



2018 - a decisive year for European Space Policy

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2018 will be a decisive year for European Space Policy and the programmes under it. The European Union now prepares for the phase post 2020, namely for the next Multiannual Financial Framework (MFF). According to the Commission's work programme for 2018, a proposal for the MFF Regulation shall be submitted to Council and Parliament by May 2018. This proposal will also include the draft budgetary planning for the EU space programmes. Based on public statements during the recent EU Space Policy Conference in Brussels, it can reasonably be assumed that the space budget will see an increase, but not a duplication as suggested by some stakeholders. The effects of Brexit lead to substantial losses in the EU budget (calculated at around 70 billion EUR for the MFF period) and it is already questionable whether and to what extent Member States are willing and prepared to close the gap with additional commitments. Further, while there seems to be principal agreement that the EU should do more in security, defence, migration and climate change, it is less clear whether Member States will agree to a corresponding budget increase. Some net contributing countries have already declared their opposition against any increase. Reports from a recent Council meeting suggest that the further discussions will be particularly complex.¹

Further difficulties arise from the European Parliament elections in late May 2019 and the subsequent appointment of a new Commission. To ensure that the MFF Regulation and related legislation, including the Financial Regulation and the Rules for Application, are in force at the beginning of the next MFF period, the Commission aims to reach at least informal agreement with the Council and the Parliament before the Parliament elections. Pressure is high on all stakeholders to reach consensus in the months to come.

The MFF Regulation will be negotiated as a package, including also key financial elements of sector-specific legislation. Sector-specific legislation establishes the EU's operational spending in various policy areas, including space. Sector-specific acts are adopted under the ordinary legislative procedure by the Council and the European Parliament on the basis of proposals by the Commission.

The Commission currently prepares proposals for all legislative acts related to space policy. The aim is to publish these proposals in May 2018, at the same time as the proposal for the MFF Regulation. The "space package" will include new legislative proposals for the ongoing programmes GNSS and Copernicus, comprising the GNSS Regulation², the GSA Regulation³, the Copernicus

¹ Remarks by President Donald Tusk following the informal meeting of the 27 heads of state or government on 23 February 2018, under <http://www.consilium.europa.eu/en/press/press-releases/2018/02/23/remarks-by-president-donald-tusk-following-the-informal-meeting-of-the-27-heads-of-state-or-government-on-23-february-2018/>

² Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council

³ Regulation (EU) No 512/2014 of the European Parliament and of the Council of 16 April 2014 amending Regulation (EU) No 912/2010 setting up the European GNSS Agency

Regulation⁴ and the Copernicus Delegated Regulation⁵. It will further include a legislative proposal for the continuation of the Space Surveillance and Tracking (SST) programme, so far run under Decision No 541/2014/EU of 16 April 2014⁶ and an Implementing Decision of the European Commission of 12 September 2014⁷. Furthermore, we can expect a legislative proposal for a new GOVSATCOM programme, aiming to ensure reliable, secure and cost-efficient satellite communications services for EU and national public authorities. In October 2017, the Commission presented a related Impact Assessment Study, prepared by PriceWaterhouseCoopers, to Member States.⁸ The future EU GOVSATCOM programme will build upon the on-going Pooling and Sharing demonstration project and the EU Satcom Market project by the European Defence Agency (EDA)⁹ as well as the GOVSATCOM precursor activities by the European Space Agency (ESA).¹⁰

In addition to and above these programme-specific legislative proposals, the Commission is expected to propose, for the first time, a Framework Regulation for the EU space programmes. Such Framework Space Regulation would establish the key principles and common rules for the individual programmes GNSS, Copernicus, SST and GOVSATCOM. Not much is currently known on the specific content, but elements of the Framework Space Regulation will likely include common provisions on the governance of the programmes, including on the delegation of tasks to the GSA, other EU agencies, ESA and EUMETSAT, on financial management, on grants and procurements, on the treatment of classified information, as well as procedural provisions on programme committees, annual reports and mid-term evaluations.

