

# EU Integrative Approach to Space and Telecommunications Areas

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## Abstract

The European Union has turned into a significant player in the area of space activities and this has been accompanied by legislative steps. In 2018, it formulated a Proposal for a Regulation Establishing the Space Programme of the Union and the European Union Agency for the Space Programme which seeks to regulate the governance of the key components of the EU space activities. In parallel, the Union adopted also the Directive No 2018/1972 establishing the European Communications Code, which represents the recent developments in the approach to frequency spectrum applicable also to space communication. It is interesting to see that from the legislative point of view European Union is approaching the regulation of space activities and telecommunication differently. Whereas telecommunication, including space communication, is regulated as a part of the European internal market and the respective procedures are substantially harmonised, space activities are based on the provision of the Lisbon Treaty which expressly prohibits any harmonization of national space laws. The common denominator for both areas is the method to codify a whole package of new and older activities in a single document.

## 1. Introduction

The European Union has become a significant player in the area of space activities. At present, the Union's space programme consists of five components, all of them using space communication. The first is the programme Galileo, which is a civil global navigation satellite system comprising a constellation of Union owned satellites and a global network of ground stations. The second component is the civil system EGNOS composed of transponders installed on geostationary satellites and of ground stations, which aims at augmenting the performance of other navigation systems such as GPS, for example in the area of air traffic management. The third is Copernicus, an operational civil Earth observation system comprising

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satellites, ground infrastructure, and facilities. The fourth component is the planned system of space surveillance and tracking (SST), which envisages tracking space objects orbiting the Earth. The last one will be the GOVSATCOM system, a satellite communication service enabling the Union and its Member States to communicate and manage security, critical missions, and infrastructures.

To organise the governance of its space activities, the Union is active in the legislative area. In 2018, a Proposal for a Regulation Establishing the Space Programme of the Union and the European Union Agency for the Space Programme has been published. The amended version of 2020 represents the present culmination of the discussion on the development of the Union legal framework in this area.<sup>1</sup>

Additionally, European Union provides incentives for developing its communications capacity. The Member States are building up a high-speed broadband 5G terrestrial networks, and are expanding in broadband satellite services. On 18 December 2020, SpaceX was allocated frequencies for its Starlink satellite system by the German Federal Network Agency to provide broadband internet via satellite based broadband services.<sup>2</sup> The convergence of the telecommunications, media and information technology sector has required a modified legal setup.

The Directive 2018/1972 establishing the European Communications Code<sup>3</sup> – a recast of four earlier directives regulating electronic communications – represents last European developments in the harmonization of procedures of national management of frequency spectrum. With minimal exemptions, it covers all forms of use of electronic communications, such as voice telephony, messaging services and electronic mail services, internet of things, machine-to-machine and connected cars. From the perspective of the use of outer space, it covers the use of radio spectrum by services using the satellites. In view of these regulatory steps, the question arises whether these legislative initiatives have a common denominator. A comparison is possible in view of the overlap of their regulatory scope – specific aspects of space communication. To answer, the legal basis of the two materials will be defined, followed by a short analysis of their content.

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- 1 Proposal for a Regulation of the European Parliament and of the Council establishing the space programme of the Union and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014 EU [COM (2018) 447 final, 6 June 2018] (“Draft Space Regulation”), final compromise text 14200/20, 18 December 2020.
  - 2 SpaceX: BNetzA erteilt Frequenznutzungsrechte für Starlink, Teltarif.de 18.12.2020.
  - 3 Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Communications Code.

## **2. Proposal for the EU Space Programme**

### **2.1. Legal Basis**

Article 4(3) TFEU placed the space area in the category of shared competences,<sup>4</sup> but it specified that the exercise of such competence shall not result in Member States being prevented from exercising of their own. This means that the Treaty shifted the space competence from a shared competence to a ‘parallel’ one.

