

SPACE

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Convention on the Establishment of a European Space Agency

Paris, 30 May to 31 December 1975

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*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
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**CONVENTION
FOR THE ESTABLISHMENT OF A EUROPEAN SPACE AGENCY**

The States parties to this Convention,

Considering that the magnitude of the human, technical and financial resources required for activities in the space field is such that these resources lie beyond the means of any single European country,

Considering the Resolution adopted by the European Space Conference on 20 December 1972 and confirmed by the European Space Conference on 31 July 1973, which decided that a new organisation, called the "European Space Agency", would be formed out of the European Space Research Organisation and the European Organisation for the Development and Construction of Space Vehicle Launchers, and that the aim would be to integrate the European national space programmes into a European space programme as far and as fast as reasonably possible,

Desiring to pursue and to strengthen European cooperation, for exclusively peaceful purposes, in space research and technology and their space applications, with a view to their being used for scientific purposes and for operational space applications systems,

Desiring, in order to achieve these aims, to establish a single European space organisation to increase the efficiency of the total of European space efforts by making better use of the resources at present devoted to space and to define a European space programme for exclusively peaceful purposes,

Have agreed as follows:

ARTICLE I

Establishment of the Agency

1. A European organisation, called the "European Space Agency", hereinafter referred to as "the Agency", is hereby established.
2. The Members of the Agency, hereinafter referred to as "Member States", shall be the States which are parties to this Convention in accordance with Articles XX and XXII.
3. All Member States shall participate in the mandatory activities referred to in Article V.1 (a) and shall contribute to the fixed common costs of the Agency, referred to in Annex II.
4. The Headquarters of the Agency shall be situated in the Paris area.

ARTICLE II

Purpose

The purpose of the Agency shall be to provide for and to promote, for exclusively peaceful purposes, cooperation among European States in space research and technology and their space applications, with a view to their

being used for scientific purposes and for operational space applications systems,

- (a) 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 organisations and institutions;
- (b) by elaborating and implementing activities and programmes in the space field;
- (c) by co-ordinating the European space programme and national programmes, and by integrating the latter progressively and as completely as possible into the European space programme, in particular as regards the development of applications satellites;
- (d) by elaborating and implementing the industrial policy appropriate to its programme and by recommending a coherent industrial policy to the Member States.

ARTICLE III

Information and data

1. Member States and the Agency shall facilitate the exchange of scientific and technical information pertaining to the fields of space research and technology and their space applications, provided that a Member State shall not be required to communicate any information obtained outside the Agency if it considers that such communication would be inconsistent with the interests of its own security or its own agreements with third parties, or the conditions under which such information has been obtained.

2. In carrying out its activities under Article V, the Agency shall ensure that any scientific results shall be published or otherwise made widely available after prior use by the scientists responsible for the experiments. The resulting reduced data shall be the property of the Agency.

3. When placing contracts or entering into agreements, the Agency shall, with regard to the resulting inventions and technical data, secure such rights as may be appropriate for the protection of its interests, of those of the Member States participating in the relevant programmes, and of those of persons and bodies under their jurisdiction. These rights shall include in particular the rights of access, of disclosure, and of use. Such inventions and technical data shall be communicated to the participating States.

4. Those inventions and technical data that are the property of the Agency shall be disclosed to the Member States and may be used for their own purposes by these Member States and by persons and bodies under their jurisdiction, free of charge.

5. The detailed rules for the application of the foregoing provisions shall be adopted by the Council, by a two-thirds majority of all Member States.

ARTICLE IV

Exchange of persons

Member States shall facilitate the exchange of persons concerned with work within the competence of the Agency, consistent with the application to any person of their laws and regulations relating to entry into, stay in, or departure from, their territories.

ARTICLE V

Activities and programmes

1. The activities of the Agency shall include mandatory activities, in which all Member States participate, and optional activities, in which all Member States participate apart from those that formally declare themselves not interested in participating therein.

(a) With respect to the mandatory activities, the Agency shall

- (i) ensure the execution of basic activities, such as education, documentation, studies of future projects and technological research work;
- (ii) ensure the elaboration and execution of a scientific programme including satellites and other space systems;
- (iii) collect relevant information and disseminate it to Member States, draw attention to gaps and duplication, and provide advice and assistance for the harmonisation of international and national programmes;
- (iv) maintain regular contact with the users of space techniques and keep itself informed of their requirements.

(b) With respect to the optional activities, the Agency shall ensure, in accordance with the provisions of Annex III, the execution of programmes which may, in particular, include

- (i) the design, development, construction, launching, placing in orbit, and control of satellites and other space systems;
- (ii) the design, development, construction, and operation of launch facilities and space transport systems.

2. In the area of space applications the Agency may, should the occasion arise, carry out operational activities under conditions to be defined by the Council by a majority of all Member States. When so doing the Agency shall

- (a) place at the disposal of the operating agencies concerned such of its own facilities as may be useful to them;
- (b) ensure as required, on behalf of the operating agencies concerned, the launching, placing in orbit and control of operational application satellites;
- (c) carry out any other activity requested by users and approved by the Council.

The cost of such operational activities shall be borne by the users concerned.

3. With respect to the co-ordination and integration of programmes referred to in Article II (c), the Agency shall receive in good time from Member States information on projects relating to new space programmes, facilitate consultations among the Member States, undertake any necessary evaluation and formulate appropriate rules to be adopted by the Council by a unanimous vote of all Member States. The objectives and procedures of the internationalisation of programmes are set out in Annex IV.

ARTICLE VI

Facilities and services

1. For the execution of the programmes entrusted to it, the Agency

(a) shall maintain the internal capability required for the preparation and supervision of its tasks and, to this end, shall establish and operate such establishments and facilities as are required for its activities;

(b) may enter into special arrangements for the execution of certain parts of its programmes by, or in co-operation with, national institutions of the Member States, or for the management by the Agency itself of certain national facilities.

2. In implementing their programmes, the Member States and the Agency shall endeavour to make the best use of their existing facilities and available services as a first priority, and to rationalise them; accordingly they shall not set up new facilities or services without having first examined the possibility of using the existing means.

ARTICLE VII

Industrial policy

1. The industrial policy which the Agency is to elaborate and apply by virtue of Article II (d) shall be designed in particular to

(a) meet the requirements of the European space programme and the co-ordinated national space programmes in a cost-effective manner;

(b) improve the world-wide competitiveness of European industry by maintaining and developing space technology and by encouraging the rationalisation and development of an industrial structure appropriate to market requirements, making use in the first place of the existing industrial potential of all Member States;

(c) ensure that all Member States participate in an equitable manner, having regard to their financial contribution, in implementing the European space programme and in the associated development of space technology; in particular the Agency shall, for the execution of its programmes, grant preference to the fullest extent possible to

industry in all Member States, which shall be given the maximum opportunity to participate in the work of technological interest undertaken for the Agency;

- (d) exploit the advantages of free competitive bidding in all cases, except where this would be incompatible with other defined objectives of industrial policy.

Other objectives may be defined by the Council by a unanimous decision of all Member States.

