

COUNCIL REGULATION (EC) No 1942/2006**of 12 December 2006****amending Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio-navigation programmes**

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,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

(1) The Galileo Joint Undertaking was set up by Regulation (EC) No 876/2002 ⁽³⁾ to complete the development phase and prepare for the following phases of the Galileo programme. As the Galileo programme currently stands, the development phase will not be completed before the end of 2008.

(2) The European GNSS Supervisory Authority (hereinafter referred to as 'the Authority') was set up by Regulation (EC) No 1321/2004 ⁽⁴⁾, to manage the public interests relating to the European GNSS programmes and to act as the regulatory authority for the programmes during the deployment and operational phases of the Galileo programme.

(3) The Authority is in a position to take over all the activities currently being carried out by the Galileo Joint Undertaking in the course of 2006 and subsequently complete them. Extending the lifetime of the Joint Undertaking beyond 2006 would therefore be pointless and not cost-effective. It is therefore appropriate to wind up the Galileo Joint Undertaking and, prior to this, transfer its activities to the Authority before the completion of the development phase.

(4) It is also appropriate to assign explicitly to the Authority the tasks entrusted to the Galileo Joint Undertaking prior to its winding up, together with the task of attending, where appropriate and acting in accordance with a decision by the Administrative Board of the Galileo Joint Undertaking, to the proceedings involved in winding up the Joint Undertaking after 31 December 2006. It is also necessary to entrust the Authority with the task of carrying out all research of benefit to the European GNSS programmes.

(5) However, the taking over of the management of the development phase from the Galileo Joint Undertaking is not listed as one of the Authority's tasks as laid down in Article 2 of Regulation (EC) No 1321/2004, nor does that Article mention research activities or work that the Authority may be called upon to carry out or finance during the development, deployment and operation phases of the programme.

(6) Consequently, in order to ensure the continuity of the Galileo programme and the smooth transfer of the activities of the Galileo Joint Undertaking to the Authority, Article 2 of Regulation (EC) No 1321/2004 should be amended accordingly.

(7) Moreover, for the sake of consistency, provision should be made for the Authority to assume ownership, of the tangible and intangible assets held by the Galileo Joint Undertaking, at the time of its winding up rather than at the end of the development phase. Provision should also be made for the Authority to assume ownership of the tangible and intangible assets created or developed, during the development phase, after the winding up of the Joint Undertaking. Furthermore, provision should be made for the modalities for the transfer.

(8) In addition, to avoid any risk of differences of interpretation as to the scope of Regulation (EC) No 1321/2004, it is also necessary to specify that tangible and intangible assets created or developed by the concession holder during the deployment and operation phases include those created or developed by its subcontractors or by undertakings under its control or by their subcontractors. It should also be specified that the ownership of assets covers trade mark rights and all other intellectual property rights within the meaning of Article 1(1) of Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements ⁽⁵⁾ and Article 2 of the Convention of 14 July 1967 establishing the Intellectual Property World Organisation.

⁽¹⁾ Opinion delivered on 12 October 2006 (not yet published in the Official Journal).

⁽²⁾ Opinion delivered on 26 October 2006 (not yet published in the Official Journal).

⁽³⁾ OJ L 138, 28.5.2002, p. 1.

⁽⁴⁾ OJ L 246, 20.7.2004, p. 1.

⁽⁵⁾ OJ L 123, 27.4.2004, p. 11.

- (9) Finally, due to the fundamental role played by the European Space Agency (ESA) in the conception and the development of the systems, which implies consideration and knowledge of all aspects related to security and safety of those systems, the ESA should be represented as an observer within the Administrative Board and the System Safety and Security Committee. In addition, similar provisions shall be made as regards the representation of the Secretary General/High Representative (SG/HR) in the Administrative Board.
- (10) Regulation (EC) No 1321/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1321/2004 shall be amended as follows:

1. In Article 2(1), the following points shall be added:

- ‘(k) with a view to the completion of the development phase of the Galileo programme, it shall take over, no later than at the end of the duration of the Galileo Joint Undertaking, the tasks assigned to the latter by Articles 2, 3 and 4 of the Annex to Regulation (EC) No 876/2002 (*). It shall, where appropriate and acting in accordance with a decision by the Administrative Board of the Galileo Joint Undertaking, attend to the proceedings involved in the winding up of the Joint Undertaking after 31 December 2006;
- (l) it shall carry out all research of benefit to the development and promotion of the European GNSS programmes.

(*) OJ L 138, 28.5.2002, p. 1.’

2. Article 3(1) and (2) shall be replaced by the following:

‘1. From the end of the duration of the Galileo Joint Undertaking, as referred to in Article 1 of the Regulation (EC) No 876/2002 and in Article 20 of its Annex, the Authority shall be the owner of all the tangible and intangible assets created or developed during the entire development phase, including those owned by the Galileo Joint Undertaking in accordance with Article 6 of the Annex of that Regulation and those created or developed by the

European Space Agency and by entities given responsibility by the latter or by the Galileo Joint Undertaking for activities for the development of the programme.

2. The Authority shall be the owner of all the tangible and intangible assets created or developed by the concession holder during the deployment and operation phases, including those created or developed by its subcontractors or by undertakings under its control or by their subcontractors.

3. Ownership rights shall cover all intellectual property rights within the meaning of Article 1(1) of Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements (*) as well as all property rights within the meaning of Article 2 of the Convention of the 14th July 1967 establishing the Intellectual Property World Organisation, and in particular trade mark rights.

4. The modalities for the transfers of the tangible and intangible assets owned by the Galileo Joint Undertaking in accordance with Article 6 of the Annex to Regulation (EC) No 876/2002, will be established during the winding-up proceeding as laid down in Article 21 of the Annex of that Regulation.

5. The agreement concluded between the Authority and European Space Agency (ESA), in accordance with Article 3 of the Annex to Regulation (EC) No 876/2002, can foresee the modalities of exercise, by ESA on behalf of the Authority, of the right of ownership granted to the Authority by Paragraph 1.

6. The concession contract can foresee the modalities of exercise by the concession holder, on behalf of the Authority, of the right of ownership granted to the Authority by Paragraph 1.

(*) OJ L 123, 27.4.2004, p. 11.’

3. Article 3(3) shall be renumbered as Article 3(7).

4. In Article 5(2) the following subparagraph shall be added:

‘A representative of the SG/HR and a representative of the ESA shall attend the Board meetings as observers.’

5. Article 10(1) shall be replaced by the following:

'1. The Administrative Board shall establish a System Safety and Security Committee. It shall be composed of one representative per Member State and one for the Commission from among acknowledged security experts. A representative of the SG/HR and a representative of the ESA shall attend the Committee meetings as observers.'

Article 2

This Regulation shall enter into force on the 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, 12 December 2006.

For the Council
The President
S. HUOVINEN