The 2018 Proposal is based on Article 189 TFEU – a unique article embedded in the Lisbon Treaty conferring upon the Union a competence to legislate in the area of space activities, specifically to adopt a European space programme. In the same breath, the article excludes any harmonisation of the corresponding laws of the Member States: Paragraph 2 of this provision explicitly added a limitation that excludes “any harmonisation of the laws and regulations of the Member States.” This addition is identical to the wording of the non-harmonisation provisions related to tourism<sup>5</sup> and civil protection.<sup>6</sup> Article 189(3) TFEU also stresses that “the Union shall establish any appropriate relations with the European Space Agency”.

### **2.2. Content of the Regulation**

The 2018 Proposal seeks to regulate the main components of the Union space programme in one legal document. However, the ambition of the Proposal goes beyond this aim. The document creates a unified system of governance for all components of the European space programme, supported by the European Union Agency for the Space Programme (EUSPA),<sup>7</sup> transformed from the GSNNA Agency in Prague.

The objective of the envisaged space programme is to foster European independence, the development of European industry, and capacity building across the Union.<sup>8</sup> According to its Article 9, the Union is the owner of all tangible and intangible assets created or developed under the programme’s components. Concerning its governance, the Commission should have the overall responsibility for its implementation, and it should ensure a high degree of security of its components.<sup>9</sup> To guarantee the functioning of the Programme, the Commission may adopt implementing acts.

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4 This category of competences is defined in Article 2(2) TFEU according to which Member States may legislate to that extent that the Union has not exercised its competence.

5 Article 195(3) TFEU.

6 Article 196(3) TFEU.

7 GNSS stands for Global Navigation Satellite System.

8 Articles 4 and 6 of the Proposal.

9 Articles 29 and 34 of the Proposal. A specific task is vested to a “Security Accreditation Authority” established within EUSPA, which will be the security accreditation authority for all the components of the programme (Article 35).

The EUSPA – a body of the Union with a legal personality – should i.e. ensure the security accreditation of all the components of the programme, undertake market development and promotion activities of the services offered by Galileo and EGNOS, and manage the exploitation of these programmes. Furthermore, it should coordinate the use of GOVSATCOM, and implement the downstream activities based on the Copernicus programme. The staff of EUSPA should consist of servants recruited as necessary to perform its tasks (Article 88). Their privileges and immunities are covered by the Protocol No 7 on the Privileges and Immunities of the European Union.<sup>10</sup> The Agency's administrative and management structure shall comprise the Administrative Board, the Executive Director and the Security Accreditation Board (Article 72).

From the substantial provisions of the Proposal, the following items are of note. The Union would not offer any guarantee for the services provided by its Programme. According to its Article 10, the services, data and information provided by the Programme's components shall be provided without any express or implied guarantee as regards their quality, accuracy, availability, reliability, speed and suitability for any purpose. Concerning the potential danger of the attacks against the system, the space and ground infrastructure shall be protected by the Commission (Article 34).

### **2.3. Relation of the Union and the ESA**

The Proposal also seeks to re-define the role of ESA in the space programme. This is not an easy task. Based on an earlier Framework Agreement between both entities of 2004, which defined their roles,<sup>11</sup> the Commission identified several possible options for their relationships in its Communication of 2012<sup>12</sup> that included (i) improved cooperation under the status quo, (ii) bringing ESA as an intergovernmental organisation under the authority of the Union, or (iii) transforming ESA into a Union agency.<sup>13</sup> These scenarios resonated in several subsequent Union documents.<sup>14</sup> By contrast, ESA Council concluded that the ESA Member States expressed their clear preference for a relationship of both organisations that maintains the role of ESA as an independent and intergovernmental space organization.<sup>15</sup> This was also emphasised by the ESA Ministerial Council in 2016 when it adopted a

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10 Official Journal of the European Union, C 83/266, 30.3.2010.

