



Non-paper January 2024 Finnish views on space legislation in the EU

It was announced in September 2023 that the Commission priorities for 2024 would include an initiative for an EU Space Law. The proposal would envisage common EU rules addressing safety, resilience and sustainability of space activities. With this non-paper Finland wishes to draw the Commission's attention to some of the questions relating to the initiative.

International cooperation with the aim of creating global solutions for global challenges

Finland recognizes the concerns relating to safety, security and sustainability of space activities bearing in mind that they are of global concern, and thus, call for global governance. A common European approach can play an important role in furthering the international cooperation in this field, but it is essential that common rules are created at a global level to prevent problems or conflicts caused by different rules in different States or regions. One question regarding the developments of the European approach is whether the EU is to declare its acceptance of the relevant United Nations treaties on outer space (*UN Space Treaties*) which it has not done thus far.

We recognize the UN and especially its Committee on the Peaceful Uses of Outer Space (*COPUOS*) as an indispensable forum for ensuring that space activities and related regulatory developments are carried out in accordance with international law, the UN Space Treaties in particular. E.g. "appropriate State" whose authorization and continuing supervision for space activities is required under Art. VI of the Outer Space Treaty is a question under general international law, not a question of internal market.

National space legislation and avoidance of fragmentation

In Finland, it is regarded that national space legislation is the most effective way for us to implement and comply with our international obligations under the UN Space Treaties. We believe that any regulatory developments must be in line with the globally accepted guidelines and/or tools to avoid fragmentation at the international level and to assure level playing field at the global arena. Our space legislation has been developed by utilizing international instruments and guidelines (e.g. Sofia Guidelines for a Model Law on National Space Legislation by International Law Association) and taking into account national legislation in other (EU) countries. Exchange of views in COPUOS has also provided a means for coordination concerning national legislation.

Finland's space policy and space law

Sustainable growth of the space sector, in particular the New Space economy, are key priorities of the Finnish space policy. We promote national expertise and business opportunities

in space-related matters also taking into account the interests of national defence and NATO's Space Policy.

The starting point of our space legislation is a positive approach towards space activities. This means that there is no need to set restrictions on activities if the safety and the other criteria for granting the authorization can be ensured. For the safety and sustainability considerations, our law takes note of some of the international non-binding instruments, such as Space Debris Mitigation Guidelines by IADC/COPUOS and ISO standards for space debris mitigation. Furthermore, the debris assessment tools provided by European Space Agency (*ESA*) and National Aeronautics and Space Administration of the United States (*NASA*) are utilized in the licensing process, and the risk levels based on these are in use in Finland.

National interests and responsibilities

National interests regarding different space missions and their licensing may vary e.g. from the national security point of view taking into consideration the dual use nature of space technology as well. In addition, States bear international responsibility for their space activities under the UN Space Treaties as well as the risks involved. Common set of rules in the EU would not preclude the fact that individual States would still have to take into account their national interests and international obligations when it comes to their space activities and the licensing requirements. Therefore, when it comes to any intervention in the EU level, it is important that Member States maintain necessary flexibility and margin for manoeuvre also bearing in mind the principle of subsidiarity.

The scope of regulatory measures under envisaged EU Space Law

In the Finnish system, sufficient level of safety and resilience measures and risk management depend on the mission as space activities and the conditions for carrying them on are assessed in relation to the scope and dangerousness of the planned activities. Similarly, any measures proposed at the EU level should be appropriate and proportionate.

We note that CER and NIS2 directives touch upon some aspects of the space sector while taking into consideration the exclusion of harmonization when it comes to legislation on the space segment (Art. 189(2) TFEU). The directives already cover some cyber security and resilience requirements regarding the ground segment with limited scope of operators. If complementing these directives are to be held necessary as well as in line with the Treaty on the Functioning of the European Union (*TFEU*), we would suggest to consider if the scope of regulatory measures could still be limited to the most critical entities that carry on space operations having an indispensable role for the EU. When it comes to a wider scope of space operators, a more proportionate intervention from the EU level might be the incentive measures.

Competitiveness of the EU space sector and global service chains

Any intervention at the EU level concerning the space sector regulations should solely focus on measures that could in a verifiable and concrete manner create the highest European added value, i.e. on benefits that could actually be achieved through legal instruments bearing in mind the technological progress and rapid developments in the global space arena. The growth and development of the EU space sector, just like of any other sector critical for EU's strategic competitiveness, should not be discouraged by an excessive flood of regulations or administrative burden not forgetting the risk of unnecessary or overly tight regulations creating unwanted barriers to market access.

It is crucial that the existing system (national – international) is not stiffened with an extra regulatory level (i.e. regional) that could hinder the EU actors' involvement in the global space value and supply chains. Any measure must be in line with general international law, the UN Space Treaties and the principles thereof (e.g. space freedoms, international co-operation irrespective of State's degree of economic or scientific development). The Commission has e.g. expressed an idea of the requirement for non-EU space operators to comply with the EU set of rules. We note the uncertainties this may create as the willingness and/or ability of non-EU actors to comply is not in the hands of the EU Member States nor their operators. Such uncertainties and lack of predictability are not conducive to facilitate growth or innovation nor to attract investment.

Consideration of alternative policy options

To avoid risks relating to new regulations we must seek to have a good balance between the regulatory measures and supporting or incentive measures. Instead of new binding obligations upon the space actors in the EU, Finland would be interested in the possibility of creating an incentive system to encourage the Member States and the operators therein to comply with (non-binding) instruments created at global level. E.g. the "Policy Option 1" that was presented in the online questionnaire by the Commission (Targeted consultation on EU Space Law) suggested measures that would entail non-binding measures for the Member States and voluntary measures for the industry instead of binding obligations, including a "space label" to verify compliance with the relevant non-binding instruments. We see that some sort of "labels" or such could be a reward for those demonstrating responsible behavior in regard to space activities if e.g. utilized in prioritizing the space actors in EU and/or ESA calls for tenders as well as for private and public financing.

Furthermore, we should not only concentrate in policy or legal issues, but discuss operational European capabilities as well, such as the EU SST, and further the development of new capabilities, e.g. through relevant ESA activities and programmes. Crowding orbits are not only a challenge but also an opportunity for creating a new market for new solutions, such as on-orbit-servicing, active debris-removal, and new solutions for space debris mitigation. It is important that the European space sector is placed at the forefront of this market generation and that innovations and renewal of current practices are fostered.

Questions relating to the legal basis

According to the Commission Work 2024 Programme (published 17 October 2023), the legislative proposal is to be given under articles 114 and 191 TFEU. This leaves the question open regarding the dedicated article on space, especially the exclusion of harmonization as set forth in Art. 189(2) of the Treaty. We understand that while some measures could be adopted under other articles of the TFEU having some impact on the space sector, this should not go against or circumvent the explicit exclusion of harmonization as laid down in Art. 189(2) TFEU. In accordance with articles 4 and 189 TFEU, we wish to underline that in such areas of space activities as licensing conditions etc., the competence of the EU Member States should not be hampered. The Member States should be able to continue to exercise their space freedoms and rights in conformity with the UN Space Treaties and to comply with obligations thereunder without any EU interference hindering this.