



European Economic and Social Committee

TEN/246
Galileo – European
supervisory authority

Brussels, 13 September 2006

OPINION

of the

European Economic and Social Committee

on the

GALILEO programme: successful establishment of the European supervisory authority

Own-initiative opinion

On 19 January 2006 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

GALILEO programme: successful establishment of the European supervisory authority.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 July 2006. The rapporteur was Mr Buffetaut.

At its 429th plenary session, held on 13 and 14 September 2006 (meeting of 13 September), the European Economic and Social Committee adopted the following opinion by 200 votes to four with two abstentions.

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1. **Conclusions and recommendations**

The European Economic and Social Committee attaches great importance to the success of the Galileo programme, and accordingly emphasises the need for the hand-over period between the Galileo Joint Undertaking (GJU) and the Galileo Supervisory Authority (GSA) to be effected smoothly. To this end, it recommends:

- setting up a plan for the transfer of activities from the Joint Undertaking to the Supervisory Authority in order to ensure the legal certainty of the operation;
- providing legal and practical solutions for the issue of the transfer of activities carried out by third country entities (China and Israel) associated with the Joint Undertaking to the Supervisory Authority;
- ensuring that the Joint Undertaking's remaining appropriations are effectively handed over to the Supervisory Authority;
- making sure that there is no overlap of responsibilities between the Joint Undertaking and the Supervisory Authority before the date of winding up of the Joint Undertaking;
- avoiding any interruption in the negotiations on the concession contract;
- guaranteeing the international liability arrangements for the launching States of the Galileo constellation satellites.

2. **Introduction**

2.1 The transfer of business between the Galileo Joint Undertaking (GJU) and the Galileo Supervisory Authority (GSA) must be completed by the end of 2006. For the future success

of the Galileo programme, it is crucial that the transfer should take place under the best possible conditions from the legal, human, financial and budgetary points of view.

- 2.2 Similarly, it is preferable that the negotiations on the concession contract begun by the Joint Undertaking, and to be taken up by the supervisory authority, should continue seamlessly.
- 2.3 Lastly, the specific issue of the international liability of states under the Galileo programme needs to be addressed, as it must be resolved before the concession contract discussions end and the forthcoming launches of the Galileo constellation satellites.

3. **General comments**

3.1 **Summary description of the Galileo programme**

- 3.1.1 Galileo is the European Union's flagship scientific and technical project. Satellite radionavigation systems are an issue of strategic importance to Europe, which it cannot afford to neglect. Europe has consequently decided to fund and deploy its own global navigation satellite system (GNSS) similar to its US and Russian counterparts.
- 3.1.2 Galileo will provide a highly accurate, robust and guaranteed worldwide positioning system, containing an integrity message. It will supply independent navigation and positioning services under civilian control, while remaining compatible and interoperable with the two existing military systems: the American GPS (Global Positioning System) and the Russian GLONASS system. Galileo will also provide a secured governmental service which will be accessible to authorised users under all conditions.
- 3.1.3 The European system will comprise a constellation of thirty satellites and ground stations, which are necessary for optimum system functioning, and should be operational by the end of 2010.
- 3.1.4 The programme is being carried forward and supported by two major players: the European Union, represented by the European Commission, and the European Space Agency (ESA). The European Commission and the ESA set up the Galileo Joint Undertaking (GJU) with the task of supervising the programme and management the EU's funding for Galileo.
- 3.1.5 At the end of the in-orbit validation (IOV) phase, the entire system will be transferred from the GJU to the Galileo Supervisory Authority (GSA), a Community regulatory agency, which will be responsible for signing a concession contract with a group of private companies.
- 3.1.6 The total cost of the Galileo programme for the design, development and in-orbit validation phase, is estimated at EUR 1 500 million.

3.1.7 The concession contract is currently being negotiated between the GJU and a consortium of European companies (Anea, Alcatel, EADS, Finmeccanica, Hispasat, Immarsat, Teleop and Thales).

3.1.8 Arrangements for the transfer of activities between the GJU and GSA are being defined at present: it must be ensured that they do not entail any delays, complications or duplication of costs.

