



→ **ESA CONVENTION AND COUNCIL RULES OF PROCEDURE**



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INTRODUCTORY NOTE

At the end of the Conference of Plenipotentiaries, held in Paris on 30 May 1975, the Convention for the establishment of a European Space Agency (CSE/CS(73)19, rev.7) was opened for signature by the Member States of the European Space Conference, until 31 December 1975.

The Final Act of the Conference of Plenipotentiaries and the associated Resolutions (CSE/CS(73)20, rev.7) established conditions for signature of the Convention and for the functioning of the European Space Agency.

On 30 May 1975, the Convention was signed by: the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Sweden, and the Swiss Confederation.

On 31 December 1975, the Convention was signed by Ireland.

The Convention entered into force on 30 October 1980.

In accordance with Article XVI, 3 of the Convention, the Council has amended certain provisions in Annexes to the Convention adopting the following:

- *ESA/C-M/CXXII/Res. 1 (Final), chapter IV, adopted on 20 October 1995;*
- *ESA/C-M/CLIV/Res. 2 (Final), chapter III, adopted on 15 November 2001;*
- *ESA/C/CLXXIX/Res. 6 (Final), adopted on 22 June 2005;*
- *ESA/C(2009)73, adopted on 10 June 2009.*

The following version is a consolidated text in force as of 1 January 2010.

Date of deposit of instruments of ratification:

<i>Sweden:</i>	<i>6 April 1976</i>
<i>Switzerland:</i>	<i>19 November 1976</i>
<i>Germany:</i>	<i>26 July 1977</i>
<i>Denmark:</i>	<i>15 September 1977</i>
<i>Italy:</i>	<i>20 February 1978</i>
<i>United Kingdom:</i>	<i>28 March 1978</i>
<i>Belgium:</i>	<i>3 October 1978</i>
<i>Netherlands:</i>	<i>6 February 1979</i>
<i>Spain:</i>	<i>7 February 1979</i>
<i>France:</i>	<i>30 October 1980</i>
<i>Ireland:</i>	<i>10 December 1980</i>
<i>Austria:</i>	<i>30 December 1986</i>
<i>Norway:</i>	<i>30 December 1986</i>
<i>Finland:</i>	<i>1 January 1995</i>
<i>Portugal:</i>	<i>14 November 2000</i>
<i>Greece:</i>	<i>9 March 2005</i>
<i>Luxembourg:</i>	<i>30 June 2005</i>
<i>Czech Republic:</i>	<i>12 November 2008</i>
<i>Romania</i>	<i>22 December 2011</i>
<i>Poland</i>	<i>19 November 2012</i>
<i>Estonia</i>	<i>1 September 2015</i>
<i>Hungary</i>	<i>4 November 2015</i>

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 coordinating 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 programme, 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 coordination 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 cooperation 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 coordinated 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 or 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 assist in coordinating 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;

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 for which statistics are available. Nevertheless,
 - a.* no Member State shall be required to pay contributions in excess of twenty-five percent 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 percent 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 percent 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 sub-paragraph *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

COOPERATION

1. The Agency may, upon decisions of the Council taken by unanimous votes of all Member States, cooperate 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 cooperation 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 cooperation 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 cooperation 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 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 and the Convention for the establishment of a European Organisation for the Development and Construction of Space Vehicle Launchers 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;
- 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 becomes 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.

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 Articles 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 XVIII 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 cooperate 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 cooperation 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

GENERAL PRINCIPLES

The financial management of the Agency shall serve the purposes set out in Article II of the Convention and support the implementation of the long-term European space policy approved by the Council. The Agency shall apply internationally recognised accounting standards and follow the principles of sound financial management, economy and efficiency in the planning and management of resources, transparency, accountability and control of the use of public funds, affordability and equity in the mobilisation of Member States resources. The financial system reflects the multiyear character of the Agency's activities and programmes. It shall be subject to efficient internal control and independent audit.

Financial planning, budgeting and accounting including Member States' contributions shall be

expressed in euros, the currency for reporting and transactions.

