

ECSL

News

Bulletin of the European Centre for Space Law – Published under the auspices of the European Space Agency

National Space Agencies

Chairman's Word

Continuing ECSL News' tour of its member communities, this issue focuses on the legal practice and shape of the national space agency and how different legal functions – e.g. registration of space objects – are dealt with at national level (European-level practice will be dealt with next).

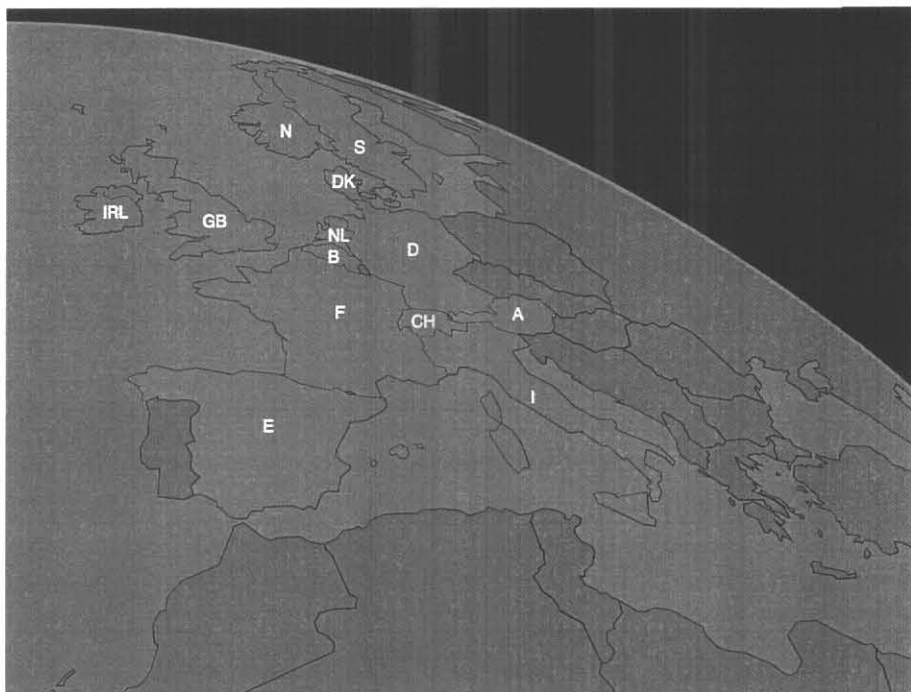
Meant as an introduction to an area documented so far only scantily, this issue's content will be complemented later in 1991 by a new ECSL publication providing the national agencies' legal texts and fuller descriptions of their structures and activities. As with Space Law Teaching in Europe, it will be free to members.

ECSL's further activities continue to quicken in pace, as readers will see from the items on the back-page. Of particular importance is the scholarship scheme, the themes of which target areas of especial practical utility, as well as the growing strength of the NPOC system and the implementation of the first ECSL workshops and seminars.

This increase in activity has been made possible in large part by members' donations since May 1989. Maintenance of the scholarship scheme alone, however, calls for replenishment of the Fund, and we therefore take this occasion to invite fresh contributions for a year in which the first ECSL General Meeting will be asked to endorse a significantly expanded programme.

Seasons' greetings to all members and other readers.

G. Lafferranderie (Chairman) &
K. Madders (Acting Chairman)



The law establishing the Italian Space Agency was passed by the Italian Parliament in May 1988, with the object of coordinating and reinforcing Italy's space sector, an area considered to be of growing strategic importance. ASI both defines and implements space policy in Italy, through management measures and by working with the industrial and scientific communities, and also represents Italy's interests in ESA.

Top-level policy, especially concerning ESA, is set by the Minister of University & Scientific and Technological Research (MURST), while the general objectives and scope of the Italian space activities are deliberated upon by CIPE, the Inter-ministerial Commission for Economic Planning. International commitments require the authorisation of both MURST and the Minister of Foreign Affairs. The Agency contracts out programme implementation to research centres or industrial concerns. It can go into partnership, taking a minority share, with industrial consortia and enterprises.