3.2 **The Galileo Joint Undertaking (GJU)**

3.2.1 The Joint Undertaking was set up by decision of the Council of the European Union in Regulation No 876/2002 of 21 May 2002, on the basis of Article 171 of the Treaty establishing the European Community, which provides that "the Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes". The annex to the regulation contains the statutes of the GJU.

3.2.2 The members of the GJU are:

- the European Community, represented by the Commission,
- the European Space Agency (ESA).

3.2.3 Article 2 of the Statutes allows undertakings, including those from third countries, to become members of the Joint Undertaking. It now in fact includes a Chinese body (the National Remote Sensing Centre of China - NRSCC) and an Israeli commercial company (MATIMOP). Both these entities sit on the Administrative Board with voting rights in proportion to their contributions.

3.2.4 The GJU's legal nature is complex as a result of the membership of its Administrative Board. The regulation stipulates that it is to be considered as an international organisation for the purposes of European legislation on turnover taxes and excise duty. It also specifies that it is not designed to fulfil an economic purpose. According to the Commission, the GJU's legal character is closer to that of an association than a commercial undertaking, as the GJU receives only contributions from its members and does not make a profit. Moreover, the Belgian tax authorities (the GJU being subject to Belgian law for aspects not covered by the above-mentioned regulation) have deemed it not to be a commercial enterprise but a legal person (falling into the same category as an association in Belgian law).

3.2.5 The GJU's capital breaks down as follows:

- European Commission EUR 520 million
- ESA EUR 50 million
- NRSCC EUR 5 million

– MATIMOP EUR 5 million.

- 3.2.6 Because of the GJU's specific legal nature and the fact that it only receives contributions, the Commission has proposed that the word "capital" be replaced by "contribution", which requires an amendment of the Statutes. This was approved by the GJU Administrative Board on 2 June 2006. The European Court of Auditors had also pointed out that use of the word "capital" was inappropriate, since the GJU's budget line did not allow for capital contributions.
- 3.2.7 The main task of the GJU is successfully to complete the development of the Galileo programme during its development phase by combining public and private sector funding, and to ensure the management of major demonstration projects. A further mission of the GJU is to undertake the research and development steps needed to ensure the success of the development phase and of the coordination of national activities in this field and, consequently, to manage the contracts concluded under the European Commission's framework programme for research and technological development (FP6).
- 3.2.8 The GJU is directed by:
- an Administrative Board,
 - an Executive Committee, and
 - a Director.
- 3.2.9 The Council of the European Union also established a Supervisory Board and a Security Board to monitor its activities.
- 3.2.10 The GJU was set up for a period of four years from 28 May 2002 (date of publication in the Official Journal), covering the initial duration of the Galileo programme development phase. The regulation makes provision for extending this period until the development phase is completed, but without defining how the extension is to be carried out. In the light of the establishment of the GSA, the Commission has proposed winding up the GJU on 31 December 2006, requiring an amendment to the Statutes annexed to Council Regulation N° 876/2002 of 21 May 2002 and the opinions of both the European Parliament and the EESC. At the end of the procedure for consulting the GJU's Supervisory Board and the ESA's navigation steering committee, commenced on 10 March 2006, the GJU's Administrative Board approved the amendment to the Statutes on 2 June 2006, enabling the Commission to adopt the proposal for a regulation amending the Statutes of the GJU on 29 June 2006. This regulation is in the process of being approved by the Council of the EU.
- 3.2.11 In order to promote the widespread use of satellite navigation systems and to allow third country entities to take part in the GJU, a number of international agreements have been signed between the European Union and third countries (China, Israel, India, Ukraine and others), with others in the process of negotiation (Morocco, Korea, Russia and Argentina).

These agreements explicitly exclude any cooperation in aspects concerning the service reserved for government applications. Two technical cooperation agreements have been concluded between the GJU and bodies representing two countries (the National Remote Sensing Centre for China and MATIMOP for Israel) which, under the GJU Statutes, enables representatives of these entities to sit on the Administrative Board of the GJU.

3.2.12 Lastly, arrangements for winding up the Joint Undertaking are set out in Article 21 of the Statutes.

3.3 **The Galileo Supervisory Authority (GSA)**

3.3.1 This body was set up by decision of the Council of the European Union in Regulation No 1321/2004 of 12 July 2004. It is a Community agency having legal personality.

