

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

Author: Mr. João Frazão
Portugal, joaonunofrazao@gmail.com

Mr. João Marques de Azevedo
Portugal, joao.azevedo@novalaw.unl.pt

Mr. Vinicius Aloia
Luxembourg, aloia.vinicius@gmail.com

Dr. Marcia Alvarenga dos Santos
National Institute for Space Research - INPE, Brazil, marcia.alvarenga@inpe.br

(DO) WE HAVE A LIFT OFF!(?) A COMPARATIVE ANALYSIS OF THE NATIONAL SPACE
LEGISLATION FOR THE FEASIBILITY OF COMMERCIAL SPACEPORTS: THE CASE FOR
LAUNCH SITES IN BRAZIL AND PORTUGAL

Abstract

The democratisation of space has enabled the surge of new launch services providers with competitive prices and flexibility. This has created a market for the launch of micro and small satellites in States that, until recently, did not possess their own launching capabilities. With a view of maintaining conformity with international space law and to enable commercial space launches from their territory, several new Launching States have enacted or are in the process of enacting national space laws to regulate and control private space activities. In this paper, the national legal framework for the feasibility of commercial spaceports is examined, using the case of Brazil and Portugal. Firstly, we provide an overview of the current framework for commercial space launches from Brazil as well as legislative efforts to provide further legal certainty and aimed at attracting interest and international investment. This includes evaluating a proposal for an act on Space Activities currently being discussed in Congress, and proposed conditions for authorisation, insurance, and limitation of liability for private operators. In that sense, it is essential to point out that the Brazilian Government has established a plan to enable launches from the Alcântara Launch Centre and attract small commercial satellite operators and small rocket launchers. Secondly, we address the Portuguese legislation that regulates space activities and sets the conditions for their authorisation. With technical support from ESA, the country is building a spaceport in the Azores islands for the launch of small commercial satellites. This could potentially affect Brazilian attempts to position itself in the launch market, and vice-versa. Yet, the Portuguese approach still has to be consolidated, with a recent project for a new decree-law to develop previous legislation receiving negative feedback from the Azorean Regional Government. Due to the similarities between the two legal systems, the Portuguese approach can be considered a relevant and significant model for a Brazilian law, and contains provisions endowed with a commercial feature also sought by the Brazilian authorities to address legal and regulatory concerns from the private sector. However, we will identify shortcomings from both approaches to ensure that any potential “rivalry” between the two spaceports would not lead to a race-to-the-bottom regarding international standards for safety and environmental concerns. Finally, we put forward general recommendations for a successful regulatory model as inspiration for a more optimal framework on commercial spaceports that accommodates the interests of both States across the Atlantic.