

THE ODYSSEY OF EUROPEAN SPACE POLICY

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I. INTRODUCTION

Throughout history, space has nourished the dreams of human beings and attracted the attention of States. In 2021, the European Union (EU or Union) adopted its first comprehensive space program that was intended to enable it to remain “a leading international player.”¹ This program, included in Regulation (EU) 2021/696 of April 28, 2021 (Regulation 2021/696),² simplifies and rationalizes the Union’s achievements in this area. The Union is determined to forge its way to the stars, and thus promotes the visibility of its space policy.

In many ways, Europe’s awakening may seem to have appeared late,³ but space is a symbol of power which is closely related to the defense sector.⁴ Space is an area of important strategic dimension, both in its civilian and military applications. It is not subject to any claims of sovereignty, its exploration and use must be for the benefit and in the interest of all countries, and it shall be

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¹ Commission Regulation 2021/696 of Apr. 28, 2021 Establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU, 2021 O.J. (L 170/69) 69 [hereinafter Regulation 2021/696].

² *Id.* Regulation 2021/696 has been applicable since Jan. 1, 2021.

³ Juhna-Matti Liukkonen et al., *Espace: le Réveil de l'Europe?*, INSTITUT MONTAIGNE (Feb. 2020), <https://www.institutmontaigne.org/publications/espace-le-reveil-de-leurope>.

⁴ Philippe Varnoteaux, *La naissance de la politique spatiale française* [The Birth of French Space Policy], 77 VINGTIEME SIECLE. REVUE D'HISTOIRE 59, 59-68 (2003) <https://www.cairn.info/revue-vingtieme-siecle-revue-d-histoire-2003-1-page-59.htm>.

considered the province of all humankind.⁵ In 1957, while the USSR launched Sputnik-1 and positioned itself at the front of the race to the stars, six European States signed the Treaty of Rome, thus creating the European Economic Community (EEC).⁶ While this treaty sought the integration of national economies at the cost of ignoring the space sector, the space race between the USA and the USSR contributed to the emergence of a spatial Europe.⁷

To make up the ground separating them from other countries, the European States chose to develop cooperatively. This cooperation gave rise to a complex spatial Europe, combining national, multilateral, intergovernmental and community dimensions.⁸ Two international cooperation organizations were first created: the European Launcher Development Organization (ELDO)⁹ and the European Space Research Organization (ESRO).¹⁰ The former is responsible for developing launching services,¹¹ while the latter takes charge of developing scientific satellites.¹² The merging of these two entities gave rise to the European Space Agency (ESA), which was created in 1975,¹³ and enables the countries of the European continent¹⁴ to pool their “human, technical and financial resources required for activities in the space field.”¹⁵ Under the impetus of the

⁵ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies art. I, Oct. 10, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 [hereinafter Outer Space Treaty].

⁶ Treaty establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 3 [hereinafter Treaty of Rome] (Belgium, France, Germany, Italy, Luxembourg and the Netherlands as signatories) (volume 298 as cited contains the English translation by the Interim Committee for the Common Market and EURATOM).

⁷ PIERRE-MARIE MARTIN, *LE DRIOT DE L'ESPACE* 8 (Presses Universitaires de France ed., 1992); René-Jean Dupuy, *Les Espaces hors Souveraineté*, 67 *Pouvoirs* 99 (1993); MIREILLE COUSTON, *DROIT SPATIAL* 224 (2014).

⁸ Géraldine Naja, *Politiques spatiales Intergouvernementales Européennes*, 2 *ANNALES DES MINES - REALITES INDUSTRIELLES* 6 (2019).

⁹ Convention for the Establishment of a European Organization for the Development and Construction of Space Vehicle Launchers, Mar. 29, 1962, 507 U.N.T.S. 177.

¹⁰ Convention for the establishment of a European Space Research Organization, June 14, 1962, 528 U.N.T.S. 33.

¹¹ Comprising six Member States: Belgium, France, Germany, Italy, the Netherlands and the United Kingdom

¹² Comprising ten Member States: the six ELDO member states plus Denmark, Spain, Sweden and Switzerland

¹³ Convention establishing a European Space Agency, May 30, 1975, 1297 U.N.T.S. 161 [hereinafter ESA Convention].

¹⁴ The ESA Convention would go on to be signed by the 10 ESRO Member States.

¹⁵ See ESA Convention, *supra* note 13, preamble ¶ 1.

ESA, two intergovernmental entities were also created: EUTELSAT, in 1977, to build, launch, and operate European telecommunications satellites and EUMETSAT, in 1986, to operate European meteorological satellites.¹⁶

In parallel with this intergovernmental cooperation, the EEC recognized the importance of space related issues within its focus to create a common market to ensure “economic and social progress”¹⁷ and improve the “living and working conditions of [the European] peoples.”¹⁸ As an economic and then political integration organization, the EEC has developed along with various foundational treaties¹⁹ to finally place the Union ahead. During this period, the European Parliament had the opportunity to stress “the importance of the benefits that the [European Economic Community] can derive... from space activities... [and the fact] that Europe cannot depend on the outside world to meet its own needs”²⁰ After the launch of the US space shuttle Columbia, the European Parliament stated that “a new era has started in space... [and that] the time has come... for the effort of the nations and the Community in the field of space exploration to be pursued with renewed vigor”²¹ Thus, in 1987 the Single European Act²² introduced Title VI, which is devoted to research and technological development, into European Economic Community law. The objective is for the Union to “strengthen the scientific and technological bases of European

¹⁶ EUTELSAT was provisionally established in 1977 and has been governed since 1982 by the Convention Establishing the European Telecommunications Satellite Organization “EUTELSAT”, July 15, 1982, 1519 U.N.T.S. 149; EUMETSAT was created and has been governed by the Convention for the establishment of a European organization for the exploitation of meteorological satellites “EUMETSAT”, May 24, 1983, 1434 U.N.T.S. 3.

¹⁷ Treaty of Rome, *supra* note 6, preamble ¶ 2.

¹⁸ *Id.* at preamble, ¶ 3.

¹⁹ Single European Act, Feb. 17-Feb. 28, 1986, 1754 U.N.T.S. 3; Treaty on European Union, Feb. 7, 1992, 1757 U.N.T.S. 3; Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, 1997 O.J. (C 340) 1; Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Feb. 26, 2001, 2701 U.N.T.S. 3; Treaty of Lisbon Amending the Treaty on European Union, the Treaties Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon].

²⁰ European Parliament Resolution on Community Participation in Space Research, 1979 O.J. (C 127) 42.

²¹ European Parliament Resolution on European Space Policy, 1981 O.J. (C 260) 102.