The law instituting ASI represents a really innovative approach in the Italian regulatory environment, combining the form of a State agency with provisions designed to render ASI's organisational structure more agile and flexible.

In particular, even though the Agency is governed by public law, it maintains some private-law peculiarities. For instance, and in contrast with normal Italian public practice, it applies private rules in industrial contracts for executing ASI's programmes and in engaging specialised technical and scientific staff under fixed term contracts. A royalty arrangement is also introduced by which the Agency, while remaining the owner of the products developed for it, authorises their marketing against return of a part of their cost.

Moreover, it is the Board of Directors which undertakes rule-making in ASI albeit subject to approval by the supervising Minister – as regards its administrative regulations, staff pay, and accountancy system.

S. Sabbadini



British National Space Centre

BNSC was established as a result of an administrative decision by the British Government in 1985. It acts as a focus for the civil space interests of the Department of Trade and Industry, the Cabinet Office, the Department of the Environment, the Ministry of Defence, the Foreign and Commonwealth Office, the Department of Education and Science, the Meteorological Office, the Science and Engineering Research Council and the Natural Environment Research Council. The Secretary of State for Trade and Industry has overall responsibility within Government for UK civil space policy but other Departmental Ministers are involved in major policy decisions where they have funding responsibilities.

Among other tasks, BNSC has responsibility for the administration of the Outer Space Act 1986. This Act conferred licensing and other powers on the Secretary of State to secure compliance with the international obligations of the United Kingdom with respect to the launching and operation of space objects and the carrying on of other activities in outer space by UK nationals, whether carried on in the UK or elsewhere. In administering the licensing requirements, BNSC attaches particular importance to the provision of evidence by the licensee that he is arranging adequate third party insurance cover. Also under the 1986 Act, BNSC maintains the UK's national register of space objects and advises the Foreign and Commonwealth Office on the information to be furnished to the UN Secretary-General.

BNSC acts as a focus in advising the Secretary of State on further legislation required as a result of the UK's space activities, for example any domestic legislation necessary as a result of Britain's signature of the 1988 International Space Station Inter-Governmental Agreement (IGA).

R. Troke



Centre Nationale d'Etudes Spatiales

Institué par une loi du 19 décembre 1961 comme établissement scientifique et technique de caractère industriel et commercial, le CNES dirige depuis 1962 l'effort spatial français dans les domaines de la science, des applications spatiales

(télécommunications, observation de la terre), des technologies lanceurs et maintenant de l'infrastructure orbitale et des vols habités.

Placé sous la tutelle du Ministère des Postes, des Télécommunications et de l'Espace (au sein duquel est née en 1988 une Délégation générale à l'Espace), il a également des liens particuliers avec le Ministère de la Recherche et de la Technologie, responsable de l'ensemble de l'enveloppe budgétaire française de la recherche, et avec le Ministère des Affaires Etrangères avec lequel il partage le suivi de la politique de coopération bilatérale et multilatérale.

Administré par un Conseil d'Administration de 18 membres (7 représentants de l'Etat, 6 représentants du personnel, 5 autres personnalités compétentes dans les activités spatiales), le CNES dispose à sa tête d'un Président (issu par tradition du milieu scientifique) et d'un Directeur général.

Le Président et le Directeur général du CNES sont tous deux membres, avec huit hauts fonctionnaires, du Comité de l'Espace créé par décret du 19 juillet 1989 auprès et sous la présidence du Ministre des PTE. Le Comité de l'Espace est chargé de préparer les décisions de politique spatiale du gouvernement, et notamment, sur rapport du Directeur général du CNES, les positions de la France en matière de collaboration spatiale internationale.

Au titre de l'année 1990, le CNES dispose d'un budget avoisinant les 10 milliards de francs, dont 43% sont dépensés dans le cadre des programmes de l'ESA.

