



EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

on the signing on behalf of the European Union and the provisional application of the Cooperation Agreement between the European Union and its Member States, of the one part, and the Swiss Confederation, of the other, on the European Satellite Navigation Programmes

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

Technological, geographical and financial reasons have ensured Switzerland an important role in the European GNSS (Global Navigation Satellite Systems) programmes. Switzerland provides critical technology to the Galileo programme. This Agreement aims to settle the principles of cooperation in general and the rights and obligations of Switzerland in areas such as security and export control. The Agreement has been negotiated on the basis of negotiation directives adopted by the Council on 29 June 2010.

Articles 4(5) and 6(4) of 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) allow for the possibility for third countries to provide additional funding to the European GNSS programmes in accordance with conditions to be laid down in Agreements pursuant to Article 218 of the Treaty on the Functioning of the European Union.

The Agreement is limited to topics that are necessary to allow close cooperation with Switzerland. The construction and management of Galileo and EGNOS as EU-wide programmes highlight the need for common approaches and working methods between all Member States and some third countries such as Norway and Switzerland. The rules for these topics need to be set by the governments and coherently enforced Europe-wide. The Commission as programme manager acting on behalf of the Union, the owner of the system, needs to take all reasonable measures to induce this coherence. Failing to do this would increase security risks.

1.2. General context

Switzerland is one of the Union's closest third country cooperation partners in the Galileo programme since the early days of the programme. Switzerland has contributed politically, technically and financially to all phases of the Galileo programme through its membership in the European Space Agency (ESA) and its informal participation in the Galileo-specific EU governance structures over the years. This Agreement will formalise and deepen this close integration of Switzerland in the European GNSS programmes. Without this agreement, there would be uncertainty about the nature of the collaboration in areas such as security, export control, standardisation, certification and radio spectrum. Moreover, the Agreement allows the EU to set overall principles including safeguard measures in the areas of security and export control.

1.3. Existing provisions in the area of the proposal

Cooperation of Switzerland in Galileo will be organised in the enclosed Agreement to provide an umbrella for the cooperation including principles of future cooperation and complementary provisions concerning cooperation in security, standardisation and certification.

1.4. Consistency with the other policies and objectives of the Union

The proposal is in line with the policy of integrating into the European GNSS programmes certain third countries that are Member of ESA and therefore participated in the Galileo and EGNOS programmes from the beginning. Moreover, it supports the objectives of the Commission in reinforcing the Union aspect of cooperation in policies relevant to non-proliferation.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

The Special Committee of the Council, authorities of the Member States and Switzerland have been consulted through bilateral meetings both at the stage of negotiation directives and during negotiations. The respondents included technical, security and transport experts of Member States and Swiss authorities, Ministries of Foreign Affairs, Defence and Interior, ESA and national space agencies.

Summary of responses and how they have been taken into account

These stakeholders have supported the close integration of Switzerland in cooperation in the European GNSS programmes matters and underlined the importance of including issues such as security and export control in the Agreement.

2.2. Collection and use of expertise

Scientific/expertise domains concerned

Space technology/ ground facilities, Security/ Industrial and governmental security, information security and international law/ privileges and immunities

Methodology used

Meetings and exchange of information

Main organisations/experts consulted

EU MS ministries and space agencies ESA, space industry

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

There was a broad consensus over the principles of cooperation foreseen in the Agreement and the objective of closely integrating Switzerland in the programme including rights and corresponding obligations.

Means used to make the expert advice publicly available

The conclusions of the experts have not been made publicly available.

2.3. Impact assessment

The action aims at ensuring a close involvement of Switzerland in the construction and operations phases of the Galileo and EGNOS programmes. These two initiatives contain significant industrial, economic and strategic components. The governance of the European GNSS programmes has been reformed in Regulation (EC) No 683/2008 whereby the focus has been shifted from a Public-Private-Partnership to programmes managed and systems owned by the Union. This evolution and the content of the cooperation with security implications require formal regulatory measures. Consequently, three options were considered to achieve this goal.

The first one was an association of Switzerland to the programme through a specific international cooperation body (Galileo International Board) grouping all third countries interested in the Galileo programme. After long discussions over this body with Switzerland and other third countries such as Norway, the option was abandoned. Switzerland felt it was unjust to have the same treatment as considerably less integrated non-European third countries that do not contribute financially to the programme.

The second option was the conclusion of the enclosed Agreement. This allowed practically to reinforce provisions on security and export control and to provide principles and messages paving the way for a mutually beneficial long term cooperative relationship, and to obtain additional funding.

The third option would have been no action at all. This would have led to uncertain relations in the area of GNSS with Switzerland.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The Commission proposes to the Council to authorise the signing and provisional application of a Cooperation agreement on European Satellite Navigation Programmes between the EU, its Member States and Switzerland. Provisional application for the elements of the Agreement falling within the EU competence is a necessary measure to speed up the application of the Agreement and to receive the Swiss financial contribution to the programmes.

3.2. Legal basis

Article 172 in conjunction with article 218(5) and the first subparagraph of Article 218(8) of the Treaty on the Functioning of the European Union.