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

Article II

PLANNING

1. The Director General shall establish such planning tools as deemed useful to allow the optimisation of the use of the Agency's resources, to ensure the continuous consolidation of programme implementation and the preparation of corresponding funding by Member States. Such plans include but are not limited to:
 - a long term plan covering ten years, including all approved and foreseen programmes and activities, together with the estimated financial contributions and expenditures;
 - annual and multiyear cost plans, established on the basis of the obligations of the Member States for the approved

activities and programmes and on the agreements entered into with other funding entities; such plans will cover the common costs foreseen in Articles I, 3 and XIII, 1 of the Convention.

2. The above plans shall be revised and submitted to the Council or the subordinated bodies delegated by it, at least once a year in due time for the approval of the budgets or whenever necessary, in accordance with the Financial Regulations.

Article III

FUNDING

1. The Agency's annual budgets provide Member States and other funding entities with the annual instrument by which to progressively meet their multi-annual obligations while ensuring the continuous execution of the Agency's approved programmes and activities. They shall be the binding basis for the call-up of contributions by Member States.
2. All costs (including capital costs for the use of common infrastructure) related to activities and programmes outside the scope of Article V, 1

of the Convention, such as those foreseen in Articles V, 2 and IX of the Convention, shall be borne by the requesting party, unless otherwise decided by Council.

3. The Director General shall establish appropriate accounting and reporting for Member States and other funding entities, to ensure the transparency and traceability of their respective funding status in the relevant activities and programmes.

Article IV

BUDGETS

1. The Director General shall, on the basis of the plans mentioned in Article II, 2 above, prepare and submit to the Council the following draft budgets, containing the funding requests for the following year:
 - a. a draft general budget for the mandatory activities referred to in Article V, 1 a of the Convention;
 - b. draft budgets associated to the general budget, if created, as foreseen in the Financial Regulations;

- c. draft budgets for the optional programmes referred to in Article V, 1 *b* of the Convention.
2. The draft budgets for a given year shall be submitted to Council for approval before the end of the previous financial year. The modalities for budget revisions and any interim measures required in the event of non-approval of budgets prior to the start of the financial year shall be provided for in the Financial Regulations.
3. Other budgets shall be presented to Council for programmes and activities funded by other entities.

Article V

TREASURY

The Agency's cash resources from Member States shall be managed by the Director General as a general treasury. Interest earned shall be credited to each Member State in accordance with rules established in the Financial Regulations.

Article VI

ACCOUNTING

1. The Agency's financial and cost accounting system constitutes the main financial record of the Agency's activities and operations. It supports the efficient management and control of the Agency's resources through the accurate and timely recording of financial transactions and the identification and measurement of costs.
2. The Agency's financial accounting system shall follow generally accepted accounting principles and apply international public sector accounting standards for the publication of its annual financial statements.
3. The Director General will ensure that the accounts provide a reliable and complete record of the Agency's annual financial performance and a faithful reflection of its financial position at the end of each financial year.
4. By 31 October of each year, the Director General shall submit to Council for approval and discharge for his management, the

audited annual financial statements of the previous year.

Article VII CONTRIBUTIONS

1. The funding for the activities and programmes foreseen in Article V of the Convention shall be met by Member States 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.
3. The arrangements by which contributions are to be made, which shall ensure the proper funding of the Agency, shall be determined in the Financial Regulations.
4. The Director General shall notify Member States of the amount of their contributions

and of the dates on which payments shall be made.

Article VIII

INTERNAL CONTROL

The Director General shall implement an overall system of internal control with the purpose of monitoring performance and the achievement of objectives, assessing the economy, efficiency and effectiveness of operations and verifying their regularity and compliance with applicable rules and regulations.

Article IX

EXTERNAL CONTROL

1. The Agency's accounts, its financial statements and financial management, shall be examined by an independent 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 auditors preferably from among their experienced audit officials, to serve on this Commission. One member of the Audit

Commission shall serve as Chairman during the penultimate year of his mandate.

2. The purpose of the audit shall be to verify and to certify that the annual financial statements are in accordance with the books and records of the Agency, and that they are lawful and correct. Following 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. The Commission shall also report on the economic management of the Agency's financial resources.
3. The Audit Commission shall discharge such other functions as are set out in the Financial Regulations and shall have access at any time to all books of account and records deemed necessary for the performance of the audit. Access to classified information shall be subject to the applicable rules and regulations.