Conscient de l'utilité de développer les activités commerciales spatiales, le CNES est à l'origine de la création des premières sociétés commerciales au monde dans le domaine des activités de lancement (Arianespace) et d'observations de la Terre (Spotimage); le CNES participe directement au capital de ces deux sociétés ainsi qu'à celui de plusieurs autres filiales, telles que:

- Intespace (moyens d'essais)
- Novespace (diffusion des technologies spatiales dans d'autres secteurs d'activité)
- Prospace (promotion à l'étranger de l'industrie spatiale française).

En ce qui concerne les activités liées au droit de l'espace (stricto sensu), le CNES apporte son soutien au Ministère des Affaires Etrangères auprès du Comité des Utilisations Pacifiques de l'Espace des Nations-Unies et tient le registre national français des objets spatiaux (les informa-

tions étant transmises à l'ONU par le Ministère des Affaires Etrangères).

La participation directe du Ministère des PTE ou du CNES à l'activité spatiale commerciale (télécommunications, observation de la Terre, lancements) a permis de se passer pour le moment d'une réglementation du type de celle qui existe aux Etats-Unis pour l'octroi d'autorisations d'activité à des sociétés privées; le CNES suit les développements du droit à cet égard car une telle réglementation pourrait s'avérer nécessaire à l'avenir.

D'un point de vue général, le CNES, déjà fortement impliqué dans l'Europe spatiale par sa contribution financière à l'ESA et son rôle de partenaire dans la gestion des programmes Hermès et Ariane, est déterminé à jouer la carte européenne aussi bien par la consolidation d'un grand programme spatial à l'ESA que par l'élaboration de positions juridiques concertées au sein de l'ESA vis-à-vis des organisations internationales, telles que les Nations-Unies et la Communauté Européenne, ou vis-à-vis des autres puissances spatiales.

Y. Rebillard



DEUTSCHE
AGENTUR FÜR RAUMFAHRT-
ANGELEGENHEITEN (DARA) GmbH

German Space Agency (DARA) GmbH

In July 1989, the new German Space Agency DARA started its business activities, taking over the leading role from the Federal Ministry for Research & Technology (BMFT), and becoming Germany's central management organisation for space activities.

With DARA's inception came also restructuring of space policy-making at the highest levels, through the setting up of a cabinet committee for fundamental space strategy and planning and a subordinate, preparatory committee at top civil-servant level. The cabinet committee is chaired by the Federal Chancellor and includes the foreign, finance, economics, defence, transport and PTT ministers.

DARA is a private law company ('GmbH') but having the Federal Government as its only shareholder. This legal construction was adopted to allow the maximum flexibility, and especially to attract personnel from industry. The company's charter charges DARA with drafting German space policy and plans, running German space programmes and awarding industrial contracts and financial

assistance, and representing German space interests at international level, especially in ESA. This last task means that the agency exercises certain sovereign rights. In order for it to do so consistent with the German Grundgesetz, a 'Raumfahrtaufgabenübertragungsgesetz' (law governing the transfer of competence with regard to space activities) had to be passed so that ministerial responsibilities could be delegated. This law entered into force on 21 June 1990.

Up to now only BMFT has made delegations under the statute, in a transitional process that started in October 1989 and was completed in September 1990 and gave DARA the following responsibilities:

- strategic planning
- programme direction (orbital systems, e.g. Columbus and the German D2 Spacelab mission; space transportation; microgravity; space science, e.g. the German/British/US X-ray Project ROSAT; earth observation; telecommunications)
- autonomous administration and financial management of the German space budget, once approved by Parliament
- product assurance
- external relations (especially leadership of German delegation to ESA).

Currently, DARA's work focuses on the drafting of the new German space programme 1991–2000 with an outlook on the space activities up to 2030. This task will be completed in 1991. Another major activity is preparation for the 1991 decision on phase 2 of the Columbus and Hermes programmes.

In consequence of German unification DARA is also responsible for space activities in the former GDR.

M. Spude and B. Staudt

...and Telekom

Germany's partial liberalisation of Deutsche Bundespost's monopoly over telecommunications services became effective on 1 July 1990. At the same time a new authority was instituted for continuing government activities in telecommunications, Deutsche Bundespost Telekom ('TELEKOM').