3.3. Subsidiarity principle

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons.

The Galileo programme, whose costs are estimated at several billions of Euros, is a European

initiative that no single state alone is willing to finance. The content of the proposed Agreement cannot be limited to any single Member State or a group of Member States but affects the Union as a whole and in some aspects has even a worldwide impact.

The industrial and technical knowledge in the space sector is spread over several European countries, including Switzerland, with no one state capable of mastering all of it. Without a coordinated effort and information sharing, the risks of agreeing on sub-optimal solutions with Switzerland would increase. Errors in the area of security could compromise the security of supply of export controlled components to the European GNSS programmes. This would drive up the costs of the programmes.

Also, the size and complexity of the European GNSS programmes require centralised and simple management structures and clear interfaces between the Union and third countries. A large network of bilateral relations with Switzerland would bear a high risk of inefficiencies, delays and contradictions which in an industrial project quickly translate into higher costs to be borne by the Union budget. Also, Member States acting individually might have smaller chances to impose principles and conditionality towards Switzerland than what is achieved through cooperation.

The Agreement is limited to the common principles and commitments of cooperation and to the specific issues forming part of the Union-owned European GNSS programmes. The Agreement relies on existing capabilities of the Member States (e.g. in export control, exchange of sensitive information) in the implementation of most provisions of the Agreement.

The proposal therefore complies with the subsidiarity principle.

3.4. Proportionality principle

The proposal complies with the proportionality principle for the following reasons.

The Agreement is a traditional well-known instrument in international relations, defined in collaboration with existing expert working groups and to be approved by the existing decision-making structures. It does not establish new administrative structures.

3.5. Choice of instruments

An international agreement is the sole instrument which ensures Union-wide coherency in relations with Switzerland in satellite navigation. Uniformity in application is particularly important in security which forms a major part of the Agreement. At the same time the Agreement allows flexibility as to the implementing measures in particular in the area of standardisation and certification where the Member States are key actors in the international organisations. The Treaties do not provide other viable options for regulating the relationships with a third country.

4. BUDGETARY IMPLICATION

The proposal has only a positive implication for the Union budget. Switzerland will financially participate in the European GNSS programmes following the same formula as for the Swiss participation in the 7th EU RTD Framework Programmes (FP7). The Swiss contribution shall be calculated on the basis of the proportionality factor which is obtained by

establishing the ratio between Switzerland's gross domestic product, at market prices, and the sum of the gross domestic products, at market prices of the Member States of the European Union.

5. OPTIONAL ELEMENTS

The proposal includes a review clause.

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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 172 in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By its Decision of 29 June 2010, the Council authorised the Commission to open negotiations with Switzerland for establishing a cooperation agreement on satellite navigation.
- (2) This cooperation agreement allows for Swiss participation in the European satellite navigation programmes. In return Switzerland will financially contribute to the programmes.
- (3) The negotiations were successfully concluded by the initialling of the Agreement on [xx 2012].
- (4) Therefore, the Agreement should be signed on behalf of the European Union, subject to its conclusion at a later date.
- (5) In view of ensuring the immediate implementation and the appropriate Swiss participation in the programmes elements falling within the European Union's competence should be provisionally applied in accordance with Article 27(2) of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Cooperation Agreement on Satellite Navigation between the European Union and its Member States and Switzerland is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 3

The Agreement shall be applied on a provisional basis, in accordance with Article 27(2) of the Agreement, pending the completion of the procedures for its conclusion. The Commission shall publish a notice in the Official Journal of the European Union providing information on the date of provisional application of the Agreement.

Article 4

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

Done at Brussels,

*For the Council
The President*

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

1. NAME OF THE PROPOSAL:

COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE ONE PART, AND THE SWISS CONFEDERATION, OF THE OTHER, ON THE EUROPEAN SATELLITE NAVIGATION PROGRAMMES.

2. BUDGET LINES:

Chapter: 66

Article: 660

Item: 6600

Amount budgeted for the year concerned: p.m.

3. FINANCIAL IMPACT

The proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(in €)

Budget line	Revenue	12 month period, starting on	2012
Article 660; Item 6600	Other assigned contributions and refunds – Assigned revenue	01/01/2012	20 000 000

Situation following action					
	2013	2014	2015	2016	...
Article 660; Item 6600	40 000 000	20 050 870	To be calculated later	To be calculated later	To be calculated later

4. ANTI-FRAUD MEASURES

5. OTHER REMARKS

- (a) This EU-Switzerland GNSS Cooperation Agreement is of indefinite duration. The Swiss financial contribution to the European Satellite Navigation Programmes for the period 2008-2013 amounts to 60 000 000 € and for 2014 amounts to 20 050 870 €.
- (b) The Swiss financial contribution will be calculated on the proportionality factor spelled out in article 18 of the Agreement. For the period 2008-2013 this proportionality factor is applied on the amount of EUR 3 005 Million. From 2014 onwards the same proportionality factor will be applied on the annual budget appropriations of the European Satellite Navigation Programmes.

DECLARATION of the European Commission

The Commission recalls its general policy objective of negotiating Union only agreements where appropriate.