3.3.2 Its task is to manage the public interests relating to the GNSS programmes and to be their regulatory authority.

3.3.3 Its tasks, defined in Article 2 of the regulation, are:

- managing and controlling the use of the European funds specifically allocated to it for GNSS (Global Navigation Satellite System) programmes;
- concluding a concession contract with the consortium selected for the deployment and operation of Galileo;
- taking over the management of the agreement with the economic operator charged with operating EGNOS (European Geostationary Navigation Overlay Service);
- managing frequencies (coordination, rights of use, relations with the concession holder);
- modernising and further developing the system;
- ensuring certification of system components;
- dealing with aspects relating to the system's security.

3.3.4 It should be emphasised that the GSA will own the system and in particular the property developed by the concession holder, and will be responsible for protecting and valorising investment already made by the Community.

3.3.5 The GSA is directed by an Administrative Board (one representative for each Member State and one for the Commission), a System Safety and Security Committee and a Scientific and Technical Committee. An Executive Director represents the authority and is in charge of its management.

3.4 Legal, technical and financial questions and risks involved in the GJU-GSA transfer

3.4.1 Implementing the GJU-GSA transition

The arrangements for the transition and transfer of activities from the GJU to the GSA have not been clearly defined by the Commission. A non-paper from the Commission's Transport and Energy DG¹ has however suggested that an exchange of letters or a Memorandum of Understanding might take place between the two bodies in order to lay down the cooperation arrangements, ensuring complementarity of activities and preventing duplication.

3.4.2 Although the tasks allotted to the two bodies when the Galileo programme was launched were different in kind and in the implementation deadlines, in the light of the delay in the development phase (approximately two years) and of the effective establishment of the GSA (the director was appointed in May 2005) it is now necessary for economic, legal and technical reasons to authorise the GSA to intervene immediately – well before the end of the development and validation phase – and to wind up the GJU as soon as possible². To this end, the progressive transfer of activities from the GJU to the GSA, including work arising from the management of the contracts concluded by the GJU, must be put in motion; it is also important that GSA teams be very closely involved, as of now, in the negotiations for the concession contract which is to be signed and managed by the regulatory authority.

3.4.3 The GJU is now expected to cease activity on 31 December 2006, subject to acceptance by its members of the amendment to the GJU Statutes. An initial plan for the transition and the transfer of GJU activities and know-how has been drawn up between the Directors of the GJU and the GSA and was submitted to the Supervisory Board and the Administrative Board of the GJU in February 2006. This transition plan will have to be worked out in detail and adapted in order to ensure the transfer takes place as quickly and smoothly as possible.

3.4.4 During this transitional period, the two bodies must work in close cooperation to ensure a smooth, problem-free transfer of activities and know-how. This period should also enable the GSA to become fully operational in order to avoid the risk of personnel shortages at a time when the main tasks on which the programme's success depends are to be carried out.

3.4.5 The actions should be planned with a view to ceasing activity at the end of December 2006. This would enable the winding-up phase to commence at the beginning of 2007. This transition must also be completed as soon as possible so that the regulatory authority can define and implement Galileo's security and safety rules, define the relevant rules governing

¹ Setting up of the Galileo Supervisory Authority, Document for discussion at the executive Committee of 24 June 2004, TREN E/4/OO/bp D 11090 (2004) of 24 June 2004, p. 1.

² It is recalled that the initial date for the end of GJU activity was 28 May 2006 (see above – duration of the GJU).

intellectual property rights and coordinate Member States' actions and positions regarding the frequencies needed to use the Galileo system.

3.4.6 The transition plan must contain measures to ensure that the actions carried out by the two entities are compatible, and provide procedures for settling any disputes that may arise between them. It has so far been agreed that the Director of the Energy and Transport DG should serve as a mediator between the GJU and the GSA in the event of difficulties in carrying out the transfer.

