

National Interest Analysis [2011] ATNIA 30

with attachment on consultation

**Agreement between the Government of Australia and the European Space Agency
for a Co-operative Space Vehicle Tracking Program**

Done at Cape Town on 5 October 2011

[2011] ATNIF 23

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

**Agreement between the Government of Australia and the European Space Agency
for a Co-operative Space Vehicle Tracking Program
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Nature and Timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the European Space Agency for a Co-operative Space Vehicle Tracking Program*, done at Cape Town on 5 October 2011 (“the proposed Agreement”).
2. Pursuant to its Article 18, the proposed Agreement will enter into force upon written notification by the Australian Government to the European Space Agency (ESA) that all internal procedures for its entry into force have been fulfilled. It is anticipated that Australia would be able to provide that advice in February 2012.

Overview and national interest summary

3. The proposed Agreement replaces the *Agreement between the Government of Australia and the European Space Agency for a Co-operative Space Vehicle Tracking Program* done at Paris on 15 June 1979 ([1979] ATS 9) and amended in 1987 ([1987] ATS 29), hereinafter referred to as “the 1979 Agreement”. The 1979 Agreement will be terminated when the proposed Agreement enters into force.
4. The proposed Agreement was devised primarily to overcome limitations of the 1979 Agreement, which would have prevented the relocation of the ESA facilities, and to provide enhanced opportunities for Australian involvement with the ESA activities. The drafting of the proposed Agreement also provided an opportunity to update the treaty language, the rights and obligations of the Parties and the provisions for dispute resolution and amendment. The Parties also took the opportunity to introduce enhanced national security provisions, for example, allowing the Australian Government the conditional rights to inspect and deactivate the ESA facilities.

Reasons for Australia to take the proposed treaty action

5. The ESA has been operating in Australia since the 1970s. Prior *ad hoc* arrangements were formalised in the 1979 Agreement to accommodate the relocation of tracking facilities from Carnarvon (WA) to the current site in Gnangara, a suburb in the Perth

metropolitan area. The ESA also operates a deep space antenna at New Norcia, approximately 120km north of Perth.

6. In 2007, the ESA was advised by the Australian Communications and Media Authority (ACMA) that, as a result of increasing radiofrequency interference generated by the surrounding suburbs, the Gnangara facility would require relocation to New Norcia or another location by 2015. The relocation of facilities would have required amendment of the 1979 Agreement. However, the Parties decided that the conclusion of a new agreement would be more appropriate for the reasons stated above.

7. The primary function of the ESA facilities is the tracking and telecommand of spacecraft used for space exploration, research and satellite missions. This is reflected in Article 2 of the proposed Agreement, which limits the agreed activities to the tracking and telecommand of ESA or other space vehicles used for civil space research and applications, and the acquisition of data from such space vehicles.

8. Hosting the ESA facilities has provided employment to Australians as well as providing Australian scientists access to technology they would not have otherwise had. The proposed Agreement will strengthen Australia's close working relationship with the ESA, which in turn will allow Australia to leverage the expertise and leadership of the ESA for the future benefit of Australia's space-dependent capabilities, science and research communities and emerging space sector.

Obligations

9. Like the 1979 Agreement, the proposed Agreement limits the agreed activities to the tracking and telecommand of ESA or other space vehicles used for civil space research and applications, and the acquisition of data from such space vehicles (Article 2). However, it does not specify the agreed activities or the location of facilities, leaving these to be specified in subordinate implementing arrangements (Article 4). The proposed Agreement thus avoids the limitations of the 1979 Agreement by allowing a more flexible mechanism to accommodate changing operational or other practical circumstances. Implementing arrangements made under Article 4 are not intended to create legally binding obligations. (The Parties signed an implementing arrangement together with the proposed Agreement on 5 October 2011. The implementing arrangement concerns the termination of the 2GHz frequency band activities at ESA's Perth facility by 31 December 2015, and alternative radio frequency spectrum apparatus licence arrangements for ESA facilities.)

10. Whilst primarily envisaging ESA activities, the proposed Agreement allows for Australian involvement in the activities. It also allows Australian activities to be conducted independently at the ESA facilities and for Australian infrastructure to be developed or installed, at Australia's expense, at the sites of the ESA facilities (Article 7).

11. Article 6 provides for the sharing of scientific data acquired through the agreed activities. Article 8 requires the Parties to make freely available details of all activities undertaken pursuant to the proposed Agreement.

12. The Australian Government is obliged to facilitate the entry and exit of personnel (Article 10) and goods (Article 11) associated with the agreed activities in accordance with domestic law. Article 11 provides that goods imported for use in agreed activities shall not be subject to Australian duties or taxes.

