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

REGULATION (EU) No 912/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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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 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[(6)].

(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.

(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 cooperation, 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.