

# BECOMING AN ESA ASSOCIATE MEMBER

## SLOVENIA'S PARTICIPATION IN ESA OPTIONAL PROGRAMMES

Earth observation @ ESA – Opportunities for Slovenia meeting  
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## Evolution of Slovenia's cooperation with ESA: main milestones

- **ESA/Slovenia Cooperation Agreement** signed on **28 May 2008**. It provided for exchange of information, ESA experts + financial support to conferences, training programmes, communication material...
- **European Cooperating State (ECS) Agreement** entered into force on 30 November 2010 and has been further extended for a further two-year period (i.e. up to 2019).
- Total PECS contribution amounts to **6,358,658 €**. So far, about 4,5M€ have been returned to Slovenia by means of **26 PECS** contracts. Main fields of PECS activities: **space science** (25%), **Earth observation** (31%), **life and material sciences, space techniques and technology** (44%).
- Currently **ESA/Slovenia Association Agreement** is under ESA internal approval process, its approval being scheduled to take place at Council meeting of 15 June 2016. It will enter into force, after signature, on the date of the second of the notifications by the Parties and shall remain in force for a period of **five years** following that date. It will then also replace the ECS Agreement.

## **Slovenia becomes an ESA Associate Member**

- As of entry into force of the Association Agreement Slovenia shall become **ESA Associate Member. Privileged cooperative status foreseen under Article XIV.3 of the ESA Convention** This implies:
- Financial contribution of Slovenia to ESA's general budget = 70% of its share as MS
- 50 % of this amount to be used to foster and manage Slovenian participation in ESA as Associate Member
- **Access to ESA's optional programmes subject to approval by participating States concerned with same rights and obligations as other participating States to that programme**
- Participation in ESA scientific payloads possible through the ESA Prodex optional programme
- **Financial contribution to optional programmes commensurate with Slovenia's ambitions**
- **Duration: 5 years, renewable**

## Possibility for Slovenia to participate in ESA optional programmes

### ARTICLE 4 of ESA/Slovenia Association Agreement

- *"For the purpose of the execution of each Agency optional programme for which the respective Member States concerned have unanimously approved Slovenia's participation, **Slovenia shall from the date of that approval have the rights and obligations of a Participating State as set forth in the Declaration concerning the programme in question**, in the applicable implementing rules and in any other decisions governing the execution of said programme.*
- *In particular, **Slovenia shall contribute to cover the expenditure resulting from the execution of said programme in accordance with the provisions of the Declaration** and of any subsequent revision of that Declaration by the Participating States on the occasion of meetings of the Agency's Council or of the Council's subordinate bodies."*

## Slovenia's rights and obligations as an ESA participating State

- On 1 June 2016, during the internal ESA approval process, the ESA Administrative and Finance Committee (AFC) underlined that it would be important for the Slovenian side to gain a proper understanding of the meaning of the expression “... *and in any other decisions governing the execution of said programme*” at the end of the first sentence of Article 4 of the draft Association Agreement.
- That expression refers to the possibility of Slovenia participating in the Agency's optional programmes, and thus **acquiring the rights and obligations of a participating State in these programmes.**
- As mentioned in Article 4, these rights and obligations are not only set forth in the programme Declarations and Implementing Rules **but can also derive from the ESA Convention and decisions taken from time to time by Council or its subordinate bodies**, addressing matters such as applicable industrial policy or international liability.



## Participation in ESA optional programmes

All Member States participate (on a GNP basis) in activities related to space science and a common set of programmes (Mandatory programmes).

### Mandatory

- General Budget: Future studies, technological research, education, common investments (facilities, laboratories, basic infrastructure)
- Science: Solar System science, astronomy and fundamental physics
- **Optional:**
- In addition, Member States choose their level of participation in Optional programmes.
- The current activities are in the following fields: Human Spaceflight, Telecommunications & Integrated Applications, Earth Observation, Launchers, Navigation, Robotic Exploration, Space Situational Awareness.

## Article V of the ESA Convention 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.

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:

- *the design, development, construction, launching, placing in orbit, and control of satellites and other space systems;*
- *the design, development, construction and operation of launch facilities and space transport systems.*"

## Article XIII of the ESA Convention Financial Contributions

“1. **Each Member State shall contribute to the costs of the activities and programme** referred to in Article V,1a 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, [....].**

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.”*



Some other important applicable provisions from the ESA Convention:

- **Annex III to the ESA Convention:** 6 articles providing the procedure and legal basis
- **Art. XIV.2:** refers to the participation in a programme also by a non-Member State or an International Organization
- **Art.XIV.3:** refers to the granting by ESA of the Associate membership status to a non ESA Member State subject to the fulfilment of certain minimum conditions and to the definition by ESA Council of detailed modalities which in the case of Slovenia includes the possibility for the latter to participate in optional programmes

Major steps to set-up a new optional programme (the continuation of on-going optional programmes not dealt with here):

1. **Programme Proposal** by the Director General
2. **Enabling Resolution** adopted by Council
3. Drafting and subscription of a **Programme Declaration** by interested Member States: the Participants
4. Programme **implementing Rules** adopted by Council
5. Implementation of the programme by ESA: annual budgets, procurements, reporting etc.

