

The Legal Framework of Space Activities in Europe

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Space: a key asset for Europe

- Social, economic, strategic
- Space is an 'enabling tool':
 - Response to critical challenges (climate change, global security,...)
 - Growth & employment
 - Technologies for knowledge-based society
 - Security interests
 - Understanding of planet, Universe
 - European identity, cohesion, inspiration

UN legal framework

- Five UN treaties, UNGA Resolutions
- Most EU members ratified the main instruments, but not all
 - Estonia, Latvia, Lithuania, Malta, Slovenia did not ratify the 1967 Outer Space Treaty
- ESA made a declaration of acceptance of 3 treaties, including Liability Convention
- EU has not



Main legal principles

- Exploration and use of outer space & celestial bodies is 'free'
 - Benefit and interests of all states
 - Province of all Mankind
 - No discrimination
 - On basis of equality
- Appropriation of outer space and celestial bodies is forbidden
 - No sovereignty in space!
- Int. law & UN Charter apply

Main legal principles (2)

- Partial demilitarization of space
- International responsibility for national activities in space
 - Also those by private enterprises and individuals
- Liability of the launching state
- State of registry retains jurisdiction & control over object/personnel
- International cooperation, due regard, avoid harmful interference

Additional sources

- Guidelines
 - e.g. debris
- Codes of conduct
 - e.g. European CoC, if adopted
- Multilateral Agreements
 - e.g. IGA for the ISS
- European rules
 - Lisbon Treaty, ESA Convention, EASA?
- National space legislation
 - In EU: SW, UK, BE, NL, FR
- Related fields of law
 - e.g. trade, environment, transport, IPL...

Institutions/ actors in Europe

- ESA and predecessors (since the sixties)
 - Has no regulatory power
 - Has helped build a broad European space competence
- EU
 - Became involved more recently, when space became a political, strategic tool
- Member states
 - Many differences in capacity, funding

Other space actors in Europe

- In Member states
 - Besides governmental actors (Space Agencies, ministries), national parliaments (i.e. citizens) also have influence
 - Industry: public procurement, few SMEs
- Other EU bodies/agencies/organizations may be(come) involved
 - European Parliament, Council
 - EASA (EU Agency), Eurocontrol (EU is a member), in fields like space tourism, space traffic management...

Fields of EU-ESA cooperation

- Galileo
- GMES
- Security
- Exploration

- Suborbital flights?
 - ESA: following developments
 - EU: role for EASA?



ESA-EU cooperation

- 2000: European strategy for space
 - High level joint taskforce
- 2003: White Paper European space policy
 - Raise awareness strategic importance of space
- 2004 Framework Agreement
 - Recognise complementary strengths
- 2004: 1st 'Space Council': EU Council /ESA Ministerial Council
 - Distinct roles in space despite contradictory basic principles ('Juste retour' – fair competition)
 - EU: regulatory & general in character
 - ESA: technical / operational & space-focused

ESA-EU cooperation (2)

- 2007: 4th 'Space Council'
 - Adoption of the European Space Policy
- 2008: 5th 'Space Council'
 - Priority areas: reaffirms Galileo /GMES, + new ones: space & climate change, contribution of space to Lisbon strategy, space & security, space exploration
- 2009: 6th 'Space Council' mainly addressed GMES & contribution of space to innovation/competitiveness
- 2010: 7th 'Space Council', resolution on 'Global challenges: taking full benefit of European space systems'
- 2011: Commission Communication: 'Towards a space strategy for the EU that benefits its citizens'

EU & space post-Lisbon

- TFEU codifies space competence for the first time
 - Title 1 - EU Competences
 - Art. 3 exclusive / Art. 4 shared / Art. 6 support competence
 - Only exclusive & shared allow for adoption of regulations/directives/decisions
 - Space is mentioned in Art. 4(3), i.e. 'shared', but not in list...

Art. 4(3)

- In the areas of research, technological development and **space**, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence **shall not result in Member States being prevented from exercising theirs.**
- Note: 'normal' shared competences (cf. transport) are 'subsidiary' (pre-emption principle), but for space, the competences of EU and MS 'co-exist'
 - Space = a '**parallel** competence'?

Article 189

- 1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space
- 2. To contribute to attaining the objectives referred to in paragraph 1, the European Parliament and the Council [...], shall establish the necessary measures, which may take the form of a European space programme, **excluding any harmonisation of the laws and regulations of the Member States**
- 3. The Union shall establish any appropriate relations with [ESA]
- 4. [...]

Implications

- The EU has been given a mandate to
 - Draw up a space policy
 - Set up space programmes
 - Coordinate work done at national level
- **Priorities:**
 - EGNOS/Galileo
 - GMES
 - SSA
 - Exploration
 - Space industrial policy
 - R&D, innovation
 - Strengthen partnerships outside Europe (US, Russia, China, Africa)

Problem areas / conclusions

- EU as owner of space assets may be held liable for damage under the space treaties
 - EU needs to accept UN treaties
- Some member states have not ratified the UN treaties but may participate in space activity through the EU
 - States need to be encouraged to ratify
- Many member states have not enacted national space legislation although space activity exists
 - Need more national space laws

Problem areas/ conclusions (2)

- Risk of 'flags of convenience', patchwork legislation
 - Need harmonization of national laws, not by EU
- States and EU have shared competence
 - Need to recognize all actors, work together
- EU must establish relations with ESA
 - Integration of ESA into EU? Strong words in COM!
- Shift towards defense & security issues (Lisbon Treaty, ESP '07, SSA '08, ESA/EDA agreement '11)
 - Be aware of risk of militarization
- Increased global competition
 - Europe must be united vis-à-vis other space powers to have bargaining power in int. ventures

Thank you!

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