11 Framework Agreement between the European Community and the European Space Agency (OJ 2004 L 261, p. 64).

12 Communication of 14 November 2012 from the Commission to the Council and the European Parliament 'Establishing appropriate relations between the EU and the European Space Agency' [COM(2012) 671].

13 For details see V. Reillon, *European Space Policy, Historical perspective, specific aspects and key challenges*, EPRS, January 2017 – PE 595.917, p. 25.

14 For example COM (2014) 56 final.

15 ESA/C-M/CCXXXIV/Res. 4 (Final).

resolution that invited the ESA Director General to further shape and promote ESA not as “a” space agency for Europe but “the” space agency for Europe.<sup>16</sup> Obviously this approach is not shared by the Commission.

The main stumbling blocks in the relation of ESA and the Union are related to (i) the ESA principle of fair return which is contrary to the principle of free competition laid down in Union law, (ii) asymmetry in membership where Switzerland, Norway and the United Kingdom are European ESA Members without being Member States of the Union, (iii) the presence of technical expertise on the side of ESA and its lack on the part of the Union, and (iv) the asymmetry in financial and legal capacities.

According to the 2018 Proposal, ESA “may” be entrusted, but according to the 2020 version, it “shall” be entrusted with (i) coordination of the space component of Copernicus; (ii) systems evolution, design and development, of parts of the ground segment and of satellites of Galileo and EGNOS; and (iii) upstream research and development activities for all components of the programme (Article 31); furthermore, it “may” be entrusted with other tasks provided that they do not duplicate activities performed by another entrusted entity. The Commission shall conclude with the ESA and the EUSPA a Financial Framework Partnership, which shall serve for the implementation of the programme (Article 29 3a) and define their roles, responsibilities and obligation (Article 31a). Concerning the procurement procedures, the Proposal states that in case of joint programmes with ESA, the procurement procedures have to comply with the procedural provisions applied to the Union (Article 24).

The complexity of the relation of the European Space Agency to the European Union Agency for the Space Programme is given also by the fact that the Union is not formally bound by any of the UN space treaties despite of the declaration in the Preamble to the Regulation that the Commission shall “explore the possibility for accessing to the relevant UN Conventions” and make, if necessary, appropriate proposals (recital 7).<sup>17</sup> The consequence is that the Union is – seen formally – obliged to respect “only” the customary elements of international space law, not the full content of the UN treaties.

The consequence of the fact that the Union is not bound by the 1975 Registration Convention<sup>18</sup> is the fact that the Galileo satellites in the deployment phase were not registered in the Registry maintained by the UNOOSA, and the Copernicus satellites Sentinel were not registered by the

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16 Towards Space 4.0 for a United Space in Europe, <https://esamultimedia.esa.int/doc>.

17 F. von der Dunk, “The European Union and the Outer Space Treaty: Will the Twain Ever Meet?”, *Space, Cyber, and Telecommunications Law Program Faculty Publications*, 2017, vol. 89, p. 85 and 86. <http://digitalcommons.unl.edu/spacelaw>.

18 Convention on Registration of Objects Launched into Outer Space, UNTS vol. 1023, No 15020.

Union, but by the European Space Agency.<sup>19</sup> This situation may be seen as unsatisfactory also from the broader legal perspective. The fact that, as the majority of the Union's Member States ratified United Nations space treaties, they are obliged to "take all appropriate steps to ensure" that the organisation of which they are members – the Union – makes a respective declaration of acceptance (Article XXII of the Liability Convention and Article VII of the Registration Convention).