## Programme Proposal by DG

- DG maintains constant expertise on the space sector and proposes to Member States new space programmes in the framework of the European space policy.

The proposal contains:

- objectives and content of the new programme
- financial estimations and proposed envelope
- management, reporting, industrial policy and possible
- arrangements with partners on additional financing.

## Council's Enabling Resolution

- DG's proposal is presented to the Member States
- Council may accept that the new optional programme is conducted in the frame of the Agency, that the objectives of the programme comply with the Agency's mission
- Council takes note of the main technical features, of the financial envelope and accepts that the programme is carried out using the Agency's resources
- Programme becomes an official activity of the Agency, under its legal regime, by Council passing the enabling Resolution by simple majority

## Council's Enabling Resolution (continued)

- Does not create an immediate financial commitment for Member States.
- After the adoption, a 3-months period runs, during which each Member State may decide not to participate in the optional programme;

The potential participants to the programme express the level of financial contribution to the financial envelope (= subscription)

## Programme Declaration

- Member States taking part in the optional programme meet in the frame of **potential participants meetings** and draw up a Programme Declaration
- In the current **ESA/Slovenia Association Agreement**, it is foreseen that **Slovenia may attend Potential Participants' meetings in an observer capacity**, in particular meetings dealing with the preparation of programmes related to programmes in which Slovenia participates, **unless the Agency Member States concerned decide otherwise.**
- It constitutes the basic understanding among them regarding the implementation of the programme.

The Programme Declaration must define:

- Programme objectives and content
- timing and phases of the programme
- overall financial envelope and sub-envelopes for phases
- financial contributions by Participating States
- duration and amount of first binding financial commitment.



## Programme Declaration (continued)

- Contains the cost breakdown and payment plan.
- Is subscribed individually by each Participant as a multilateral Agreement: they mutually undertake to fund the programme in accordance with the contribution subscribed and **cannot unilaterally withdraw, unless cost overrun > 20%**.
- mandate to the Agency to run the programme in accordance with the Agency's framework.
- **may be revised by unanimous decision of the Participants**, e.g. in case of substantial change in the objectives and content, the financial envelope, admission of new participants
- Council receives for information the Declaration as agreed by Participating States.

## Implementing Rules

- Contain specific rules as needed by the programme, in addition to the general ESA rules and procedures.
- Are finalised by participants and then **adopted by Council**, whereby the Agency accepts the mandate from the Participants
- Specifies the **modalities of execution of the programme**
- Modifies general rules and procedures in force in the Agency (to the extent legally possible) on:
  - Arrangements on **management, project teams**, etc
  - **Industrial policy and contractual rules**
  - Relationships with other entities or cooperation
  - Delegation of powers from Council to a subsidiary body (PB) to monitor execution of programme and recommend to Council the **cost plans** which constitute the basis for the approval by the latter of the corresponding budget

## Running the programme

The programme is managed under DG's authority, in accordance with ESA's general Rules and Regulations (Financial Regulations, Industrial Policy Rules, Contract Regulations and general clauses and conditions for ESA contracts, Staff Rules, Information and data rules, Security Regulations) and the Implementing Rules.

**Slovenia has, through its Association Agreement already agreed a priori, to abide to all the applicable ESA Rules and Regulations (already "de jure" applicable to all ESA Member States) but needs to fully aware of them at the time of its subscription of the programme concerned.**

Major decisions are taken by the Participants meeting in the organs of the Agency:

- through a revision of the Declaration (unanimous decision)
- recommendation of the cost plans to Council
- other programmatic decision (double simple majority).

## Running the programme

- DG provides regular reporting: quarterly, annual and on completion on the programme status, planned procurements, commitments, technical risks, etc.
- ESA, acting on behalf of the Participants is the owner of satellites and space systems.
- Procurement policy is approved by IPC
- Contracts are then awarded by DG
- Contract (together with General Clauses and Conditions) creates a private law relationship with the contractor.

## Slovenia's voting rights as Participating State

### Article 5 of ESA/Slovenia Association Agreement .....

- (a) Slovenia shall have the right to be represented at open meetings of the Council of the Agency by not more than two delegates, who may be accompanied by advisors. Slovenia **shall have the right to vote on questions relating to the activities and programmes in which it participates pursuant to this Agreement, this being in its capacity of Participating State in the case of optional programmes.** Slovenia shall not have the right to vote in Council on the General Budget or on matters related to it, but shall have the right to state its opinion and to be heard on other questions.
- (b) Slovenia shall have the right to be represented, by not more than two delegates who may be accompanied by advisors, at meetings of the subordinate and advisory bodies of the Agency, competent in any capacity to deal with the activities and programmes in which Slovenia participates. Slovenia shall also have the right to be similarly represented on the Programme Boards of the Agency concerned with those optional programmes in which Slovenia participates pursuant to Article 4 above. **Slovenia shall have the right to be heard at the above meetings and to vote, in its capacity of Participating State, on issues relating to those activities and programmes.**

# Main steps to set up an optional programme

## Programme Approval

