

# European Space Agency and European Commission: Recent Rules for the European Space Sector

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## Abstract

Since last IAC in Naples the European space sector has experienced important events like the 234<sup>th</sup> ESA-council meeting held at ministerial level in Naples (Italy). In its course four resolutions were adopted on 20 and 21 November 2012. It is therefore interesting to analyze these resolutions to see in which way European space is developing. These resolutions are ranging from internal financial and organizational aspects/rules to “the role of ESA in sustaining competitiveness and growth in Europe”. In addition the fourth resolution comprises a “political declaration towards the European space agency that best serves Europe”.

On the other side the European Commission issued in the same time frame on 14 November 2012 a document. In this communication from the Commission to the Council and the European Parliament “Establishing appropriate relations between the EU and the European Space Agency” structural obstacles in the current EU/ESA relations are enumerated like the mismatch of financial rules, membership asymmetry, asymmetry in security and defense matters, absence of mechanisms for policy coordination and the missing political accountability for ESA due to the fact that ESA has no formal link with the European Parliament. A couple of ways for the future are proposed in the same.

These two documents have to be highlighted as they show in an extensive way that the space sector in Europe and its rules is quite dynamic and developing.

## Introduction

During the last ESA Council meeting at ministerial level in Naples, four resolutions were adopted on 20 and 21 November 2012 covering a wide range of aspects from internal financial and organizational aspects to “the role of ESA in sustaining competitiveness and growth in Europe”. Moreover the fourth

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declaration comprises a “political declaration towards the European space agency that best serves Europe”. Quite in the same time frame the European Commission issued a Communication from the Commission to the Council and the European Parliament “Establishing appropriate relations between the EU and the European Space Agency”<sup>1</sup>. Firstly this document reminds that the Lisbon Treaty grants a competence in space matters to the European Union (“without prejudice to the Member States’ own competence”). Furthermore the EU itself declares that “space has become an instrument for the achievement of the EU objectives and an EU policy in its own right”<sup>2</sup>. Nevertheless the Lisbon Treaty, especially Art. 189 requires that the EU “establish any appropriate relation with ESA”. Secondly this communication recalls the good cooperation with ESA and Member States mentioning that EU is meanwhile the largest contributor to ESA. All this asks for a stronger cooperation with ESA. Nevertheless various obstacles have to be overcome.

### **ESA Declaration on Ministerial Level**

The above mentioned four declarations adopted during ESA-council meeting have to be highlighted. The first resolution is “on the role of ESA in sustaining competitiveness and growth in Europe”<sup>3</sup>, the second “on the level of resources for the agency’s mandatory activities 2013-2017”<sup>4</sup>, the third on the CSG<sup>5</sup> (2012-2017)<sup>6</sup> and the fourth containing a “political declaration towards the European space agency that best serves Europe”<sup>7</sup>. Especially the first and the fourth declaration have to be analyzed further in this context.

### **Resolution on the Role of ESA in Sustaining Competitiveness and Growth in Europe**

The first resolution on the role of ESA in sustaining competitiveness and growth in Europe makes first of all reference to art. II of the ESA Convention<sup>8</sup> which stipulates the purpose of the European Space Agency (peaceful use of space, cooperation among European States in space science or applications...) “by elaborating and implementing a long-term European space policy, by recommending space objectives to the Member States, and by concerting the policies of the Member States with respect to other national and international organ-

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1 European Commission, Communication from the Commission to the Council and the European Parliament, “Establishing appropriate relations between the EU and the European Space Agency”, Brussels, 14.11.2012, COM(2012) 671 final.