²² 1987 O.J. (L 169) 10.

industry and develop international competitiveness.”²³ The following year, in a statement on space, the European Commission (Commission) established the principle of the EU’s participation in space activities in Europe, while stressing that its role should be complementary to that of the ESA.²⁴ Acknowledging that “whole sections of European society depend... critically on the use of satellites and space technologies,” it stated that “...the Union cannot remain indifferent to the development of space exploration, which contributes both to Europe’s industrial competitiveness and to improving the life quality of its citizens.”²⁵ In 2003, in its white paper entitled “Space: A New European Frontier for an Expanding Union,” the Commission stated what seems to be a matter of course: space is “not only a tool for exploring the universe and taking [hu]mankind to new frontiers...[it] also has a strategic and economic dimension.”²⁶ The Commission’s space strategy will therefore focus on four major objectives: 1) maximizing the benefits that space represents for the European society and economy; 2) fostering a globally competitive and innovative European space sector; 3) strengthening Europe’s autonomy in accessing and using space in a safe and secure manner; and 4) reinforcing Europe’s role as a global player while promoting international cooperation.²⁷ Finally, the Treaty of Lisbon explicitly confers competence in the space field on the Union following its entry into force on December 1, 2009.²⁸ The new Article 189(1) of the Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) stipulates that “to foster scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall develop a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts

²³ *Id.* at art. 130f.

²⁴ *Community and Space: A Coherent Approach. Communication from the Commission*, COM (1988) 417 final (July 26, 1988).

²⁵ *Europe and Space: Turning to a New Chapter*, COM (2000) 597 final (Sept. 27, 2000).

²⁶ *The European Union and Space: Fostering Applications, Markets and Industrial Competitiveness*, COM (1996) 617 final (Dec. 4, 1996).

²⁷ *Space Strategy for Europe*, COM (2016) 705 final (Oct. 26, 2016).

²⁸ Treaty of Lisbon, *supra* note 19. It may be useful to stress that, in addition to this new space competence, the Lisbon Treaty recognizes the legal personality of the European Union, *id.* at art. 47, and strengthens the means and coherence of its defense policy, *Id.* at art. 42 & 46.

needed for the exploration and use of space.”²⁹ This inclusion of space in the European Union’s sphere of competence enhances its political visibility and cannot be disconnected from the Union’s increased and recognized role in security and defense. As underlined in Regulation 2021/696, space exploration opportunities must be exploited for the safety of the Union and its Member States while maintaining the civilian character of the Union’s space program as well as any neutrality or non-alignment provisions laid down in the constitutional law of the Member States.³⁰ Notably, this aligns with the global strategy for the European Union’s foreign and security policy, dated June 2016.³¹

At a time when the new space development overturns the international space landscape,³² when China, the United States, and Russia measure their power based on their control of space,³³ and when States such as Japan and India are trying to develop their own presence in space,³⁴ the Union is showing off its ambitions for space.³⁵ Despite the challenge this poses for the European economy, space is nonetheless a key that could enable it to assert its sovereignty through participation in global governance, as discussed in Part III. Regardless, the development of the Union’s interest in space raises the question of space governance in Europe, discussed below in Part II.

II. EUROPEAN SPACE GOVERNANCE

Pythagoras is said to have understood the harmony of sounds when, as he passed by a forge, he noticed that pleasant sounds were occasionally produced when hammers of different weights would

²⁹ Consolidated Version of the Treaty on the Functioning of the European Union art. 189, June 7, 2016, 2016 O.J. (C 202) 47 [hereinafter TFEU].

³⁰ Regulation 2021/696, *supra* note 1.

³¹ FEDERICA MOGHERINI, SHARED VISION, COMMON ACTION: A STRONGER EUROPE; A GLOBAL STRATEGY FOR THE EUROPEAN UNION’S FOREIGN AND SECURITY POLICY (2016).

³² Lukas Rass-Masson, *Stratégies étatiques et lois nationales dans le droit international de l’espace*, at *L’espace Extra-Atmosphérique et le Droit International*, Colloque SFDI, 2021, Pedone, Paris (May 6, 2021).

³³ Isabelle Sourbes-Verger, *La place de l’Europe au sein des puissances spatiales*, at *L’espace Extra-Atmosphérique et le Droit International*, Colloque SFDI, 2021, Pedone, Paris (May 6, 2021).

³⁴ *Id.*

³⁵ *Id.*

strike metal bells.³⁶ Just as musical harmony arises from the consonance of sounds, the harmony of European space governance arises from the coordination of the various actors involved. European space policy emerges from the combined efforts of the ESA, the Union, and the Member States. To put all the puzzle pieces together and avoid unnecessary overlap, Regulation 2021/696 proposes a new governance model based on a clear division of the tasks and responsibilities between these entities.³⁷

A. *The Union and its Member States*

Europe must learn to speak the “language of power.”³⁸ In this sense, it must “guarantee autonomous European access to space.”³⁹ “[A] robust European space sector is essential for a robust Europe.”⁴⁰ The Union’s clearly stated political ambitions must, however, be harmonized with any national space ambitions. Space policy is traditionally reflected in national policy. Therefore, in addition to their decision-making power within the EU and ESA bodies, the Member States exert their own political will in the space sector in varying ways. Some, such as France, Germany, and Italy hold national capacity rights in the field of space including contracting, industry, and research capacities. Yet France and Germany still differ in their consideration of space policy. France views it as intrinsically linked to the defense sector while Germany takes a

³⁶ Maria Popova, *How Pythagoras and Sappho Radicalized Music and Revolutionized the World*, THE MARGINALIAN (2021), <https://www.themarginalian.org/2021/03/02/pythagoras-sappho-music/>.

³⁷ Resolution 2021/696, *supra* note 1.

³⁸ Alexandre Robinet-Borgomano, *Les leaders politiques révélés par le Covid-19: Ursula von der Leyen ou l'affirmation d'une ambition européenne [Political Leaders Revealed by Covid-19: Ursula von der Leyen on the Affirmation of a European Ambition]*, INSTITUT MONTAIGNE (Aug. 18, 2020) (quoting Ursula van der Leyen speech on the occasion of the thirtieth anniversary of the fall of the Berlin Wall (Nov. 1, 2019)), <https://www.institutmontaigne.org/blog/les-leaders-politiques-reveles-par-le-covid-19-ursula-von-der-leyen-ou-laffirmation-dune-ambition>.

³⁹ Baptiste Roman, *A Bruxelles, la Commission européenne marque son soutien à l'industrie spatiale*, TOUTE L'EUROPE (Jan. 22, 2020) (quoting Thierry Breton, European Commissioner for the Internal Market), <https://www.touteurope.eu/economieet-social/revue-de-presse-a-bruxelles-la-commission-europeenne-marque-son-soutien-a-l-industrie-spatiale/>.

