

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
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THE LACK OF NATIONAL SPACE LEGISLATION IN EU MEMBER STATES AND THE ROLE OF
THE EU AS A NEW RESPONSIBLE (?) ACTOR IN OUTER SPACE

Abstract

Out of the 27 EU member states, 23 have ratified the Outer Space Treaty and are therefore bound by its Article VI, which obliges them to authorize and continuously supervise national activities carried out by non-governmental entities in outer space. The remaining states are bound by Principle 5 of the UN Legal Principles Declaration, which contains the same obligation and is generally considered as representing customary international law. There is therefore no doubt that all EU member states are under an international obligation to ensure that non-governmental space activities under their jurisdiction are authorized and continuously supervised. Nevertheless, only ten states have so far enacted comprehensive national space laws, which contain specific rules and procedures regulating authorization and supervision by competent national authorities. The existing laws follow a certain common pattern but still differ in certain aspects. This situation is likely to distort competition in the European internal market with its increasing number of non-governmental space actors operating in different countries. However, as is well known, Article 189 of the Treaty on the Functioning of the European Union (TFEU), which describes the competence of the EU in the area of space, explicitly prohibits the harmonisation of national laws and regulations. In pursuing its competence in the area of space, the EU has developed a EU Space Policy and intensified its engagement for the EU Space Programme. The legal framework for the EU Space Programme was enacted by a Regulation of the European Parliament and the Council in April 2021. It regulates the rules and conditions of the EU Space Programme and sets the financial envelop at 14.88 billion euros until 2027. It is therefore evident that the EU is developing its engagement in the space sector and is dedicated to assume the role of an increasingly important actor in outer space. Article VI of the Outer Space Treaty takes account of such a situation and stipulates that, when activities are carried on in outer space by an international organization, “responsibility for compliance with this Treaty shall be borne both by the international organization and by the State Parties to the Treaty participating in such organization”. The presentation will discuss the responsibility of the EU and its member states, in particular with respect to the obligation to authorize and supervise non-governmental space activities, in the context of the EU Space Programme.