2 COM(2012) 671 final, p. 2.

3 ESA/C-M/CCXXXIV/Res. 1 (Final) adopted on 20 November 2012.

4 ESA/C-M/CCXXXIV/Res. 2 (Final) adopted on 21 November 2012.

5 Guiana Space Centre.

6 ESA/C-M/CCXXXIV/Res. 3 (Final), adopted on 21 November 2012.

7 ESA/C-M/CCXXXIV/Res. 4 (Final), adopted on 20 November 2012.

8 ESA Convention and Council rules of procedure, December 2010.

isations and institutions”<sup>9</sup>. In addition reference is made to the resolutions adopted during previous ESA Councils at ministerial level at the Space Council (25 November 2010 and 6 December 2011).

Under the first chapter, the recent resolution summarizes ESA achievements since 2008 like the enlargement of knowledge (for example thanks to results of Herschel and Planck, GOCE, SMOS, CryoSat-2 missions or studies on the ISS) or the support of ESA to stimulate innovation and competitiveness of the European industry.<sup>10</sup> The second chapter treats the “challenges and opportunities” in order to take into consideration the changes of the space sector like the increasing number of actors in the field (EU has become a serious actor on European level, increasing number of nations worldwide leading to more competition, opening of new markets and space infrastructures). This influences ESA’s programmes and activities (Chapter III) which have to be in line with ESA main focus like “pushing the frontiers of Knowledge”, “supporting an innovative and competitive Europe” and “enabling services” in order to prepare space services, applications and infrastructure of a new generation. In the same time actions should be consistent with funded EU programmes (during the period 2014-2020). Chapter IV highlights the industrial policy, an important aspect as the success of European space industry relies on it. Nevertheless it is underlined that the ESA procurement reform adopted in 2008 mastered an increased efficiency and fulfilment of industrial requirements. Moreover it is taken into consideration that space sector leads to growth and employment in Europe by underlining the importance of partnerships with public or private partners and by supporting Small and Medium-sized Enterprises via ESA programmes.<sup>11</sup> Therefore further decisions to fulfill ESA’s long term approach should be taken in this regard at next Council meeting at ministerial level in 2014 (Chapter V).

### **Political Declaration towards the European Space Agency That Best Serves Europe**

The political declaration has the aim “to consider the further evolution of ESA in order to consolidate the competitiveness of the European space sector to face the challenges of the fast changing world environment”.<sup>12</sup> In this document the central role of ESA since nearly 50 years is stressed in consolidating “the competitiveness of the European space sector to face the challenges of the fast changing world environment” and “in pushing the frontiers of knowledge, in enabling the delivery of daily services to citizens, in supporting the competitiveness of European industry and operators in the world-wide commercial market and in building European partnerships and a common European ambition in space”<sup>13</sup>. In the same time the document recognizes “the increasing role of the European Union in integrating the European space policy (...) and as an actor

9 Art II a) ESA Convention.

10 ESA/C-M/CCXXXIV/Res. 1 (Final), pt. 1.

11 ESA/C-M/CCXXXIV/Res. 1 (Final), chap. IV.

12 ESA/C-M/CCXXXIV/Res. 4 (Final), p. 1.

13 ESA/C-M/CCXXXIV/Res. 4 (Final), p. 1.

in space matters through its space programmes”<sup>14</sup> and notes “that the EU has (...) become one of the three key actors of the European space policy, together with ESA and Member States, thereby reinforcing Europe’s ambitions and capabilities in space”<sup>15</sup>.

Moreover the declaration states “the need for all the European actors to contribute to a further increase in the overall efficiency and competitiveness of the European space sector, and thus consider that ESA must further evolve, in coherence and complementarity with the other actors, towards the European space agency that best serves Europe in a competitive world-wide environment”<sup>16</sup>. It is therefore fixed in this political resolution that ESA “initiate with immediate effect, a reflection process (...) aiming at defining how the evolution of ESA can reach the (...) objectives”<sup>17</sup> like the possibilities for ESA member states to work in a flexible framework to implement their space policies and to provide “ESA Member States equivalent rights and obligations whether or not they are also EU Member States”<sup>18</sup> or the possibility to provide “the EU with a unique pool of research, technology and development capabilities”<sup>19</sup>. In addition this political declaration gives a mandate to the Director General of ESA “to work with the European Commission in order to provide a common analysis on the situation of the European space sector and a common vision on its evolution at building up coherence, convergence and complementarity among the different actors”<sup>20</sup>.

