

## TWO SPACE AGENCIES FOR THE EUROPEAN UNION. NECESSITY OR ANACHRONISM?

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**Abstract:** *Space activities have undergone unprecedented progress in recent years and the European Union is also making a significant contribution to this progress. Historically, the European Space Agency (ESA) is the pivotal agency for the management of space activities of European states and of the European Union. From 2021, the European Union uses its own European Union Agency for the Space Programme (EUSPA) to manage some of its space activities. Both organizations currently provide services to the European Union in the field of space activities. This causes many challenges in division of responsibilities or division of the funding of space activities. The aim of this article is to analyze the mutual relations of ESA and EUSPA in historical contexts and to deduce the further direction of mutual relations of these organizations. Article also analyses the purpose and scope of these organizations and theories of possible options of cooperation between them.*

**Keywords:** *Space policy, Space law, ESA, EUSPA, Space agency*

### INTRODUCTION

With the increasing interconnection and greater integration of the member states of the European Communities and then the European Union, there is also an increase in areas that are uniformly managed within the framework of the European Union bodies to achieve better efficiency and competitiveness. Newer areas include the legal regulation of space activities. For a long time, there have been debates about the most appropriate organizational form for managing the European Union's space activities. Historically, the European Space Agency (ESA) was offered for this activity, but since it is not a European Union body, this option creates complications. In 2021, the European Union Agency for the Space Programme (EUSPA) is established, and within the framework of some European Union countries there is a situation where they have their own national space agency, they are members of ESA, and in addition they are also members of the European Union, and therefore EUSPA. Due to the current development of space law, it is essential for the European Union to be able to assert its positions in space development, which would not be possible in a situation where ESA was the only agency. In addition, the European Union will have to deal with outer space from the point of view of defense strategy in the future, as the establishment of military space forces will become more of a rule in the future and ESA is an agency serving exclusively peaceful purposes. Division of space affairs between ESA and the European Union necessarily causes a number of difficult situations that have had to be solved over the years, for example in the necessity of strict division of responsibilities of organizations, the necessity of dividing the funding of space activities while maintaining economy and also different competitive rules these organizations. The question is why the EU uses for its space activities two space agencies

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(EUSPA as internal space agency, ESA as external space agency) and how the position of the institutions dealing with fundamental issues of space activities in the European Union should be adjusted in the future.

The aim of this work is to analyze the mutual relations of ESA and EUSPA in historical contexts and to deduce the further direction of mutual relations of these organizations and to find out the reasons for the establishment of EUSPA at a time when the EU enjoys services in the field of space activities already established by ESA. The work will briefly map the creation of ESA and the space activities of the European Union to their common intersection and, subsequently, the cooperation between ESA and the European Union. The purpose and scope of these organizations will be analyzed to find out whether there is any overlap, and the theories of possible variants of cooperation between ESA and the European Union will also be analyzed. As a result, these analyzes will show how important these organizations are in solving the space activities of the European Union and what solutions are offered in the framework of the future development of these organizations' activities.

The above-mentioned historical and legal analysis, comparison of competences and scope, including financing, should lead to an answer to the question of whether there is a need for two organizations for the European Union, which is also the aim of the work, together with the effort to find a better option for the future of the EU space program.

## I. HISTORICAL CONTEXT

This chapter maps the creation of ESA, the beginnings of the European Union's involvement in space activities and the subsequent cooperation between these two organizations. It is included here to bring closer the context in which the mutual relationship of these organizations developed and to understand what resulted from later considerations on the mutual connection of ESA and the European Union.

### I.1 The creation of ESA

In 1964, the European Launcher Development Organization (ELDO) was established as the first institution that dealt with space activities in the territory of the current European Union, and the European Space Research Organization (ESRO) was established by the Convention on the Establishment of the European Space Research Organization, as an organization serving exclusively scientific activities. The original idea was that Western Europe should have only one organization that would be dedicated to both the development of launch vehicles and satellites, but due to the riskiness of the development of launch vehicles at the time, it was preferred to create two organizations.<sup>1</sup> In 1975, these organizations merged into the European Space Agency (European Space Agency (ESA))<sup>2</sup> and Europe had one organization for space activities as it was originally intended. The merger took place on the basis of the Convention for the establishment of the European

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<sup>1</sup> KRIGE, John - RUSSO, Arturo. *A History of the European Space Agency 1958–1987*. Noordwijk: ESA Publications Division. 2000, Vol. 1, pp. 42–45, 81–83.