⁴⁰ Charles Michel, President of the European Council, opening speech at the 13th European Space Policy conference in Brussels (Jan. 12, 2021).

civilian approach.⁴¹ Others, such as Spain, are initiating the development of an industry linked to the new space savings systems.⁴² It is worth recalling that the Union's space competence is subject to a *sui generis* legal regime, enshrined in Article 4(3) of the TFEU.⁴³ This regime is intended to be exercised in parallel with that of the Member States, in accordance with the principle of loyal cooperation.⁴⁴ Indeed, while the Union's space competence falls within the category of the competences shared between the Union and its Member States and should, as such, be subject to the principle of subsidiarity, Article 4(3) of the TFEU specifies that, when it comes to matters of space, the Union may only "take action, in particular to define and implement programs, [but] the exercise of this competence shall not have the effect of preventing the Member States from exercising their competence in this area."⁴⁵ It is true that the space policies of certain Member States sometimes result in successful achievements of international scope. For example, France, via the CNES,⁴⁶ is contributing to the success of the Mars Sample Return (MSR) program led by the NASA with the SuperCam instrument on board the Perseverance rover.⁴⁷ Therefore, Regulation 2021/696 specifies that the EU Member States may participate in the EU space program by providing technical competence, know-how, and assistance, particularly in the field of safety and security,

⁴¹ Massimiliano Salini, *La Politique spatiale de l'Union: un Succès sous-estimé* (Robert Schuman Foundation Policy Paper No. 611, 2021).

⁴² Juan Manuel de Faramiñán Gilbert, *Los desafíos de España en el ámbito aeroespacial: hacia la creación de una Agencia Espacial Española y la adopción de una Ley global sobre el Espacio*, REAL INSTITUTO ELCANO (Feb. 10, 2021), <https://www.realinstitutoelcano.org/documento-de-trabajo/los-desafios-de-espana-en-el-ambito-aeroespacial-hacia-la-creacion-de-una-agencia-espacial-espanola-y-la-adopcion-de-una-ley-global-sobre-el-espacio/>.

⁴³ TFEU art. 4(3)

⁴⁴ Dimitris Liakopoulos, *The Future of the European Space Agency-EU relationship: Critical Aspects and Perspectives*, 25.2 EUR. J. OF CURRENT LEGAL ISSUES (2019), <http://webjcli.org/index.php/webjcli/article/view/649/919>.

⁴⁵ TFEU art. 4(3).

⁴⁶ National Centre for Space Studies. The CNES is a public establishment created on December 19, 1961. It is the successor to the Space Research Committee, founded two years earlier. It is responsible for developing and proposing the French space program to the French government and for implementing it. It is placed under the joint supervision of the Ministry of Research and the Ministry of the Armed Forces. It is the most important national space agency in the European Union. *See generally* CNES, <https://cnes.fr/en/> (last visited Apr. 25, 2022).

⁴⁷ *Organization*, CNES (June 25, 2020), <https://supercam.cnes.fr/en/organization-2>.

or by making available to the Union, where appropriate and feasible, data, information, services, and infrastructure in their possession or located on their territory.⁴⁸ The Commission may also, by means of contribution agreements, entrust specific tasks to bodies in the Member States which have been designated by them.⁴⁹

Within the Union, the main actors of the space program are the Commission, which is the institution responsible for promoting the general interest, and the new European Union Space Program Agency (EUSPA).⁵⁰ The Commission is responsible for the implementation of the program.⁵¹ It has overall responsibility for the program and must promote its use.⁵² It determines the priorities and long-term development of the program.⁵³ It is also responsible for managing all components or sub-components of the program that are not assigned to another entity, in particular the GOVSATCOM,⁵⁴ the NEO⁵⁵ and SWE⁵⁶ sub-components.⁵⁷ The Commission must also ensure an adequate division of the tasks and responsibilities between the different entities involved in the program and coordinate their activities.⁵⁸ Since January 1, 2020,⁵⁹ it can rely on a new Directorate-General specifically responsible for

⁴⁸ Regulation 2021/696, *supra* note 1, art. 27.

⁴⁹ *Id.*

⁵⁰ EUSPA, <https://www.euspa.europa.eu/> (last visited May 12, 2022).

⁵¹ Regulation 2021/696, *supra* note 1, art. 28.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ GOVSATCOM is the European Union's Governmental Satellite Communications. Regulation 2021/696, *supra* note 1, art. 62.

⁵⁵ Near-Earth Objects (NEO): detecting natural objects such as asteroids that can potentially impact the Earth and cause damage. Regulation 2021/696, *supra* note 1, art. 61.

⁵⁶ Space Weather (SWE): monitoring and predicting the state of the Sun and the interplanetary and planetary environments, including the Earth's magnetosphere, ionosphere and thermosphere, which can affect spaceborne and ground-based infrastructure thereby endangering human health and safety. Regulation 2021/696, *supra* note 1, art. 60.

⁵⁷ Regulation 2021/696, *supra* note 1, art. 28.

⁵⁸ *Id.*

⁵⁹ The same Commissioner (currently Frenchman Thierry Breton), heads the DG DEFIS and DG GROW. The DG GROW (Internal Market, Industry, Entrepreneurship and SMEs) is responsible for developing and implementing the Commission's policies in the fields of the Single Market, Enterprise and Industry. *About this DG*, EUR. COMM'N (last visited June 16, 2022), https://ec.europa.eu/growth/about-us_en; *Industrie de la défense et espace [Defense Industry and Space]*, EUR. COMM'N (last visited June 16, 2022), https://ec.europa.eu/info/departments/defence-industry-and-space_fr.

directing the activities in the industry, defense, and space sectors (DG DEFIS). The creation *ex nihilo* of a new Directorate-General within the EU executive is rare enough to be worth noting. The DG DEFIS is under the responsibility of the Commissioner for the Internal Market.⁶⁰ In the field of industry and defense, the DG DEFIS supports the competitiveness and innovation of the European defense industry by ensuring the evolution of a strong European defense industrial and technological foundation.⁶¹ In the space field, it is responsible for implementing the EU's space program.⁶² The creation of the DG DEFIS illustrates the Union's political will not to depend on the United States or China in a sensitive sector and to avoid downgrading in terms of technological and industrial standards. By bringing together the defense and space industries within the same Directorate General, the European Union has finally recognized the strategic dimension of the space sector.⁶³

Regulation 2021/696 also created the EUSPA, a new decentralized EU agency which succeeds and replaces the European GNSS Agency.⁶⁴ The EUSPA has its own legal personality and a broad mandate to manage all the components of the space program and to exploit their synergies.⁶⁵ Through its Safety Certification Board, it ensures the safety certification of all program components, provides expertise to the Commission and contributes to the development of the market and downstream applications.⁶⁶ Launched on May 12, 2021, the EUSPA acts in close cooperation with the Member States, the relevant EU agencies, the European External Action

⁶⁰ Currently the Frenchman Thierry Breton. In a speech delivered on 22 January 2020, the Commissioner reiterated his desire to make space a priority: "Space is at the intersection of technological leadership, industrial strategy and geostrategic considerations. This is why I always had a strong interest in space. And this is why, as your new European Commissioner in charge of space, you will be able to count on me to push an ambitious European Space Agenda. And deliver on it." Thierry Breton, Commissioner, Eur. Comm'n Internal Market, 12th Annual Space Conference Closing Speech (Jan. 22, 2020).