### **Evolution of ESA-EU Relation**

The above mentioned documents manifest the new frame conditions in which the European space actors have to find their respective role which contains new parameters and endeavors.

### **Structural Obstacles in the Current EU/ESA Relations Enumerated by the EU Commission**

The EU Commission itself enumerates in its communication document obstacles in the current EU/ESA relation which asks for a further detailed survey. From the Commission side there are five structural obstacles, the “mismatch of financial rules”, the “membership asymmetry”, “asymmetry in security and defense matters”, “absence of mechanisms for policy coordination” and the “missing political accountability for ESA”.

Firstly the “mismatch of financial rules” has to be analyzed. It is widely known that the EU and ESA are governed by different legal systems and rules. One

14 ESA/C-M/CCXXXIV/Res. 4 (Final), p. 1.

15 ESA/C-M/CCXXXIV/Res. 4 (Final), p. 2.

16 ESA/C-M/CCXXXIV/Res. 4 (Final), p. 2.

17 ESA/C-M/CCXXXIV/Res. 4 (Final), p. 3.

18 ESA/C-M/CCXXXIV/Res. 4 (Final), p. 3, pt. 3 i).

19 ESA/C-M/CCXXXIV/Res. 4 (Final), p. 3, pt. 3 ii).

20 ESA/C-M/CCXXXIV/Res. 4 (Final), pt. 4.

of the main topics are the different financial or procurement rules. ESA's main programmes are mostly funded by Member States. For those programmes the rules of geo return found their application. This geo return is hardly compatible with EU competition rules. Nevertheless ESA has to accept and implement EU rules<sup>21</sup> when ESA is executing EU programmes. For mixed ESA-EU funded programmes the difficulties are even more complex.

“Membership asymmetry” means that EU has currently more Member States than ESA. Moreover ESA is composed of member states which are not belonging to the EU like Norway and Switzerland. Furthermore Canada is an associated Member States to ESA. Additionally ESA and EU have different decision finding process as in ESA each Member State has one vote in the ESA Council that has to adopt main topics by unanimity. This leads to the fact that non-EU but ESA Member States have a decisive say even in EU programmes executed by ESA. This aspect is even more true and crucial when it comes to security and defense matters (“Asymmetry in security and defense matters”). Indeed, with the coming into effect of the Lisbon Treaty and the European External Action Service, the EU got more competence in security and defense domain in which space is dedicated to play a growing role. Therefore the EU has to generate closer links between civil and defense related space topics which pose problem due to the above mentioned membership asymmetry.

Furthermore the EC enumerates an “absence of mechanisms for policy coordination” meaning with this that there is no “coordination mechanism within the policy-making of the European Union”<sup>22</sup>. Such a mechanism was not foreseen in the EU/ESA Framework Agreement of 2004<sup>23</sup>. Therefore this mechanism has to be discussed widely and agreed in each time of programme level. It does not exist any mechanism at policy level which ensures that ESA initiatives fit within EU policies especially when it concerns international relations.<sup>24</sup>

Lastly, another point which the EC likes to bring forward in this context is the political accountability for ESA. In the eyes of EC the EU has thanks to the European Parliament and its elected parliamentarians a direct link with the EU citizens. The EU space policy enjoys therefore the same legitimacy as every EU policy in other matters. Hence this “legitimization” from the EU citizens does not exist for ESA's space policy.<sup>25</sup>

The analyses of these diverging points leads therefore to some proposals made by the EC to manage the future.