3.5 **Ensuring legal certainty in the transfer of assets from the GJU to the GSA by drawing up a practical transfer of activities plan**

3.5.1 As presently worded, the regulation establishing the Supervisory Authority does not permit it to intervene during the development phase, which is the responsibility of the ESA. The regulation should therefore be amended to grant this power to the Supervisory Authority. An opinion of the European Parliament (but not necessarily of the EESC) will be required for this purpose. The agreement between the GJU and the GSA should guarantee the legal certainty of operations to transfer GJU assets to the GSA, by drawing up a practical transfer of activities plan which comprises an identification of the roles of the different bodies and entities concerned, an accurate catalogue of assets and liabilities, practical transfer arrangements, a timeframe for the transitional phase, the essential steps to be taken, the financial and fiscal consequences of the transfer, etc. The decisions to be taken regarding the arrangements for transferring assets from the GJU to the GSA should require the active involvement of a range of bodies such as the GJU Supervisory Board, the GJU Administrative Board, the ESA Council, the Administrative Board of the Galileo Supervisory Authority, the European Commission, the EU Council and the European Parliament.

3.5.2 It should be pointed that, despite the fact that Article 6 of the GJU Statutes lays down that the Joint Undertaking shall own all the tangible and intangible assets created or transferred to it for the development phase of Galileo, most of the items developed under the programme, including satellites, appear to belong not to the GJU, but rather to the ESA under the GalileoSat programme. Article IV of Annex III of the ESA Convention clearly shows that the Agency, acting on behalf of the participating States, is the owner of the satellites, space systems and other items produced under the ESA programme as well as of the facilities and equipment acquired for its execution. Any transfer of ownership is decided on by the ESA Council. Thus, it would seem that until such times as the ESA Council decides on a transfer of ownership or grants a licence for use to the GJU, the GJU will not have any right to these items. For its part, the Commission considers that Community law is applicable and that, following the amendment of the GSA and GJU Statutes, and the winding-up of the latter, all the assets will automatically be transferred to the Supervisory Authority. The ESA's and the Commission's interpretations could therefore differ.

- 3.5.3 It would consequently appear that this state of affairs might give rise to discussion on how to interpret Article 7 of the GJU-ESA contract, which states that the ownership of the satellites and other physical and immaterial property produced in the framework of the programme shall be vested in ESA, acting on behalf of the JU.
- 3.5.4 The meaning of "on behalf of" is in fact interpreted by the ESA on the basis of the wording of Article IV of Annex III to the ESA Convention. In this context, the expression means that the ESA acquires the results of developments carried out on behalf of the States participating in the relevant ESA programme, and that the latter may ask the Agency for a licence to use the results; this licence is more or less restrictive depending on the requirements which the States specify (use for commercial or scientific purposes, etc.).
- 3.5.5 This position seems to be confirmed in the text of the GalileoSat programme Declaration, Article 12 of which stipulates that the ESA is the owner of all tangible and intangible items of the GalileoSat programme.
- 3.5.6 For EGNOS, in contrast, the ESA is only the owner of the tangible items on behalf of the States participating in the programme, with intellectual property rights remaining with the ESA contractors under the Agency's rules.
- 3.5.7 The expression "vested in ESA, acting on behalf of the JU" is consequently interpreted by the ESA as "vested in ESA in the interests of the GJU".
- 3.5.8 Discussions with the ESA, however, do not suggest that the ESA does not wish to transfer assets to the GJU or the GSA. Nevertheless, the ESA has made it known that this transfer requires the authorisation of the ESA Council (by a simple majority) and that the transfer arrangements have still to be defined. The ESA would prefer the option of a direct transfer from the ESA to the GSA for both fiscal reasons and because it would be more appropriate, insofar as in this case third countries holding GJU capital would have no rights over items whose ownership was transferred by the ESA. These items would not be counted among the GJU's assets and would therefore not be subject to its winding-up procedures.
- 3.5.9 The specific question of the intellectual property rights and items developed by third countries is governed by the international agreements concluded between firstly, the EU and non-EU third countries and secondly, between third party bodies and the GJU³.
- 3.5.10 However, the GSA regulation would appear to clearly show that the Supervisory Authority is the owner of all the tangible and intangible assets which are transferred to it by the GJU on

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The involvement of non-EU third countries in the Galileo programme is covered by international agreements negotiated and concluded by the EU on behalf of the Member States, following negotiation of the provisions of the Agreement by the European Commission acting on the instructions of the Council. The first agreement was signed with China in October 2003, and is in the process of being ratified by the Member States. These agreements call on third countries to appoint an entity to participate in the Joint Undertaking (see above – International cooperation).