The detailed arrangements for the attainment of these objectives shall be those set out in Annex V and in rules which shall be adopted by the Council by a two-thirds majority of all Member States and reviewed periodically.

2. For the execution of its programmes, the Agency shall make the maximum use of external contractors consistent with the maintenance of the internal capability referred to in Article VI. 1.

ARTICLE VIII

Launchers and other space transport systems

1. When defining its missions, the Agency shall take into account the launchers or other space transport systems developed within the framework of its programmes, or by a Member State, or with a significant Agency contribution, and shall grant preference to their utilisation for appropriate payloads if this does not present an unreasonable disadvantage compared with other launchers or space transport means available at the envisaged time, in respect of cost, reliability and mission suitability.

2. If activities of programmes under Article V include the use of launchers or other space transport systems, the participating States shall, when the programme in question is submitted for approval or acceptance, inform the Council of the launcher or space transport system envisaged. If during the execution of a programme the participating States wish to use a launcher or space transport system other than the one originally adopted, the Council shall make a decision on this change in accordance with the same rules as those applied in respect of the initial approval or acceptance of the programme.

ARTICLE IX

Use of facilities, assistance to Member States, and supply of products

1. Provided that their use for its own activities and programmes is not thereby prejudiced, the Agency shall make its facilities available, at the cost of the State concerned, to any Member State that asks to use them for its own programmes. The Council shall determine, by a two-thirds majority of all Member States, the practical arrangements under which the facilities will be made available.

2. If, outside the activities and programmes referred to in Article V but within the purpose of the Agency, one or more Member States wish to engage in a project, the Council may decide by a two-thirds majority of

all Member States to make available the assistance of the Agency. The resulting cost to the Agency shall be met by the Member State or States concerned.

3. (a) Products developed under a programme of the Agency shall be supplied to any Member State that has taken part in the funding of the programme in question and asks for such products to be supplied for its own purposes.

The Council shall determine by a two-thirds majority of all Member States the practical arrangements under which such products will be supplied and in particular the measures to be taken by the Agency in regard to its contractors to enable the requesting Member State to obtain those products.

- (b) This Member State may ask the Agency to state whether it considers that the prices proposed by the contractors are fair and reasonable and whether, under similar circumstances, it would consider them acceptable for the purposes of its own requirements.
- (c) The fulfilment of the requests referred to in this paragraph shall not involve the Agency in any additional costs, and all costs resulting from such requests shall be borne by the requesting Member State.

ARTICLE X

Organs

The organs of the Agency shall be the Council, and the Director General assisted by a staff.

ARTICLE XI

The Council

1. The Council shall be composed of representatives of the Member States.
2. The Council shall meet as and when required, either at delegate level or at ministerial level. The meetings shall be held at the Agency's Headquarters unless the Council decides otherwise.
3. (a) The Council shall elect for two years a Chairman and vice-chairmen, who may be re-elected once for a further year. The Chairman shall direct the proceedings of the Council and ensure the preparation of its decisions; he shall inform the Member States of proposals for the execution of an optional programme; he shall insist in co-ordinating the activities of the organs of the Agency. He shall maintain liaison with the Member States, through their delegates to the Council, on general policy matters affecting the Agency and shall endeavour to harmonise their views thereon. In the interval between meetings, he shall advise the Director General and shall obtain from him all necessary information.

(b) The Chairman shall be assisted by a Bureau, the composition of which shall be decided by the Council and which shall be convened by the Chairman. The Bureau shall advise the Chairman in the preparation of Council meetings.

4. When the Council meets at ministerial level it shall elect a chairman for the meeting. The next ministerial meeting shall be convened by him.

5. In addition to the functions set forth elsewhere in this Convention and in accordance with its provisions, the Council shall

(a) as regards the activities and programme referred to in Article V.1 (a) (i) and (ii)—

(i) approve the activities and programme by a majority of all Member States; decisions to this effect may only be changed by new decisions adopted by a two-thirds majority of all Member States;

(ii) determine, by a unanimous decision of all Member States, the level of resources to be made available to the Agency for the coming five-year period;

(iii) determine, by a unanimous decision of all Member States, towards the end of the third year of each five-year period and after a review of the situation, the level of resources to be made available to the Agency for the new five-year period starting at the end of this third year;

(b) as regards the activities referred to in Article V.1 (a) (iii) and (iv)—

(i) define the policy to be followed by the Agency in pursuit of its purpose;

(ii) adopt, by a two-thirds majority of all Member States, recommendations addressed to Member States,

(c) as regards the optional programmes referred to in Article V.1 (b)—

(i) accept each programme by a majority of all Member States;

(ii) determine, as appropriate, in the course of their implementation, the order of priority of programmes;

(d) adopt the annual work plans of the Agency;

(e) as regards the budgets as defined in Annex II—

(i) adopt the annual general budget of the Agency by a two-thirds majority of all Member States;

(ii) adopt each programme budget by a two-thirds majority of the participating States;

(f) adopt, by a two-thirds majority of all Member States, the Financial Regulations and all other financial arrangements of the Agency;

(g) keep under review expenditure on the mandatory and optional activities referred to in Article V.1;

(h) approve and publish the audited annual accounts of the Agency;

(i) adopt the Staff Regulations by a two-thirds majority of all Member States;

- (j) adopt, by a two-thirds majority of all Member States, rules under which authorisation will be given, bearing in mind the peaceful purposes of the Agency, for the transfer outside the territories of the Member States of technology and products developed under the activities of the Agency or with its help;
 - (k) decide on the admission of new Member States in accordance with Article XXII;
 - (l) decide on the arrangements to be made in accordance with Article XXIV in the event of a Member State's denouncing this Convention or ceasing to be a member under Article XVIII;
 - (m) take all other measures necessary for the fulfilment of the purpose of the Agency within the framework of this Convention.
6. (a) Each Member State shall have one vote in the Council. However, a Member State shall not have the right to vote on matters concerning exclusively an accepted programme in which it does not take part.
 - (b) A Member State shall have no vote in the Council if the amount of its arrears of contributions to the Agency in respect of all activities and programmes covered by Article V in which it participates exceeds the assessed amount of its contributions for the current financial year. Moreover, if the amount of a Member State's arrears of contributions to any one of the programmes under Article V.1 (a) (ii) or V.1 (b) in which it participates exceeds the assessed amount of its contributions to that programme for the current financial year, then that Member State shall have no vote in the Council on questions relating exclusively to that programme. In any such case, the Member State may nevertheless be authorised to vote in the Council if a two-thirds majority of all Member States considers that the non-payment of contributions is due to circumstances beyond its control.
 - (c) The presence of delegates from a majority of all Member States shall be necessary to constitute a quorum at any meeting of the Council.
 - (d) Except where this Convention provides otherwise, decisions of the Council shall be taken by a simple majority of Member States represented and voting.
 - (e) In determining the unanimity or majorities provided for in this Convention, account shall not be taken of a Member State which has no vote.
7. The Council shall adopt its own rules of procedure.
 8. (a) The Council shall establish a Science Programme Committee, to which it shall refer any matter relating to the mandatory scientific programme under Article V.1 (a) (ii). It shall authorise that Committee to take decisions regarding that programme, subject always to the Council's functions of determining the level of resources and adopting the annual budget. The terms of

reference of the Science Programme Committee shall be determined by the Council by a two-thirds majority of all Member States and in accordance with this Article.

