

IMPLEMENTING THE UNITED NATIONS OUTER SPACE TREATIES

THE BELGIAN SPACE ACT IN THE MAKING

by

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FOREWORD

At the end of April 2004, the Council of State has provided the Minister for Science Policy with its recommendations concerning the draft Belgian Space Act. Most of those recommendations cover formal and textual aspects of the draft. On the other hand, the Council of State has admitted the competence of the Federal State when it comes to the regulation of space activities under Belgian jurisdiction.

No remark have been issued on the principles contained in the draft act, especially as they take care of the implementation of international outer space law in the national legal framework.

The draft circulated until now will then be revised and accordingly corrected on some formal items and wordings but the "building blocks", the principles and the mechanisms will remain unchanged.

The final approval of the law is still considered at the end of 2005. A Royal Decree will then be required in order to implement some of the provisions of the law.

THE DRAFT BELGIAN SPACE ACT: MAIN ORIENTATIONS

Responding to the specific needs of a small country actively involved in international space co-operation and activities¹, the draft Belgian Space Act² consider the regulation of the space sector under a very pragmatic eye. The scope of the law is limited to the operation of space objects (launching, flight operating and monitoring). It excludes application activities (such as remote sensing or telecommunication) or exploitation of payloads. To that extent, the Belgian law clearly focuses on implementing Articles VI, VII and VIII of the 1967 UN Outer Space Treaty, although other provisions of UN outer space treaties are also considered.

¹ total public budget for civil space activities: 170 million euro/year

² original title in French and in Dutch: "(av ant-projet de) loi relative aux activités de lancement, d'opération de vol et de guidage d'objets spatiaux/(voorontwerp van) wet met betrekking tot de activiteiten op het gebied van het lanceren, het bedienen van de vlucht of het geleiden van ruimtevoorwerpen"

The main guidelines of the law in the making are then:

- the setting-up of an authorization procedure in the hands of the competent Minister, for the performance of activities as defined by the law;
- the setting-up and the maintenance of a national registry for space objects;
- the opening of a legal action by the Belgian Government towards the operator, under detailed conditions, in the case of third party damage liability.

THE AUTHORIZATION TO PERFORM ACTIVITIES

Principle:

A prior authorization from the Minister is required to perform any activity falling under the scope of the law. The application for such an authorization is regulated by the law and by its implementing decree. This authorization can be delivered by the Minister under general or special conditions and can be withdrawn in the case of non-respect of the conditions, false information by the applicant or public security purposes.

Which activities are considered ?

Any activities of launching, flight operation or monitoring of space objects performed under Belgian jurisdiction is subject to the law.

The term "Space Object" is defined as any object launched or intended to be launched in outer space, including its material parts and components (hardware).

"Under Belgian jurisdiction" means that, to be subject to the Belgian law, the activity

must be performed by natural or legal persons, on the Belgian territory or under the jurisdiction or the control of the Belgian State, or by means of facilities, mobile or fixed, which belong to the Belgian State or which are under its jurisdiction or control.

For instance:

- (1) a foreign company launching from the Belgian territory or from the Belgian territorial sea is subject to the Belgian law;
- (2) a Belgian company operating (the flight of) a satellite under contract with a international organization and using a ground facility belonging to this organization but located on the Belgian territory, is not subject to the Belgian law (because outside Belgian jurisdiction);
- (3) a Belgian company operating from a foreign territory but using facilities rent by the Belgian Government for the purposes of the launch and/or the flight operations; is subject to Belgian law;
- (4) the same company operating from a foreign territory and under foreign jurisdiction is not subject to Belgian law.

It is quite important to understand that the draft Belgian Space Act does not consider the nationality of the operator. The only criterion of application is the location of the activities. This solution is due to the fact that, according Article VI of the 1967 Outer Space Treaty, States party have to ensure continuous supervision on their "national activities in outer space" when they are performed by non-governmental bodies. As international law doesn't provide a clear definition of the "nationality of activities" (except maybe in international environmental law), the draft Belgian Space Act opted for a functional approach, using criteria which would allow

the fulfillment by the States party of their obligations under Art. VI OST.

However, following the numerous discussions held within international fora, such as UNCOPUOS or academic symposia, it appears that, in order to avoid situations where no State jurisdiction would apply, either because of the nationality of the operator or because of the location of the activities, a virtual extension of the law was needed. Therefore, the draft Belgian Space Act allows the application of the Belgian law to activities performed by Belgian (natural or legal) citizens, wherever those activities are located. However, such an extended application is subject to the prior conclusion of an agreement between Belgium and the State (or international organization) under which jurisdiction the activities are performed.

Who has to apply for an authorization from the Minister ?

The answer is: the operator.