Whereas the Outer Space Treaty does not encompass any mechanism for international intergovernmental organisation to become its Party, four other treaties enable such entity to declare acceptance of the rights and obligations provided for in these instruments. With the exemption of the Moon Agreement,<sup>20</sup> such declarations have been made by ESA, but also by the European Organisation for the Exploitation of Meteorological Satellites, European Telecommunication Satellite Organisations, as well as Intersputnik.<sup>21</sup> The timeliness of the Union to make such declaration is a subject of deliberations,<sup>22</sup> especially with regard to the Liability Convention.<sup>23</sup> A liability of the Union for the damage caused by its satellites would require new internal rules defining the distribution of the burden of compensation between the Union and its Member States, appropriate insurance policies or the recourse against the operator. Such declaration could be made in the form of a Council decision based on Article 189 TFEU in conjunction with Article 218 TFEU.<sup>24</sup>

#### **2.4. Member States**

In line with Article 189 para 2 of the Lisbon Treaty, no specific harmonization measures are envisaged by the Proposal. However, the Explanatory Memorandum states that the Commission should be able to mobilise the means at Member States' disposal and entrust them with "non-regulatory tasks" in the execution of the programme (recital 26). According to Article 28 of the Proposal, Member States "may" participate in the Union's space programme by contributing with their technical competence, know-how and assistance (Article 28). In such cases, the Member States

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19 Online Index of Objects Launched into Outer Space, UNOOSA, [www.unoosa.org/oosa/osoindex/search-ng](http://www.unoosa.org/oosa/osoindex/search-ng).

20 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, UNTS, vol. 1363, No 23002.

21 Status of International Agreements Relating to Activities in Outer Space as at 1 January 2020, [www.unoosa.org](http://www.unoosa.org).

22 Summary of comments provided by the Member States regarding the EU's possible declaration of acceptance of the rights and obligations of the relevant UN Space Treaties, 14903/1/19 REV 1, 13 December 2019.

23 Convention on International Liability for Damage Caused by Space Objects, UNTS vol. 961, No 13810.

24 Supra note 22, p. 10.

“shall” take all the necessary measures to ensure the smooth functioning of the Programme. The national entities responsible for the implementation of these tasks are generally mentioned as “national agencies and bodies linked to space.”<sup>25</sup>

Moreover, the Member States should work together and with appropriate international bodies and regulatory authorities to ensure that the frequencies necessary for the programme are available and protected to allow for the full development and implementation of services offered (recital 26). This is a reference to the provisions of the 2012 Radio Spectrum Policy Programme<sup>26</sup> that requires Member States, i.a, to ensure spectrum availability for EU space programmes (Article 8 of the Programme). In the practice, as only Member States can “file” for the use of specific frequencies at the ITU, the radio stations on Union’s owned satellites cannot be filled by the Union and e.g. the stations on Galileo satellites are filed by France.<sup>27</sup>

In relation to the part of the programme dealing with the space surveillance and tracking system (SST), the Proposal uses other terms for the description of national entities responsible for its implementation. These are called “designated national entities” (Article 56) or “Constituting National Entities” (Article 57) responsible for developing SST services. Also, the GOVSAT system relies on national authorities – here “competent GOVSAT authorities” h– which ensure that the access rights for its users are properly determined and managed (Article 67).

## 2.5. Outlook

In November 2020, a political agreement was reached between the European Parliament, EU Member States in the Council and the Commission on the next long-term EU budget pending the final approval of the legal texts by the European Parliament and the Council.<sup>28</sup> The programme disposes by a generous financial envelope; this shall be EUR 14,880 billion for the period 2021-2027 (Article 11). The Regulation should have originally entered into force on 1 January 2021 but the legislative procedure is still ongoing.<sup>29</sup> After entered into force, it shall have a general application; it shall be binding in its entirety and directly applicable in the EU Member States (Article 288 TFEU).

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25 Explanatory Memorandum, para 26.

26 Decision No 243/2012/EU of the European Parliament and of the Council of March 2012 establishing a multiannual radio spectrum policy programme, L 81/1, 21.3.2012.

27 BR IFIC 2911 / 07.01.2020RES 609 (Rev.WRC-07).

28 Commission welcomes the political agreement on the European Space Programme, Press Release, 16 December 2020, IP/20/2449.