- (b) The Council may establish such other subordinate bodies as may be necessary for the purpose of the Agency. The establishment and terms of reference of such bodies, and the cases in which they have powers of decision, shall be determined by the Council by a two-thirds majority of all Member States.
- (c) When a subordinate body examines a question relating exclusively to one of the optional programmes referred to in Article V.1 (b), non-participating States shall have no vote unless all participating States decide otherwise.

ARTICLE XII

Director General and staff

1. (a) The Council shall, by a two-thirds majority of all Member States, appoint a Director General for a defined period and may, by the same majority, terminate his appointment.
 - (b) The Director General shall be the chief executive officer of the Agency and its legal representative. He shall take all measures necessary for the management of the Agency, the execution of its programmes, the implementation of its policy and the fulfilment of its purpose, in accordance with the directives issued by the Council. He shall have authority over the establishments of the Agency. He shall, in regard to the financial administration of the Agency, act in accordance with the provisions of Annex II. He shall make an annual report to the Council, and this report shall be published. He may also submit proposals concerning activities and programmes as well as measures designed to ensure the fulfilment of the Agency's purpose. He attends meetings of the Agency without the right to vote.
 - (c) The Council may postpone the appointment of the Director General for such period as it considers necessary either upon the entry into force of this Convention or in the event of a subsequent vacancy. In this event, it shall appoint a person to act in his place, who shall have such powers and responsibilities as the Council may determine.
2. The Director General shall be assisted by such scientific, technical, administrative and clerical staff as he may consider necessary, within the limits authorised by the Council.
 3. (a) Senior management staff, as defined by the Council, shall be appointed and may be dismissed by the Council on the recommendation of the Director General. Appointments and dismissals made by the Council shall require a two-thirds majority of all Member States.

- (b) Other staff members shall be appointed and may be dismissed by the Director General, acting on the authority of the Council.
- (c) All staff shall be recruited on the basis of their qualifications, taking into account an adequate distribution of posts among nationals of the Member States. Appointments and their termination shall be in accordance with the Staff Regulations.
- (d) Scientists who are not members of the staff and who carry out research in the establishments of the Agency shall be subject to the authority of the Director General and to any general rules adopted by the Council.

4. The responsibilities of the Director General and the staff in regard to the Agency shall be exclusively international in character. In the discharge of their duties they shall not seek or receive instructions from any government or from any authority external to the Agency. Each Member State shall respect the international character of the responsibilities of the Director General and the staff, and shall not seek to influence them in the discharge of their duties.

ARTICLE XIII

Financial contributions

1. Each Member State shall contribute to the costs of the activities and programme referred to in Article V.1 (a) and, in accordance with Annex II, to the common costs of the Agency, in accordance with a scale adopted by the Council, by a two-thirds majority of all Member States, either every three years at the time of the review referred to in Article XI.5 (a) (iii), or whenever the Council, by a unanimous vote of all Member States, decides to establish a new scale. The scale of contributions shall be based on the average national income of each Member State for the three latest years of which statistics are available. Nevertheless,

- (a) no Member State shall be required to pay contributions in excess of twenty-five per cent of the total amount of contributions assessed by the Council to meet these costs;
- (b) the Council may, by a two-thirds majority of all Member States, decide in the light of any special circumstances of a Member State to reduce its contribution for a limited period. In particular, when the annual *per capita* income of a Member State is less than an amount to be decided by the Council by the same majority, this shall be considered as a special circumstance within the meaning of this provision.

2. Each Member State shall contribute to the costs of each optional programme covered by Article V.1 (b), unless it has formally declared itself not interested in participating therein and is therefore not a participant. Unless all participating States decide otherwise, the scale of contributions to a given programme shall be based on the average national income of each participating State for the three latest years for which statistics are available. This scale shall be revised either every three years or whenever the Council decides to establish a new scale in accordance with paragraph 1.

However, no participating State shall, by the operation of this scale, be required to pay contributions in excess of twenty-five per cent of the total amount of contributions to the programme concerned. Nevertheless, the percentage contribution to be made by each participating State shall be equivalent to at least twenty-five per cent of its percentage contribution established under the provisions of paragraph 1, unless all the participating States decide otherwise when adopting the programme or during the execution of the programme.

3. The statistical systems to be used for establishing the scales of contribution referred to in paragraphs 1 and 2 shall be the same, and shall be determined in the Financial Regulations.

4. (a) Any State that was not a party to the Convention for the establishment of a European Space Research Organisation or to the Convention for the establishment of a European Organisation for the Development and Construction of Space Vehicle Launchers and which becomes a party to this Convention shall make, in addition to its contributions, a special payment related to the current value of the assets of the Agency. The amount of this special payment shall be fixed by the Council by a two-thirds majority of all Member States.

(b) Payments made in accordance with the provisions of subparagraph (a) shall be used to reduce the contributions of the other Member States unless the Council decides otherwise by a two-thirds majority of all Member States.

5. Contributions due under this Article shall be paid in accordance with Annex II.

6. Subject to any directions given by the Council, the Director General may accept gifts or legacies to the Agency provided that they are not subject to any conditions inconsistent with the purpose of the Agency.

ARTICLE XIV

Co-operation

1. The Agency may, upon decisions of the Council taken by unanimous votes of all Member States, co-operate with other international organisations and institutions and with Governments, organisations and institutions of non-member States, and conclude agreements with them to this effect.

2. Such co-operation may take the form of participation by non-member States or international organisations in one or more of the programmes under Article V.1 (a) (ii) and V.1 (b). Subject to the decisions to be taken under paragraph 1, the detailed arrangements for such co-operation shall be defined in each case by the Council by a two-thirds majority of the States participating in the programme in question. These arrangements may provide that a non-member State shall have a vote in the Council when the latter examines matters pertaining exclusively to the programme in which that State participates.

3. Such co-operation may also take the form of according associate membership to non-member States which undertake to contribute at least to the studies of future projects under Article V.1 (a) (i). The detailed arrangements for each such associate membership shall be defined by the Council by a two-thirds majority of all Member States.

ARTICLE XV

Legal status, privileges and immunities

1. The Agency shall have legal personality.
2. The Agency, its staff members and experts, and the representatives of its Member States, shall enjoy the legal capacity, privileges and immunities provided for in Annex I.
3. Agreements concerning the Headquarters of the Agency and the establishments set up in accordance with Article VI shall be concluded between the Agency and the Member States on whose territories the Headquarters and establishments are situated.