⁶¹ *Industrie de la défense et espace [Defense Industry and Space]*, EUR. COMM'N (last visited June 16, 2022), https://ec.europa.eu/info/departments/defence-industry-and-space_fr.

⁶² *Id.*

⁶³ "Espace, le Réveil de l'Europe?", Juha-Matti Liukkonen, Arthur Sauzay and Sebastian Straube... aforementioned.

⁶⁴ Regulation 2021/696, *supra* note 1, art. 1.

⁶⁵ *Id.* at const. 62.

⁶⁶ *Id.* at art. 29.1.

Service (EEAS),⁶⁷ and other entities for crisis management missions and operations.⁶⁸ It would also manage future initiatives that might be launched by Brussels, such as the quantum constellation awaited by the European Commissioner, Thierry Breton.⁶⁹ By placing the management of these programs under the aegis of a single agency, the European Union should guarantee the continuity of service and the security of infrastructures and systems.

The implementation of the European Space Program is also the responsibility of the ESA.⁷⁰ Although the ESA is not an EU body, and is not subject to EU law, it is an international organization with recognized expertise in the field of space and has concluded a framework agreement with the European Community in 2004.⁷¹

B. Cooperation with the ESA

The ESA is first and foremost the organization that has given Europeans independent access to space.⁷² Through its cooperation with NASA and the Russian,⁷³ Canadian⁷⁴ and Japanese⁷⁵ space agencies within the ISS,⁷⁶ it contributes to the mediatization of space in European society, fostering the development of a European identity in space.⁷⁷ Since 1975, the organization has held a

⁶⁷ The European External Action Service (EEAS) is the diplomatic service of the EU. EUROPEAN EXTERNAL ACTION SERVICE, <https://www.eeas.europa.eu/en> (last visited Apr. 11, 2022).

⁶⁸ Regulation 2021/696, *supra* note 1, art. 29.2.

⁶⁹ TL with AFP, *Thierry Breton veut une Constellation de Satellites Européenne pour l'Internet haut Débit*, BMF BUSINESS (July 2, 2020, 6:44 AM), https://www.bfmtv.com/economie/entreprises/services/thierry-breton-veut-une-constellation-de-satellites-europeenne-pour-l-internet-haut-debit_AN-202007020311.html.

⁷⁰ Regulation 2021/696, *supra* note 1, art. 30.

⁷¹ Framework Agreement between the European Community and the European Space Agency, 2004 O.J. (L 261) 64.

⁷² Marco Ferrazzani, Legal Dir. of the European Space Agency, *L'Agence Spatiale Européenne, Acteur de la Politique Spatiale Européenne* at the SFDI Annual Colloquium: *L'Espace Extra-Atmosphérique et le Droit International* (May 6, 2021).

⁷³ ROSCOSMOS, [roscosmos.ru](https://www.roscosmos.ru).

⁷⁴ CANADIAN SPACE AGENCY (CSA), <https://www.asc-csa.gc.ca/eng/default.asp> (last visited Apr. 25, 2022).

⁷⁵ JAXA, <https://global.jaxa.jp/> (last visited Apr. 25, 2022).

⁷⁶ See *Mission Pages – International Space Station*, NASA (last visited Aug. 10, 2022), https://www.nasa.gov/mission_pages/station/cooperation/index.html.

⁷⁷ AUDE BONO-VANDROME & BERNARD DEFLESSELLES, FRENCH NATIONAL ASSEMBLY, COMMITTEE ON EUROPEAN AFFAIRS, INFORMATION REPORT N°1438 (2018).

coordinating role at the political and economic levels in the field of space.⁷⁸ It must

... ensure and ... develop, for exclusively peaceful purposes, the cooperation between European States in the fields of space research and technology and their space applications, with a view to their use for scientific purposes and for operational space application systems ... by developing and implementing a long-term European space policy ... by developing and implementing space activities and programs; ... by coordinating the European Space Program and national programs ... by developing and implementing the appropriate industrial policy for its program and recommending to the Member States a coherent industrial policy.⁷⁹

The success of the cooperation is undoubtedly linked to the application of the principle of fair return⁸⁰ and the national preference clause.⁸¹ Similarly, the existence of different types of programs, whether compulsory for all Member States or simply optional,⁸² leads to variable-geometry funding by the States depending on their interests. With a total budget of €4.55 billion in 2021, to which €1.94 billion must be added for programs that are implemented for other institutions, such as the European Union or Eumetsat, the ESA might seem quite modest; particularly in comparison with the \$23.3 billion that make up the budget allocated to the NASA for the same period.⁸³ However, it has achieved major successes: the Rosetta, Huygens, BepiColombo, and Mars Express space probes reflect the scale of its ambitions. The same applies to the Solar Orbiter mission conducted in collaboration with NASA and the Mars 2020 mission, the first segment of the Mars Sample Return (MSR)

⁷⁸ The coordination of the space program is carried out by the ESA Council, which meets either at the level of delegates from the Member States or at ministerial level. ESA Convention, *supra* note 13, art. XI.

⁷⁹ *Id.* at art. II.

⁸⁰ *Id.* at art. VII.10.c.

⁸¹ *Id.* at art. VII.1.c.

⁸² *Id.* at art. V.1.b. Where appropriate, the Agency may also carry out activities on behalf of third parties; *Id.* at art. V.2.

⁸³ See *Funding*, EUROPEAN SPACE AGENCY, https://www.esa.int/About_Us/Welcome_to_ESA/Funding (last visited Apr. 16, 2022). See also, 2021 NASA ANN. FINANCIAL REP. 11.

program led by NASA, which benefits from the major contribution of the Earth Return Orbiter (ERO) provided by the ESA.⁸⁴

While the ESA takes center stage on the European space scene, the EU's growing commitment to space quickly raised the issue of the relations between the two organizations. In order to move from competitive to complementarity, an institutional cooperation was developed with the adoption of a framework agreement between the EC and ESA on November 25, 2003 (Framework Agreement).⁸⁵ This agreement, which entered into force on May 28, 2004, lays the foundation for cooperation and specifies the rules applicable to joint initiatives.⁸⁶ It established the Space Council, a joint secretariat, and a High Level Space Policy Group.⁸⁷ The Space Council facilitates regular meetings at the ministerial level of the EU Council and the ESA Council to guide cooperation activities.⁸⁸ The Framework Agreement is concluded for a period of four years and is automatically renewed for subsequent four-year periods.⁸⁹ According to Regulation 2021/696, the development of the European Space Program must be "without prejudice" to the ESA's activities in regards to access to space.⁹⁰ The ESA is responsible for upstream research and development activities in its areas of expertise.⁹¹ Additionally, the Commission and the EUSPA may request technical expertise from it.⁹² In accordance with Regulation 2021/696, the Commission signed a Framework Financial Partnership Agreement (FFPA) with the ESA in June 2021, which governs all financial relations between the Commission, the EUSPA and the

⁸⁴ *Earth Return Orbiter*, EUROPEAN SPACE AGENCY (May 27, 2019), https://www.esa.int/ESA_Multimedia/Images/2019/05/Earth_Return_Orbiter.