Thus, by end of May 2018, we can expect a whole package of legislative proposals for the EU space programmes during the period 2021-2027. In addition, other proposals are of significant relevance, such as the proposal for the next European Framework Research Programme (FP9) or for the European Defence Industrial Development Programme (Defence Fund). Under FP9, we can expect a Joint Technology Initiatives (JTI) on larger-scale space R&D, a pilot project has already been launched in November 2017.¹¹ The Defence Fund is proposed to have a yearly budget of 1,5 billion EUR and, according to Commissioner Elżbieta Bieńkowska, “*space capabilities are natural candidates for support.*”¹² Finally, we may expect a non-legislative document by the Commission specifying its launcher policy, aggregating its demand for the EU space programmes and eventually establishing some sort of Buy-European principle.¹³ In 2021, the Commission will award the Low-Cost Space Launcher Prize, valued at 12 million EUR, to the company that best demonstrates its

⁴ Regulation (EU) No 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010

⁵ Commission Delegated Regulation (EU) No 1159/2013 of 12 July 2013 supplementing Regulation (EU) No 911/2010 of the European Parliament and of the Council on the European Earth monitoring programme (GMES) by establishing registration and licensing conditions for GMES users and defining criteria for restricting access to GMES dedicated data and GMES service information

⁶ Decision No 541/2014/EU of the European Parliament and of the Council of 16 April 2014 establishing a Framework for Space Surveillance and Tracking Support

⁷ Commission Implementing Decision of 12.9.2014 on the procedure for participation of the Member States in the Space Surveillance and Tracking Support Framework

⁸ Study in support of the Impact Assessment of an EU GOVSATCOM initiative, PWC, August 2017, to be found at <https://publications.europa.eu/en/publication-detail/-/publication/f9004854-0d50-11e8-966a-01aa75ed71a1/language-en/format-PDF>

⁹ <https://www.eda.europa.eu/info-hub/press-centre/latest-news/2017/06/16/14-eda-member-states-to-pool-share-govsatcom-capabilities> as well as <https://www.eda.europa.eu/what-we-do/activities/activities-search/eu-satcom-market>

¹⁰ https://www.esa.int/Our_Activities/Telecommunications_Integrated_Applications/Govsatcom_Precursor

¹¹ <http://www.eurospace.org/towards-a-joint-technology-initiative-for-the-space-sector-start-of-a-pilot-project-between-european-commission-and-eurospace.aspx>

¹² https://ec.europa.eu/commission/commissioners/2014-2019/bienkowska/announcements/10th-annual-space-conference-opening-speech_en

¹³ It is also possible that provisions on launchers will be contained in the Framework Space Regulation.

capability to develop a European technologically non-dependent solution for launching small satellites into Low-Earth Orbit (LEO).¹⁴

The Commission has already initiated consultations with Member States, industry and other stakeholders on the upcoming proposals, including a handful of meetings and some surveys. Not much can be deduced from publicly available information with regard to the prospective content of the legislative proposals. For Copernicus, the Commission currently conducts a market survey to assess which national and commercial capacities could be used to complement the existing and future Sentinel satellites in a way that would bring additional value to the programme and would satisfy the requirements of the core Copernicus Services. For SST, the Commission has issued a Discussion Paper in preparation of a User Workshop, which took place on 23 February 2018. Questions addressed in the paper mainly focus on the adequacy of the current services portfolio, on the need for and potential impact of additional services, and on the potential role of industry in such services. Stakeholders will thus have to wait for the legislative proposals to discover the details of the Commission's plans for the different space programmes.

Even without using the crystal ball, one can predict that EU agencies will receive a greater role in the programmes' governance, while the role of ESA will shrink. Rumours are circulating that the GSA might, beyond a further increasing role in the GNSS programme, be also charged with service provision and operational tasks in Copernicus or GOVSATCOM. Some even suggest that the Agency should be transformed to take over implementing responsibility for all EU space programmes. During the EU Space Policy Conference, both the Commission and the Parliament highlighted the need to significantly increase the staffing of the GSA. The Agency reportedly has significant problems in finding suitable staff, among others due to its distance from the Brussels centre of gravity and an approx. 30 % lower salary compared to Brussels.

Should the GSA be allocated tasks within GOVSATCOM, the Commission would have to define a suitable governance scheme for the interaction with EDA, which is currently leading the preparatory pooling and sharing as well as the satcom procurement activities. As a Council agency, EDA is not under direct supervision of the Commission and a comprehensive delegation of tasks and associated budget from the Commission to EDA, implying related supervisory and control mechanisms, meets concerns at least by some Member States. The same issue applies with regard to an enhanced role of the EU Satellite Centre (SatCen) in the provision of Copernicus services related to security and defence.¹⁵ For SST, participants noticed during the EU Space Policy Conference that EASA claimed a role in the programme governance, comparing itself with the FAA in the US. One can expect that such statements during a high-level panel are not made without prior coordination with the Commission.