### **Options for the Future Seen by the EC**

To fill the above mentioned gaps, EC proposed some scenarios which should lead to a rapprochement of ESA towards the European Union. This is seen as a long term objective to be reached between 2020 and 2025. Several options are

21 COM(2012) 671 final, p. 3, pt. 2.1.

22 COM(2012) 671 final, p. 4, pt. 2.4.

23 OJ L no 261 of 6.08.2004, p. 64.

24 COM(2012) 671 final, p. 4, pt. 2.4.

25 COM(2012) 671 final, p. 4, pt. 2.5.

possible like an “improved cooperation under the status quo, bringing ESA as an intergovernmental organization under the authority of the European Union<sup>26</sup> (...) or transforming ESA into an EU agency”<sup>27,28</sup>. All these options should “preserve the current essential features of ESA (i.e. optional programmes subscribed by Member States) while giving ESA key EU features – such as qualified majority decision-making or accountability vis-à-vis the European Union”<sup>29</sup>.

### **Options for the Future Seen by ESA**

The above mentioned options were also considered by ESA, adding one more, the status quo to which no changes occurs and serving as reference value.<sup>30</sup> The three evolution scenarios differ in level of funding. The independent intergovernmental model leads to a way where ESA in parallel to its ESA way of functioning can implement EU-funded space programmes following EU rules (“ESA with an EU chamber”). R&D funding in this model kept to be nevertheless mostly intergovernmental. Even if ESA is already acting in 25 % of its programs under EU funding and according to EU rules<sup>31</sup>, nevertheless there is a significant difference between the current status and the first evolution scenario. Under the current status ESA is able to implement EU-funded programmes, under the first scenario ESA is operating according to EU rules.<sup>32</sup> The second model would be to turn ESA into an EU Agency of intergovernmental nature, “an EU Agency with a strong intergovernmental character under the authority and political supervision of the EU Council, accommodating structures for intergovernmental programmes”<sup>33,34</sup>. The third scenario is a regularly EU Agency meaning that ESA will then fully be integrated without intergovernmental components “where all space activities, including the R&D, are funded from the EU only”<sup>35</sup>.

The different options have significant impacts in terms of management, efficiency, costs, benefits and risks. Indeed under the current situation, it needs a double management which may question efficiency and increased costs. The first evolution scenario however asks for changes in the governance of ESA. But the various scenarios not only have consequences for ESA and EU, but also for industry partners as the procurement rules have to change accordingly. It is also a question of transfer/impact of responsibility/ies. ESA’s contribution can range from a pure technical support for EU programmes where EU keeps “the overall

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26 An example could be the European Defence Agency.

27 Likewise existing regulatory agencies.

28 COM(2012) 671 final, p. 4, pt. 3.

29 COM(2012) 671 final, p. 4, pt. 3.

30 Nevertheless improvements in the ESA/EU relationship have to be done for the period 2014-2020.

31 ESA/C(2013)9, p. 7, pt. 3 d).

32 ESA/C(2013)9, p. 7, pt. 3 d).

33 ESA/C(2013)9, p. 7, pt. 3 d).

34 EDA for example.

35 ESA/C(2013)9, p. 7, pt. 3 d).

technical and managerial responsibility” to a “real delegation of the technical, contractual and financial management to a dedicated project team working under the EU rules”<sup>36</sup>.

## **Conclusion**

The recent documents issued from the various space actors on European level underline once more the willingness to find a way to cooperate and work closer in space affairs. Nevertheless the way to there will be a long term project depending on various parameters. As the space sector is quite dynamic and developing the outcome of these discussions and negotiations is open as the parameters until 2020/2025 can still change due to political, socio-economic or financial incidences and evolutions. Moreover it is of utmost importance to draw lessons learned from the current ESA/EU relation and how the different programmes are likely to develop taking account of a risk/benefit analysis of the above mentioned scenarios in relation to the economic evolution of the space sector. Nevertheless certain relevant decisions have to be taken already in the short term as they influence various ongoing space programmes.

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36 ESA/C(2013)9, p. 8, pt. 3 e).