



European Space Policy Institute

Perspectives on a European Office for Space Commerce

1. *The U.S. Office for Space Commerce*

The U.S. Office for Space Commerce (OSC) was created in 1988 by the Secretary of Commerce based on the assumption that the commercial use of space would one day become a significant part of space activities. OSC's status was only formalised in 1998 by the Technology Administration Act. In 2005, it moved from the Office of the Secretary to NOAA's National Environmental Satellite, Data and Information Service (NESDIS). The OSC acts as the main coordination unit of space-related issues within the DoC. Its mandate slightly changed over the years and was last updated by the Commercial Space Launch Competitiveness Act of 2015 to:

- foster the conditions for the economic growth and technological advancement of the United States space commerce industry,
- coordinate space commerce policy issues and actions within the DoC,
- represent the DoC in the development of U.S. policies and in negotiations with foreign countries to promote U.S. space commerce,
- promote the advancement of U.S. geospatial technologies related to space commerce,
- provide support to Federal Government organizations working on Space-Based PNT policy, including the National Coordination Office for Space-Based PNT.

Other duties include market monitoring, assisting companies in providing services to the Government, lobbying, supporting exports, etc. In 2018, SPD-3 transferred civilian Space Situational Awareness (SSA) to the DoC. Therefore, DoD can focus on National Security missions and DoC can manage collision alerts with commercial providers and foreign partners and support SSA commercial initiatives.

In 2020, the Government proposed to merge the OSC and NOAA's Office of Commercial Remote Sensing Regulatory Affairs (CRSRA) within the Office of the Secretary. Congress allowed the two entities to merge but kept the OSC within NOAA.

2. *Fostering the commercial use of space in Europe*

The European approach to space commerce is rather scattered and responsibilities are divided among many stakeholders within the EU, ESA and Member States. While the European Commission (DGDEFIS) is responsible for fostering “a competitive and innovative space industry”, legislating on the commercial use of space remains the responsibility of the Member States. Indeed, the emergence of commercial space activities was not addressed by the Treaty of Lisbon. Article 4.3 and 189 conferred a shared space competence to the EU, which is more of a “parallel competence” since it did not limit the responsibilities of Member States and did not address any specific domain. A space commerce competence, namely the same type of remits as those attributed to the U.S. OSC, was not explicitly envisioned at the time the Treaty was negotiated, which was hence kept at the Member State level.

While the internal market which aims at creating a free market where goods, services, people and capital can circulate without restrictions is a shared competence between the EU and Member States, exports and the common trade policy are the sole competence of the EU (DGTRADE). However, space exports usually fall under national and international regulations due to their dual-use nature. Regulation EC/428/2009 established an EU framework for the circulation of dual-use space technologies within the EU and defined the list of space technologies subject to export authorizations by Member States. Therefore, a significant number of decisions related to commerce still remain under the responsibility of Member States.

At national level, many legislations have been established in recent years (e.g. Austrian Space Act of 2011 or the German Satellite Data Security Act of 2007). While they enable the commercial use of space by setting the rules for licensing procedures, registration of space objects or insurance, the primary goal of these laws was not to create incentives to support the private sector but rather to ensure the security of space activities and implement the commitments made at UNCOPUOS. However, several national initiatives have been put in place to specifically foster commercial activities. For instance, Luxembourg's space law of 2017 provides protection and support to investors and startups in the field of space mining. Besides, the French Ministry of High Education and Research created CoSpace to establish concerted industrial views, technological roadmaps and support exports. CNES also established the Observatory of Space Economy to support industries in facing the COVID crisis, by sharing information, orienting them towards the right stakeholders and by conducting market monitoring.

At the European level, the need for additional synergies to support commercial providers has been identified with the creation of EUSPA which will be in charge of supporting market uptake as well as creating synergies between EU flagship programmes.

3. Do we need a European Office for Space Commerce?

The 2020 EU-ESA Council, under German chairmanship, recalled that the space economy is increasingly driven by commercial activities, a strong international competition and a rising number of actors. It also highlighted the need for Europe to establish key principles for the global space economy, enhance "space commercialization" and "encourage space entrepreneurship". It stressed the need to strengthen "the global competitiveness of European space industry and supply chains with regard to international markets".

According to the principle of subsidiarity, the EU should not be competent in an area unless it is more effective than the actions taken at national level. Given the current developments in commercial space, is the current state of play in adequation with the principle of subsidiarity? Indeed, the European space industry as a whole relies extensively on commercial orders and exports to be sustainable and therefore is more exposed to market fluctuations. In this context, it could be relevant to have an overarching coordinating body that promotes the European industry's interests, supports exports, removes market and legal barriers, and supports commercial space companies.

Then, the issue is to define the potential mandate and scope for such an entity. Still, some aspects could benefit from a more centralized and consistent approach such as licensing rules, market regulations and exports. For instance, rules for commercial remote sensing are different in each EU country and could benefit from some harmonization to enable a true single market. In the same vein, Luxembourg is the only country that has so far legislated on the commercial exploitation and appropriation of space resources. While most countries remain undecided, some have signed the ARTEMIS accords which, to some extent, might compel them to adopt the U.S. vision on this matter, thereby complicating the emergence of a concerted European vision on space mining. As this sector is developing and programmes are progressing, the longer Europe takes to tackle this policy issue, the deeper the divergence of views between Member States might be.

4. Beyond a potential political agreement. How could such regulations be implemented?

Considering GSA's results with regards to the market uptake of Galileo and EGNOS, could the recent creation of EUSPA provide an opportunity to start a discussion to fill this void at the European level? Yet, such mandate requires high technical and technological expertise, that only ESA possess and should therefore have a major role to play.

In this context, the next EU-ESA Council could consider this question by addressing the relevance of overarching Europe-wide space commercial and industrial strategies which cannot be dissociated from each other, as well as the creation of a dedicated office to implement these strategies to address rising commercial issues in the European space sector.

Available for download from the ESPI website:

www.espi.or.at

Short title: "ESPI Briefs" No. 48

Published in: February 2021

Editor and publisher:

European Space Policy Institute, ESPI

Schwarzenbergplatz 6 • A-1030 Vienna • Austria

Tel: +43 1 718 11 18 -0 / Fax: -99

Email: office@espi.or.at

Rights reserved – No part of this publication may be reproduced or transmitted in any form or for any purpose without permission from ESPI. Citations and extracts to be published by other means are subject to mentioning "Source: ESPI "ESPI Briefs" No. 48, February 2021. All rights reserved" and sample transmission to ESPI before publishing.