

# LUXEMBOURG

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## I INTRODUCTION TO THE NATIONAL LEGAL, REGULATORY AND POLICY FRAMEWORK

Luxembourg established itself very early on as a state fostering entrepreneurship and the development of commercial activities in the space sector. By supporting the creation of SES, one of the biggest satellite operators in the world, and by creating legislation specific to the transmission of satellite services shortly thereafter, Luxembourg has demonstrated its ability to build a favourable environment for the structural development of activities related to the use of outer space.

Luxembourg is party to the following United Nations space treaties: the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the Outer Space Treaty), signed in 1967 and ratified on 17 January 2006; the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the Rescue Agreement), signed in 1968 but not yet ratified;<sup>2</sup> and the Convention on International Liability for Damage Caused by Space Objects, signed in 1972 and ratified on 9 June 1983.

The Convention on Registration of Objects Launched into Outer Space (the Registration Convention) and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the Moon Agreement) have neither been signed nor ratified by Luxembourg. However, a draft bill of law<sup>3</sup> is currently being debated in the parliament and the ratification of the Registration Convention may still occur in 2019.

Luxembourg currently notifies all Luxembourg-registered space objects, on the basis of United Nations General Assembly Resolution No. 1721 B (XVI) of 20 December 1961, to the United Nations Office for Outer Space Affairs. Furthermore, given Luxembourg's intention to ratify the Registration Convention, there is a proposal to create a national registry of space objects to comply with the terms of the Convention.

From an institutional standpoint, Luxembourg has always benefited from governmental impetus in setting new policy standards. In this respect, the Ministry of the Economy initiated the creation of the Luxembourg Space Agency in 2018. The Agency is a department of the Ministry of the Economy and, unlike the space agencies of the other major spacefaring European countries, it does not have independent status. Under the authority of the Ministry of the Economy, the mission of the Luxembourg Space Agency is to promote the economic

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2 The ratification of the Rescue Agreement is currently being considered by the Luxembourg parliament.

3 Draft Bill of Law No. 7270 on the ratification of the Registration Convention.

development of the space sector in Luxembourg by providing support to the space industry, attracting new businesses, developing talent, offering innovative financial solutions, and supporting academic learning and research.

## **II REGULATION IN PRACTICE**

The Law of 27 July 1991 on electronic media applicable to the operation of a Luxembourg satellite system and the transmission of services by satellite (the Electronic Media Law), the Law of 30 May 2005 on the organisation of the management of frequency bands (the Frequency Bands Law) and the Law of 20 July 2017 on the exploration and use of space resources (the Space Resources Law) are the main pieces of legislation applicable to the space industry.

According to the provisions of the Electronic Media Law, no one can establish and operate a Luxembourg satellite system without first obtaining a licence (concession), granted by the government, upon the joint proposal of the Minister in charge of telecommunications and the Minister in charge of media. The national concession creates a legal nexus between Luxembourg and the licensee (concessionaire) for the implementation of Luxembourg satellite systems.

In connection with the concession and the constant necessity to monitor the space activities of Luxembourg operators (resulting from Luxembourg's international obligations), the Electronic Media Law sets a number of criteria that must be fulfilled by any operator at all times. In particular, Article 21 of the Electronic Media Law contains a non-exhaustive list of conditions that must be respected by the concessionaire. These requirements relate, among other things, to: (1) the government's right to inspect the concessionaire's articles of association, shareholding and management; (2) the conditions under which the concessionaire may make its transmission capacity available to users (and the government has the right to express its opposition to the choice of users); and (3) the conditions for the supervision of the concessionaire's activity by one or more government commissioners.

In addition, the Electronic Media Law provides for a list of specifications, which may include any additional requirements to be duly observed by the concessionaire and by the concessionaire's customers at any time. These specifications remain confidential and are adapted to the context in which each concession is awarded.

The concession is personal and non-assignable (neither against payment nor for free). It may include elements of exclusivity in the use of certain frequency bands or orbital positions, or for certain types of applications in the field of satellite telecommunications. The period of the concession is limited, but renewable.

In accordance with the provisions of Article 35 *sexies* of the Electronic Media Law the concession may be withdrawn if (1) the conditions required to obtain it are not being met, (2) the obligations set out in the specifications are not met or (3) it is not regularly operated, in accordance with the procedures laid down.

The transmission of Luxembourg services by satellite is subject to a second licence (services concession), distinct from the concession required for the establishment and operation of a Luxembourg satellite system. The services concession may be obtained upon the proposal of the Minister in charge of media and after consultation with the Luxembourg Independent Audiovisual Authority (the Audiovisual Authority).