<sup>2</sup> Convention for the establishment of a European Space Agency, 30 May 1975 (CSE/CS(73)19, rev. 7).

Space Agency, which defines the establishment, purpose and other rules and is the basic document for the functioning of ESA.

The purpose of the ESA is defined very broadly and is an excellent basis for conducting and regulating space activities. It is also important to note that ESA, as an organization, develops activities for peaceful purposes only.

## 1.2 The beginnings of EU space activities

Concerning the beginning of the history of the EU, the most often mentioned moment is the establishment of the European Coal and Steel Community (ECSC) by the Treaty of Paris in 1952.<sup>3</sup> In 1957, the Treaties of Rome were signed and the European Economic Community<sup>4</sup> and the European Atomic Energy Community<sup>5</sup> were established. A few more decades of European integration follow, in which space law does not yet have a place. Space programs were handled by individual members independently within national space agencies or the European Space Agency. Within the framework of the European Communities, there is not even the authority to regulate space law in any way. We could only find the first shred of authority to engage in outer space in the Single European Act<sup>6</sup> of 1987, which introduced several new policy areas in which decisions were to be taken by a qualified majority. It was, among other things, an area of research and development,<sup>7</sup> and it was the first harbinger of the involvement of the European Communities also in research and development in outer space.

In 1993, the Maastricht Treaty, or the Treaty on the European Union,<sup>8</sup> enters into force, leaving the area of research and development in the first Community pillar. The Treaty of Amsterdam<sup>9</sup> of 1999 and the Treaty of Nice<sup>10</sup> of 2003 did not change the European Union's approach to the possibilities of legal regulation of outer space.

A big leap in the field of EU space law was the Treaty of Lisbon,<sup>11</sup> which entered into force in 2009. It stipulates that the Union has the power to develop activities in the field of research, technological development and space, in particular to define and implement programmes but still allows member states to exercise their own programmes.<sup>12</sup> Title XIX – Research and technological development and space was incorporated and within its framework the provision of Article 189 was added: “To promote 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 support joint initiatives,

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<sup>3</sup> Treaty establishing the European Coal and Steel Community, 18 April 1951.

<sup>4</sup> Treaty establishing the European Economic Community, 25 March 1957.

<sup>5</sup> Treaty establishing the European Atomic Energy Community, 25 March 1957.

<sup>6</sup> Single European Act, 17 February 1986.

<sup>7</sup> Single European Act, 17 February 1986, Chapter VI, Research and technological development.

<sup>8</sup> Treaty on European Union, 7 February 1992.

<sup>9</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, 2 October 1997.

<sup>10</sup> Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed at Nice, 26 February 2001.

<sup>11</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007 (2007/C 306/01).

<sup>12</sup> Treaty on the Functioning of the European Union, 13 December 2007, Article 4.

support research and technological development, and coordinate the efforts needed for the exploration and exploitation of space.”<sup>13</sup> This article is the basis for the development of the space policy of the European Union. Finally, the European Union is clearly enabled to participate significantly in space activities. Furthermore, Article 189 says: “The Union shall establish any appropriate relations with the European Space Agency.”<sup>14</sup> We can see that at this stage the Union is already making great progress in adjusting its own space activities but still relies on cooperation with ESA.

The European Union space program finally comes into existence in 2021 by Regulation (EU) 2021/696 of the European Parliament and of the Council, establishing the Union Space Programme and the European Union Agency for the Space Programme.<sup>15</sup> This space program is designed for the period 2021–2027 and sets new goals and key points in the European Union’s space efforts. The main objectives include maintaining the leading position of the European Union in the field of space, ensuring competitiveness, ensuring the ability to solve current climate and technological challenges, supporting the political priorities of the Union, increasing the security of the Union and the Member States, supporting the development of the space economy of the Union, with special regard to small, medium and new enterprises.