ARTICLE XVI

Amendments

1. The Council may recommend to Member States amendments to this Convention and to Annex I thereto. Any Member State that wishes to propose an amendment shall notify the Director General thereof. The Director General shall inform the Member States of any amendment so notified at least three months before it is discussed by the Council.
2. Any amendment recommended by the Council shall enter into force thirty days after the Government of France has received notification of acceptance from all Member States. The Government of France shall notify all Member States of the date of entry into force of any such amendment.
3. The Council may, by a unanimous vote of all Member States, amend any of the other Annexes to this Convention, provided that such amendments do not conflict with the Convention. Any such amendment shall enter into force on a date to be decided by the Council by a unanimous vote of all Member States. The Director General shall inform all Member States of any such amendment and of the date on which it will enter into force.

ARTICLE XVII

Disputes

1. Any dispute between two or more Member States, or between any of them and the Agency, concerning the interpretation or application of this Convention or its Annexes, and likewise any dispute referred to in Article XXVI of Annex I, which is not settled by or through the Council, shall, at the request of any party to the dispute, be submitted to arbitration.

2. Unless the parties to the dispute decide otherwise, the arbitration procedure shall be in accordance with this Article and with additional rules to be adopted by the Council by a two-thirds majority of all Member States.

3. The Arbitration Tribunal shall consist of three members. Each party to the dispute shall nominate one arbitrator; the first two arbitrators shall nominate the third arbitrator, who shall be the chairman of the Arbitration Tribunal. The additional rules referred to in paragraph 2 shall determine the procedure to be followed if the nominations have not taken place within a specified time.

4. Member States or the Agency, not being parties to the dispute, may intervene in the proceedings with the consent of the Arbitration Tribunal if it considers that they have a substantial interest in the decision of the case.

5. The Arbitration Tribunal shall determine its seat and establish its own rules of procedure.

6. The award of the Arbitration Tribunal shall be made by a majority of its members, who may not abstain from voting. This award shall be final and binding on all parties to the dispute and no appeal shall lie against it. The parties shall comply with the award without delay. In the event of a dispute as to its meaning or scope, the Arbitration Tribunal shall interpret it at the request of any party to the dispute.

ARTICLE XVIII

Non-fulfilment of obligations

Any Member State which fails to fulfil its obligations under this Convention shall cease to be a member of the Agency on a decision of the Council taken by a two-thirds majority of all Member States. The provisions of Article XXIV shall apply in such a case.

ARTICLE XIX

Continuity of rights and obligations

On the date when this Convention enters into force, the Agency shall take over all rights and obligations of the European Space Research Organisation and of the European Organisation for the Development and Construction of Space Vehicle Launchers.

ARTICLE XX

Signature and ratification

1. This Convention shall be open until 31 December 1975 for signature by the States which are members of the European Space Conference. The Annexes to this Convention shall form an integral part thereof.

2. This Convention shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Government of France.

3. After the entry into force of the Convention and pending the deposit of its instrument of ratification or acceptance, a signatory State may take part in the meetings of the Agency, without the right to vote.

ARTICLE XXI

Entry into force

1. This Convention shall enter into force⁽¹⁾ when the following States, being members of the European Space Research Organisation or the European Organisation for the Development and Construction of Space Vehicle Launchers, have signed it and have deposited with the Government of France their instruments of ratification or acceptance: the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of the Netherlands, Spain, the Kingdom of Sweden, the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland. For any State ratifying, accepting or acceding to this Convention after its entry into force, the Convention shall become effective on the date of deposit by such State of its instrument of ratification, acceptance or accession.

2. The Convention for the establishment of a European Space Research Organisation⁽²⁾ and the Convention for the establishment of a European Organisation for the Development and Construction of Space Vehicle Launchers⁽³⁾ shall terminate on the date of the entry into force of this Convention.

ARTICLE XXII

Accession

1. After the entry into force of this Convention, any State may accede thereto following a decision of the Council taken by a unanimous vote of all Member States.

2. A State that wishes to accede to this Convention shall notify the Director General, who shall inform the Member States of this request at least three months before it is submitted to the Council for decision.

3. Instruments of accession shall be deposited with the Government of France.

ARTICLE XXIII

Notifications

The Government of France shall notify all signatory and acceding States of

(a) the date of deposit of each instrument of ratification, acceptance or accession,

⁽¹⁾ The Convention entered into force on 30 October 1980.

⁽²⁾ Treaty Series No. 56 (1964), Cmnd. 2489.

⁽³⁾ Treaty Series No. 30 (1964), Cmnd. 2391.

- (b) the date of entry into force of this Convention and of amendments covered by Article XVI.2,
- (c) the denunciation of the Convention by a Member State.

ARTICLE XXIV

Denunciation

1. After this Convention has been in force for six years, any Member State may denounce it by notifying the Government of France, which shall notify the other Member States and the Director General. The denunciation shall take effect at the end of the financial year following that during which it was notified to the Government of France. After the denunciation has taken effect, the State concerned shall remain bound to honour its due share of the payment appropriations corresponding to approved contract authority used both under the budgets to which it was contributing for the year in which the denunciation was notified to the Government of France, and under previous budgets.

2. A Member State denouncing the Convention shall indemnify the Agency for any loss of property on its territory, unless a special agreement can be concluded with the Agency for the continued use of this property by the Agency or the continuation of certain activities of the Agency on the territory of the said State. Any such special agreement shall determine in particular to what extent and on what conditions the provisions of this Convention shall continue to apply, after the denunciation has taken effect, to the continued use of this property and the continuation of these activities.

3. A Member State denouncing the Convention, and the Agency, shall jointly determine any additional obligations to be borne by the said State.

4. The State concerned shall retain the rights it has acquired up to the date on which the denunciation takes effect.

ARTICLE XXV

Dissolution

1. The Agency shall be dissolved if the number of Member States become less than five. It may be dissolved at any time by agreement between the Member States.

2. In the event of dissolution the Council shall appoint a liquidation authority, which will negotiate with the States on whose territories the Headquarters and establishments of the Agency are situated at the time. The legal personality of the Agency shall subsist for the purposes of the liquidation.

3. Any surplus shall be distributed among those states that are members of the Agency at the time of the dissolution, in proportion to the contributions actually made by them from the dates of their becoming parties to this

Convention. In the event of a deficit, this shall be met by the same States in proportion to their contributions as assessed for the financial year then current.

ARTICLE XXVI

Registration

Upon the entry into force of this Convention, the Government of France shall register it with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations^(*).

In witness whereof, the undersigned plenipotentiaries, having been duly authorised thereto, have signed this Convention.

Done at Paris, on 30 May 1975, in the German, English, Spanish, French, Italian, Dutch and Swedish languages, all these texts being equally authentic in a single original, which shall be deposited in the archives of the Government of France, which shall transmit certified copies to all signatory and acceding States.

Texts of this Convention drawn up in other official languages of the Member States of the Agency shall be authenticated by a unanimous decision of all Member States. Such texts shall be deposited in the archives of the Government of France, which shall transmit certified copies to all signatory and acceding States.