Only legal persons governed by Luxembourg law may apply for a services concession. A set of specifications must be complied with to apply for this concession and these may be adapted according to the number of services offered by the applicant. Each specification may contain provisions on:

- a* the monitoring of the services;
- b* the government's right to inspect the operator's articles of association, shareholding and management and those of all companies involved in the operation of the services concession;
- c* the supervision of the activity of the licensed operator by one or more government commissioners; and
- d* the obligation for the operator to identify itself as a Luxembourg organisation and to contribute, through its services, to the reputation of Luxembourg.

The services concession is personal, non-assignable (neither against payment nor for free) and applies for a limited period, but is renewable. It may be withdrawn at any time in accordance with the provisions of Article 35 *sexies* if the conditions required to obtain it are no longer being met or the obligations set out in the specifications are not being met.

When the Audiovisual Authority becomes aware, either of its own volition or through a complaint, of a breach by a concession holder or a services concession holder of a provision of (1) the Electronic Media Law, (2) one of the regulations adopted pursuant to the Electronic Media Law or (3) the concession or services concession specifications, it will invite the operator to provide an explanation within one year of the breach occurring. Depending on the seriousness of the breach, it may impose disciplinary sanctions ranging from a reprimand to a fine of up to €25,000. If, subsequently, the operator does not comply with the Electronic Media Law or if it commits a repeat offence within six months of the imposed sanction, it may be fined up to €50,000. If the operator is a services concession holder, the Audiovisual Authority may propose the temporary suspension or withdrawal of the services concession and the government will ultimately decide on the sanction. The operator can appeal against the decision of the Audiovisual Authority to the Administrative Tribunal. The administrative judge may make a final decision and validate or reject the appeal.

In addition, in accordance with the Frequency Bands Law, in Luxembourg or on board a ship, boat, aircraft or any other medium subject to Luxembourg law, frequency bands may not be used without the prior authorisation of the Minister in charge of the management of frequency bands, who allocates frequency bands according to an allotment and frequency band allocation plan. The assignment of frequency bands is recorded in a public ledger called the frequencies register, which provides information on the obligations associated with frequency bands. Access to this register may be limited at the discretion of the Minister in charge of frequency bands.

The frequency allocation procedure is carried out according to objective criteria, and in a transparent manner in accordance with the frequency bands allocation plan and the Radio Regulations of the International Telecommunications Union. Where several undertakings apply for authorisation to use the same frequency or frequencies exclusively, the relevant licences shall be granted by the Minister through a public call for applications to the highest bidder, either by competitive or comparative selection. This also applies to satellite spectrum.

The obligations of the frequency licence holder are, among other things, to: (1) provide a service or use a type of technology for which frequency rights have been granted, including, where applicable, coverage and quality requirements; and (2) establish the

technical and operational conditions necessary to avoid harmful interference. Failure to fulfil these obligations carries the penalty of a fine, which can be up to €25,000 for legal persons. The Minister may also temporarily or permanently withdraw the frequency licence. The maximum fine may be doubled in the event of a repeated offence.

In the context of the growing interest in the exploration and use of outer-space resources, Luxembourg has decided to reinforce its position as a European hub for space exploration activities and to offer a legal and regulatory framework to authorise, support and monitor space exploration missions and activities.

The Space Resources Law entered into force on 1 August 2017. In accordance with its provisions, space resources may not be explored or used without a written mission authorisation from the Ministers in charge of the economy and space activities. The authorisation is granted for commercial purposes only on written application by a space resources operator, which must be a Luxembourg-based company incorporated under one of the following legal forms: a public company limited by shares; a corporate partnership limited by shares; a private limited liability company; or a European company. The authorisation is personal and non-assignable (neither against payment nor for free) and may be granted to an operator with respect to one single mission.

The authorisation is subject to: (1) the production of evidence showing the existence in Luxembourg of the central administration and of the registered office, including the administrative and accounting structures of the operator to be authorised; (2) the communication to the Ministers of the identities of the direct or indirect shareholders or members,<sup>4</sup> regardless of whether they are natural or legal persons, that have direct or indirect holdings of at least 10 per cent of the capital or of the voting rights in the operator, or, if the 10 per cent threshold is not met, the identities of the 20 largest shareholders or members; and (3) the submission for review of the risk assessment for the mission. The authorisation is also conditional on: (1) the confirmation that the annual accounts will be audited by one or more independent auditors; (2) the appointment of at least two persons for the management of the operator with adequate professional experience; and (3) the payment of a fee set by the Ministers to cover the administrative expenses incurred in relation to the processing of the application (which is between €5,000 and €500,000 depending on the complexity of the application and the amount of work involved). The scope of the above-mentioned conditions is not exhaustive as the legislator has empowered the government with the right to impose additional conditions on a case-by-case basis.