### 1.3 EU and ESA cooperation

To be sure, it should be noted that the ESA was not and is not a European Communities or European Union body, although due to its membership base and geographical location it maintained close cooperation with some European Communities states and still maintains close cooperation with the European Union. However, it should be borne in mind that ESA members are not only members of the European Union (but also Great Britain, Norway, Switzerland and, with a special status, Canada as well), which may have different interests in the field of outer space than the European Union, but also not every member of the European Union is a member of the ESA (although of the 27 states of the European Union, only Bulgaria, Croatia, Cyprus and Malta are not members of the ESA, but these have a cooperation agreement with the ESA. Lithuania, Latvia, Slovakia and Slovenia are associate members).

Regarding the political nature of the ESA, it is an intergovernmental international organization without the supranational elements that the EU has. Member States determine the political direction of the organization at regular meetings and reflect the interests and priorities of individual member states.

In 1985, the European Commission acquires the status of an independent observer at the meetings of the ESA Council at the ministerial level. Even then, the principle of separation of their various mandates was applied.<sup>16</sup>

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<sup>13</sup> Treaty on the Functioning of the European Union, 13 December 2007, Article 189 (1).

<sup>14</sup> Treaty on the Functioning of the European Union, 13 December 2007, Article 189 (3).

<sup>15</sup> Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 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.

<sup>16</sup> HOBE, Stephan – HOFMANNOVÁ, Mahulena – WOUTERS, Jan (ed.). *A coherent European procurement law and policy for the space sector: towards a third way. Cologne studies in international and European law*. Berlin: LIT, 2011, pp. 3–4.

The cooperation between the European Commission and ESA graduated in 1998 in the form of European Geostationary Navigation Overlay Service (EGNOS), which is the first European company in the field of satellite navigation. EGNOS was developed on the basis of a tripartite agreement between the European Space Agency, the European Commission and Eurocontrol (the European Organization for the Safety of Air Traffic). It is the first European Global Navigation Satellite Systems (GNSS) activity and is the forerunner of Galileo, a complete global navigation satellite system under development in Europe.<sup>17</sup>

In May 2002, Regulation setting up the Galileo Joint Undertaking was adopted.<sup>18</sup> GALILEO is the European satellite radio navigation and positioning program. Launched by the European Commission and jointly developed with the European Space Agency, it provides the European Union with an independent technology that competes with the US GPS and Russia's GLONASS systems. The joint venture had two main tasks. The first was the implementation of the development phase. To this end, the Joint Undertaking has mandated the European Space Agency to carry out the activities required during the development phase in the space and related Earth segment. The second task was to prepare for the next phases of the program, in which the joint venture mobilized the public and private sectors for the necessary funds and established the management structures for the various subsequent phases of the program.<sup>19</sup>

By Council Regulation on the establishment of management structures for European satellite navigation programs,<sup>20</sup> a Community agency called the European GNSS<sup>21</sup> Supervisory Authority (GSA) is established to manage the public interest in relation to the European GNSS programs and to be the regulatory body for those programs. Further Council Regulation establishing management structures for European satellite navigation programs<sup>22</sup> takes over all activities carried out by the Galileo Joint Undertaking. It is recommended to liquidate the Galileo Joint Undertaking. Given the essential role of the ESA in the design and development of systems, which includes consideration and knowledge of all aspects related to the security and safety of these systems, ESA should be represented as an observer on the Management Board and in the System Safety and Security Committee. Furthermore, the representation of the general secretary, a high representative in the board of directors, should be similarly determined.<sup>23</sup>

An important milestone in the EC/ESA relationship was the signing of the Framework Agreement<sup>24</sup> in 2004. This agreement specified the cooperation between the European

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<sup>17</sup> EUSPA. In: *EGNOS* [online]. [2026-01-09]. Available at: <https://www.euspa.europa.eu/european-space/egnos>.

<sup>18</sup> Council Regulation (EC) No 876/2002 of 21 May 2002 setting up the Galileo Joint Undertaking.

<sup>19</sup> In: *Galileo Joint Undertaking* [online]. [2023-01-09]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l24098&from=EN>.