⁸⁵ Council Decision 2004/578/EC Apr. 29, 2004, Conclusion of the Framework Agreement Between the European Community and the European Space Agency, 2004 O.J. (L 261) 63.

⁸⁶ Council Decision 2004/578/EC Apr. 29, 2004, Framework Agreement Between the European Community and the European Space Agency, 2004 O.J. (L 261) 64.

⁸⁷ *Id.* at art. 8.

⁸⁸ *Id.*

⁸⁹ Regulation 2021/696, *supra* note 1, art. 12.

⁹⁰ *Id.* at art. 5.

⁹¹ *Id.* at art. 30 & 31

⁹² *Id.*

ESA.⁹³ From 2021-2027, the FFPA guarantees the ESA an investment of almost 9 billion euros.⁹⁴

III. THE AMBITIONS OF THE EUROPEAN SPACE POLICY

Even before the Treaty of Lisbon came into force and established the basis for the Union's action in the space field, the Union had successfully developed satellite radio navigation⁹⁵ and earth observation programs.⁹⁶ Its achievements were gradually complemented before coagulating in Regulation 2021/696, which reveals the ambitions of the European space policy.⁹⁷

The various components of the European Space Program have been brought together in Regulation 2021/696, which repeals all regulations previously governing the subject matter.⁹⁸ Given the coverage of the space program, its activities have taken on a pronounced international dimension. This raises the question of the possible participation of third-party countries in the European space program, but also that of the Union's participation in international bodies competent in space matters and, more generally, its contribution to the development of international space law.

A. *The Components of the European Space Program*

“Without satellites, the whole planet comes to a halt.”⁹⁹ The European Space Program has embraced this reality and utilizes

⁹³ Regulation 2021/696, *supra* note 1, art. 31.

⁹⁴ *N° 20–2021: ESA and EU celebrate a fresh start for space in Europe*, EUROPEAN SPACE AGENCY (June 22, 2021), https://www.esa.int/Newsroom/Press_Releases/ESA_and_EU_celebrate_a_fresh_start_for_space_in_Europe.

⁹⁵ The competence used is that of trans-European networks. This development was funded from the appropriations assigned to the trans-European transport networks. Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community Guidelines for the Development of the Trans-European Transport Network, art. 4(g), 1996 O.J. (L 228) 1; Council Regulation (EC) No 2236/95 of 18 September 1995 Laying Down General Rules for the Granting of Community Financial Aid in the Field of Trans-European Networks, art. 17, 1995 O.J. (L 228) 1.

⁹⁶ *See Global Monitoring for Environment and Security (GMES): From Concept to Reality*, COM (2005) 565 final (Nov. 10, 2005)

⁹⁷ *See generally* Resolution 2021/696, *supra* note 1.

⁹⁸ *Id.*

⁹⁹ Michel Cabirol, « Sans Satellites, la Planète Entière s'Arrête! » *Jean-Yves Le Gall (CNES)*, LA TRIBUNE (Jan. 20, 2014, 12:20 PM), (quoting Jean-Yves LeGall President of the Centre national d'études spatiales (CNES))

satellite infrastructure to maintain European economic competitiveness and technological capabilities. The program currently comprises the following systems: Galileo, European Geostationary Navigation Overlay Service (EGNOS), Copernicus, Space Situational Awareness (SSA), and GOVSATCOM.¹⁰⁰ Regulation 2021/696 stresses the importance of ensuring the continuous operation of these services, which must not only be of high quality¹⁰¹ but also “on the leading edge” in the case of Galileo and EGNOS, “accurate and reliable” for Copernicus, and “enhanced” and “improved” for SSA.¹⁰²

Galileo has been in operation since 2016.¹⁰³ With this project, the EU aims to build and operate the world’s first satellite navigation and positioning infrastructure.¹⁰⁴ Initiated by the European Commission in 1999¹⁰⁵ as part of its transport policy, the system, which had a difficult start,¹⁰⁶ was developed in collaboration with the ESA.¹⁰⁷ The Commission provides its funding and direction, while the ESA is responsible for its overall architecture, from design to integration and validation.¹⁰⁸ Unlike the American GPS and Russian GLONASS, with which it is compatible, Galileo was designed for civilian purposes. With a real-time positioning accuracy

<https://www.latribune.fr/entreprises-finance/industrie/aeronautique-defense/20140120trib000810506/-sanssatellites-la-planete-entiere-s-arrete-jean-yves-le-gall-cnes.html>.

¹⁰⁰ Regulation 2021/696, *supra* note 1, art. 3.

¹⁰¹ *Id.* at art. 4(1).

¹⁰² *Id.* at art. 4(2).

¹⁰³ Gemma Ryles, *What is Galileo?*, TRUSTED REVIEWS (Apr. 20, 2022), <https://www.trustedreviews.com/explainer/what-is-galileo-4226777>.

¹⁰⁴ *Qu'est-ce que Galileo?*, EUROPEAN SPACE AGENCY, https://www.esa.int/Space_in_Member_States/France/Qu'est-ce_que_Galileo.

¹⁰⁵ *Galileo – Involving Europe in a New Generation of Satellite Navigation Services*, COM (1999) 54 final (Feb. 10, 1999).

¹⁰⁶ BERNARD DEFLESSELLES & MICHEL DELEBARRE, INFORMATION REPORT NO. 440 ON BEHALF OF THE NATIONAL ASSEMBLY’S DELEGATION FOR THE EUROPEAN UNION (2007) (on the implementation of the European satellite radionavigation program - Galileo and Egnos (E 3657 and E 3691)) (translation by author); BERNARD DEFLESSELLES, INFORMATION REPORT NO. 2142 ON BEHALF OF THE COMMITTEE ON EUROPEAN AFFAIRS (2009) (on the state of the Galileo program) (translation by author).

¹⁰⁷ *Galileo – Involving Europe in a New Generation of Satellite Navigation Services*, COM (1999) 54 final (Feb. 10, 1999).

