

EU Competences in Space

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A Space Strategy for Europe

Structure



- Section I: Evolution of EU competences within space activities
- Section II: Art. 189 TFEU
- Section II: EU Space Programmes: an introduction to Copernicus and Galileo
- Section III: Potential future scenarios and developments

Principle of Conferral



- Fundamental principle of the action of the EU: art. 5 TEU, the EU acts only within the limits of the competences that EU countries have conferred upon it in the Treaties
- Competences defined by artt. 2–6 TFEU:
 - exclusive competences
 - shared competences (including parallel)
 - supporting competences

Competence within space sector: the early years...



Seven Phases

1. 1962 integration of European efforts and knowledge in space through international organisations (ESRO and ELDO)

▶ No relationship with EEC

2. 1975 ESA Convention following the merger of the previous two space organisations. 20 Member States (not all EU MS are part of ESA, and plus Switzerland and Norway are in, plus Canada is a “cooperating Partner”)

▶ ESA has no legislative power (indirect legislative authority)



... and the rationale
thereof



Even if gradually shifting from pure military to
also civil use of space, from the '60s to the
'90s of previous century NO private
involvement in space activities, then
NO INTEREST NOR ROOM
for the EC to be involved in the regulation,
given its nature and purposes



Hints of an EU interest in space...



3. 1986 Single European Act competence in the realm of science and technological development
BUT it gives the Commission an **AUXILIARY LEGISLATIVE INITIATIVE**

(artt. 130f - 130q EEC Treaty)

that can lead the EC to coordinate national research programmes, by the integration of national activities

 First relationship with ESA is established

... and the need to interact
with competent international
organizations



4. From '90 it is clear that space activities have a heavy impact on economic and social aspects. European Institutions start to develop an informal European Space Policy through soft-law instruments (Commission Communications). Later, in 1999 also the Council acknowledge the need for a European approach to space.



2003 EU/ESA

Framework Agreement



The first attempt to introduce space competence



5. 2004 Treaty establishing a constitution for Europe (never entered into force)

art. III-254 and I-14(3)

shared competence BUT “*the exercise of that competence may not result in MS being prevented from exercising theirs*”.

shared competence or supporting action?



Recovering from the collapse of the Constitutional treaty



6. May 2007 the “European Space Policy” COM(07) 212 final, a joint document of EU Commission and ESA , draws the guidelines for a European Space Policy.

NO Specific competence for space is provided by the
Treaties

BUT a space policy is needed as FUNCTIONAL to
other EU policies and competences

(i.e. industrial development, technological
improvement, trans-European networks)

The (present) state of the art for EU and space law



7. 2009 Lisbon Treaty, art. 189 TFEU (together with art. 4(3) TEU)

- Space is a goal in itself, not only functional to other EU Policies
- the clause differs from the draft clause contained in the EU Constitutional Treaty

BUT more precision in the definition of EU competence, MS want to clarify that they still maintain the power to autonomously undertake space activities and programmes

PARALLEL COMPETENCE



ART. 189 TFEU



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, acting in accordance with the ordinary legislative procedure, 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 the European Space Agency.
4. This Article shall be without prejudice to the other provisions of this Title.

Art. 189 TFEU: some assessments



- Political value rather than legislative?
- The clause safeguards the *status quo* regarding balance of powers of EU, MS and ESA
- However importance must be given to the **formalisation of the European Space Policy** AND to the **possibility to promote joint initiatives** under the EU budget AND to the **mention of the ESA** as key subject of the European intervention in space

Article 189 TFEU: is it the very end of EU space competences?



The possibility for the EU to regulate space activities is not exclusively dependent upon the restrictions imposed by art. 189 TFEU

- ✓ By adopting legislative acts juridically based upon other articles of the Treaty, (i.e. transport, trans-european networks, industrial policy, defence etc.) the action is not limited by the parallel competence
- ✓ Article 352 and flexibility clause?

EU Space Programmes



Even before the elaboration of the European space policy, two flagship space-programmes were introduced in order to achieve other relevant objectives of European intervention and to establish the independence of the EU from foreign Nations (notably the US as a major power in space)

COPERNICUS



EU Programme aimed at developing European information services based on **satellite Earth Observation and in situ (non-space) data.**

- coordinated and managed by the European Commission, data are property of the EU
- implemented in partnership with the MS, ESA, the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT), the European Centre for Medium-Range Weather Forecasts (ECMWF), EU Agencies and Mercator Océan
- Functional to other EU policies (i.e. environmental policies)

([What is Copernicus](#))

GALILEO



- Galileo is the European contribution to GNSS (derives from EGNOS);
- Galileo is a global infrastructure, comprising:
 - A constellation of MEO satellites;
 - Its associated Ground Segment;
- Galileo is independent from, yet interoperable with other existing global radio-navigation systems, notably GPS;
- Galileo is a civil system operated under public control;
- The Galileo programme also includes the development of receivers, applications & services;
- The Galileo programme is totally financed by the EU, the infrastructure is property of the EU but jointly managed by EU and ESA

([Galileo GNS Agency – linking space to user needs](#))

Critical issues

- EU has a limited legislative power in space-law and activities but it has the property and the responsibility of two space programmes.
- Proper coordination between EU, MS and ESA is lacking – do the principles of mutual cooperation and international cooperation supply?
- Basic principles which regulate the market within EU are not easy to apply to the space sector i.e. competition rules

Potential future perspectives



- Enhanced cooperation (art. 20 TEU and 326-334 TFEU) as a useful tool for a further integration among MS in space activities and programmes?
- Permanent Structured Cooperation for common security and defence policy (art. 42.6 and 46 TEU) – space applications and programmes for defence
- Development of the relationship between ESA and EU ... is there a possibility for ESA to become the space agency of the EU?



Thank You

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