<sup>20</sup> Council Regulation (EC) No 1321/2004 of 12 July 2004 on the establishment of structures for the management of the European satellite radio-navigation programmes.

<sup>21</sup> Global Navigation Satellite System.

<sup>22</sup> Council Regulation (EC) No 1942/2006 of 12 December 2006 amending Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio-navigation programmes.

<sup>23</sup> Council Regulation (EC) No 1942/2006 of 12 December 2006 amending Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio-navigation programmes.

<sup>24</sup> Framework Agreement between the European Community and the European Space Agency.

Community and the European Space Agency while maintaining the distinct tasks and responsibilities of each party.

In 2008, Regulation on the further implementation of the European satellite navigation programs (EGNOS and Galileo)<sup>25</sup> defined a new framework for public administration and financing of the programs. It lays down the principle of a precise division of powers between the European Community represented by the Commission, the GSA and the European Space Agency, giving the Commission responsibility for the management of the programs and entrusting it with the tasks originally entrusted to the GSA. It also provides that GSA, in carrying out the tasks entrusted to it, will ensure that the Commission's role as administrator of the programs is respected and that GSA will act in accordance with the instructions issued by the Commission.<sup>26</sup> This regulation was replaced by Regulation (EU) No. 1285/2013 of the European Parliament and of the Council on the establishment of European satellite navigation systems and their use.<sup>27</sup>

In 2010, Regulation No. 912/2010 of the European Parliament and Council on the establishment of the European GNSS Agency was issued,<sup>28</sup> which was amended in 2014 by Regulation No. 512/2014 of the European Parliament and Council.<sup>29</sup> These regulations restructure the GSA. There is a change of name to the European GNSS Agency (the abbreviation remains GSA), and it reflects the changes in the agency's powers and the reduced scope of activities.

Finally, as noted above, in 2021 the EU Space Programme and the EUSPA were established by Regulation (EU) 2021/696 of the European Parliament and of the Council, replacing the GSA.<sup>30</sup> Currently, certain relations are governed by agreements between ESA and the EU. One such agreement is the Financial Framework Partnership Agreement (FFPA).<sup>31</sup> Article 31 of the Regulation (EU) 2021/696 lays down the mandatory content of the agreement. In general it defines the allocation of roles and responsibilities between the Commission, EUSPA and ESA, establishes how EU funds are entrusted, managed and controlled, ensures compliance with EU security and procurement rules, sets performance monitoring and corrective mechanisms, and determines the principles for ESA's remuneration, thereby safeguarding the Union's financial, security and strategic interests in the implementation of the EU Space Programme. Other agreements between ESA and the EU include Contribution Agreements, under which the Commission ent-

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<sup>25</sup> Regulation (EC) No 683/2008 of the European Parliament and of the Council of 9 July 2008 on the further implementation of the European satellite navigation programmes (EGNOS and Galileo).

<sup>26</sup> Regulation (EC) No 683/2008 of the European Parliament and of the Council of 9 July 2008 on the further implementation of the European satellite navigation programmes (EGNOS and Galileo).

<sup>27</sup> Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council.

<sup>28</sup> Regulation (EU) No 912/2010 of the European Parliament and of the Council of 22 September 2010 setting up the European GNSS Agency, repealing Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes and amending Regulation (EC) No 683/2008 of the European Parliament and of the Council.

<sup>29</sup> Regulation (EU) No 512/2014 of the European Parliament and of the Council of 16 April 2014 amending Regulation (EU) No 912/2010 setting up the European GNSS Agency.

<sup>30</sup> Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 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.

<sup>31</sup> The Financial Framework Partnership Agreement (FFPA) signed on 22 June 2021.

rusts ESA with specific technical and operational tasks, for example in the implementation of Copernicus and other components of the EU Space Programme. ESA continues to be an organization with deep knowledge and experience in the field of space activities, and the regulation itself assigns this organization a supporting role within the space activities of the European Union, taking appropriate measures to ensure the protection of the interests of the Union.