¹⁰⁸ EUSPA Press Release EUSPA/PR/21/05, Galileo Constellation Expands After Successful Launch 11 (Dec. 5, 2021).

of one meter,¹⁰⁹ it is the most accurate navigation system in the world.¹¹⁰ The Galileo constellation, which has 28 satellites as of December 4, 2021,¹¹¹ will be fully operational when it has 30.¹¹² The second generation of Galileo is expected to be phased in before 2030.¹¹³ Galileo operates independently of other existing or future systems and contributes to the strategic autonomy of the Union.¹¹⁴

EGNOS is a system that aims to improve the quality and reliability of the open signals emitted by existing global satellite navigation systems, in particular those emitted by Galileo.¹¹⁵ Developed in collaboration by the ESA, the European Commission, and Eurocontrol,¹¹⁶ it became operational on 1 October 2009.¹¹⁷ By approving the signals for accuracy and quality, EGNOS can be used for cargo tracking and precision agriculture, but also for safety-critical applications such as aviation, transport, automated toll collection systems, or pay-per-use insurance schemes.¹¹⁸

In July 2019, “a technical incident related to its ground infrastructure”¹¹⁹ paralyzed Galileo. As Regulation 2021/696 points out, “Galileo and EGNOS are complex systems which require intensive coordination.”¹²⁰ Accordingly, their coordination is entrusted to the EUSPA, which “in view of the expertise it has acquired in recent

¹⁰⁹ *Qu'est-ce que Galileo?*, *supra* note 104.

¹¹⁰ *Deux nouveaux satellites rejoignent la constellation Galileo [Two New Satellites Join the Galileo Constellation]*, EUROPEAN SPACE AGENCY (Dec. 5, 2021), https://www.esa.int/Space_in_Member_States/France/Deux_nouveaux_satellites_rejoignent_la_constellation_Galileo2.

¹¹¹ EUSPA Press Release EUSPA/PR/21/05, *supra* note 108.

¹¹² *Id.*

¹¹³ Regulation 2021/696, *supra* note 1, const. 63.

¹¹⁴ *Id.*

¹¹⁵ Regulation 2021/696, *supra* note 1, const. 47.

¹¹⁶ The European Organization for the Safety of Air Navigation

¹¹⁷ *Le système de navigation EGNOS est disponible dès aujourd'hui pour la navigation aérienne en Europe [The EGNOS Navigation System is Available Today for Air Navigation in Europe]*, EUROPEAN SPACE AGENCY (Mar. 2, 2011), https://www.esa.int/Space_in_Member_States/Belgium_-_Francais/Le_systeme_de_navigation_EGNOS_est_disponible_des_aujourd'hui_pour_la_navigation_aerienne_en_Europe.

¹¹⁸ Regulation 2021/696, *supra* note 1, const. 62.

¹¹⁹ *Update on the Availability of Some Galileo Initial Services*, EUSPA (July 14, 2019), <https://www.euspa.europa.eu/newsroom/news/update-availability-some-galileo-initial-services>.

¹²⁰ Regulation 2021/696, *supra* note 1, const. 47.

years, is the most appropriate body to coordinate all the operational tasks related to the operation of these systems.”¹²¹ Therefore, the EUSPA is responsible for managing the operation of EGNOS and Galileo. EUSPA draws on the expertise of the ESA, which is also responsible for activities relating to the evolution of the systems and the design and development of elements of the ground segment and satellites.¹²²

In addition to navigation, the European Space Program includes earth observation activities.¹²³ In October 1998, a number of institutions involved in the development of space activities in Europe¹²⁴ adopted the “Baveno Manifesto,” a document that recalls the strategic importance for Europe to supply itself with the means of globally monitoring the environment.¹²⁵ The Baveno Manifesto will give rise to a European initiative for the global monitoring of the environment and security, known as GMES.¹²⁶ GMES, referred to as Copernicus, became operational in 2014.¹²⁷ Copernicus aims to observe and monitor the planet and its ecosystems.¹²⁸ The program offers six types of services: atmospheric, marine, and terrestrial monitoring; climate change monitoring; emergency response service; and security service.¹²⁹ Copernicus services are based on data from a constellation of satellites,¹³⁰ supplemented by *in situ* (on site) measurements.¹³¹ The program transforms the data into value-added information by processing and analyzing them,

¹²¹ *Id.*

¹²² *Id.*

¹²³ *See id.* at const. 62.

¹²⁴ Those being the BNSC, CNES, DLR, European Commission, EARSC, ESA, and EUMETSAT. Later joined by the ASI. Gérard Bégni et al., *L’initiative européenne “Suivi global pour l’environnement et la sécurité” et le protocole de Kyoto [The European Initiative “Global Monitoring for Environment and Security” and the Kyoto Protocol]*, 157 *Revue Française de Photogrammétrie et de Télédétection [French J. of Photogrammetry and Remote Sensing]* 18, 18-35 (2000).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Regulation (EU) No 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010, 2014 O.J. (L 122) 44.

¹²⁸ *Id.*

¹²⁹ Regulation 2021/696, *supra* note 1, const. 71.

¹³⁰ In particular, the “Sentinel” satellites. *Satellites d’observation de la Terre [Earth Observation Satellites]*, COPERNICUS, <https://www.copernicus.eu/fr/propos-de-copernicus/infrastructures>.

¹³¹ Regulation 2021/696, *supra* note 1 const. 72.

integrating them to other sources and finally by validating the results.¹³² The dataset, which spans over years and even decades, allows the monitoring of trends.¹³³ Coordinated and managed by the European Commission, in cooperation with the ESA, the European Environment Agency, and the Member States, the Copernicus program provides the EU with independent information on how its policies and decisions interact with and affect countries and regions across the world.¹³⁴ In doing so, the European Union strengthens its role as a global player on the world stage. Furthermore, the free and open data policy of the Copernicus program is also likely to strengthen its position in international negotiations, particularly on climate, the environment and biodiversity, thus reinforcing its role as a “soft power” on the international scene.¹³⁵

There is only one step from observation to surveillance: this step has been taken with the Space Situational Awareness system (SSA).¹³⁶ SSA is an indispensable tool for spatial Europe. Not only to protect its strategic infrastructures, in particular the Galileo and Copernicus systems, but also to guarantee the sustainability of space activities and access to space for the Union.¹³⁷

In its resolution of November 25, 2010, entitled “Global challenges: Making the Most of European Space Systems,” the Space Council recognized the need for SSA capability.¹³⁸ Four years later, the EU established a framework to support Space Surveillance and Tracking (SST).¹³⁹ According to Regulation 2021/696, the SST must be based on “a holistic approach, including detailed knowledge and understanding, of the main space hazards, which include collisions between space objects, fragmentation and re-entry of space objects

¹³² *Id.*

¹³³ *Id.* at const. 75-77.

¹³⁴ *Id.* at const. 85-87.

¹³⁵ *À propos de Copernicus*, COPERNICUS, <https://www.copernicus.eu/fr/propos-de-copernicus> (last visited Apr. 18, 2022).

¹³⁶ Space Situational Awareness (SSA). Regulation 2021/696, *supra* note 1, art 3.1(d) & 4.2.(c).

¹³⁷ *See id.* at art. 2.6.

