12.2011, p.3.

systems and with conventional means of radio navigation, where the necessary compatibility and interoperability requirements and conditions thereof are laid down in international agreements.

Radiofrequency compatibility and interoperability between Galileo and GPS are among the main objectives of the Agreement.

International cooperation is also a key element of the Space Strategy for Europe, as set by the Commission in its Communication of 26 October 2016², which stipulates that the Commission will take into account the specific requirements of space systems when coordinating frequency allocation at European and international level.

The European GNSS (Global Navigation Satellite Systems) are important elements in the EU's policy to ensure the full integration of land, sea and air transport infrastructure for safe, seamless, economic and environmentally friendly navigation. To conclude cooperation agreements on satellite navigation with countries that also develop their own GNSS, including the U.S., is part of the Union GNSS international strategy.

The U.S. are a key partner and the closest GNSS provider partner for Galileo.

This proposal does not foresee conferring ownership or decision-making rights to the U.S.

- **Consistency with other Union policies**

The proposal also takes into account the new EU-U.S. transatlantic agenda for global change, which is relevant in this context because it encourages the Union and the U.S to work together on technology, trade and standards.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 189 and Article 218(6) (a) (v) of the Treaty on the Functioning of the European Union.

In accordance with the settled case law of the Court of Justice law, 'the choice of the legal basis of a European Union act ... must rest on objective factors amenable to judicial review, which include the aim and content of that measure.'³

According to Article 189(1) TFEU, 'to promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.'

The Agreement contributes to this as evidenced by its Article 1 according to which its 'objective ... is to provide a framework for cooperation between the Parties in the promotion, provision and use of civil GPS and Galileo navigation and timing signals and services, value-added services, augmentations, and global navigation and timing goods.' Moreover, 'the Parties intend to work together, both bilaterally and in multilateral fora, as provided herein, to

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Space Strategy for Europe, COM(2016) 705, 26.10.2016.

³ For example Case C-263/14 European Parliament v Council (Tanzania Pirates Agreement) ECLI EU C 2016 435, paragraphs 43-44.

promote and facilitate the use of these signals, services, and equipment for peaceful civil, commercial, and scientific uses, consistent with and in furtherance of mutual security interests.’ In accordance with Article 216(1) TFEU, to achieve the objectives set out in Article 189 TFEU, the EU has thus competence to decide on the extension of the agreement on its behalf.

The procedural legal basis for deciding on the extension of the Agreement on behalf of the EU is Article 218(6) (a) (v) TFEU. It is not necessary for the Commission to seek an authorisation to negotiate the extension from the Council in accordance with Article 218(2) TFEU. Article 20(5) of the Agreement does not provide for any negotiations, but simple information.

- **Subsidiarity (for non-exclusive competence)**

Individual Member States cannot achieve the objectives of the proposal for the following reasons:

- Galileo is owned by the Union, and with costs estimated at several tens of billions of Euros financed as a European initiative managed by the Commission in the context of the Space policy;

- The Galileo system and its services are not provided by one single Member State. Therefore, the scope of the Agreement to be extended cannot be limited to any single Member State alone or a group of Member States but affects the Union as a whole and in some aspects may even have a worldwide impact;

- The industrial and technical knowledge in the space sector is spread over several Member States with no singular state capable of mastering all of it alone. Without a coordinated effort and information sharing, the risks of agreeing on sub-optimal solutions with the U.S. would increase.

Union action will better achieve the objectives of the proposal for the following reasons:

- The infrastructure of the Galileo system is deployed over the whole world and the security and protection of Galileo will largely depend on the enforcement of coherent protection measures by the Union and all its Member States, with support by the U.S. where relevant;

- The Commission as the programme manager acting on behalf of the Union and the owner of the system is better positioned to take all reasonable measures to induce this coherence. Failing to do this would increase security risks and the exposure of the Union and its Member States for liability claims in case of serious incidents.

The positions that the Commission takes on behalf of the Union in the different Working Groups set up under Article 13 of the Agreement lead to Union coherence.

- **Proportionality**

N/A

- **Choice of the instrument**

The extension of the Agreement is the sole instrument ensuring Union-wide coherence in relations with the U.S. in the area of civil satellite navigation. The majority of military satellite-based navigation and timing aspects are exempted.

Coherence in application is particularly important regarding measures established by the Parties concerning civil satellite based navigation and timing signals and signal providers, civil satellite-based navigation and timing services and service providers, augmentations, value-added services and value added service providers, as well as global navigation and timing goods.

The Treaty on the Functioning of the EU does not provide other viable options for regulating the relationships with a third country.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

This initiative is not part of the REFIT agenda.