## II. POSSIBILITIES OF COOPERATION BETWEEN ESA AND THE EU

From the above summary of developments, it can be seen that the original leading role of ESA in the field of space activities is slowly declining over time, and we have two almost equal space agencies that must carefully divide their powers. Historically, there have been ideas about how to deal with space activities within the European Union and what the deepening of cooperation between ESA and the European Union should look like.

In 2000, the „Report of the Three Wise Men“ was published,<sup>32</sup> which expressed the conviction to strengthen the space policy of the European Union. This is to be achieved by decision-making on space policy at the highest levels of the European Union and therefore should be aimed at making ESA the de facto space agency of the European Union, and its scope should even be extended to programs related to the development of European defense policy.

In his 2009 article, Thomas Hoerber summarizes three possibilities for relations between the European Space Agency and the European Union. The first is the incorporation of the European Space Agency into the European Union. The second option is membership of the European Union in the European Space Agency. The third option is the European Space Agency as a space agency of the European Union without incorporation.<sup>33</sup>

A 2014 European Commission report offered four options for the development of EU-ESA relations.

- The first default option was to leave relations unchanged, i.e. continuation according to the framework agreement of 2004.

- The second option was strengthened cooperation within the current state, i.e. formal continuation with divided powers within the framework of the new framework agreement, but it would already have new mechanisms strengthening the cooperation between ESA and the European Union.

- The third option was the creation of a new European Union pillar that would operate according to European Union rules and this pillar would be administered within the framework of the ESA, therefore the ESA would have to comply with all the rules of the European Union within the framework of this pillar.

- The fourth option envisaged that ESA would become a European Union agency, while retaining some of its features as an intergovernmental agency.<sup>34</sup>

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<sup>32</sup> BILDT, Carl – PEYRELEVADE, Jean – SPÄTH, Lothar. *ESA-24784 Towards a Space Agency for European Union*. In: *esamultimedia.esa.int* [online]. [2026-02-23]. Available at: [https://esamultimedia.esa.int/docs/annex2\\_wisemen.pdf](https://esamultimedia.esa.int/docs/annex2_wisemen.pdf).

<sup>33</sup> HOERBER, Thomas. *ESA+EU: Ideology or pragmatic task sharing? Space Policy*. 2009, No. 25, pp. 206–208.

<sup>34</sup> REPORT FROM THE COMMISSION Progress report on the establishment of an effective relationship between the European Union and the European Space Agency (COM/2014/056 final) 6 February 2014. In: *EUR-Lex* [online]. [2026-01-23]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013DC0056>.

Frans G. von der Dunk commented on this report as follows: “As of now, however, the two ‘middle’ options are the most likely ones to be further investigated, and possibly be chosen from: improved cooperation under the status quo (meaning ESA will remain formally independent from the European Union, yet increasingly be tasked by the latter, effectively to that extent taking over from the combined member states as it were) or creating an ‘EU pillar’ within ESA, exclusively working for the Union, under its guidance and in accordance with its legal principles such as fair competition. Whichever option is finally chosen, another chapter in European space legal development will almost certainly result.”<sup>35</sup>

From the context of the historical development described in the previous chapter, it can be seen that there is a strengthening of the role of the European Union in space activities and an effort by the European Commission to increase control over these activities through the body of the European Union. With the creation of the EUSPA agency, which now operates alongside ESA, and with the new space program of the European Union, it is impossible to speak of one of the above-mentioned variants occurring. ESA does not become an agency of the European Union, nor does ESA enforce the rules of the European Union. There are changes that do not necessarily mean increased cooperation, but rather a strengthening of the European Union in the area of space activities. So, it looks like a fifth option has been created, where EUSPA is slowly taking over the space programs of the European Union states with the aim of becoming the primary space agency for the European Union.

Hoerber now proposes that the EU should take over the military aspect of space, with ESA moving away from its territorial role as a European international organization and becoming a global international organization and a kind of global institute for space research and innovation.<sup>36</sup> This would, however, lead to an even greater fragmentation of funding for EU space projects and problematic secrecy in the work on EU space defense projects, which would still require ESA technology and specialist staff.