Article X

FINANCIAL REGULATIONS

The detailed rules for the implementation of this Annex II and of the other relevant provisions of the Convention shall be provided for in the Financial Regulations, as approved by Council.

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% 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% 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% 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 time scale 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 coordination 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 geographical distribution of contracts shall take place every five years, with an interim review before the end of the third year.

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. At the time of each formal review, the Council may revise the lower limit for the cumulative return coefficient for the subsequent 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, and in particular at the interim review, with the aim of identifying the action needed to redress any imbalances.

Article V

If, between two formal reviews, a trend is identified indicating that the overall return coefficient of any Member State is likely to

be below the lower limit defined according to Article IV, 6, 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.

* * *

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.

For the Federal Republic of Germany
Sigismund Freiherr Von BRAUN
Hans MATTHÖFER

For the Kingdom of Belgium
Ch. de KERCHOVE

For the Kingdom of Denmark
Paul FISCHER

For Spain

Miguel de LOJENDIO

For the French Republic

Michel d'ORNANO

For Ireland

David NELIGAN

For the Italian Republic

Mario PEDINI

For the Kingdom of Norway

[no signature]

For the Kingdom of the Netherlands

Onder voorbehoud van aanvaarding

J.A. de RANITZ

For the United Kingdom of Great Britain and
Northern Ireland

BESWICK

For the Kingdom of Sweden

Sous réserve de ratification

Ingemar HÄGGLÖF

For the Swiss Confederation

Pierre DUPONT

**→ ESA COUNCIL
RULES OF
PROCEDURE**

ESA COUNCIL RULES OF PROCEDURE*

I. COMPOSITION

Rule 1

1. The Council is composed of representatives of Member States of the Agency. It shall meet either at delegate level or at ministerial level.
2. Each Member State may be represented in principle by not more than two delegates. Participation as a delegate will be subject to production of credentials issued by the competent national authority. A delegate shall continue to hold the position until such time as the Director General is notified of the termination of his appointment.

* Ref. ESA/C(79)69.

Approved by the Council at its 7th Session (10-11 May 1976) and amended at its 29th Session (27-28 February 1979).

As far as the responsibilities of the Council are concerned, please refer to Article XI of the ESA Convention.

Rule 2

Each Member State may nominate in writing alternates of delegates. The alternates shall continue to hold the position until such time as the Director General is notified of the termination of their appointment.

Rule 3

The delegate may be accompanied by advisers. The names and professions of advisers shall be notified to the Director General before they take part in the work of any meeting of the Council.

Rule 4

At the beginning of a meeting, the Director General shall circulate a list of participants based on information received from the Member States in accordance with Rules 1, 2 and 3 above.

II. CHAIRMANSHIP OF THE COUNCIL

Rule 5

1. The Council shall elect from among its members for two years a Chairman and two Vice-chairmen, who may be re-elected once

for a further year. The terms of office of the Chairman and of his Vice-chairmen shall begin on 1 July of the year of the election.

2. If the Chairman is unable to fulfil his functions, a Vice-chairman shall take the Chair in his stead.
3. If the Chairman is unable to call upon one of the Vice-chairmen, the senior, or, in the case of equal seniority, the elder of the Vice-chairmen shall take the Chair.
4. The provisions of paragraph 3 of this Rule shall also apply in the event of resignation or decease of the Chairman. In such case the Vice-chairman shall act as Chairman until the end of the term of office of the original Chairman, unless the Council decides to appoint a new Chairman.
5. A Vice-chairman acting as Chairman shall have the same powers and duties as the Chairman.

Rule 6

1. The Chairman shall conduct the discussions of the Council. He shall not have the capacity

of a delegate of a Member State. In the exercise of his functions he remains under the authority of the Council.

2. The Member State of which a delegate exercises the functions of Chairman shall appoint a delegate in his stead for the duration of his functions as Chairman.