completion of the development phase or which may be created or developed by the concession holder during the deployment and operational phases. The GSA regulation provides that the procedures governing ensuing transfers of property will, in the case of the GJU, be set out in the course of the winding-up proceedings laid down in Article 21 of the GJU Statutes. For EGNOS, the Authority is the owner of all the tangible and intangible EGNOS assets subject to agreement with the EGNOS investors on the terms and conditions of the transfer from the ESA of ownership of all or part of the EGNOS facilities and equipment. This could be interpreted to mean that, from the Commission's point of view, no transfer procedure between the GSA and the ESA would be necessary, since all the tangible and intangible assets belong to the GJU (in contrast to the ESA's current interpretation based on its Convention and on the programme Declaration).

3.5.11 The following legal steps in particular must be taken:

- amendment of the GJU Statutes to establish the closure of the GJU on 31 December 2006, complete operations to transfer the GJU's activities to the GSA, and provide for a winding-up period the duration of which will remain to be defined;
- amendment of the GSA regulation in order to introduce the tasks transferred from the GJU to the GSA, such as steering the development and in-orbit validation phase, managing the activities emerging from the European R&D framework programmes, and monitoring and managing technical developments in the operational system⁴.

3.6 **Plan for transfer of activities from GJU third countries to the GSA**

Negotiations for the transfer of activities carried out by third country entities, by means of additional transfer clauses between the GSA, the GJU and the bodies concerned, must get under way rapidly. Contact must be made with these bodies to sound out their positions regarding the closure of the GJU and their future place and role within the GSA. The provisions of the regulation establishing the GSA stipulate that it should be possible for third countries, particularly those which have been involved in the programme's previous phases, to participate in the GSA provided they have concluded an agreement with the Community. Such agreements must specify, in particular, the nature, extent and manner in which these countries are to participate in the work of the Authority, including provisions relating to participation in the initiatives undertaken by the Authority, financial contributions and staff. It would seem that the reaction of third-country entities to the decision to wind up the GJU before the end of the IOV (in-orbit validation) phase might depend on the place accorded to them in the GSA. The NRSCC and MATIMOP could, for example, demand repayment of a part of their contributions as a result of GJU closure. The question of third party participation on the GSA Administrative Board will inevitably arise during the negotiations. Initial contacts

⁴ Two information memos have been drawn up by the Commission on this question for the members of the GJU Administrative Board: "Changes to the GJU Statutes and GJU/GSA transfer", TREN B5 D(2006) of 18 January 2006; "Envisaged changes to the GSA Regulation and GJU/GSA transfer", TREN B5 D(2006) of 19 January 2006.

on this question with the Community bodies seem to indicate differing views between the Member States: some do not wish to grant voting rights to third countries, while others point to the danger of compromising system security if it is opened up too widely to third countries. All, however, appear to agree that third party involvement in the GSA's Administrative Board must under no circumstances jeopardise EU control over the system. A special position might be granted, under certain conditions, to non-EU European countries (Norway and Switzerland). One solution might be to group third countries together within a dedicated structure to allow them to state their positions regarding decisions taken by the GSA.

3.7 Limiting overlap of responsibilities

3.7.1 A plan to reduce the GJU establishment plan should be put in place, with firm step-by-step deadlines in keeping with the timetable for the transfer of activities, in order to avoid the presence of a large number of staff at the end of December 2006, take stock of the employment contracts and ensure that there is no risk of end-of-contract disputes which might block the transfer of assets. It should be noted that some 24 people are expected to continue working up to the date of the end of negotiations on the concession contract, no later than 31 December 2006. The GJU winding-up phase after 31 December 2006 is to be carried out by approximately six people.

3.7.2 It is also necessary to have a clear picture of how the GSA is to grow, and particularly of the staff recruitment plan, in order to check on its compatibility with the plan for the transfer of GJU activities. It should be noted that the GSA must comply with Community procedures and deal with a number of constraints concerning staff recruitment (level of salaries, contracts limited to three years, final location of the agency as yet undecided) which are holding back the process of setting up the GSA organisation.

3.8 Financial and budgetary aspects

3.8.1 It is important that the remaining appropriations at the closure of the GJU (estimated at some EUR 46 million) should be transferred to the GSA. The Commission would like the transfer of funds from the GJU to the GSA to take place as soon as the Supervisory Authority is empowered to manage the end of the development phase. In this way, the only funds remaining available to the Joint Undertaking at the time of closure of activities would be those required for the winding-up process.