All EU space programmes, including the future GOVSATCOM and enhanced SST, have a clear focus on services and applications. Copernicus, Galileo and EGNOS are already operational and deliver a comprehensive set of services. During the next MFF, the service portfolio of these programmes will even be expanded, e.g. by introducing a Copernicus service dedicated to climate change and by reaching the Full Operational Capability (FOC) of Galileo.¹⁶ While ESA had a key role in the early definition and deployment phases of the GNSS and Copernicus programmes, its future role in the overall EU space programmes is less evident. Traditionally, ESA has always handed over operational services systems to dedicated operators, leading to the creation of EUTELSAT, INMARSAT and EUMETSAT during the 70ies. Nowadays, operational services systems are mostly set-up by ESA under Public Private Partnerships (PPP) with industry, just mentioning the European Data Relay

¹⁴ https://ec.europa.eu/research/eic/index.cfm?pg=prizes_space

¹⁵ Currently, the Copernicus Security Service is provided by the SatCen for Support to External Action, by FRONTEX for Border Surveillance, and by the European Maritime Safety Agency (EMSA) for Maritime Security

¹⁶ https://ec.europa.eu/commission/commissioners/2014-2019/bienkowska/announcements/10th-annual-space-conference-opening-speech_en

Satellite (EDRS) programme with Airbus. In the EU GNSS programme, the GSA is now the responsible agency for system operations and service provision, while ESA continues to procure the system elements. It remains to be seen, whether the Commission will propose to continue such approach under the next MFF. With the recent procurements for the Galileo Service Operator (GSOp) and the EGNOS Service Provider, GSA has demonstrated its capacity to conduct complex and large-scale tenders for system operations and services provision. With an increased staff level, the GSA may soon also be able to procure the underlying system elements, including satellites, ground segment and launchers. ESA's role in the GNSS programme during the next MFF period could then be limited to technology development and prototype procurement for next generation systems. But what will be the ESA role in the other EU programmes, namely in Copernicus, where ESA currently has responsibility for the space segment and its evolution? And what will be the impact on ESA's own programmes, including the GOVSATCOM precursor activities or the SSA programme?

The upcoming proposal for a Framework Space Regulation will likely contain general provisions on the EU-ESA relationship, while the programme specific proposals will define the specific tasks to be allocated to ESA. In this respect, it will be interesting to see, whether the Framework Space Regulation will leave room for the continuation or renewal of the Framework Agreement between the EU and ESA concluded in 2004.¹⁷ Before 2021, the Commission will then conclude Delegation Agreements with ESA for each individual programme where ESA is to be involved. With regard to ESA's relationship towards EU agencies, it is to be noted that a so-called sub-delegation is not possible under the EU Financial Regulation and the Rules of Application. The collaboration between EU agencies and ESA in the execution of the EU space programmes therefore has to be established by specific contractual arrangements.

Enhanced EU space programmes under the next MFF will have significant impacts on industry. Above all, the continuation of the current GNSS and Copernicus programmes, a more robust SST programme as well as new programmes and initiatives such as GOVSATCOM or the Space JTI will bring important opportunities. In Copernicus, the role and involvement of industry will grow significantly, e.g. in the provision of core Copernicus Services, in the storage and dissemination of Copernicus data, in the development of downstream applications covering public needs as well as regarding the purchase of data from commercial systems. The potential JTI could help to reduce the dependence on non-European components and to mitigate the constraints arising from the US export control regime. Additional opportunities may arise from a potential continuation of the Space Equity Pilot, launched by the Commission in 2017 with a budget of 50 million EUR until 2020 to invest in venture capital and other risk-capital funds focused on innovative SMEs that aim to commercialise new space products and services. According to Elżbieta Bieńkowska, the Space Equity Pilot "*is just an initial step*". Space-related projects may be funded within several other policy areas, above all within the CSDP.