13. The proposed Agreement includes enhanced national security provisions. Article 13 allows the Australian Government a right to access the facilities for inspection and compliance purposes. Article 13 further allows the Australian Government a right to deactivate facilities if it is determined that activities are contrary to national security requirements and the ESA fails to bring the activities into compliance.

14. Regarding radiofrequency spectrum access, the Australian Government is required to use its best endeavours to ensure that the frequency bands set out in the implementing arrangements are and remain available to carry out the agreed activities (Article 14). The Australian Government is also required to use its best endeavours to provide the ESA with access to the requested radiofrequency spectrums, and to achieve domestic registration of those spectrums. However, the ESA is ultimately responsible for securing domestic registration of the necessary radiofrequency spectrums. The Australian Government is also obliged to use its best endeavours to protect the ESA facilities from harmful radiofrequency interference from radiocommunications stations within Australia that are subject to Australian law.

15. The Parties are required to meet at least once a year to facilitate the implementation of the proposed Agreement and implementing arrangements, with meetings to be held in Canberra unless otherwise agreed (Article 15).

Implementation

16. At the time of tabling, no changes to domestic legislation are required to give effect to the proposed Agreement.

17. The activities provided for in the proposed Agreement will be undertaken in accordance with relevant Australian laws. For example:

- The ESA needs to take the necessary steps under Australian law to secure access to, and achieve domestic registration of, the radiofrequency spectrum necessary for the ESA to carry out agreed activities (Article 14.2).
- The operation of radio transmitting and receiving equipment needs to comply with Australian law and requirements of relevant Australian authorities (Article 14.4).
- The Australian Government needs to, in accordance with Australian laws, regulations and procedures, facilitate the entry into and temporary stay in Australia of persons not normally resident in Australia employed or engaged as

staff, consultants or contractors by the ESA in connection with agreed activities (Article 10.1).

- Effects for the personal and household use of persons entering Australia for the purpose of agreed activities need to be permitted free entry in accordance with Australian customs law (Article 10.2).

18. Relief from customs duty on goods to be imported into Australia within the framework of the proposed Agreement is given effect by item 69 of Part III of Schedule 4 of the *Customs Tariff Act* (Article 11.2). This item allows duty free entry of goods imported into Australia for use in space projects authorised by the Minister.

Costs

19. The ESA remains responsible for all of the operational and maintenance costs of its facilities and for the establishment of new facilities in Australia (Article 5). The Australian Government will be responsible for the cost of hosting annual meetings in Canberra, with funds to be allocated from existing resources. The Australian Government will also be responsible for discretionary costs, which may include contributions to any agreed activities, conducting independent activities at the ESA facilities, or for developing infrastructure or installing equipment at the ESA facilities.

Regulation Impact Statement

20. The Office of Best Practice Regulation within the Department of Finance and Deregulation has been consulted and advises that a Regulation Impact Statement is not required.

Future Treaty Action

21. Both Parties may agree to amend the proposed Agreement, with amendments to be recorded in writing and signed by the Parties (Article 16). Any amendment will come into force upon written notification by the Australian Government to the ESA that all internal procedures for the amendment's entry into force have been fulfilled.

Withdrawal or denunciation

22. Article 18 provides that the proposed Agreement may be terminated at any time by either Party by giving notice to the other Party. However, it will remain in force for a period of five years after notice of termination has been given. This is to allow for the orderly winding-up of activities whilst alternative arrangements are made for the re-location of the facilities.

23. Any termination of the proposed Agreement by Australia would be subject to Australia's domestic treaty-making process.

Contact details

Space Policy Unit
Department of Innovation, Industry, Science and Research

ATTACHMENT ON CONSULTATION

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24. The Department of Innovation, Industry, Science and Research sought the views of the following Australian Government agencies during the negotiation and drafting stages of the proposed Agreement:

- The Attorney-General's Department
- The Department of Defence
- The Department of Foreign Affairs and Trade
- The Department of Broadband, Communications and the Digital Economy
- The Treasury
- The Department of Immigration and Citizenship
- The Australian Communications and Media Authority (ACMA)
- Geoscience Australia
- The Bureau of Meteorology
- The Commonwealth Science and Industrial Research Organisation (CSIRO)

25. The Department of Innovation, Industry, Science and Research sought the views of State and Territory Governments through the official Standing Committee on Treaties (SCOT) contact points:

- ACT Chief Minister's Department
- QLD Department of Premier and Cabinet
- VIC Department of Premier and Cabinet
- NT Department of Chief Minister
- SA Department of Premier and Cabinet
- TAS Department of Premier and Cabinet
- WA Department of Premier and Cabinet
- NSW The Cabinet Office

No concerns or comments about the proposed Agreement were received.