3.8.2 The revised GJU budget for 2006, incorporating an increase of EUR 7 million over the budget adopted in 2005, when it was expected that closure would take place in May 2006 (instead of the EUR 14 million originally requested by the GJU without taking account of the transfer of activities to the GSA), means that the transfer of activities to the GSA by the end of 2006 at the latest can be covered with maximum flexibility: this revised budget was adopted by the GJU Administrative Board and Supervisory Board at the end of February.

- 3.8.3 The 2006 GSA budget, for its part, must take account of additional staff recruitment requirements in the course of 2006 and must be increased accordingly. Following the adoption of the new draft 2006 budget of some EUR 8 million (instead of an initial budget of EUR 5 million for 2006 voted in 2005) by the GSA's Administrative Board on 23 January 2006, the revised draft budget is to be examined by the Ecofin Council and then by the European Parliament in the second half of 2006. The increase in the GSA's budget to the suggested amount is a precondition for the GSA's ability to recruit the necessary staff and conduct the transferred activities. The final savings made on the GJU's budget, as a result of the progressive transfer of activities to the GSA should ideally cover the increased GSA budget: this should serve to reassure MEPs regarding the proper use of European funds in the transfer operation even in, in practice, the funds and budgets in question come from different sources.
- 3.8.4 An assessment of the costs of winding up the GJU (in particular, staff kept on to complete the winding-up operations) and the financial impact in terms of VAT and other taxes (e.g. transfer of ownership duties) must be made as soon as possible. Since the GJU, to which the Belgian authorities have sent a comfort letter, is regarded by them as a legal person under Belgian law (falling into the same category as an association) rather than a commercial enterprise, it should not be liable to any tax on the liquidation surplus. The amount of tax levied should therefore be small, especially if most of the funds have been transferred prior to winding up. Such issues must, of course, be dealt with in advance in order to avoid any unpleasant surprises.
- 3.9 **Negotiation of the concession contract and finalisation of technical activities**
- 3.9.1 The GJU's revised 2006 budget will enable it to continue negotiations on the concession contract, the aim being to complete them by 31 December 2006 at the latest, while facilitating the transfer of know-how to the GSA and progressively involving it in the negotiations as it gathers speed.
- 3.9.2 It should be pointed out that it is stated in the records of the various GJU and GSA control bodies that if the negotiations have not been finished by 31 December 2006, responsibility for conducting them will pass to the GSA on 1 January 2007.
- 3.9.3 The GJU will also have to introduce a procedure or action plan so that the technical files can be closed and technical documents finalised before its closing date.
- 3.9.4 The role and responsibilities of the ESA during the reception and system validation phase, and subsequently for technical developments of the system and maintaining the system in operational condition following validation, will have to be specified in a framework contract between the GSA and the ESA. The ESA's role in the GSA Administrative Board as an observer rather than as a full member as in the GJU means it will no longer be able to play such an active role in decision-making. The GSA regulation provides that cooperation with

the ESA should exploit to the fullest the possibilities offered by the framework agreement concluded between the European Community and the ESA on 25 November 2003, where relevant⁵, and that the ESA may be requested to provide the Authority with technical and scientific support⁶. In any case, an agreement must be reached between the Supervisory Authority and the ESA before the end of 2006 to cover activities concerning the end of the development phase, and another agreement will have to be concluded by 2008 to organise relations between the Supervisory Authority and the ESA after the development phase has ended, during the reception and system validation phase and possibly beyond, for the operational phase.

