

EUROPEAN SPACE POLICY: A COMMON FUTURE FOR ESA AND EU

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ABSTRACT

After 40 years of European's activities in space, the European Space Agency (ESA) and the European Union (EU) are putting space applications linked to inspirational goals at the service of Europe; they are asking for a European Space Policy (ESP) in order to grant substantial economic, social and environmental benefits to the European citizens.

This ambitious aim is requiring an ambitious legal/institutional answer. So far, this answer is based in a two-phased approach: on the one hand, the recently agreed Framework Agreement between European Community (EC) and ESA, and on the other hand, the Treaty establishing a Constitution for Europe. Nevertheless its extremely political importance, this new element has not

been focused by the public discussion.

The purpose of this paper is to analyse which system of governance is designed, which role ESA and EU can/must play, and which legal/institutional tools are provided to develop and implement their synergies, in sum, the paper will try to determine if the given legal/institutional answer is likely to generate a real ESP.

I. INTRODUCTION

The European cooperation in the space activities began in the 1960s under the ESRO/ELDO framework, and, after, under the ESA framework, however, nowadays, the competitiveness of the space activities demand another institutional and legal structure where the ESA and the EU, whose legal nature and political logic are totally different (cooperation

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versus integration), have to define their respective role¹ (II).

Since the report of the *Three Wise Men*, the ESA and the EC work jointly to identify and encourage the most effective sharing of tasks and responsibilities for determining and continuously delivering the benefits of space to the Union and the European citizens².

In sum, a new approach, to the European governance of the space activities, has to be established, as the 2003 White Paper has underlined: "...successful implementation [of the ESP] requires a system of governance in which the roles of the players are clearly understood, the tools for careful coordination properly provided and processes of accountability put in place. Duplication of work and structures must obviously be avoided"³.

Furthermore, the 2003 White Paper also sets down the legal/institutional tools and the two phases-calendar needed to implement the ESP: the phase 1 (2004-2007) will consist of implementing the 2003

Framework Agreement between EC and ESA, and the phase 2 (2007-onwards) will consist of implementing the Treaty establishing a Constitution for Europe⁴ (III).

II. THE DIFFERENT LEGAL NATURE AND POLITICAL LOGIC OF ESA AND EU

THE ESA

The ESA is an European intergovernmental organization, committed to carry out their science and applications activities for exclusively peaceful purposes⁵.

The historical perspective of ESA shows us the following points⁶:

- the national and the European policy logics are clearly interrelated: if there is a harmony of national policy logics among all the governments, it is easier to define the European policy logics;
- the logics of finance appears on every occasion that the European logic is fragile;

- some new and innovative rules and procedures are created when the logic of commerce begins to have influence in national governments (the principle of fair return or the rule of the optional participation).

THE EU

The EU is the most important sophisticated European structure⁷, which has two different frameworks: the European Communities, and the Cooperation policies (Common Foreign and Security Policy and Justice and Home Affairs).

The first one establishes a method of integration, based on the transfer of the exercise of sovereignty rights to the EC, on the respect of the *acquis communautaire*, and on the existence of an unique budget system with its own resources. The second one seems to be closer to the model of intergovernmental organization.

The current basic set-up of the EU do not refer to outer space, nevertheless, this dimension can be

found implicit in the EU 's Treaties: research, industrial development transport, telecommunications, agriculture, environment and health services, development aid, regional development and security⁸.

III. A COMMON LEGAL AND POLITICAL STRUCTURE FOR ESA AND EU

The 2003 White Paper asserts that "objectives must be ambitious and organisational arrangements must be consistent with these objectives"⁹. Therefore, having the benefits of the space activities as the main objective, the point is how to create a common legal and political for ESA and EU.

Several models have been discussed¹⁰. One of them has been put into practice in the first place: the 2003 Framework Agreement between EC and ESA, provides for a "common basis and appropriate operational arrangements for an efficient and mutually beneficial cooperation between the Parties with regard to space activities", but "in accordance with their respective tasks and responsibilities and fully

respecting their institutional settings...”¹¹. This can be considered the appropriate first step, in order to create a joint strategy and programmes for two independent international organizations; however, it results insufficient to create a common structure. Other models imply either to integrate the ESA into the traditional legal and institutional structure of the EU, and consider it as an simple executive agency of the EU in order to implement the decisions adopted by the EU; or to make it dependent politically of the EU, however to preserve its independence in other non-political areas¹².