29 Article 111 of the Draft Space Regulation. After the European Parliament adopted its position at first reading (P8\_TA\_PROV (2019)0402, 17 April 2019) discussions within the Council and its preparatory bodies in the first reading are taking place (see <https://eur-lex.europa.eu/legal-content/en/HIS/?uri=CELEX%3A52018PC0447>);

Another challenge is the development of the Financial Framework Partnership Agreement (FFPA) between the ESA and the European Union securing the financing of the implementation of the Galileo and Copernicus programmes by the ESA.

### **3. European Communications Code**

#### **3.1. Legal Basis**

The Directive (EU) 2018/1972 establishing the European Communications Code<sup>30</sup> is a recast of four earlier directives regulating electronic communications. The document has been adopted in line with the “Regulatory Fitness” exercise of the Union, a recasting that consists in the adoption of new legal acts that incorporate in a single text both the amendments to the earlier acts and new provisions (recital 4). It has been drafted on the basis of Article 114 TFEU (former Article 95 EC Treaty), which enables adopting measures for the approximation of laws of EU Member States in the area of internal market. This competence has been used also in the earlier times in order to ensure liberalization and harmonization of the telecommunication sector, including the space communication sector.

#### **3.2. Content of the Directive**

The principal aim of the Directive is to bring a more consistent internal market to radio spectrum policy and management in Europe (recital 3), to ensure freedom to provide electronic communication networks, without the prejudice to the possibility for Member States to take the necessary measures to protect their essential security interests (recital 6).

The material scope of the Directive are all electronic communications networks and services – transmission systems that permit the conveyance of signals by wire, radio, optical, or other electromagnetic means (Article 2). The typical cases of such service are internet access service, broadcasting, as well as interpersonal communication service (e.g. voice telephony). Satellite networks<sup>31</sup> are explicitly mentioned as being covered by the document, together with fixed and mobile networks, and electricity cable systems. The condition under which electronic communications are regulated by the Directive is that the services are provided for remuneration (Article 2).

The principal aim of the document is to foster an internal market for electronic communication within the Union. It establishes an enhanced

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30 Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Communications Code.

31 The ITU Radio Regulations understand under satellite networks a satellite system or a part of a satellite system, consisting of only one satellite and the cooperating earth stations (1.112); satellite systems are space systems using one or more artificial earth satellites (1.111).



harmonized framework for the national regulation of electronic communication services and networks, as well as procedures for its application by the national regulatory authorities (NRAs) (Article 1).

The key principle of the European Communications Code is the freedom to provide electronic communications networks and services on the territories under the jurisdiction of EU Member States, subject to the conditions set out in the Directive (Article 12). Therefore, the Member States should not prevent an undertaking from providing electronic communications networks or services, except for reasons formulated by Article 52(1) TFEU allowing special treatment of non-EU nationals on grounds of public policy, public security, or public health.

As already formulated in the legal acts preceding the Code,<sup>32</sup> in principle, the provision of electronic communications or services in the EU may be subject only to a general authorization – a national legal framework ensuring rights for the provision of electronic communications or services. This general authorization has to be subject of clearly enumerated conditions (Article 13, Annex I); one of those is the respect to obligations “under relevant international agreements relating to the use of radio spectrum bands” – the ITU obligations. Where a Member State considers that a notification to the national regulatory authority is sufficient for the undertakings offering electronic services, no administrative decision of the local authority should be necessary for exercising the corresponding rights (Article 13).

The second part of the Directive devoted to “Networks” specifies procedures for the access to radio spectrum (authorization). When authorizing the use of radio spectrum, Member States should promote its harmonization by ensuring the predictability and consistency in granting of corresponding rights, and by applying the most appropriate and least onerous authorization systems possible (Article 45). When authorizing the use of radio spectrum, the granting of individual rights should be limited to “situations where such rights are necessary” (Article 46). When deciding about the regime for authorization, several criteria have to be taken into account, including the need to protect against harmful interference – this would mean that in the majority of cases of authorizing space services, an individual authorization would be the rule. The Directive formulates also the criteria for granting individual authorization – the applications will be considered pursuant to objective, transparent, proportionate, and non-discriminatory procedures and eligibility criteria (Article 48).