However, the strengthening of the EU space programmes, coupled with a potentially decreasing role of ESA, may also have downside effects on industry. Under the procurement rules of the EU Financial Regulation, and every time where ESA acts under budget delegation by the European Commission, the ESA rules and procedures on geographical distribution or fair return are not applicable. At least in theory, all procurements under the EU space programmes are purely based on best value for money. While SMEs shall generally be supported, the competitive nature of EU procurements and the skills and resources required for participation lead to advantages for large and leading companies. These companies are concentrated in few Member States, namely France, Germany, Italy and Spain. Over time, these boundaries may cause visible changes to the European industrial landscape, including a potential wave of consolidation. Where companies cannot count on geographic return and informal support of their national ministries and agencies, they may have

¹⁷ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2004_261_R_NS010

more incentives to challenge award decisions under the applicable review or court procedures, including at the Court of Justice of the European Union. The procedure initiated by EUTELSAT for the annulment of the GSA award decision in the GSOp tender can serve as an indicator for such potential future trend.¹⁸

Participation in EU space programmes implies higher risks for industry when compared to ESA programmes. The Commission and the GSA tend to extensively apply the so-called open procedure, which does not foresee any discussion or negotiation of tenders submitted. In order to increase their chances, companies have to offer lowest possible prices and to accept draft contract provisions without reservations. The EU procurement rules also limit the room for changes during contract execution. In contrast to ESA, the Commission and the GSA are generally more willing to enforce contract performance e.g. by applying penalties for delays and underperformance, by taking recourse to liability provisions in case of damage, and even by terminating contracts for default.

National space programmes are traditionally designed to support the competitiveness of national industry in future ESA programmes. Sometimes, national strategies and related grant instruments bluntly spell out the purpose of providing advantages in upcoming procurements. Some Member States also increasingly use public investment banks and export credit agencies in support of their national space industry. During the next MFF, such types of national measures could increasingly come in the focus of EU competition law. Back in 2011, an ESPI paper suggested that *“the Commission should be encouraged to accept that space is a special case, with characteristics that distinguish it from other sectors where open markets are generally beneficial.”*¹⁹ Whether the Commission will follow such suggestions when assessing future notifications of national subsidies or complaints by industry from other Member States remains to be seen.

With fully operational GNSS and Copernicus programmes, the EU will have more than 40 operational satellites in orbit during the next MFF period. While the EU conducts large-scale space operations, it however still lacks the legal capacity to hold international rights to the associated frequencies. Under the ITU framework, only administrations of Member States can submit filings for frequencies used by satellite systems. The EU as ITU sector member can only submit filings through one or more administration of its Member States. For Galileo, a group of Member States makes available their rights of use to the EU under a Memorandum of Understanding, for Copernicus the ITU filings have been made by France as the notifying administration for ESA. Furthermore, the EU has not yet established a registry for space objects, nor has it submitted registration data to the UN in accordance with UN GA resolution 1721 B (XVI) or the UN Registration Convention.²⁰ While ESA has registered the early Giove A/B and Galileo IOV Satellites, it does not register the Galileo FOC satellites.²¹ For the time being, ESA registers the Sentinel satellites under the Copernicus Programme, but it is questionable whether this practice will continue under the next MFF period. First Galileo and Sentinel satellites will reach their end-of-life during the next period and the EU must establish a policy regarding space debris mitigation in accordance with international standards and best practices. Under an enhanced EU Space Policy, the EU should therefore find suitable solutions to ensure better compliance with international space law. To this end, the Commission may however claim a stronger voice in the competent international organisations and bodies, namely the ITU and UNCOPOUS. It will be interesting to see the positions of Member States in this respect.

¹⁸ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2017.144.01.0048.01.ENG

¹⁹ https://www.files.ethz.ch/isn/136420/ESPI_Perspectives_55.pdf

²⁰ Further reading: <http://www.insidegnss.com/node/5469>

²¹ http://www.unoosa.org/oosa/osoindex/search-ng.ispx?lf_id=

For the next MFF period, the European Commission has announced a comprehensive and ambitious framework for the EU Space Policy and the programmes under it. The legislative proposals anticipated for May 2018 will prepare for the continuity of the current GNSS and Copernicus programmes, and will introduce an enhanced SST, a new GOVSATCOM programme, as well as several other space-related actions. Quoting Elżbieta Bieńkowska, *“the next months will be key to transform political aims into tangible delivery of a true and genuine EU space policy”*. While the pressure to reach consensus before the Parliament elections is high, implications of the Commission’s proposals should be carefully assessed by Member States, Parliament, industry and other stakeholders.

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