The authorisation will be refused if, taking into account the need to ensure a sound and prudent operation, the shareholders or members are found to be unsuitable. If any assessed person is replaced, the change must be communicated in advance to the Ministers who may request all information as may be necessary regarding the persons to be appointed with respect to their good repute and professional experience. The Ministers will refuse the proposed change if these persons are not of adequate professional repute or do not have sufficient professional experience, or where there are objective and demonstrable grounds for believing that the proposed change would pose a threat to the sound and prudent management of the operations.

Given the high risks involved with space exploration activity, the Space Resources Law also requires financial assets from the space operator that should be appropriate to the risk of the mission (although it is not further defined what the term ‘appropriate’ covers in practice).

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4 Members means ‘Members of a board of directors, a board of managers or any related management body of the operator’.

In addition, the risks may be covered by one of the following: (1) the financial resources of the space operator; (2) an insurance policy; or (3) a guarantee from a bank. An insurance policy does not constitute a *sine qua non* condition for the authorisation if the operator is able to cover its risks by other means. However, the Law does not specify what type of guarantees could qualify. In any case, the operator should not be part of the same group of companies as the insurer or guarantor.

The Space Resources Law also lists the circumstances in which the authorisation should be withdrawn. In particular:

- a* the mission has ended or been modified;
- b* the operator has entered into liquidation;
- c* the operator has failed to use the authorisation for over 36 months;
- d* the operator no longer meets the criteria of the authorisation; or
- e* the authorisation was granted based on inaccurate statements made by the operator.

Anyone who explores and uses space resources without validly granted authorisation for such mission is subject to between eight days' and five years' imprisonment or a fine of between €5,000 and €1.25 million, or both. Any person that contravenes or attempts to contravene the provisions of the articles by failing to communicate to the Ministers changes relating to the management or the appointment of an independent auditor, or that contravenes the terms and conditions of the authorisation (including its non-assignability), will be sanctioned with imprisonment of between eight days and one year or a fine of between €1,250 and €500,000, or both. The court to which the matter is being referred may declare the termination of an operation contravening the provisions of the Space Resources Law, under a penalty that shall not exceed €1 million per day of infringement.

### **III DISTINCTIVE CHARACTERISTICS OF THE NATIONAL FRAMEWORK**

The distinctive characteristic of the national space legal framework derives from the Space Resources Law. Luxembourg also implemented the Law of 27 June 2018 on the control of the export, transfer, transit and import of strictly civilian goods, defence-related products and dual-use items (the Export Control Law).

Following the launch of the space resources initiative in 2016, the Luxembourg legislator adopted the Space Resources Law in 2017, introducing a new element by stating that space resources<sup>5</sup> are capable of being appropriated. The new law follows the model established in 2015 by the US Space Act.<sup>6</sup> The enactment of the Space Resources Law was a significant event and brought Luxembourg to the attention of the global space community.

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5 Space resources are commonly defined as abiotic resources found in situ in outer space, which can be extracted. This definition excludes satellite orbits and radio spectrum, as well as energy from the sun, and magnetic fields and related gravity]

6 51 USC 51303: 'A United States citizen engaged in commercial recovery of an asteroid resource or a space resource under this chapter shall be entitled to any asteroid resource or space resource obtained, including to possess, own, transport, use, and sell the asteroid resource or space resource obtained in accordance with applicable law, including the international obligations of the United States.'

The Space Resources Law reopened a debate regarding the link between two important principles of the Outer Space Treaty: the freedom to use outer space and the non-appropriation of outer space. The Space Resources Law considers the possibility of owning space resources as one of the applications of the freedom to use outer space guaranteed by the Outer Space Treaty.

As mentioned above, Article 1 of the Space Resources Law provides that ‘space resources are capable of being appropriated’. To substantiate this reasoning, the Luxembourg legislator, among others, made an analogy using the rules governing the high seas and the possibility that exists of exploring marine resources without appropriating the high seas, as such. Although the Outer Space Treaty defines and forbids the appropriation of the Moon or any other celestial bodies, it does not prevent the appropriation of outer space resources, as such. The legislator, in its commentary to Article 1 of the Space Resources Law, points out that the wording used excludes any possibility of contradicting the provisions of Article 2 of the Outer Space Treaty, in that: (1) it does not allow the appropriation of asteroids, comets or celestial bodies; and (2) it does not allow or does not constitute ‘a commencement of a component of sovereignty over a territory above a celestial body or any part whatsoever of outer space and the other celestial bodies’.<sup>7</sup> In addition, as mentioned in Section II, anyone who explores and uses space resources without government authorisation is subject to imprisonment or a fine, or both.