SIGNATURES AND RATIFICATIONS

<i>State</i>	<i>Date of Signature</i>	<i>Date of deposit of Ratification</i>
Belgium	30 May 1975	3 Oct. 1978
Denmark	30 May 1975	15 Sept. 1977
France*	30 May 1975	30 Oct. 1980
Germany, Federal Republic of	30 May 1975	26 July 1977
Ireland, Republic of	31 Dec. 1975	
Italy	30 May 1975	20 Feb. 1978
Netherlands	30 May 1975	6 Feb. 1979
Spain	30 May 1975	7 Feb. 1979
Sweden	30 May 1975	6 Apr. 1976
Switzerland	30 May 1975	19 Nov. 1976
United Kingdom	30 May 1975	28 Mar. 1978

* On depositing its instrument of ratification the Government of the French Republic made the following interpretative declaration:

"In ratifying the Convention for the Establishment of a European Space Agency, the Government of the French Republic considers that adoption, in conformity with Article XI.5(e), of the annual general budget of the Agency, and of the budget of the scientific programme referred to in Article V.1(a)(ii), is subject to prior approval, in accordance with Article XI.5(a)(ii) and (iii), of the level of resources."

(*) Treaty Series No. 67 (1946), Cmd. 7015.

ANNEX I

Privileges and immunities

ARTICLE I

The Agency shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property, and to be a party to legal proceedings.

ARTICLE II

Without prejudice to Articles XXII and XXIII, the buildings and premises of the Agency shall be inviolable.

ARTICLE III

The archives of the Agency shall be inviolable.

ARTICLE IV

1. The Agency shall have immunity from jurisdiction and execution, except,

- (a) to the extent that it shall, by decision of the Council, have expressly waived such immunity in a particular case; the Council has the duty to waive this immunity in all cases where reliance upon it would impede the course of justice and it can be waived without prejudicing the interests of the Agency;
- (b) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Agency, or in respect of a motor traffic offence involving such a vehicle;
- (c) in respect of an enforcement of an arbitration award made under either Article XXV or Article XXVI;
- (d) in the event of the attachment, pursuant to a decision by the judicial authorities, of the salaries and emoluments owed by the Agency to a staff member.

2. The Agency's property and assets, wherever situated, shall be immune from any form of requisition, confiscation, expropriation and sequestration. They shall also be immune from any form of administrative or provisional judicial constraint, except insofar as may be temporarily necessary in connection with the prevention and investigation of accidents involving motor vehicles belonging to, or operated on behalf of, the Agency.

ARTICLE V

1. Within the scope of its official activities, the Agency, its property and income shall be exempt from direct taxes.

2. When purchases or services of substantial value and strictly necessary for the exercise of the official activities of the Agency are made or used by or on behalf of the Agency, and when the price of such purchases or services includes taxes or duties, appropriate measures shall, whenever possible, be taken by the Member States to grant exemption from such taxes or duties or to provide for their reimbursement.

ARTICLE VI

Goods imported or exported by the Agency or on its behalf, and strictly necessary for the exercise of its official activities shall be exempt from all import and export duties and taxes and from all import or export prohibitions and restrictions.

ARTICLE VII

1. For the purpose of Articles V and VI, the official activities of the Agency shall include its administrative activities, including its operations in connection with the social security scheme, and activities undertaken in the field of space research and technology and their space applications in pursuance of the purpose of the Agency as defined in the Convention.

2. The extent to which other applications of such research and technology and activities carried out under Articles V.2 and IX of the Convention may be considered part of the Agency's official activities shall be decided in each case by the Council after consultation with the competent authorities of the Member States concerned.

3. The provisions of Article V and VI shall not apply to taxes and duties that are no more than charges for public utility services.

ARTICLE VIII

No exemption shall be granted under Articles V or VI in respect of goods purchased or imported, or services provided, for the personal benefit of the staff members of the Agency.

ARTICLE IX

1. Goods acquired under Article V or imported under Article VI shall not be sold or given away except in accordance with conditions laid down by the Member States which have granted exemptions.

2. The transfer of goods and services between the Headquarters and the establishments of the Agency, and between its various establishments, or, for the purpose of implementing a programme of the Agency, between them and a national institution of a Member State, shall be free of charges or restrictions of any kind; if necessary, the Member States shall take all appropriate measures to grant exemption from or reimbursement of such charges or to lift such restrictions.

ARTICLE X

The circulation of publications and other information material sent by or to the Agency shall not be restricted in any way.

ARTICLE XI

The Agency may receive and hold any kind of funds, currency, cash or securities; it may dispose of them freely for any purpose provided for in the Convention and hold accounts in any currency to the extent required to meet its obligations.

ARTICLE XII

1. For its official communications and the transfer of all its documents, the Agency shall enjoy treatment not less favourable than that accorded by each Member State to other international organisations.

2. No censorship shall be applied to official communications of the Agency by whatever means of communication.

ARTICLE XIII

Member States shall take all appropriate measures to facilitate the entry into, stay in, or departure from their territories of staff members of the Agency.

ARTICLE XIV

1. Representatives of Member States shall, while exercising their functions and in the course of their journeys to and from the place of meeting, enjoy the following privileges and immunities:

- (a) immunity from arrest and detention, and from seizure of their personal luggage;
- (b) immunity from jurisdiction, even after the termination of their mission, in respect of acts, including words spoken and written, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by a representative of a Member State, nor in the case of damage caused by a motor vehicle belonging to or driven by him;
- (c) inviolability for all their official papers and documents;
- (d) the right to use codes and to receive documents or correspondence by special courier or sealed bag;
- (e) exemption for themselves and their spouses from all measures restricting entry and from aliens' registration formalities;
- (f) the same facilities in the matter of currency and exchange control as are accorded to the representatives of foreign governments on temporary official missions;
- (g) the same customs facilities as regards their personal luggage as are accorded to diplomatic agents.

2. Privileges and immunities are accorded to representatives of Member States, not for their personal advantage, but in order to ensure complete independence in the exercise of their functions in connection with the Agency. Consequently, a Member State has the duty to waive the immunity of a representative wherever retaining it would impede the course of justice and it can be waived without prejudicing the purposes for which it was accorded.

ARTICLE XV

In addition to the privileges and immunities provided for in Article XVI, the Director General of the Agency and, when the office is vacant, the person appointed to act in his place, shall enjoy the privileges and immunities to which diplomatic agents of comparable rank are entitled.

ARTICLE XVI

The staff members of the Agency :

- (a) shall have, even after they have left the service of the Agency, immunity from jurisdiction in respect of acts, including words written and spoken, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by a staff member of the Agency, nor in the case of damage caused by a motor vehicle belonging to or driven by him;
- (b) shall be exempt from all obligations in respect of military service;
- (c) shall enjoy inviolability for all their official papers and documents;
- (d) shall enjoy the same facilities as regards exemption from all measures restricting immigration and governing aliens' registration as are normally accorded to staff members of international organisations, and members of their families forming part of their households shall enjoy the same facilities;
- (e) shall enjoy the same privileges in respect of exchange regulations as are normally accorded to staff members of international organisations;
- (f) shall, in time of international crisis, enjoy the same facilities as to repatriation as diplomatic agents, and the members of their families forming part of their households shall enjoy the same facilities;
- (g) shall have the right to import duty-free their furniture and personal effects at the time of first taking up their post in the Member State concerned, and the right on the termination of their functions in that Member State to export free of duty their furniture and personal effects, subject, in both cases, to the conditions considered necessary by the Member State on whose territory the right is exercised.