III. BUREAU OF THE COUNCIL

Rule 7

The Chairman shall be assisted by a Bureau consisting of himself and one authorised representative per Member State of the Agency. Each representative may be accompanied by an adviser. The names of these representatives and advisers shall be notified to the Director General before they attend any meeting of the Bureau. When questions on the Council's agenda concern a subordinate body of the Council or another Committee, the Chairman of the Council may also invite the Chairman of the said subordinate body or Committee to attend the Bureau meeting. He may likewise invite to the meeting the Vice-chairmen of the Council.

IV. MEETINGS

Rule 8

1. The Council shall meet as and when required and at least twice a year. The meetings shall be held at the Agency's Headquarters, unless the Council decides otherwise.
2. The Council shall at each meeting determine the date of its next meeting. When necessary the Chairman may, in agreement with the Director General, alter the date fixed for a meeting.
3. The Chairman may convene an extraordinary meeting of the Council, either on his own initiative or on a joint request from at least three Member States.
4. Meetings of the Council shall not be held in public unless otherwise decided by the Council.
5. To deal with matters of particular confidentiality, the Council shall meet in restricted meeting.

Rule 9

1. After consultation with the Chairman, the Director General shall prepare a draft agenda which shall be circulated to Member States not later than a fortnight before each meeting. This draft agenda shall comprise, in particular, matters which at a previous meeting the Council has decided to include, any matter whose insertion a delegation may have requested either during a previous meeting or in a letter addressed to the Director General not later than three weeks before the meeting, matters proposed by the subordinate bodies or the other committees of the Agency and matters that the Director General may deem it necessary to submit to the Council. Documents concerning matters on the draft agenda must be circulated to Member States not later than a fortnight before each meeting.
2. The draft agenda referred to in paragraph 1 above shall be discussed and adopted by the Council, after any necessary modifications, immediately after the opening of the meeting. Other items may be added to the draft agenda but a decision may be taken on them only if all delegations agree.

3. In the case of an extraordinary meeting, a detailed description of the items to be discussed shall be circulated with the notice convening the meeting; all documents concerning the meeting shall be circulated at least ten days before the date of the extraordinary meeting.

Rule 10

1. When the Council meets at ministerial level, the draft agenda shall be drawn up by the Director General, after consultation with the Chairman of the Council and with the minister who chaired the previous ministerial meeting. The other provisions of Rule 9 above are applicable *mutatis mutandis*.
2. When the Council meets at ministerial level, it shall elect a Chairman for the duration of the meeting. The provisions of Section V of these Rules relating to the functions of the Chairman and the conduct of business shall be applicable *mutatis mutandis* throughout the meeting.

3. A ministerial meeting shall formally be convened by the minister who chaired the previous ministerial meeting.

Rule 11

1. The Director General shall be Secretary of the Council; he may designate a member of the staff of the Agency to exercise this function in his stead.
2. The Director General and the staff members of the Agency designated by him shall attend the meetings of the Council unless the Council decides otherwise. The Director General, or a staff member designated by him as his representative, may submit to the Council, orally or in writing, statements on any matter before it.

V. FUNCTIONS OF THE CHAIRMAN AND CONDUCT OF BUSINESS

Rule 12

The Chairman shall, subject to the provisions of these Rules, control the proceedings of the Council and maintain order during its meetings. He shall declare the opening and closing of

each meeting, direct the discussions and, if necessary, sum them up, ensure observance of these Rules, accord or withdraw the right to speak, decide points of order, put proposals to the vote and announce decisions. He may propose adjournment or closure of the debate, or adjournment or suspension of a meeting. He shall ascertain before each vote that a quorum is present.

Rule 13

No one shall take the floor in the Council without first having obtained the Chairman's authorisation. Subject to the provisions of Rule 14, the Chairman shall call upon the speakers in the order in which they have asked to speak. The Chairman may call to order a speaker whose remarks have no bearing on the subject at issue.

Rule 14

1. During the meeting, a delegate may move a point of order. The Chairman shall give an immediate ruling on this motion. Any delegate may appeal against the Chairman's ruling, in which case the appeal shall be debated and put to the vote. Unless the appeal

is upheld by a majority of delegations present and voting, the Chairman's ruling shall stand. Delegates speaking on a point of order may not deal with the substance of the point at issue.