¹³⁸ EUROPEAN SPACE AGENCY, 7TH SPACE COUNCIL RESOLUTION: GLOBAL CHALLENGES: TAKING FULL BENEFIT OF EUROPEAN SPACE SYSTEMS (2010).

¹³⁹ Decision No 541/2014/EU of the European Parliament and of the Council of 16 April 2014 Establishing a Framework for Space Surveillance and Tracking Support, 2014 O.J. (L 158) 227.

into the atmosphere, space weather and near-Earth objects.”¹⁴⁰ Hence, the SSA of the European Space Program includes: a Space Surveillance and Orbiting Object Tracking System to improve, exploit and provide data, information, and services related to space surveillance and to the location of space objects in orbit around the Earth (SST sub-component); observational parameters related to space weather events (SWE sub-component); and monitoring of the risk represented by near-Earth objects approaching the Earth (NEO subcomponent).¹⁴¹

The SST involves the establishment, development and operation of a network of both terrestrial and space-based sensors developed by Member States, the ESA, the EU, or the EU’s private sector.¹⁴² This SST sensor network will monitor and establish a European inventory of space objects¹⁴³ in order to assess the risk of collision between space vehicles or between space vehicles and space debris.¹⁴⁴

As for SWE services,¹⁴⁵ they can contribute to civil protection actions and to the protection in a wide range of sectors, such as space, transport, electricity networks, or communications.¹⁴⁶ Extreme and severe space weather events can threaten the safety of citizens and disrupt the functioning of space and ground infrastructures. The SWE subcomponent of the European Space Program assesses the risks associated with space weather and the needs of users.

The European Space Program is finally complemented by a protection clause.¹⁴⁷ In the context of a thematic debate on defense, the European Council of December 19 and 20, 2013 pointed out Europe’s capability deficits in terms of secure satellite communications.¹⁴⁸ The answer to this policy challenge is GOVSATCOM. GOVSATCOM is a civilian and government-controlled satellite

¹⁴⁰ Regulation 2021/696, *supra* note 1, art. 2.

¹⁴¹ *Id.* at art. 3(d).

¹⁴² *Id.* at art. 54.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at art. 55. The public and private entities responsible for providing SWE services are selected through a tender process.

¹⁴⁵ Regulation 2021/696, *supra* note 1, art. 60.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at title VIII chapter II.

¹⁴⁸ EUCO 217/13, Cover Note from the General Secretariat of the Council to Delegations (Dec. 20, 2013).

communication system for the provision of reliable and secure satellite communications capabilities and services to the EU and Member State authorities managing security-critical missions and infrastructure.¹⁴⁹ It is a user-driven program with a strong security dimension. The cases of GOVSATCOM's use should be analyzable by stakeholders in three main areas: crisis management (which may include civil and military missions and operations under the Common Security and Defense Policy, natural and man-made disasters, humanitarian crises, and maritime emergencies); surveillance (which may include border and illegal trafficking surveillance); and key infrastructures (which may include the diplomatic network, police communications, digital infrastructure such as data centers and servers, critical infrastructures such as energy, transport, and water retention devices such as dams and space infrastructure).¹⁵⁰

The European Space Program shares similar objectives with other EU programs. The exploitation of space systems such as EGNOS, Galileo or Copernicus directly complements the actions carried out under many other EU policies, in particular the research and innovation policy, the security and migration policy, the industrial policy, the common agricultural policy, the fisheries policy, trans-European networks, the environmental policy, the energy policy, and development assistance.¹⁵¹ The ESS and the new GOVSATCOM initiative will also contribute to the objectives of the European Defense Action Plan and the EU's Global Strategy.¹⁵²

From 2021-2027, the budget for the Commission's space program amounts to €14.88 billion.¹⁵³ Of this amount, €9.017 billion will be used for the further development of the Galileo and Egnos programs.¹⁵⁴ €5.421 billion will be devoted to the Copernicus observation program and its expansion.¹⁵⁵ The remaining €0.442bn will be used mainly for the SSA program and the GOVSATCOM

¹⁴⁹ Regulation 2021/696, *supra* note 1, const. 100 & 101.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at const. 15.

¹⁵² *Id.*

¹⁵³ Regulation 2021/696, *supra* note 1, art. 11.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

program for secure government networks.¹⁵⁶ This is the highest amount ever allocated by Europe for space programs.¹⁵⁷

B. The Space Program: The Key to European Power?

The emergence of private actors in space has become a matter of course, as illustrated by companies such as SpaceX or Amazon and their Starlink¹⁵⁸ and Kuiper¹⁵⁹ projects respectively.

Focused on the development of commercial space activities, these private actors have fostered the emergence of an “economic space.” For the European Union, whose genetic heritage is to enable the economic integration of its members in order to promote economic progress,¹⁶⁰ space offers new opportunities to strengthen competitiveness, innovation, entrepreneurship and the development of skills and capacities building across Member States. The development of the European Space Program certainly pushes the boundaries of science and research and facilitates the security and defense of the Union. However, the European Space Program also contributes to creating jobs, stimulating growth and investment, thus helping the economic recovery from the COVID-19 crisis.

Therefore, the European Space Program provides a platform for the European private sector that will enable it to innovate and grow. Thus, in achieving the objectives of the program, the Union is able to draw upon the capabilities offered by private entities.¹⁶¹ The provision of SWE services, in particular, may rely on the capacities of the private sector.¹⁶² In the framework of GOVSATCOM services, public-private partnerships, with EU satellite operators for example, may make it possible to develop additional space infrastructures or capacities.¹⁶³ Similarly, in the ESS sub-component,

¹⁵⁶ *Id.*

¹⁵⁷ Council Regulation No 1311/2013 of 2 December 2013 Laying Down the Multiannual Financial Framework for the Years 2014-2020, art. 16, 2013 O.J. (L 347) 884.

¹⁵⁸ STARLINK, <https://www.starlink.com/> (last visited Apr. 18, 2022).

¹⁵⁹ *Project Kuiper*, AMAZON, <https://www.aboutamazon.com/news/tag/project-kuiper> (last visited June 19, 2022).

¹⁶⁰ Consolidated Version of the Treaty on the European Union, preamble, O.J. (C 202) 7-6-2016 pp1-388

¹⁶¹ Regulation 2021/696, *supra* note 1, const. 75.

¹⁶² *Id.* at const. 97 & art 60.