ARTICLE XVII

Experts other than the staff members referred to in Article XVI, in the exercise of their functions in connection with the Agency or in carrying out missions for the Agency, shall enjoy the following privileges and

immunities, to the extent that these are necessary for the exercise of their functions, including during journeys made in the exercise of their functions and in the course of such missions:

- (a) immunity from jurisdiction in respect of acts, including words written and spoken, done by them in the exercise of their functions, except in the case of a motor traffic offence committed by an expert, or in the case of damage caused by a motor vehicle belonging to or driven by him; experts shall continue to enjoy this immunity after they have ceased to be employed by the Agency;
- (b) inviolability for all their official papers and documents;
- (c) the same facilities as regards monetary and exchange regulations and as regards their personal luggage as are accorded to the officials of foreign governments on temporary official missions.

ARTICLE XVIII

1. Subject to the conditions and following the procedure laid down by the Council, the Director General and the staff members of the Agency shall be subject to a tax, for the benefit of the Agency, on salaries and emoluments paid by the Agency. Such salaries and emoluments shall be exempt from national income tax; but the Member States shall retain the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.

2. The provisions of paragraph 1 shall not apply to annuities and pensions paid by the Agency to its former Directors General and staff members.

ARTICLE XIX

Articles XVI and XVII shall apply to all categories of staff members to which the Staff Regulations of the Agency apply. The Council shall decide the categories of experts to which Article XVII shall apply. The names, titles and addresses of the staff members and experts referred to in the present Article shall be communicated from time to time to the Member States.

ARTICLE XX

In the event that it establishes its own social security scheme, the Agency, its Director General and staff members shall be exempt from all compulsory contributions to national social security bodies, subject to agreements concluded with the Member States in accordance with Article XXVIII.

ARTICLE XXI

1. The privileges and immunities provided for in this Annex are not granted to the Director General, staff members and experts of the Agency for their personal advantage. They are provided solely to ensure, in all circumstances, the unimpeded functioning of the Agency and the complete independence of the persons to whom they are accorded.

2. The Director General has the duty to waive any relevant immunity in all cases wherever retaining it would impede the course of justice and it can be waived without prejudicing the interests of the Agency. In the case of the Director General, the Council is competent to waive such immunity.

ARTICLE XXII

1. The Agency shall co-operate at all times with the competent authorities of Member States in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning the handling of explosives and inflammable material, public health, labour inspection or other similar national legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in this Annex.

2. The procedure for the co-operation referred to in paragraph 1 may be laid down in the complementary agreements referred to in Article XXVIII.

ARTICLE XXIII

Each Member State shall retain the right to take all precautionary measures in the interests of its security.

ARTICLE XXIV

No Member State shall be obliged to accord the privileges and immunities referred to in Articles XIV, XV, XVI (b), (e) and (g) and XVII (c) to its own nationals or persons who, at the moment of taking up their duties in that Member State, are permanent residents thereof.

ARTICLE XXV

1. When concluding written contracts, other than those concluded in accordance with the Staff Regulations, the Agency shall provide for arbitration. The arbitration clause or the special arbitration agreement concluded to this end shall specify the law applicable and the country where the arbitrators sit. The arbitration procedure shall be that of that country.

2. The enforcement of the arbitration award shall be governed by the rules in force in the State on whose territory the award is to be executed.

ARTICLE XXVI

Any Member State may submit to the international Arbitration Tribunal referred to in Article XVII of the Convention any dispute:

- (a) arising out of damage caused by the Agency;
- (b) involving any other non-contractual responsibility of the Agency;
- (c) involving the Director General, a staff member or an expert of the Agency and in which the person concerned can claim immunity from

jurisdiction under Articles XV, XVI (a) or XVII (a), if this immunity is not waived in accordance with Article XXI. In such disputes where the claim for immunity from jurisdiction arises under Articles XVI (a) or XVII (a), the responsibility of the Agency shall in such arbitration be substituted for that of the persons referred to in those Articles.

ARTICLE XXVII

The Agency shall make suitable provision for the satisfactory settlement of disputes arising between the Agency and the Director General, staff members or experts in respect of their conditions of service.

ARTICLE XXVIII

The Agency may, on a decision of the Council, conclude with one or more Member States complementary agreements to give effect to the provisions of this Annex as regards such State or States, and other arrangements to ensure the efficient functioning of the Agency and the safeguarding of its interests.

ANNEX II

Financial provisions

ARTICLE I

1. The financial year of the Agency shall run from the first of January to the thirty-first of December following.

2. The Director General shall, not later than the first of September of each year, forward to the Member States

- (a) a draft general budget,
- (b) draft programme budgets.

3. The general budget shall comprise

- (a) an expenditure part, showing the estimated expenditure relating to the activities referred to in Article V.1 (a) (i), (iii) and (iv) of the Convention, including the fixed common costs, as well as to the non-fixed common costs and the support costs concerning the programmes referred to in Article V.1 (a) (ii) and V.1 (b) of the Convention; the fixed and non-fixed common costs and the support costs shall be defined in the Financial Regulations; the estimates shall be broken down by type of activity and by general heading;
- (b) an income part, showing
 - (i) the contributions of all Member States towards the expenditure relating to the activities referred to in Article V.1 (a) (i), (iii) and (iv) of the Convention, including the fixed common costs.
 - (ii) the contributions of participating States to the non-fixed common costs and support costs allocated, in accordance with the Financial Regulations, to the programmes referred to in Article V.1 (a) (ii) and V.1 (b) of the Convention;
 - (iii) other income.

4. Each programme budget shall comprise

- (a) an expenditure part, showing
 - (i) the estimated direct expenditure relating to the programme and broken down by general heading as defined in the Financial Regulations;
 - (ii) the estimated non-fixed common costs and support costs allocated to the programme;
- (b) an income part, showing
 - (i) the contributions of participating States to the direct expenditure referred to in sub-paragraph (a) (i);
 - (ii) other income;
 - (iii) for information, the contributions of participating States to the non-fixed common costs and the support costs referred to in sub-paragraph (a) (ii), as provided for in the general budget.

5. The approval of the general budget and of each programme budget by the Council shall take place before the beginning of each financial year.

6. The general budget and the programme budgets shall be prepared and executed in accordance with the Financial Regulations.

ARTICLE II

1. If circumstances so require, the Council may ask the Director General to present a revised budget to it.

2. No decision involving additional expenditure shall be deemed to have been approved until the Council has approved the Director General's estimate of the additional expenditure involved.

ARTICLE III

1. The Director General shall, if so requested by the Council, include in the general budget or in the programme budget concerned the estimates of expenditure for subsequent years.

2. In connection with the adoption of the annual budgets of the Agency the Council shall re-examine the level of resources and make the necessary adjustments in the light of price-level variations and any unforeseen changes during the execution of the programmes.