Part I, Title IV, Chapter II of the Electronic Communications Code expands the rules adopted by the Decision No 676/2002/EC – Radio Spectrum

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32 Directive 2002/21/EC of the European Parliament and of the Council of March 7 2002 on common regulatory framework for electronic communications networks and services (Framework Directive) and following legal acts.

Decision,<sup>33</sup> which partly harmonized the use of radio spectrum in the EU. It contains provisions on the coordination of policy approaches of the Member States to the spectrum, establishes a general methodology to ensure harmonized conditions for availability and use of spectrum, and formulates the duty of information on the use of frequencies of the EU Member States. In cases of harmonized assignments of radio spectrum, such as the 3,4-3,8 GHz band for the future use with 5G,<sup>34</sup> Member States are hindered to impose any further conditions which would restrict the correct implementation of the common assignment (Article 36).

Other than a harmonized application of the Directive through the national regulatory agencies creating a barrier to the internal market can be sanctioned by appropriate recommendations or decisions of the Commission (Article 38). Furthermore, as a further means of harmonization, the Member States are encouraged to apply non-compulsory standards published by the Commission in the Official Journal of the EU for ensuring the interoperability of services (Article 39).

### **3.3. Member States**

The addressees of the rules formulated in the Directive are independent national regulatory authorities of the Member States – “administrations” in the sense of the ITU Radio Regulations (RR 1.2). Those should promote connectivity, competition, investment, applying predictable regulatory approaches, by favoring the effective, efficient, and coordinated use of radio spectrum (Article 3). In the area of frequency management, they should carry out the spectrum management and adopt corresponding decisions (Article 5). The NRA’s are charged by specific tasks – such as to ensure that the use of radio spectrum is organized on their territories that no EU Member States are prevented from allowing on its territory the use of harmonized radio spectrum especially due to cross-border harmful interference (Article 28).

### **3.4. Relation to BEREC**

NRAs are supposed to work closely with the EU Commission and BEREC – the Body of European Regulators for Electronic Communications, a technical body with expertise on electronic communications composed of representatives from NRAs and the Commission. BEREC was established for fulfilling specific tasks, such as issuing guidelines, reporting on technical matters, keeping registers, list of databases and delivering opinions on internal markets procedures for draft national measures on market

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33 Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision).

34 Commission decides to harmonize radio spectrum for the future 5G, 24.1.2019, ec.europa.eu.

regulation.<sup>35</sup> Its work is supported by “BEREC Office,” a body of the Union with legal personality with a seat in Riga. This body has the right to request “all necessary information” from the NRAs (recital 37). However, BEREC is not seen as representing the Union position to an outside audience or a committing the Union to international obligations (recital 20).

There is no parallel to the ESA in the sphere of spectrum management, but perhaps the CEPT<sup>36</sup> could be mentioned, which has been mandated by the European Commission to fulfill specific tasks, e.g. to develop a European portal for spectrum information and to collect the information of the EU Member States about the use of radio spectrum on their territories.<sup>37</sup>

In the ITU, the Union – part of the category “Regional and other International Organizations” and participant in the work of all its three Sectors<sup>38</sup> – uses also specific means to achieve a harmonized approach of Member States to spectrum. The 2012 Radio Spectrum Policy Decision establishing a multiannual radio spectrum policy programme<sup>39</sup> encompasses provisions on the obligatory coordination of policy approaches of the Member States to the spectrum. Any act of acceptance of an ITU agreement by an EU Member State has to be accompanied by a declaration stating that the State will apply the agreement in accordance with its obligations under the Lisbon Treaty (Article 10), meaning especially Article 4 TEU formulating the principle of sincere cooperation.