The main new rule for satellite telecommunications is that private low-bit-rate transmissions (up to 15 kbits/s) require no authorisation, if meeting technical standards, while higher rate transmissions are to be authorised by the Federal Minister for Post & Telecommunications.

K. Kraatz

SNSB

Swedish National Space Board

The Swedish Parliament approved in 1972 the present structure of a Swedish National Space Board, for policy and planning under the Ministry of Industry, and a state-owned Swedish Space Corporation, for programme implementation.

The Space Board (SNSB) manages Sweden's national and ESA/international space efforts in R&D including all aspects of remote sensing; research funds are provided by the Ministry of Education and Cultural Affairs. Parliament, the Swedish PTT, the National Board for Technical Development and the industrial and scientific communities are all represented. Advisory committees assist the Board for science/microgravity, remote sensing and industrial policy.

Statute and regulation (law 1982:963 and decree SFS 1982:1069) on space activities grant the Space Board the power to supervise non-governmental Swedish space activities anywhere, such activities requiring a Government licence under the 1982 Space Act (which implements Sweden's Outer Space Treaty obligations and thus falls short of covering ground-based activities). Decree 1069 also lays down that the Space Board maintains Sweden's register of space objects. This register's information is passed via the Ministry for Foreign Affairs (MOFA) to the UN Secretary-General.

Operational space activities, though, remain with the user authorities, such as the Ministry of Transport and Communication for Eutelsat, Inmarsat, Intelsat and Eumetsat affairs, while the MOFA attends to UNCOPUOS matters.

Silja Stromberg

ECSL Activities

ECSL Scholarship Scheme Started

The scheme adopted at the 3rd ECSL Board meeting on 19 October now opens up individual research projects to ECSL funding. It is hoped that student exchanges will be further promoted, for EC students, through the EC's Erasmus scheme, although applications from non-EC ECSL-country students for space-law exchanges can, exceptionally, be entertained.

To administer the joint ESA/ECSL scholarship scheme in conjunction with the ECSL Chairman, the Board merged its University Relations Group and Bursaries Group into the Universities and Bursaries Group (UBG). Among the scholarships to be awarded are ESA bursaries (one at FF15,000, two at up to FF5000 each, and FF5000 for fieldwork allocations); a similar level of funding is provided by the ECSL Fund (members' donations).

For 1990-91, the following themes were selected for funding:

1. Commercialisation, with especial attention to launch contracts.
2. Actual and emerging EC law relating to satellite data and satellite commercialisation/deregulation.
3. A legal regime for life in space.
4. Settlement of disputes in relation to such specific areas as intellectual property rights, remote-sensing, DBS and HDTV.

5. Jurisdiction and control: commercial implications.
6. Strict liability or risk liability for environmental harm caused by spacecraft.
7. Analysis of the regimes, problems and potential solutions connected with the generation and distribution of information and data in ESA programmes and internationally.
8. Study of European positions taken in the UN and other bodies concerned with the development of space-law norms.
9. A comparison of US and European intellectual property rights mechanisms in space activities, with a view to arrive at a common European approach.
10. A comparative analysis of the regulation of liability and insurance questions in space activities.
11. A comparative analysis of procurement law and practice.

Other themes can be considered (or added), but any research proposal must be primarily oriented to the space-law aspects of a subject-area and towards matters of European interest. Applicants must be of a European nationality. Preference will be given in principle to research to be conducted primarily in Europe. Candidates should apply to the ECSL Secretariat for application forms; further conditions are specified therein.

Towards 1991 General Meeting

At the 10 December 1990 Board meeting, the Acting Chairman reported ECSL membership at 267, the ECSL Fund surpassing FF 50.000, ESA scholarship allocations of FF 30.000, updating of ESA inputs to ESALEX, preparations for ECSL Protection of Space Data workshop in the first part of 1991, and the establishment of National Points of Contact in The Netherlands and the UK. A forthcoming issue of *ECSL News* will provide the charters and other information on the NPOCs so far established.