ARTICLE IV

1. The expenditure approved for activities covered by Article V of the Convention shall be met by contributions assessed in accordance with Article XIII of the Convention.

2. When a State accedes to the Convention in accordance with Article XXII thereof, the contributions of the other Member States shall be reassessed. A new scale, which shall take effect on a date to be decided by the Council, shall be established on the basis of the national income statistics for the years used in calculating the existing scale. Where appropriate, reimbursements shall be made to ensure that the contributions paid by all Member States for the current year are in accordance with the decision of the Council.

3. (a) The arrangements by which contributions are to be made, which shall ensure the proper financing of the Agency, shall be determined in the Financial Regulations.

(b) The Director General shall notify Member States of the amount of their contributions and of the dates on which payments shall be made.

ARTICLE V

1. The budgets of the Agency shall be expressed in accounting units. The accounting unit is defined by 0.88867088 gramme of fine gold; the Council may, by a unanimous decision of all Member States, adopt another definition of the accounting unit.

2. Each Member State shall pay its contributions in its own currency.

ARTICLE VI

1. The Director General shall keep an accurate account of all income and expenditure. At the end of each financial year the Director General shall, in accordance with the Financial Regulations, draw up separate annual accounts for each programme covered by Article V of the Convention.

2. Budgetary accounts, the budget and the financial management, as well as any other measure having financial implications, shall be examined by an Audit Commission. The Council shall designate, by a two-thirds majority of all Member States, the Member States which, in rotation on an equitable basis, shall be invited to nominate, preferably from among their own senior officials, auditors to serve on this Commission, and shall nominate by the same majority, from among the auditors, a Chairman of the Commission for a period not exceeding three years.

3. The purpose of the audit, which shall be based on records and, if necessary, done on the spot, shall be to verify that expenditure has conformed with the budget estimates and that the records are lawful and correct. The Commission shall also report on the economic management of the Agency's financial resources. At the end of each financial year, the Commission shall draw up a report, which shall be adopted by the majority of its members and thereupon transmitted to the Council.

4. The audit Commission shall discharge such other functions as are set out in the Financial Regulations.

5. The Director General shall furnish the auditors with such information and help as they may require to carry out their duties.

ANNEX III

Optional programmes covered by Article V.1 (b) of the Convention

ARTICLE I

1. If a proposal for the carrying out of an optional programme covered by Article V.1 (b) of the Convention is made, the Chairman of the Council shall communicate it to all Member States for examination.

2. Once the Council has, in accordance with Article XI.5 (c) (i) of the Convention, accepted the carrying out of an optional programme within the framework of the Agency, any Member State that does not intend to take part in the programme shall, within three months, formally declare that it is not interested in participating therein; the participating States shall draw up a Declaration which, subject to Article III.1, shall set out their undertaking in respect of

(a) the Phases of the programme,

(b) the conditions under which it is to be carried out, including the timing, the indicative financial envelope and sub-envelopes relating to Phases of the programme, and any other provisions for its management and execution;

(c) the scale of contributions determined in accordance with Article XIII.2 of the Convention;

(d) the duration and amount of the first binding financial commitment.

3. The Declaration shall be transmitted to the Council for information, together with draft implementing rules submitted to it for approval.

4. If a participating State is unable to accept the provisions set out in the Declaration and implementing rules within the time limit laid down in the Declaration, it shall cease to be a participating State. Other Member States may subsequently become participating States by accepting these provisions in accordance with conditions to be determined with the participating States.

ARTICLE II

1. The programme shall be executed in accordance with the provisions of the Convention and, unless otherwise stipulated in this Annex or in the implementing rules, with the rules and procedures in force in the Agency. Decisions of the Council shall be taken in accordance with this Annex and the implementing rules. Failing any specific provisions in this Annex or in the implementing rules, the voting rules laid down in the Convention or the rules of procedure of the Council shall apply.

2. Decisions on the start of a new Phase shall be taken by a two-thirds majority of all participating States, provided that this majority represents at least two-thirds of the contributions to the programme. If the decision to start a new Phase cannot be taken, the participating States that wish, nevertheless, to continue with the Programme shall consult among themselves and determine arrangements for such continuation. They shall report accordingly to the Council, which shall take any measures that may be required.

ARTICLE III

1. If the programme includes a project definition phase, the participating States shall, at the end of the phase, reassess the cost of the programme. If the reassessment shows that there is a cost overrun greater than 20 per cent of the indicative financial envelope referred to in Article I, any participating State may withdraw from the programme. The participating States that wish, nevertheless, to continue with the programme shall consult among themselves and determine the arrangements for such continuation. They shall report accordingly to the Council, which shall take any measures that may be required.

2. During each Phase, as defined in the Declaration, the Council shall, by a two-thirds majority of all participating States, adopt 'annual' budgets within the relevant financial envelope or sub-envelopes.

3. The Council shall lay down a procedure enabling the financial envelope or sub-envelopes to be revised in the event of price-level variations.

4. When the financial envelope or a financial sub-envelope has to be revised for reasons other than those referred to in paragraphs 1 and 3, the participating States shall apply the following procedure:

- (a) No participating State shall be entitled to withdraw from the programme unless the cumulative cost overrun is greater than 20 per cent of the initial financial envelope, or of the revised envelope defined in accordance with the procedure laid down in paragraph 1.
- (b) If the cumulative cost overrun is greater than 20 per cent of the relevant financial envelope, any participating State may withdraw from the programme. Those States that wish, nevertheless, to continue with the programme shall consult among themselves, determine the arrangements for such continuation and report accordingly to the Council, which shall take any measures that may be required.

ARTICLE IV

The Agency, acting on behalf of the participating States, shall be the owner of the satellites, space systems and other items produced under the programme as well as of the facilities and equipment acquired for its execution. Any transfer of ownership shall be decided on by the Council.

ARTICLE V

1. Denunciation of the Convention by a Member State shall entail the withdrawal of that Member State from all the programmes in which it participates. Article XXIV of the Convention shall apply to the rights and obligations arising out of these programmes.

2. Discontinuations under Article II.2 and withdrawals under Article III.1 and III.4 (b) shall take effect on the date on which the Council receives the information referred to in those Articles.

3. A participating State that decides not to continue with a programme under Article II.2, or withdraws from a programme under Article III.1 and III.4 (b), shall retain the rights acquired by the participating States up to the effective date of its withdrawal. Thereafter, no further right or obligation shall arise from the remaining part of the programme in which it no longer participates. It shall remain bound to finance its share of the payment appropriations corresponding to contract authority approved under the budget for the current or previous financial years and relating to the programme Phase whose execution is in progress. However, the participating States may unanimously agree, in the Declaration, that a State which decides not to continue with, or withdraws from, a programme shall be bound to finance its total share of the initial envelope or the sub-envelopes of the programme.

ARTICLE VI

1. The participating States may decide to discontinue a programme by a two-thirds majority of all participating States representing at least two-thirds of the contributions to the programme.