As Luxembourg (like the majority of spacefaring nations) has neither signed nor ratified the Moon Agreement, it is not subject to its restrictive provisions, which intend to make the appropriation of the resources on the surface or the subsurface of the Moon (and per extension, on any celestial bodies within the solar system) dependent on prior establishment of an international legal framework for that purpose. Despite compliance with international standards, the effectiveness of the Space Resources Law and its recognition by some third countries<sup>8</sup> is under debate. Some scholars consider that the resources to be extracted in outer space are global commons under the jurisdiction of the international community and that the regulatory framework should not be left to the unilateral legislation of different states. The position of the Luxembourg legislator is to consider, however, that as long as the national legislation complies with the existing international legal framework, the question of the appropriation of outer space resources may be left to the discretion of national legislatures.

Contrary to the US Space Act, the Space Resources Law is unique in that it does not require the shareholding of the operator applying for an authorisation to be exclusively composed of Luxembourg companies or Luxembourg citizens. Thus, a 100 per cent non-Luxembourg shareholding is acceptable, provided that the operator for which the authorisation is issued is a Luxembourg legal person that has its registered office in Luxembourg and abides by all other relevant conditions.

Trade in dual-use goods and technology is not a priori prohibited in Luxembourg but is subject to controls by the Office of Export, Import and Transit Control (the EITC Office)<sup>9</sup> of the Ministry of the Economy on export and transit through the European Union to ensure against the proliferation of weapons, based on the Export Control Law and Council Regulation (EC) No. 428/2009. Insofar as space object components are considered to be dual-use goods, persons wishing to export, transfer, import or transit these goods must first

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7 Rapport de la Commission de l'Economie, 6 June 2017.

8 Mainly signatories to the Moon Agreement.

9 The EITC Office was created by the Grand-Ducal Regulation on controls on import, export and transit of dual-use goods, defence-related products and diamonds, which entered into force on 24 December 2018.

request an authorisation from the Ministries responsible for foreign trade and foreign affairs via a request addressed to the EITC Office. Applications for authorisation must include all the details identifying the parties involved in the transaction, the precise description of the goods concerned, and their origin, final destination, final use, quantities and values covered by the application. Requests for authorisation must be accompanied by one or more of the documents listed in the relevant regulation, depending on the property and the proposed transaction. Authorisations will be issued after an assessment of the degree of sensitivity of the transfer, based, in particular, on: (1) the nature of the components in relation to the products in which they are to be incorporated and in relation to any end use of the finished products that may give rise to concern; and (2) the importance of the components in relation to the products in which they are incorporated. Ministers do not impose export restrictions on components where the product recipient submits a declaration of use stating that the components covered by the transfer authorisation are or must be incorporated into its own products and may therefore not be transferred or exported subsequently as such, except for the purpose of maintenance or repair.

The authorisation must be issued in individual, global or general form. The individual authorisation is issued to an individual operator and authorises an operation involving a specified quantity of goods and taking place in one or more stages. The global authorisation may be used by an operator that complies with the conditions indicated in the authorisation to carry out operations for goods covered by the Export Control Law either: (1) to recipients located in one or more Member States of the European Union, in a transfer of defence-related products; or (2) from or to third countries or to identified persons, as indicated in the global authorisation. It will cover, for its period of validity, the export, transfer, import or transit of the identified goods. The general authorisation may be used by all operators that are established or resident in Luxembourg and that comply with the conditions indicated in the authorisation to carry out transactions for goods covered by the Export Control Law to or from states outside the European Union or identified persons, as indicated in the general authorisation.

Individual authorisations are valid for one year and are renewable by express ministerial decision for a further six months, and global and general authorisations are valid for three years and are renewable, under the same terms and conditions, for a further 18 months.

Legal entities and natural persons covered by the provisions of the Export Control Law may be sanctioned by the Minister responsible for foreign trade in the event that they:

- a* refuse to provide documents or other information requested by the Minister or the EITC Office;
- b* have provided the Minister or the EITC Office with documents or other information that is found to be incomplete or incorrect;
- c* interfere with the exercise of the powers of the Minister or the EITC Office; or
- d* do not comply with instructions from the Minister or the EITC Office.