Contacts have also been initiated with Erasmus. National database coordination in ESALEX will be spearheaded in 1991 by the new ECSL Secretary.

For the next General Meeting, election guidelines were discussed; a final version will be sent to ECSL members after the next Board meeting on 25 February 1991. The basic principles of a plan for the period 1991-93 were also considered and will be revisited at the next two Board meetings; the plan will be submitted to the 1991 General Meeting, scheduled for 14 June 1991.

All Board members welcomed Dr Laffender's return to ECSL activities, he having already attended for part of the 3rd meeting.

New ECSL Secretary

Mr. Paul Henry Tuinder takes up official duties in January 1991. A graduate of Utrecht University and now pursuing doctoral studies at Leiden, he is currently in consultancy and has published several articles on space law themes.

Agreements Signed

Memorandum of Understanding between the Swedish National Space Board and the Bundesminister für Forschung und Technologie of the Federal Republic of Germany on Scientific Cooperation in the Freda-Project, signed 15 August 1990 at Stockholm.

ESA-UK Science and Engineering Research Council Agreement on additional instrument for ERS-1 payload, signed 23 July 1990 at London.

ESA-EC Commission Satellite Data Acquisition Agreement, signed 3 September 1990 at Paris.

Recent Conferences

International Institute of Space Law 33rd Colloquium, Dresden, 8-12 October. Only days after German reunification, East and West met in a new spirit of positive debate. Judge Lachs elected President, succeeding Prof. Diedericks-Verschoor who had been in office for 17 years. Proceedings due out in April.

Colloquium Research and Invention in Outer Space and their Commercial Exploitation: Liability and Intellectual Property Rights, ICC, Paris 6-7 December. Included a review of recent US Inventions in Space Act and a review of the space liability regime by Prof. Bin Cheng.

Forthcoming Conferences

Univ. Dijon (ESA-Eurospace), 24-26 October 1991, *La Commercialisation de l'espace - droit positif, droit prospectif*

ECSL-Cologne Inst. Air & Space Law morning seminar: *Manned Spaceflight: Practical Aspects*, 6 February 1991 at European Astronauts Centre, Köln-Porz (phone +49-220-36013440 or contact ECSL for info.). Participation of students especially encouraged.

Colloque organisé par la Société française de Droit aérien & spatial, avec le concours de l'ESA et du CNES: *L'avion spatial*, 14-15 mai 1991.

Publications/Theses

M. Bourély, *The Legal Hazards of Transatlantic Cooperation in Space*, Space Policy, November 1990, 323-331.

Doctoral thesis: H.R.M. Wijdeveld, *Satellite Broadcasting and the European High-Definition Television Policy* (Univ. Amsterdam).

Merkourios (Univ. Utrecht law quarterly), October 1990 issue: *Space Exploration*.

Y.C. Lodico, *A Basis for Jurisdiction on the Space Station*, New York Int'l Law Review, Vol. 3 (1989-90) 4-15.

L. Laidet, *The French Space Program*, in National Programs and International Cooperation, Westview (1989) 63-78.

B. Reijnen (Ed.), *Univ. Utrecht Space Law Textbook*.

Cassini MOU Signed

ESA's Director General, M. Jean-Marie Lutton, completed on 17 December 1990 the signature requirements needed to bring this Memorandum of Understanding into force. The mission will take a NASA Saturn Orbiter to the Saturnian system and an ESA Huygens Probe to Titan. Huygens will sample Titan's atmosphere - the composition of which is the closest to Earth's in the Solar System.

Space Law Notepad

- Ulysses litigation (see *ECSL News* N° 5): Injunction to stop launch refused by US District Court (DC), Judge Gasch, 12 October 1990.
- Intelsat \$400m+ launch contract lawsuit against Martin Marietta; issue: breadth of exclusion clause in circumstances of Intelsat F-3 launch failure.



ESA BR-63 - *Les effets économiques indirects des programmes de l'Agence spatiale européenne*, 30 pages. Available from ESA Publications Division (20 Dfl, 60 FF, 12 US\$).

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