### 3.5. Outlook

Contrary to regulations that are directly applicable in the Member States, directives are binding the Member States as to the result to be achieved and leave to the national authorities the choice of form and methods (Article 288 TFEU). In the case of the Electronic Communications Code, the EU Member States were obliged to transpose the Directive in their national legal order by 21 December 2020 and apply the corresponding measures from the same date (Article 124). It seems to be not without any problems. In February

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35 Regulation (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for the Support for BEREC (BEREC Office), L 321/1. The Seat of the Office is in Riga.

36 European Conference of Postal and Telecommunication Administrations.

37 EC Decision 2007/344/EC on harmonised availability of information Regarding Spectrum Use within the European Community.

38 EU is not identical with the Region 1 of the ITU which is composed of the European States, Armenia, Azerbaijan, the Russian Federation, Georgia, Kazakhstan, Mongolian Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan, Turkey and Ukraine, and the whole African continent, Radio Regulations, 5.3.

39 Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme, OJEU L 81/7.

2021, only Greece, Hungary, and Finland have notified to the Commission that they adopted all necessary measures for transposing the Directive, and the Commission opened infringements procedures against other 24 EU members for not transposing these new rules.<sup>40</sup>

#### 4. Conclusion

The European Union regulated two areas, space and electronic communication, recently by one legislative method – recasting. Instead of being confused by several, partly overlapping legal documents, the user can open a single legal act which complements all its predecessors by some newly elaborated rules. Both discussed documents aim at streamlining the system of governance of specific European activities, strengthening the integration in a given area. It was not a surprise that their adoption was preceded by long battles concerning the scope of competences of various actors.<sup>41</sup> These are the similarities of both documents.

The list of differences is much longer. First, the texts are based on different legal bases: Article 189(2) TFEU in case of the European space programme and 114 TFEU in case of the Electronic Communications Code. More importantly, the purpose of these legal acts was different. In case of the 2018/20 space programme proposal, the target was a creation of a unified framework of the governance of space projects owned and managed by the European Union; therefore, the regulatory efforts were directed mostly into the interior of the EU. Consequently, the Proposal cannot rely on specific traditional institutions such as the NRAs in the Communication Code during its implementation. The different entities, including the Constituting National Entities of the SST are in their deliberate vagueness not comparable to the competences of the NRAs and the elaborated procedures on the basis of which they act. In the contrary, the target of the Communications Code are procedures, which are applied mainly by the Member States and their established regulatory agencies, is the direction of the core of the regulation points to the Member States.

The different scope of the legal acts is connected with the form selected for their elaboration – a proposal of a regulation directly binding the entities cooperating in the space programme on one hand, and a directive, which has to be transposed into domestic law in case of electronic communications on another hand.

From the perspective of public international law, it is interesting to see the relation of both documents to international structures responsible for

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40 Commission opens infringement procedures against 24 Member States for not transposing new EU telecom rules, Press Release, 4 February 2021.

41 The Proposal for the space programme has not been adopted formally at the time of the submission of the contribution.

organizing activities in the specific area. The Union is neither formally bound by the UN space treaties, nor is it Party to the ITU Constitution, Convention, and Radio Regulations. The consequence is that by implementing its programmes, it has to rely on the registration practices either of the ESA in the space area or of one of its Member States in relation to the ITU. However, the Member States are not completely free in relation to the ITU. The Union disposes with a powerful legal instrument harmonising their approach – an obligatory declaration stating that they will apply international agreements regarding radio spectrum solely in accordance with their obligations under the Lisbon Treaty. Such obligation would be hardly imaginable in the area of space activities. Additionally, the Proposal of the Regulation obliges the Member States to guarantee the spectrum necessary for the development and implementation of the European Space Programme. Consequently, the question whether these two legal acts have a common denominator and are proceeded in an integrated manner, can be answered in the affirmative only in relation to the legislative method of collecting legal documents in one codex-like legal material, with the aim to further strengthen the European integration in a given area.