The "Operator" is defined as the (natural or legal) person who is in charge of performing the activities, by keeping the "Actual Control on the Space Object". This late notion is one of the key-notions of the law in the making. It is defined as the mastering (= 'the final word') of the spacecraft's commands and associated instruments required for the performance of the launching, the flight or the monitoring of the spacecraft.

This reference to the actual commander of the spacecraft comes from the willingness of the Belgian lawmaker to ensure a close relationship between the technical performance of the activities and the associated liability. This link is expected to make the operator more aware of his duties and concerned about their fulfillment.

What are the conditions to perform the activities ?

The conditions are several:

- (1) **a general condition** is imposed by the law: the compliance of the activities with international law principles;
- (2) **special conditions** may be imposed by the King to all authorizations delivered by the Minister (safety of persons and goods, the use of airspace or outer space, the protection of strategic or economic interests of Belgium, compliance with other international obligations of the Belgian State,...);
- (3) finally, **specific conditions** may be imposed by the Minister (third party damage insurance, restriction in the location of the activities, duration of the activities, mandatory recourse to third party's assistance or technical expertise,...).

What is the procedure for obtaining the authorization ?

The applicant (= the operator) must file a request to the Minister with the following elements of information:

- identification, presentation of past, present and projected activities;
- description of the activities subject to authorization;
- description and identification of the space object;
- identification of the space object's manufacturer;
- survey on the potential environmental impacts of the activities;
- identification of the persons on behalf of whom the activities are performed;

- any other information which should be considered as relevant for the authorization.

The King may add elements to the list, the Minister as well. Failure to communicate those information in due time may cause the denial of the authorization.

The Minister may request external advice on the reliability, the capabilities and the features of the operator. His decision is made on basis of technical, economical and legal criteria.

A survey of the aspects related to actual or potential environmental impacts caused by the activities is due by the operator at different stages of the procedure:

(a) an initial survey must be presented as an annex to the application dossier. This survey must cover all aspects related to potential impacts on earth and space environments;

(b) an intermediary survey is performed on the Minister's request after the launch or during the operation of the space object;

(c) a final survey may be performed on the Minister's request after the de-orbiting of the space object.

All surveys are conducted at the operator's charge.

The Minister has 90 days to take a decision (+30 days in case of further information required). Ordinary appeals are open against the Minister's decision.

During the course of the activities, the Minister, with the assistance of external expertise if needed, may perform inspections of the activities. For that purposes, the inspectors have access to all premises or documents related to the authorized

activities. Denial of access may lead to the withdrawal of the authorization.

THE NATIONAL REGISTER FOR SPACE OBJECTS

As it is the case for most of the existing national space legislations, the draft Belgian Space Act sets up a National Register for Space Objects.

It features all data mentioned in the 1975 Registration Convention, as well as other relevant information. This Register identifies all space objects of which Belgium is (one of) the launching State(s), according to the 1972 Liability Convention.

All data as well as their modification or update are communicated to the UN Secretary General.

All space objects registered by Belgium are identified by a national registration number.

The Register is accessible by the general public and is intended to be put online. Beside the Register, the Minister holds a Repertory of all authorizations delivered³.

THE LIABILITY OF THE OPERATOR TOWARDS THE STATE

The draft Belgian Space Act provides the Belgian State with an action against the operator whenever its international liability

³ The content of this Repertory doesn't necessary match the Register's since the Repertory features only the activities authorized by the Minister, which may involve operation of space objects not registered by Belgium. On the other hand, a space object registered by Belgium may be operated under a foreign license.

for damage caused by space objects is activated.

In order to allow the operator to take insurance at reasonable conditions, a ceiling amount is foreseen. However, the benefit of this ceiling is lost in the case the operator doesn't fulfill the conditions of the authorization or provides false information when applying for the authorization. The operator is then liable for the whole indemnification without limitation.

The damage's value is estimated according to a procedure based on Article XII of the Liability Convention. The operator is involved in the negotiations between the States party to the dispute. Whenever the damage is caused to a Belgian citizen, the estimation is made by experts designated by the parties (the Belgian State and the operator).

The ceiling (maximum liability amount) is calculated on the basis of the estimated damage's value according to a formula to be determined by the King (it could be proportional to the operator's turnover). This means that the Belgian State (and, should the case arise, other liable States) take(s) the charge of the remaining part of the indemnification costs.

A direct action from the Belgian State against the insurer is possible. The State's action is not subject to any prior action, including any action under the Liability Convention against other launching States. The payment of the limited amount by the operator to the Belgian State doesn't prevent any additional action for indemnification from third parties.

OTHER PROVISIONS

A specific provision prevents any appropriation of fallen or landed space objects, or components of space objects, found on the Belgian soil (by derogation to civil law).