2. Priority over all other propositions or motions shall be given, in the following order, to motions for:
 - (a) suspending the sitting,
 - (b) closing the sitting,
 - (c) adjourning the question under discussion,
 - (d) closure of the debate on the question under discussion.

Rule 15

Any proposal in its final form shall be put to the vote. It shall be submitted to the meeting in writing if a delegate so requests. In such case the Chairman shall not put the proposal to the meeting until delegates so desiring are in possession of the text of the proposal.

Rule 16

1. Whenever an amendment to a proposal is moved, the amendment shall be put to the vote first. If two or more amendments are moved the Council shall vote first on the one which the Chairman rules to be in substance farthest from the original proposal. Where adoption of one amendment necessarily implies rejection of another amendment, the latter shall not be put to the vote.
2. Any delegate may request that parts of an amendment be put to the vote separately. If this request meets with objection, the motion to split the amendment shall be put to the vote.
3. If a delegation so requests, the Council shall then vote on the final amended proposal.
4. Where two or more proposals are moved in respect of one and the same matter, these proposals shall, unless the Council decides otherwise, be put to the vote in the order in which they were moved. After each vote the Council may decide whether or not to vote on the next proposal.

Rule 17

1. Each Member State shall have one vote in the Council except:
 - (a) on questions concerning exclusively an accepted optional programme in which it does not take part, unless all other participating States decide otherwise;
 - (b) where the amount of its arrears of contributions to the Agency in respect of all activities and programmes in which it participates exceeds the assessed amount of its contributions for the current financial year; the Member State may be authorised to vote if a two-thirds majority of all Member States considers that the non-payment of contributions is due to circumstances beyond its control;
 - (c) on questions relating exclusively to an optional programme in which it participates, if the amount of arrears of its contributions that programme exceeds the assessed amount of its contributions to that programme for the current financial year; the Member State may, however, be authorised to vote if a two-thirds majority

of all participating States considers that the non-payment of contributions is due to circumstances beyond its control;

(d) on questions relating specifically to rights or obligations of ELDO, if the Member State is not a Member of ELDO.

2. A non-member State may have a vote where provided in any arrangement concluded between it and the Agency.

Rule 18

1. The presence of delegates from a majority of Member States shall be necessary to constitute a quorum at any meeting of the Council. On questions relating exclusively to an optional programme a quorum shall be constituted by the presence of a majority of participating Member States. On questions relating to rights or obligations of ELDO a quorum shall be constituted by the presence of a majority of ELDO Member States.
2. The Council shall vote under the majority conditions provided for in the relevant Conventions and their annexes.

3. Delegates shall normally vote by a show of hands, except that any delegate may request a roll call, which shall then be taken in the French alphabetical order of the names of the Member States, beginning with the delegation that requested the roll call. In order to determine unanimity or the majorities stipulated, account shall not be taken of a Member State not having the right to vote. When a decision is to be taken by a simple majority of Member States represented and voting, an abstention shall not count as a vote.
4. The result of all votes shall be included in the minutes referred to in Rule 21.

Rule 19

Once a proposal has been accepted or rejected by the Council, it shall not be permissible to request reexamination within a period of twelve months, except with the consent of the same majority as was necessary for the original decision. After such a period, reexamination may be proposed by any Member State or by the Director General.

VI. LANGUAGES

Rule 20

The use of languages in the meetings of the Council, as in other committees of the Agency, is governed by the provisions of Resolution No. 8 attached to the Final Act of the Conference of Plenipotentiaries for the establishment of a European Space Agency, which is attached hereto as Annex I.

VII. MINUTES

Rule 21

1. After each meeting of the Council the Director General shall prepare draft summary minutes giving the substance of the discussions and recording the conclusions reached.
2. The draft minutes shall be circulated as soon as possible after the end of the meeting.
3. Proposals for amendments to the draft minutes shall be sent by delegations to the Director General in writing within three weeks after the date of their communication. Proposed amendments shall be circulated to Member States before the following meeting

of the Council. Exceptionally, if all other delegations agree, oral amendments may be proposed by a delegation.