Finally, Lieberman considers the possibility of governing ESA at the EU level to be ruled out due to the establishment of EUSPA and DG DEFIS of the European Commission and therefore proposes geographical expansion of ESA while maintaining its mission in terms of international cooperation for peaceful purposes and prosperity so that outer space is not only a playground for commercial and military activities.<sup>37</sup>

### III. SCOPE OF ESA AND EUSPA

In this chapter the purpose of both organizations will be compared. Due to essentially the same territorial scope, the competences of the two organizations should be different, especially when we consider the financial participation of the European Union in both organizations.

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<sup>35</sup> DUNK, F. G. von der – TRONCHETTI, Fabio (ed.). *Handbook of space law. Paperback edition. Research handbooks in international law*. Cheltenham: Edward Elgar Publishing, 2017, pp. 268.

<sup>36</sup> LIEBERMAN, Sarah – HOERBER, Thomas. From fragmented Space to the Space University Institute. In: SSRN [online]. [2026-02-23]. Available at: <https://ssrn.com/abstract=4358753>.

<sup>37</sup> LIEBERMAN, Sarah – HOERBER, Thomas. Finding space for the European Space Agency. *Space policy*. 2024, Vol. 69.

### III.1 Scope of ESA

ESA's competences derive from the ESA Convention and are defined as the purpose of this organization in Article II as follows:

“The purpose of the Agency shall be to provide for and to promote, for exclusively peaceful purposes, cooperation among European States in space research and technology and their space applications, with a view to their being used for scientific purposes and for operational space applications systems:

- a. by elaborating and implementing a long-term European space policy, by recommending space objectives to the Member States, and by concerting the policies of the Member States with respect to other national and international organisations and institutions;
- b. by elaborating and implementing activities and programmes in the space field;
- c. by coordinating the European space programme and national programmes, and by integrating the latter progressively and as completely as possible into the European space programme, in particular as regards the development of applications satellites;
- d. by elaborating and implementing the industrial policy appropriate to its programme and by recommending a coherent industrial policy to the Member States.”<sup>38</sup>

If it should be summarized in general what projects ESA is engaged in, it would be space research in many fields, manned and unmanned space flights, Earth observation, satellite navigation and satellite communication technology, development of space technologies and providing launching services at the cosmodrome in Kourou.

Since the ESA serves only peaceful purposes, the possibility of developing and securing military defense means for outer space is not within its competences.

### III.2 Scope of EUSPA

It will be continued with the competences of the European Commission and EUSPA, which as a European Union agency serves to support the interests of the European Union. These are listed in Regulation 2021/696 of the European Parliament and of the Council establishing the Union Space Programme and the European Union Agency for the Space Programme.<sup>39</sup> The competences of the Commission and EUSPA are specifically regulated in its Articles 28 and 29. Article 30 regulates the competences that the European Union delegates to the ESA, provided that the interests of the Union are protected. In this system, the Commission has, among other things, overall responsibility for the implementation of the European Union space program, including in matters of security, it manages the components of the program that are not entrusted to another entity and coordinates and manages tasks and activities between entities.<sup>40</sup> EUSPA mainly provides security accreditation and assigned activities related to the EGNOS, Galileo and

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<sup>38</sup> Convention for the establishment of a European Space Agency, 30 May 1975, Article II.

<sup>39</sup> Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 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.

<sup>40</sup> Article 28, Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 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.

Copernicus and advises the Commission on space-related research.<sup>41</sup> The Commission therefore implements the European Union's space program, which consists of several components, namely: Galileo, EGNOS, Copernicus, SSA and GOVSATCOM and whose objectives are, inter alia, to promote the Union as a global actor in the space sector and to strengthen European space diplomacy, strengthening the autonomy of the Union, especially from a technological point of view, assisting the development of a strong space economy of the Union, supporting the possibilities of access to space, provision of data, information and services related to space.<sup>42</sup> It also supports launch services into space as well as the adaptation and development of technologies for launch services and space infrastructure<sup>43</sup> and other measures to support an innovative and competitive Union space industry.<sup>44</sup>

