

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Current Developments in Space Law with Special Emphasis on National Space Legislation (7)

Author: Ms. Cristina Miranda
Vieira de Almeida & Associados, Portugal, mmmm@vda.pt

Ms. Helena Correia Mendonça
Vieira de Almeida & Associados, Portugal, hcm@vda.pt

NATIONAL SPACE LAWS AND NON-BINDING INTERNATIONAL INSTRUMENTS – THE
PORTUGUESE EXPERIENCE

Abstract

Drafting of national space laws to ensure compliance by States with their international commitments (notably under the UN Space Treaties) has been a recent trend globally. However, the specific legislative process that each State needs to implement in this regard typically renders national space laws quite lacking in the capacity to suit, in a timely and adequate manner, the innovative and transformative nature of the space sector, including in light of increasingly relevant non-binding international instruments. Thus, States need to be mindful of the need to built-in the necessary flexibility to address the specific regulatory needs of the space sector. This challenge was identified when drafting the Portuguese Space Law and led to the necessity to built-in a set of open-concepts and to provide for lower level legal frameworks which allow for the necessary flexibility to address the challenges brought on by a technology-based sector, where evolving technical know-how and third-party standardization (notably through non-binding international instruments) is of the essence to ensure the safety and quality of space activities. All while taking into consideration that Portugal is part of the EU and is, thus, subject to EU legislative and policy measures that have a direct impact on space activities and the way in which space activities may end up being regulated in Portugal (whether directly related with space - e.g., on STM - , but also when they are not directly related with space - e.g., ESG European-driven measures). In addition, it is also important to highlight that Portugal has two Autonomous Regions, and one of them (the Azores) enacted a specific set of rules on access to space activities that raise significant difficulties in the articulation between the national and the regional regime and may end-up creating a heavy burden to potential promoters of space activities in that region. This paper describes the Portuguese approach to its national space legal framework, highlighting how articulation between compliance with international space law and innovation goals was achieved. At the same time, it assesses how the Portuguese space laws and sector fit in, reflect and contribute to the achievement of, and compliance with, EU provisions on space and on non-space matters (especially when it comes to the digital and green transition), as well as of international non-binding instruments. In this scope, the latest developments are analysed, including on space and defence, Earth Observation and promotion of testing and experimentation approaches.