¹⁶³ *Id.* at const. 104.

ground and space-based sensors could be developed by the EU private sector.¹⁶⁴

Intended to “guarantee autonomous European access to space,”¹⁶⁵ the European Space Program nevertheless provides for the participation of third countries within its various components. Under strictly controlled conditions, and according to modalities that vary depending on the component, the European Free Trade Association (EFTA) and European Economic Area (EEA) Member States, acceding countries, declared or potential candidate countries, countries covered by the European Neighborhood Policy, or other third countries may participate in the program.¹⁶⁶

Furthermore, given the coverage of the European Space Program, its activities raise the question of the Union’s participation in international space governance. In this context, Regulation 2021/696 proposes that, in close coordination with the Member States and with their agreement, the competent bodies of the program may participate in program-related initiatives in the framework of international cooperation and collaborate with the relevant sectoral bodies of the United Nations.¹⁶⁷ In particular, the Commission may coordinate international activities on behalf of the Union and within its area of competence, in particular to defend the interests of the Union and of its Member States in international forums, without prejudice to the competences of the Member States in this field.¹⁶⁸ More specifically, Regulation 2021/696 stresses that it is particularly important for the Union, represented by the Commission, to cooperate with the bodies of the international Cospas-Sarsat program.¹⁶⁹ Regulation 2021/696 further stresses that international cooperation is essential to promote the Union’s role as a global player in the space sector.¹⁷⁰ The Commission should therefore use the Union Space Program to contribute to international efforts through initiatives and build on these efforts to promote European technologies and industry on the international scene.¹⁷¹ The

¹⁶⁴ *Id.* at art. 54.

¹⁶⁵ *See* Roman, *supra* note 59.

¹⁶⁶ Regulation 2021/696, *supra* note 1, art. 7.

¹⁶⁷ *Id.* at const. 12.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at const. 13.

¹⁷¹ *Id.*

Union's participation in space governance must, however, be without prejudice to the competences of the Member States.¹⁷² In particular, Regulation 2021/696 notes that the Commission, together with the High Representative of the Union for Foreign Affairs and Security Policy and in close coordination with the Member States, should promote responsible conduct in space in the context of the implementation of the Union Space Program.¹⁷³ The Commission should also examine the possibility that the Union may accept the rights and obligations provided for in the relevant UN treaties and conventions and make appropriate proposals, if necessary.¹⁷⁴

The prospects for EU participation in international space governance are no illusion. It is true that the various instruments of the Union constituting international space law are *pacta tertiis* for not being open to international organizations.¹⁷⁵ Nevertheless, in accordance with Article 4(3) of the TFEU, "by virtue of the principle of sincere cooperation, the Union and the Member States shall respect and assist each other in carrying out the tasks arising out of the Treaties."¹⁷⁶ Additionally, according to the established case law of the Court of Justice of the European Union, the fact that the Union is "not a member of an international organization does not prevent it from exercising its external competence effectively, in particular through the intermediary of the Member States acting jointly in the interest of the Union."¹⁷⁷ Specifically, "the TFEU does not preclude the Union from adopting a decision establishing a position to be taken on its behalf in a body set up by an international agreement to which it is not a party."¹⁷⁸ It should also be noted that

¹⁷² Regulation 2021/696, *supra* note 1, const. 14.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ These treaties include: Outer Space Treaty, *supra* note 5; Agreement on the Rescue of Astronauts and the Return of Objects Launched in Outer Space, Dec. 19, 1967, 19 U.S.T. 7570, 672 U.N.T.S. 119; Convention on International Liability for Damage Caused by Space Objects, Mar. 29, 1972, 24 U.S.T. 2389, 961 U.N.T.S. 187 [hereinafter Liability Convention]; Convention on Registration of Objects Launched into Outer Space, Jan. 14, 1975, 28 U.S.T. 695, 1023 U.N.T.S. 15 [hereinafter Registration Convention]; Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, Dec. 18, 1979, 1363 U.N.T.S. 3 [hereinafter Moon Agreement].

¹⁷⁶ TFEU, art. 4(3).

¹⁷⁷ Case C-45/07, *Comm'n v. Hellenic Republic*, ECLI:EU:C:2009:81, ¶ 31 (Feb. 12, 2009); *See generally* Opinion 2/91 of the Court 19 March 1993, ECLI:EU:C:1993:106.

¹⁷⁸ Case C-399/12, *Rep of Ger. v. Council of the European Union*, ECLI:EU:C:2014:2258, ¶ 50 (Oct. 7, 2014).

the role of international organizations in space matters is addressed by the Convention on International Liability for Damage Caused by Space Objects¹⁷⁹ and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies.¹⁸⁰ Similarly, the Convention on Registration of Objects Launched into Outer Space allows international organizations engaged in space activities to make a declaration of acceptance of the rights and obligations provided for in the Convention if a majority of the member States of the organization are State Parties to the Convention and to the Outer Space Treaty.¹⁸¹ This declaration of acceptance, made by the ESA as early as 1979,¹⁸² could also be made by the Union.

IV. CONCLUSION

Although further development is necessary, Regulation 2021/696 provides European space policy with an essential boost. Similar to national space policies, the European Union space policy is designed to meet the interests of Europeans through strategic priorities that emphasize economic, diplomatic, and security aspects. The establishment of an atypical governance model makes it possible to combine the various existing competences. While the ESA will focus on research and development activities, the Union will take charge of the economic dimension and potentially the security dimension as well. The security aspect nevertheless remains the prerogative of national policies, even if the establishment of a European Defense Fund includes support for programs such as space surveillance, which is an essential element of European information and decision-making autonomy.

If space is a sovereignty issue, it is also a driving force for the revival of the European economy. In this respect, it must be seen in

¹⁷⁹ Liability Convention, *supra* note 175, preamble para. 4, art. I(a).

¹⁸⁰ Moon Agreement, *supra* note 175.

¹⁸¹ Registration Convention, *supra* note 189, art. VII(1). 21 of the 27 Member States are parties to the Convention: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden.

¹⁸² The organizations which have made a declaration accepting the rights and obligations under the Convention are: ESA (2/01/1979), the European Telecommunications Satellite Organization (10/6/2014), the European Organization for the Exploitation of Meteorological Satellites (10/7/1997) and the International Organization of Space Communications Intersputnik (10/7/2018) (make sure to find these)

the light of the European Commission's latest digital ambitions.¹⁸³ The Digital Single Market has been prioritized by the Commission in its Digital Single Market Strategy¹⁸⁴ and recently in the agenda of the Commission President's for Europe 2019-2024.¹⁸⁵ The coming decade will be Europe's "digital decade." With space and digital being interrelated, Europe will be able to get off the ground.¹⁸⁶

¹⁸³ On 15 December 2020, the European Commission made two proposals for regulations on the digital single market: Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and Amending Directive 2000/31/EC, COM (2020) 825 final (Dec. 15, 2020); Proposal for a Regulation of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), COM (2020) 842 final (Dec. 15, 2020).

¹⁸⁴ *Id.*

¹⁸⁵ URSULA VON DER LEYEN, POLITICAL GUIDELINES FOR THE NEXT EUROPEAN COMMISSION 2019-2024 (2019) (This document was originally presented by Ursula von der Leyen in her capacity as candidate for President of the European Commission, laying out her agenda for Europe).

¹⁸⁶ *Une Europe Adaptée à l'ère Numérique*, EUROPEAN COMMISSION, https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_fr.