The scramble of agencies for competence in the field of space programs causes, among other things, the promotion of the own interests of individual states with a space program. According to Bertrand de Montluc, in some cases the ESA is the driving force, but at other times the outcome is influenced by the will of some member states and their desire to dominate industrial markets, with the whole project clearly marked as an initiative of Europe for the "European interest".<sup>45</sup> We must realize that each of the agencies has a different system of funding and also a different system of competition for contracts and the return of funding. Within the framework of ESA, the principle of geographical or fair return is used, i.e. the ratio (industrial return coefficient) between the country's share of the weighted value of the contracts and its share of the contribution paid to the agency must be X percent by the end of the given period.<sup>46</sup> Within the European Union, the principle of free economic competition with strict rules applies.<sup>47</sup> When implementing European Union programmes, ESA is obliged to comply with European Union rules and the strict best value principle enshrined in European Union financial regulations. This causes difficulties, especially when programs are financed by mixed ESA and European Union funds.<sup>48</sup>

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<sup>41</sup> Article 29, Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 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.

<sup>42</sup> Article 4, Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 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.

<sup>43</sup> Article 5, Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 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.

<sup>44</sup> Article 6, Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 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.

<sup>45</sup> MONTLUC, Bertrand. *The new geostrategic context for space and the positioning of Europe. Yearbook on Space Policy 2008/2009 Setting New Trends*. Wien: Springer, 2010, pp. 160–161.

<sup>46</sup> Industrial policy and geographical distribution. In: ESA [online]. [2023-01-15]. Available at: [https://www.esa.int/About\\_Us/Business\\_with\\_ESA/How\\_to\\_do/Industrial\\_policy\\_and\\_geographical\\_distribution](https://www.esa.int/About_Us/Business_with_ESA/How_to_do/Industrial_policy_and_geographical_distribution).

<sup>47</sup> European Union. 2022 *Competition rules in the EU*. In: *European Union* [online]. [2023-01-15]. Available at: [https://europa.eu/youreurope/business/selling-in-eu/competition-between-businesses/competition-rules-eu/index\\_en.htm](https://europa.eu/youreurope/business/selling-in-eu/competition-between-businesses/competition-rules-eu/index_en.htm).

<sup>48</sup> COGEN, Marc. *An Introduction to European Intergovernmental Organizations*. New York: Routledge, 2015, pp. 224–225.

It should still be thought that the space agencies for the European Union should work in such a way that the European space industry is competitive. Within the European Union, it should also not happen that the entire space industry reaches only the largest states of the European Union thanks to the rules. The principle of fair return has allowed many European companies to acquire expertise and know-how in a field that would otherwise have remained limited to the traditional big players in established European space powers such as France, Germany, Italy and the United Kingdom.<sup>49</sup> Finally, von der Dunk summarizes the relationship between ESA, the European Union and the Member States as follows: „ESA’s role itself further compounded the policy problems for the Union in pressing for any application of the competition regime in the space sector, most tellingly in the manufacturing industry where at least several major consortia could be seen to operate—under a regime which was anathema for any true believer in competition. As no subjugation of ESA to the Union materialized, reflecting the wishes of ESA member states—which included the major EU member states as well—to keep ESA operating more or less as it used to for decades, it became clear that there would be little or no political support for any Commission legislative initiatives in this area. And finally, also the Commission recognized that the overall interest in allowing the European space industry to compete on a global scale outweighed any interest in creating competition where the natural environment for competition would be largely lacking—as duly reflected also in both ESA and EU rules allowing for exceptions to the suspiciousness, respectively prohibition, of anticompetitive behavior.”<sup>50</sup>

### III.3 Summary

When comparing the competences mentioned above, there is no duplication in the activities of the ESA and the European Union. The programs that have historically been financed by the European Union and therefore belong to it are strictly divided in terms of competence and there is no overlap. However, the overlap occurs within the purpose and goals of the organizations with an almost identical membership base. If we take into account that for 2024 the European Union contribution to ESA amounts to 1822.6 million euros, which is more than a quarter of the entire ESA budget, and most of the other contributions come from the Member States of the European Union,<sup>51</sup> it would be more economical if these funds were used within one organization, especially when both organizations operate in the implementation of European space policy and space activities and programs, in the case of the European Union, in addition, in the implementation of security space policy.