So far, the article III-255 of the Treaty establishing a Constitution for Europe states that: “the Union shall draw up a European space policy...; ...European laws or framework laws shall establish the necessary measures, which may take the form of a European space programme; ... [and] the Union shall establish any appropriate relations with the European Space Agency”¹³.

The Constitutional Treaty do not specify the model of the common

legal and political structure for the relationship between the ESA and the EU; it just stresses the obligation to carry out this relationship, as it happens in the current EU Treaties, when they emphasize the interest of the relationship between the EC and United Nations or the Counsel of Europe, It is a *minimum*, but this mention is legally and politically very important¹⁴.

In fact, the Public International Law offer several options to international organizations in order to cooperate, involving different forms and degrees of intensity, as well as different consequences, even affecting their existence¹⁵.

Apart from the common political structure for ESA and EU, it has to be asserted that there are other difficult legal challenges as the membership (the ESA and the EU have not the same members), -that could be solved in a mid-term-; the principle of the fair return and the rule of the optional participation in the programmes, -that could be solved with the enhanced cooperation¹⁶-.

CONCLUSION

This new European process, opened with the Constitutional Treaty, deems and need an big effort of politicians and jurists, in order to find the appropriate answer to these general political and legal challenges and to the specific questions related to space activities.

The European citizens have a special opportunity to improve their standard of life, the European market has the occasion to enhanced their commercial potential and the European governments have to make “their best efforts” because the basis are already settled down in the Constitutional Treaty .

¹ See the Report “Towards a Space Agency for the European Union”, presented, by Carl Bildt, Jean Peyrelevade and Lothar Späth, at the EU Council meeting on the 17th November 2000: “We thus want policies to be set more clearly, commitments to be stronger, institutions to move closer to each other and artificial barriers and blockages of the past to be taken away. We want space to count in European policies and Europe to count in the use of space”.

² See the list of documents in http://europe.eu.int/comm/space/off_docs_en.htm

³ Commission of the European Communities: *White Paper “Space: a new frontier for an expanding Union. An action plan for implementing the European Space policy”*, COM (2003) 673 final, 11.11.2003, p. 36.

⁴ *Supra* note 3, p. 37.

⁵ Art. II of the ESA Convention.

⁶ Suzuki, K.: *Policy Logics and Institutions of European Space Collaboration*, Ashgate, 2003, p. 209-212.

⁷ Hobe, S.: ESA and the EU: “A Coherent Approach in Space”, in Hobe, S., Schmidt-Tedd, B., Schrogl, K-U. (eds.): *Legal Aspects of the Future Institutional Relationship between the European Union and the European Space Agency*, -Proceedings of the Workshop, 5/6 December 2002, Brussels-, Institute of Air ans Space Law of the University of Cologne and DLR, 2003, p. 12.

⁸ Wouters, J.: “The EU and Space Policy: Constitutional and Institutional Aspects”, in Hobe, S., Schmidt-Tedd, B., Schrogl, K-U. (eds.), *supra* note 7, p. 17.

⁹ *Supra* note 3, p. 36.

¹⁰ Hobe, S., *supra* note 7, p. 13-14.

¹¹ Art. 1, para. 2 of the 2003 Framework Agreement.

¹² Hobe, S., *supra* note 7, p. 13-14.

¹³ Doc. CIG 87/04, Brussels 6 August 2004, p. 194.

¹⁴ The first Draft of the Constitutional Treaty did not mention even the ESA.

¹⁵ Ribbelink, O.: “International Institutional Law Aspects of Cooperation”, in Hobe, S.: ESA and the EU: “A Coherent Approach in Space”, in Hobe, S., Schmidt-Tedd, B., Schrogl, K-U., *supra* note 7, p. 43.

¹⁶ Arts. III-416 – III-423 of the Treaty establishing a Constitution for Europe, doc. *Supra* note 13, p. 328-332.