- **Stakeholder consultations**

The Commission has addressed the extension of the Agreement in the GNSS Programme Committee.

The Commission has also consulted the Council Intermodal Transport Working Party and the Council Space Working Party.

- **Collection and use of expertise**

Summary of the advice received and used.

It is appropriate and desirable for the Union to extend the Agreement. The Agreement does not contain any provisions that are obsolete, unacceptable or that would prevent the Agreement to be extended.

- **Impact assessment**

The first option is to take no initiative in response to the interest to extend the Agreement expressed by the Member States and by the U.S. This could be perceived as a gesture of defiance, which could endanger the compatibility of Galileo and GPS; delay or stop cooperation on their interoperability, thereby risking delaying the operational capability of Galileo.

The second option is to extend the current Agreement. This option is chosen because:

- The Galileo and GPS systems are under further development and evolving. Continued cooperation between both systems is necessary for a number of reasons, including to ensure compatibility and interoperability;

- The U.S. are a privileged satellite navigation partner of the Union;

- The U.S. and Union Member States do not oppose the extension of the Agreement.

- **Regulatory fitness and simplification**

This initiative is not part of the REFIT agenda

4. BUDGETARY IMPLICATIONS

During its ten years of application, none of the activities under the current Agreement required funding from either of the Parties.

For the next five-year period of extension of this Agreement, again no funding will be needed.

The budgetary implications will be limited to administrative costs that will be borne by the Parties when fulfilling the tasks falling under their responsibilities. All the administrative costs are related to missions. All the missions from the Commission under the Agreement are paid from the Global Envelope for missions and not from the Galileo operational budget line under the EU Space Programme Regulation.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

This proposal to extend the Agreement does not foresee conferring Galileo ownership or decision-making rights to the U.S..

The proposal does not give the U.S. the right to participate in the EU GNSS-related Programme Committees or Working Groups.

The proposal does not allow the U.S. to participate in Galileo PRS (Public Regulated Service) relevant fora, working groups or discussions.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 189, in conjunction with Article 218(6), second subparagraph, point (a) (v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) The Council with Decision 2011/901/EU² approved the conclusion of the Agreement on the promotion, provision and use of Galileo and GPS satellite based navigation systems and related applications between the United States of America, of the one part, and the European Community and its Member States, of the other part³. The Agreement was signed at Dromoland Castle, Ireland, on 26 June 2004 and entered into force on 12 December 2011.
- (2) In accordance with Article 20(5) of the Agreement, the Agreement is to remain in force for 10 years and at least three months before the end of the initial 10-year period, the Parties are to inform each other of their intention to extend the Agreement for a period of five years. The Agreement expired on 12 December 2021.
- (3) Both Parties have confirmed their intention to extend the Agreement for an additional period of five years without any amendment to the Agreement. The content of the Agreement should remain the same after the extension. For the purpose of ensuring continuity of the Agreement, this Decision should enter into force as a matter of urgency and should apply from 12 December 2021.
- (4) The extension of the Agreement should therefore be approved on behalf of the Union.

¹ OJ C , , p. .

² Council Decision 2011/901/EU of 12 December 2011 on the conclusion of the Agreement on the promotion, provision and use of Galileo and GPS satellite-based navigation systems and related applications between the European Community and its Member States, of the one part, and the United States of America, of the other part (OJ L 348, 31.12.2011, p. 1).

³ Agreement on the promotion, provision and use of Galileo and GPS satellite-based navigation systems and related applications between the European Community and its Member States, of the one part, and the United States of America, of the other part (OJ L 348, 31.12.2011, p.3).

HAS ADOPTED THIS DECISION:

Article 1

The extension of the Agreement on the promotion, provision and use of Galileo and GPS satellite-based navigation systems and related applications between the United States of America and the European Community and its Member States for an additional period of 5 years is hereby approved on behalf of the Union.

Article 2

The Commission shall, on behalf of the Union deliver to the United States of America the diplomatic note provided for in Article 20(1) of the Agreement and make the following notification: ‘As a consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community and from that date exercises all rights and assumes all obligations of the European Community. Therefore, references to “the European Community” in the text of the Agreement are, where appropriate, to be read as to “the European Union”’.

Article 3

This Decision shall enter into force on the date of its adoption.

It shall apply from 12 December 2021.

Done at Brussels,

*For the Council
The President*

LEGISLATIVE FINANCIAL STATEMENT

There is no legislative financial statement because there are no costs linked to this Agreement, except travel costs which are paid from the Global Envelope for missions, and not from the Galileo operational budget line under the EU Space Programme.