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<sup>49</sup> MASSON-ZWAAN, Tanja - HOFMANN, Mahulena. *Introduction to Space Law. 4.edition*. Alphen aan den Rijn: Wolters Kluwer International, 2019, pp. 62-64.

<sup>50</sup> DUNK, Frans G. von der. The European Union and Space – Space for competition? *Proceedings of the 61<sup>st</sup> (2018) Colloquium on the Law of Outer Space*. 2018, Vol. 61, pp. 285-300.

<sup>51</sup> ESA. Funding. In: *ESA* [online]. [2024-01-15]. Available at: [https://www.esa.int/About\\_Us/Corporate\\_news/Funding](https://www.esa.int/About_Us/Corporate_news/Funding).

## CONCLUSION

Institutions ensuring space programs have a very specific structure on the territory of the European Union. The national space agencies and now the two international organizations, ESA and EUSPA, stand side by side here. This arrangement given by historical development causes complications both from a political and legal point of view. In the 1960s and 1970s, when ESA was the main driver of space research in Western Europe, no one had any idea how extensive the European Union project would be and what strategic importance outer space would acquire. ESA is undoubtedly the prime mover of space research in Western Europe and its funding system has certainly contributed significantly to the development of the space industry in ESA member states. If we look at the development of space activities in Europe, we will see that ESA, in cooperation with the European Commission, has been able to move Europe to the forefront of achievements in scientific space activities. However, the establishment of the European Union pushes the needs in outer space beyond what ESA can cover. After various efforts to find an ideal model for solving space activities within the European Union, the establishment of EUSPA is a logical outcome. Many models have already been presented that have tried to outline the future of space agencies for the European Union, but if we look at historical developments, it seems that everything is pointing towards the increasing importance of EUSPA, as this agency will be central to the members of the European Union when deciding on the next the development of space activities of the European Union. When comparing the development of competences and powers in European space between ESA and the EU, a gradual tendency of the EU to assume more powers and powers can be seen. Current developments show that it will no longer be necessary for the European Union to entrust all its projects to the ESA agency, however, for the smooth functioning of the EUSPA agency, this will still be appropriate for some time. Both organizations basically cover the same membership base, and their purpose is also almost the same. ESA has the advantage of many years of experience and a built-in structure for the development and implementation of space activities, which EUSPA lacks so far, but it is only a matter of time before EUSPA catches up with ESA in this respect as well. An important role for the European Union will be played by the possibility of EUSPA to carry out activities also in the field of space defense, which will be an important strategic element in the future. As was said above, there is no overlapping of competences in both organizations, and due to the almost identical purpose of the organizations, possible overlap is strictly guarded. According to the latest reports, the EU and ESA announced a new beginning of space cooperation,<sup>52</sup> but the fact remains that the space for ESA's activity in European Union projects is rather decreasing. Moreover, with newer technologies, in some cases the distinction between the use of air and space is blurring. These situations also benefit the European Union, where some of the competences could be taken over by EASA.<sup>53</sup>

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<sup>52</sup> FOUST, Jeff. *EU and ESA proclaim "fresh start" in space cooperation*. In: *SpaceNews* [online]. 23. 6. 2021 [2023-01-06]. Available at: <https://spacenews.com/eu-and-esa-proclaim-fresh-start-in-space-cooperation/>.

<sup>53</sup> MASSON-ZWAAN, Tanja L. *Regulation of Sub-orbital Space Tourism in Europe: A Role for EU/EASA? Air & Space Law*. 2010, pp. 263-272.

The solution could go even further, where a robust system of individual administrative bodies managing aviation could be used within the EU, and there would be some kind of connection between aviation and space and the associated concentration of professional personnel. The complete disappearance of ESA or the total incorporation of this organization into the EU is essentially impossible, as it would require incredible agreement and cooperation. The way forward for the EU is therefore to gradually take over its responsibilities and become independent from ESA and increase its responsibilities in space within the system of EU bodies and individual national organizations, which are also elements in the administration of the unified European Union. This would also lead to a reduction in EU funding for ESA, while these funds could be used within the system of EU bodies managing outer space projects. The above-mentioned connection or strengthening of cooperation between aviation and space authorities could accelerate developments in the field of space flights and thus improve the European Union's position in space.