

EU Competences in Space

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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: Possible future scenario

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



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 (17 EU members, Switzerland, Norway and Canada as “cooperating Partner”)

ESA has no legislative power (indirect legislative authority)



Until about the last decade of XX century NO
private involvement in space activities, thus
there were
NO INTEREST NOR RATIONALE
for the EC to be involved in space regulation,
given its nature and purposes



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

4. During the 90's it becomes 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 acknowledges the need for a European approach to space.



2003 EU/ESA
Framework Agreement



5. 2004 Treaty establishing a constitution for Europe (never entered into force)
first attempt to introduce space competence
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?



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

NO specific competence on space matters 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)

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 repeals constitutional space clause BUT more precision in the definition of relevant EU competences, a clear statement is made to guarantee MS powers to autonomously undertake space activities and programmes

A TRULY 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.

- 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 mentioning of ESA as key subject of European intervention in space**

However the possibility for the EU to regulate space activities is not totally bound by the restrictions drafted by art. 189 TFEU. By adopting legislative acts juridically based upon other articles of the Treaty, (i.e. transport, trans-european networks, industrial policy etc.) the action is not limited by the 'parallel competence': i.e. de facto EU space acts might condition future MS' policies in our sector.

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

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

(video [Galileo initial services](#))

Critical issues



- The EU has limited legislative power in space law; yet, it owns and is responsible for two space programmes. NO regulation of EU liabilities (or shared liabilities with other actors such as ESA) is provided in case of damages deriving from such a technology
- Proper coordination between EU, MS and ESA is lacking
- Basic principles which regulate the market within EU are not easy to apply in the

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



Thank You

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