Consequently, the Minister may impose the following: a prohibition limited to six months or an indefinite prohibition in respect of carrying out one or more activities that are subject to the Export Control Law, as well as any other restrictions on the activity of the legal or natural person; or a suspension for a maximum of six months from the use of a general authorisation from the European Union or national authorities, or a global authorisation. There may be additional sanctions of imprisonment for five to 10 years and a fine of €25,000 to €1 million.

#### **IV CURRENT DEVELOPMENTS**

The development of the Luxembourg space sector has always been driven by commercial activities related to the space sector and Luxembourg has adopted a framework in line with the progress made by private-sector companies. It was owing to the provision of a legal framework for the activities of SES that Luxembourg adopted the Electronic Media Law (see Section II). Subsequently, the provision of a favourable environment for companies whose purpose was the exploration and use of outer space resources was the catalyst for the Space Resources Law. The legislator now intends to create a general framework applicable to all space activities and to group together the existing legislative texts to enable companies operating in the space sector, with the exception of space resources operators, to have at their disposal a single piece of legislation that clearly defines the cases in which Luxembourg will incur liability in relation to space activities (the Space Activities Draft Bill).<sup>10</sup>

The Space Activities Draft Bill is intended to create the *lex generalis* for space activities and will apply, as indicated in its Article 1, to space activities carried out (1) from the territory of Luxembourg or by means of installations, whether movable or immovable, which are under the jurisdiction or control of Luxembourg (2) and elsewhere by Luxembourg nationals or legal persons governed by Luxembourg law with the exception of the provisions on the missions of exploration and use of outer space resources, governed by the Space Resources Law.

According to the Space Activities Draft Bill, no operator will be allowed to perform a space activity without prior authorisation from the Minister in charge of space legislation. An additional launch authorisation will also be needed for an operator that plans to launch an object into outer space.<sup>11</sup>

In addition to the general procedures for obtaining prior authorisation, the Space Activities Draft Bill echoes UN Resolution 55/122 and the European Union's International Code of Conduct for Outer Space Activities by formulating an Article on environmental protection, emphasising that any operator must take the necessary measures to limit the risks of degradation of space and terrestrial environments or their contamination and the risks associated with space debris.<sup>12</sup> It is also an opportunity for Luxembourg to create a national register of space objects, in accordance with its accession to the Registration Convention. Since this register was not mentioned in the Space Resources Law, the Space Activities Draft Bill proposes to extend the obligation to register objects launched into outer space to all objects, including those mentioned in the Space Resources Law.

The Space Activities Draft Bill is expected to be adopted by the Luxembourg parliament in 2019 or 2020.

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10 The authors of the Space Activities Draft Bill point out, in this respect, that 'the concession regime provided for by [the Electronic Media Law] only applies in the event that the concessionaire is granted the right to use Luxembourg frequencies. Thus an operator established in Luxembourg who does not request the right to use Luxembourg frequencies, because it uses frequencies allocated by another State, could currently launch a space object without any authorisation from the Luxembourg State.'

11 However, the Chamber of Commerce opinion dated 19 November 2018 and the Council of State opinion dated 15 February 2019 suggest that the number of authorisations required to perform space activities should be limited as much as possible, for administrative streamlining and for the sake of business attractiveness.

12 Article 4, Space Activities Draft Bill.



## **V OUTLOOK AND CONCLUSIONS**

The space sector is one of the priority sectors that Luxembourg, in part owing to its geopolitical neutrality and political stability, has constantly promoted since its entry into the space industry more than 35 years ago, and it continues to develop.

Over the past three years, a significant number of projects have flourished with a view to promoting and strengthening Luxembourg's attractiveness on the international scene, including the following:

- a* as a Member State of the European Space Agency, Luxembourg established the Luxembourg Space Agency on 12 September 2018 for the economic development of space and activities related to the new space sector;
- b* the University of Luxembourg announced the launch of a two-year 'Interdisciplinary Space Master' for the 2019 academic year in line with the government's space initiative; and
- c* the Luxembourg Institute of Science and Technology has developed multiple space-related departments, including the Environmental Research and Innovation department, the IT for Innovative Services department and the Materials Research and Technology department.

Through the efforts made to establish a business environment conducive to commercial activities, and the establishment of an institutional, financial and commercial framework in line with business expectations, Luxembourg is positioning itself as a facilitator, and increasingly as an important player, in the space industry.

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