4. Further points for consideration: International liability of launching States for Galileo constellation satellites

- 4.1 The satellites launched during the IOV phase are at present owned by the ESA (development of satellites under the ESA GalileoSat programme). Their ownership is to be transferred to the GSA at the end of the in-orbit validation phase.
- 4.2 Under the GJU/ESA agreement, the ESA is responsible for launching the first IOV phase satellites and for registering them with the United Nations Office for Outer Space Affairs in Vienna. The first satellite in the constellation (GIOVE-A) was launched in December 2005 by the Starsem operator from Baikonur using a Soyuz-ST launch vehicle.
- 4.3 In practical terms, the ESA should proceed in the same way as for the transfer of ownership of the satellites it develops on behalf of third parties, as in the case of Meteosat or MetOp, for example (ESA-Eumetsat transfer). Notification of the transfer of ownership of the orbiting satellites should then be made to the appropriate authorities.
- 4.4 Given the provisions of the 1967 Outer Space Treaty and the 1972 Liability Convention, the liability arrangements following the launch and use of the satellites in orbit need to be examined.
- 4.5 In the light of the criteria for defining a country as a "launching State", which may incur international liability in the event of damage on the ground or in orbit caused by space objects, the ESA could be considered as a *de facto* "launching State", as it is considered as a State which "procures the launching" of satellites in the IOV phase and concludes the launch contract with the launch operator.
- 4.6 Similarly, the question could arise as to whether Belgium could be considered as the launching State, since the GJU – closely involved in developing and launching satellites for

⁵ Recital No 12 of the GSA regulation.

⁶ Article 2(2) of the GSA regulation.

the IOV phase – lies within its jurisdiction (the GJU is based in Brussels). Under Belgian national law, it would appear that the Belgian Federal State can only incur liability for space activities carried out from its territory or from installations owned by the Belgian State or placed under its jurisdiction or control⁷, which is not the case here. However, the question remains entirely valid in terms of international law.

- 4.7 Moreover, following the winding-up of the GJU and the transfer of its activities to the GSA, the GSA will become the entity on behalf of which the satellites are launched; in consequence the international legal person to which it is attached could also be considered to be the launching State. The definition of the EU launching State should therefore be analysed, with a view not only to the launch of the IOV phase satellites, but also to the launch of the other satellites of the Galileo constellation during the deployment and operational phase.
- 4.8 In the deployment and operational phase, the country in which the head offices of the operator in charge of the constellation (the company holding the concession) – which will launch the satellites – are located could also incur liability. Since the head offices of the concession holder are located in France (Toulouse), under the terms of the agreement of 5 December 2005 between the main parties involved in the concession, France could in consequence incur liability.
- 4.9 Lastly, the country under whose jurisdiction the launch operator falls will also be considered to be a launching State, as may any country whose territory or installations are used. If the operator selected is the French company Arianespace, France could be considered to be the launching State.
- 4.10 Given that several launching States are involved, the relations between the various entities in terms of liability and sharing of risk between the various launching States in the event of damage during the launch and working life of the satellites need to be clarified.
- 4.11 It should be noted that there is an agreement between the ESA and France (agreements on the *Centre Spatial Guyannais* [French Guiana Space Centre]). This agreement contains clauses on international liability, particularly in the event of launches carried out by Arianespace, and would appear to be applicable to Galileo. The issue of the international liability of the launching States during the working life of the satellites in orbit remains open: the question of whether to conclude an agreement on this matter between France and the other launching States (the ESA, Belgium and the EU) may arise.

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The Belgian law on the launch, flight operations or guidance of space objects of 17 September 2005, published in the *Moniteur* of 16 November 2005, No 348. Article 2(1) of the law states that it covers the launch, flight operations or guidance of space objects performed by natural or legal persons in areas under the jurisdiction or control of the Belgian state or by means of mobile or fixed installations which belong to the Belgian state or are under its jurisdiction or control.

Reference documents

- 1) Council Resolution of 19 July 1999 on the involvement of Europe in a new generation of satellite navigation services — Galileo-Definition phase, OJ C 221 of 3.8.1999, p. 1
- 2) Council Decision 98/434/EC of 18 June 1998, OJ L 194 of 10.7.1998, p. 15
- 3) Council Regulation (EC) No 876/2002 of 21 May 2002 setting up the Galileo Joint Undertaking (GJU Statutes in annex), OJ L 138, p. 1
- 4) Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations, OJ L 101 of 11.4.2001, p. 1
- 5) Agreement between the Galileo Joint Undertaking (GJU) and the ESA – ESA/C(2002)51, rev 1 of 23 April 2002
- 6) Galileo Joint Undertaking Organisation and Decision Process – ESA/PB-NAV(2003)20 of 5 September 2003
- 7) 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, OJ L 246 of 20.7.2004, p. 1
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The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Anne Marie Sigmund

Patrick Venturini