2. The Agency shall notify the participating States of the completion of the programme in accordance with the implementing rules; these implementing rules shall cease to be in force upon receipt of such notification.

ANNEX IV

Internationalisation of national programmes

ARTICLE I

The principal objective of the internationalisation of national programmes shall be that each Member State shall make available for participation by other Member States, within the framework of the Agency, any new civil space project which it intends to undertake, either alone or in collaboration with another Member State. With this end in view:

- (a) each Member State shall notify to the Director General of the Agency any such project before the beginning of its phase B (project definition phase);
- (b) the timing and content of proposals for participation in a project should make it possible for other Member States to undertake a significant share of the work involved; an early indication shall be given to the Agency of any reasons which make this impracticable and of any conditions which the initiating Member State may wish to place on the allocation of work to other Member States;
- (c) the initiating Member State shall explain the arrangements it proposes for the technical management of the project and indicate the reasons for them;
- (d) the initiating Member State shall use its best endeavours to accommodate all reasonable responses, subject to agreement being reached, within the timescale demanded by project decisions, on the level of the cost and the way in which the cost and work are shared; it shall subsequently submit a formal proposal under Annex III where the project is to be executed in accordance with the terms of that Annex;
- (e) the execution of a project within the framework of the Agency shall not be excluded merely because that project has failed to attract the participation of other Member States to the extent originally proposed by the initiating Member State.

ARTICLE II

Member States shall use their best endeavours to ensure that the bilateral and multilateral space projects which they undertake with non-member States do not prejudice the scientific, economic or industrial objectives of the Agency. In particular, they shall

- (a) inform the Agency of such projects, in so far as they judge that this would not prejudice the projects;
- (b) discuss with the other Member States projects so communicated, with the object of establishing the scope for wider participation. If wider participation proves possible, the procedures laid down in Article I (b) to (e) shall apply.

ANNEX V

Industrial policy

ARTICLE I

1. In implementing the industrial policy referred to in Article VII of the Convention, the Director General shall act in conformity with the provisions of this Annex and with the directives of the Council.

2. The Council shall keep under review the industrial potential and industrial structure in relation to the Agency's activities, and in particular

- (a) the general structure of industry, and industrial groupings;
- (b) the degree of specialisation desirable in industry and methods of achieving it,
- (c) the co-ordination of relevant national industrial policies,
- (d) interaction with any relevant industrial policies of other international bodies,
- (e) the relationship between industrial production capacity and potential markets,
- (f) the organisation of contacts with industry.

in order to be able to monitor and, where appropriate, adapt the Agency's industrial policy.

ARTICLE II

1. In the placing of all contracts, the Agency shall give preference to industry and organisations of the Member States. However, within each optional programme covered by Article V.1 (b) of the Convention, particular preference shall be given to industry and organisations in the participating States.

2. The Council shall determine whether and to what extent the Agency may derogate from the above preference clause.

3. The question whether an enterprise should be considered to belong to one of the Member States shall be settled in the light of the following criteria: location of the enterprise's registered office, decision-making centres and research centres, and territory on which the work is to be carried out. In doubtful cases the Council shall decide whether an enterprise shall be considered to belong to one of the Member States, or not.

ARTICLE III

1. The Director General shall, at an early stage in the contract action and before invitations to tender are sent out, submit for the approval of the Council his proposal on the procurement policy to be followed, for any contract which either

- (a) has an estimated value above limits which shall be defined in the rules concerning industrial policy and which will depend on the nature of the work; or

(b) is, in the opinion of the Director General, not adequately covered by the rules concerning industrial policy or by additional guidelines established by the Council, or might give rise to a conflict with those rules or guidelines.

2. The additional guidelines referred to in paragraph 1 (b) shall be established from time to time by the Council if it considers them helpful for the purpose of distinguishing those areas where prior submission under paragraph 1 is necessary.

3. The Agency's contracts shall be awarded directly by the Director General without further reference to the Council except in the following cases:

(a) when the evaluation of the offers received suggests a recommendation for the choice of a contractor which would be contrary either to the prior instructions issued by the Council under the terms of paragraph 1, or to any general guidelines on industrial policy adopted as a result of the Council's studies under Article I.2; the Director General shall then submit the case to the Council for decision, explaining why he considers a deviation to be necessary and indicating also whether another decision by the Council would constitute, technically, operationally or otherwise, an advisable alternative;

(b) where the Council has decided for specific reasons to undertake a review before a contract is awarded.

4. The Director General shall report to the Council, at regular intervals to be specified, on the contracts awarded during the previous period, and on the contract actions planned for the subsequent period, in order that the Council may monitor the implementation of the Agency's industrial policy.

ARTICLE IV

The geographical distribution of all the Agency's contracts shall be governed by the following general rules:

1. A Member State's overall return coefficient shall be the ratio between its percentage share of the total value of all contracts awarded among all Member States and its total percentage contributions. However, in the calculation of this overall return coefficient, no account shall be taken of contracts placed in, or contributions made by, Member States in a programme undertaken

(a) under Article VIII of the Convention for the establishment of a European Space Research Organisation, provided that the relevant Arrangement contains provisions to this effect or that all participating States subsequently unanimously so agree;

(b) under Article V.1 (b) of the present Convention provided that all original participating States unanimously so agree.

2. For the purpose of calculating return coefficients, weighting factors shall be applied to the value of contracts on the basis of their technological

interest. These weighting factors shall be defined by the Council. Within a single contract having a significant value, more than one weighting factor may be applied.

3. Ideally the distribution of contracts placed by the Agency should result in all countries having an overall return coefficient of 1.

4. The return coefficients shall be computed quarterly and shown cumulatively for the purpose of the formal reviews referred to in paragraph 5.

5. Formal reviews of the situation of geographical distribution of contracts shall take place every three years.

6. The distribution of contracts between formal reviews of the situation should be such that, at the time of each formal review, the cumulative overall return coefficient of each Member State does not substantially deviate from the ideal value. For the first three-year period, the lower limit for the cumulative return coefficient is fixed at 0·8. At the time of each formal review, the Council may revise the value of this lower limit for the subsequent three-year period, provided that it shall never be lower than 0·8.

7. Separate assessments shall be made, and reported to the Council, of the return coefficients for various categories of contract to be defined by it, in particular advanced research and development contracts and contracts for project-related technology. The Director General shall discuss these assessments with the Council, at regular intervals to be specified, with the aim of identifying the action needed to redress any imbalances.

ARTICLE V

1. If, at one of the formal reviews to be held at the end of each three-year period, the overall return coefficient of any Member State is found to be below the lower limit defined in Article IV.6, the Director General shall submit to the Council proposals designed to redress the situation within one year. These proposals shall keep within the Agency's rules governing the placing of contracts.

2. If after this period of one year, the imbalance still persists, the Director General shall submit to the Council proposals in which the need to remedy the situation takes precedence over the Agency's rules governing the placing of contracts.

ARTICLE VI

Any decision taken on industrial policy grounds which has the effect of excluding a particular firm or organisation of a Member State from competing for the Agency's contracts in a particular field shall require the agreement of that Member State.

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