4. (a) Where a decision is challenged by one or more delegations and, on reference to the tape recording, the decision is found to have been wrongly reported and there is no difference of opinion between delegations on the point, a corrigendum to the draft minutes shall be issued.
- (b) Where the record of what was decided is borne out by the tape recording of the discussion but the delegation(s) maintain their position, the Chairman of the Council shall, in consultation with the delegation(s) concerned, formulate the decision, which shall then hold good until the following meeting of the Council. This procedure shall not, however, be applied to decisions requiring special majority votes, which shall be dealt with under (c) below.
- (c) Where a tape recording of the decision is not available or is for any reason unclear, and in all cases of decisions requiring

special majority votes, the matter shall be referred to the next meeting of the Council.

5. At the beginning of each meeting the draft minutes of the previous meeting, after consideration of any amendments submitted, shall be approved by the Council.

Rule 22

The Council shall decide upon press releases concerning its proceeding and conclusions.

VIII. OBSERVERS

Rule 23

1. The Council may, by unanimous decision, grant observer status to Governments of non-member States and international organisations. This status includes the right to be represented in meetings of the Council.
2. International organisations, institutions of Member and non-member States, as well as individual experts may, with the agreement of all delegations, be invited to be represented in a meeting of the Council or in the discussion

of individual items on the agenda of a Council meeting.

3. Attendance under paragraphs 1 and 2 shall in no way convey the right to vote.

IX. SUBORDINATE BODIES

Rule 24

1. The Council may establish such subordinate bodies as may be necessary for the purposes of the Agency.
2. 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.
3. The chairman or expert-rapporteur of a committee or working group who is not a delegate shall be invited to attend meetings of the Council and participate in its discussions without the right to vote when business relating to the work of his committee or working group, or to any documentation connected therewith, is before the Council.

X. FINAL PROVISIONS

Rule 25

The present Rules of Procedure may be amended by a decision of the Council.

ANNEX I

RESOLUTION NO. 8: USE OF LANGUAGES

THE CONFERENCE,

CONSIDERING the need to settle, before the signature of the Convention for the Establishment of a European Space Agency, the question of the future use of languages in this Agency,

TAKING INTO ACCOUNT the desire, on the one hand, to facilitate the presentation of Member States' views in the Agency's delegate bodies and, on the other hand, to endow the Agency with working rules that guarantee the effectiveness of its proceedings and the economical use of funds,

AGREES that the following rules shall apply in the Agency:

1. With regard to meetings of any organ, committee or working group of the Agency, the English, French and German languages may be used, and interpretation will be provided into those three languages.

2. With regard to documents, the following provisions will apply:
 - (a) Official documents of the Agency bearing a reference number relating to the Council, one of its subordinate bodies or a working group, will be issued in English, French and German.
 - (b) All other documents of the Agency will be issued in English and French.
 - (c) Documents of Member States, of a scientific, technical, legal or administrative nature, should preferably be submitted to the Agency in English or French but may be sent to the Agency in any other language of a Member State.
3. Additionally, in meetings of the Council or any of its subordinate bodies at which questions relating to the Spacelab programme are discussed, the Italian language may be used and interpretation will be provided; official Agency documents bearing a reference number of the Council or one of its subordinate bodies and concerning that programme will also be issued in Italian.

4. Upon request by a Member State delegation, arrangements will be made for the use of any language of that Member State other than those mentioned in paragraphs 1, 2 (a) and 2 (b), in a meeting referred to in paragraph 1, or for the translation into that language of a document referred to in paragraph 2 (a) or 2 (b), it being understood that such a request will be made only in respect of a meeting or a document in which that Member State has a particular interest.
5. The Agency will normally conduct its correspondence in English or French; delegations shall write to the Agency preferably in English or French, but, should they find it appropriate, they may do so in any other language of a Member State.

STRESSES that it is not intended that the application of the above rules should lead to an increase in translations for the internal use of the Agency,

EXPRESSES the strong desire that, as in the past, Member States will so avail themselves of these facilities that additional expense and administrative complications are minimised,

RECOMMENDS that the language arrangements should be reviewed by the Council of the Agency if at any time disproportionate use appears to be made by delegations of the facilities referred to above.

