

# Article VI of the Outer Space Treaty 'in the European Context'

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**Article VI, OST, in the European Context**

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# Art. VI, OST

“**States** Parties to the Treaty shall bear **international responsibility** for **national** activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by **governmental agencies or by non-governmental entities**, and for assuring that **national** activities are carried out in conformity with the provisions set forth in the present Treaty. The **activities of non-governmental entities** in outer space, including the Moon and other celestial bodies, shall require **authorization and continuing supervision** by the appropriate **State** Party to the Treaty. When activities are carried on in outer space, including the Moon and other celestial bodies, by an **international organization**, **responsibility** for compliance with this Treaty shall be borne both by the **international organization** and by the **States** Parties to the Treaty **participating in such organization.**”

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# 'European context' ...?

## ■ Which 'Europe'?

- European Space Agency
  - ◆ EUTELSAT? EUMETSAT?
- European Community / Union
- *Geographical Europe*

## ➔ Individual states

- Those **with** systems for “authorization and continuing supervision”
- And those **without** ... (?)

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# ESA

Note: ESA 'party' to other space treaties

- Declarations Rescue Agreement, Liability Convention & Registration Convention

## ■ Instrument for joint space programmes

- Mandatory *versus* optional activities
  - ◆ Private industry only as builders & integrators
  - ➔ No 'national activities in space by non-govt. entities'
  - ➔ No "authorization" / "continuing supervision" thereof

➔ No authority to license (either)

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# EC / EU

- EC (in particular) regulatory power
  - ➔ Possibility to license ('authorise' / 'supervise') - but largely theoretical even outside outer space
    - ◆ Focus EC (law) on economy ➔ commercial activities
    - ◆ Cf. European satellite communications sector
      - Half-way effort to *harmonise* national licensing
      - Applicability & application competition law
  - Interest in space: largely political
    - ◆ Driving Galileo; Kopernikus

Note: EC / EU not 'party' to any space treaty

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# ➔ Individual states

- ***Yardsticks*** - with reference to Art. VI
  - Scope in terms of (space) activities
    - ◆ Ref. “(national) **activities in outer space**”
  - Scope in terms of license obligation
    - ◆ Ref. “**national activities** (in outer space)”
  - Liability (& insurance)
    - ◆ Most tangible need for authorisation & supervision
  - Licensing (& registration)
    - ◆ Ref. “**authorisation**” & “**supervision**” - & ‘toolkit’
  - Implementation

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# Norway, 1969

- ESA member state (only)
- Act on launching objects from Norwegian territory into outer space
  - Limited to launching activities
  - License obligation: territory; vessels & aircraft; nationals if operating from global commons
  - Liability...?
    - ... Prior to Liability Convention!
  - License for Norsk Romsentr from Andøya

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# Sweden, 1982

- 1st now-EU member state / also ESA
- Act & Decree on Space Activities
  - Excl. launch sounding rockets
  - License obligation: territory & nationals
  - Liability: full reimbursement
    - ◆ No obligatory insurance
  - National Board for Space Activities licenses
    - ◆ Also runs national register

Note: Virgin Galactic's future Kiruna operations!

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# United Kingdom, 1986

- ESA & EU

- Outer Space Act

- Incl. “procuring”
  - ◆ Widely defined - “causes it to occur or is responsible for its continuing”
- License obligation: nationals - no territory (!)
- Liability: full indemnification
  - ◆ Obligatory insurance - up to limit
- British National Space Centre licenses
  - ◆ Also keeps national register

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# UK practice

- Licensing fee £ 1,000 → £ 6,500
  - Since 1989; > 20 licenses BNSC; some 10 licenses by Governors UK Overseas Territories
- Insurance
  - Insurance *vis-à-vis* unlimited reimbursement: UK government to be insured for £ 100 M
  - ↔ 3rd party liability coverage available at reasonable rates up to ± US\$ 250 M (launch phase) / ± US\$ 400 M (in-orbit operations)

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# Russia, 1993

- Only geographic Europe
- Law of the Russian Federation on Space Activities
  - Broad definition “space activities”
  - License obligation: “under the jurisdiction” ...
  - Liability: indemnification in principle unlimited
    - ◆ Compulsory insurance coverage (level t/b decided)
  - Russian Space Agency - Roscosmos
    - ◆ Licenses (‘supervised’ by MoD) & runs registry

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# Russia, 1996

## ■ Statute on Licensing Operations

“Space operations subject to licensing are those of legal entities regardless of their organizational and legal form, and of individual entrepreneurs *of the Russian Federation*, and also space operations of foreign citizens and organizations when carried out *under the jurisdiction of the Russian Federation*.

Space operations subject to licensing include the making (encompassing production and testing) of space-rocket complexes and their component parts, storage, readying for launch, launching and utilizing space vehicles, and also the control of space missions.”

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# Russian practice

- Megaruss insurance co.: involved in > 60 contracts since 1992
- Limits reimbursement liability (USD)

Proton	300 M	Tsyklon	100 M
Soyuz	100-300 M	Rocket	100 M
Molniya	150 M	Cosmos	100-150 M
Zenith	150-500 M	Strela	100 M
Dnepr	100-150 M	Start	80 M

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# Ukraine, 1996

- Like Russia (...)
- Law of the Ukraine on Space Activity
  - Definition “space activity” very broad
  - License obligation:
    - ◆ ‘In Ukraine’ & ‘under jurisdiction Ukraine’
  - Liability - as Russia: unlimited (in principle)
    - ◆ Insurance - as Russia: compulsory
  - National Space Agency of the Ukraine licenses
    - ◆ Registers - unless someone else takes care

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# Belgium, 2005

- ESA & EU
- Law on (...) launching, flight ops or guidance of space objects
  - License obligation: territory; nationals only if under special agreement
  - Liability: in principle unlimited
    - ◆ No obligation insurance
  - Minister space research & applications licenses
    - ◆ ... & registers

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# Netherlands, 2007

- ESA & EU
- Space Activities Act
  - Incl. “organization” of space activities
    - ◆ Ref.: space tourism from the ‘Dutch’ Caribbean
  - License obligation: territory (incl. ships & aircraft); nationals if not from OST parties
  - Liability: redress up to value of sum insured
  - Radiocommunications Agency licenses
    - ◆ Also registers

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# Towards the future ...

## ■ France

- *Not seen an English version yet...*
- Before: authorisation & supervision 'by control'
  - ◆ Arianespace & SPOTImage: majority-owned French; CNES largest single shareholder
  - ◆ Eutelsat: special arrangements post-privatisation
  - ◆ France Telecom: French govt. crucially involved

## ■ Germany - further then EO data-law

## ■ Italy (?)

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# Concluding remarks

- Neither ESA nor EU yet to ‘implement’ Art. VI, OST, in practice
  - Nationally, considerable divergence
    - Esp. scope of licensing obligation & handling of insurance (obligation or not)
    - Usually liability reimbursement unlimited - in principle ...
    - Usually dedicated entity licensing & registering
- ➔ Need / possibility for harmonisation?

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