

LONDON INSTITUTE OF SPACE POLICY AND LAW

SPACE POLICY AND LAW COURSE

ON-LINE

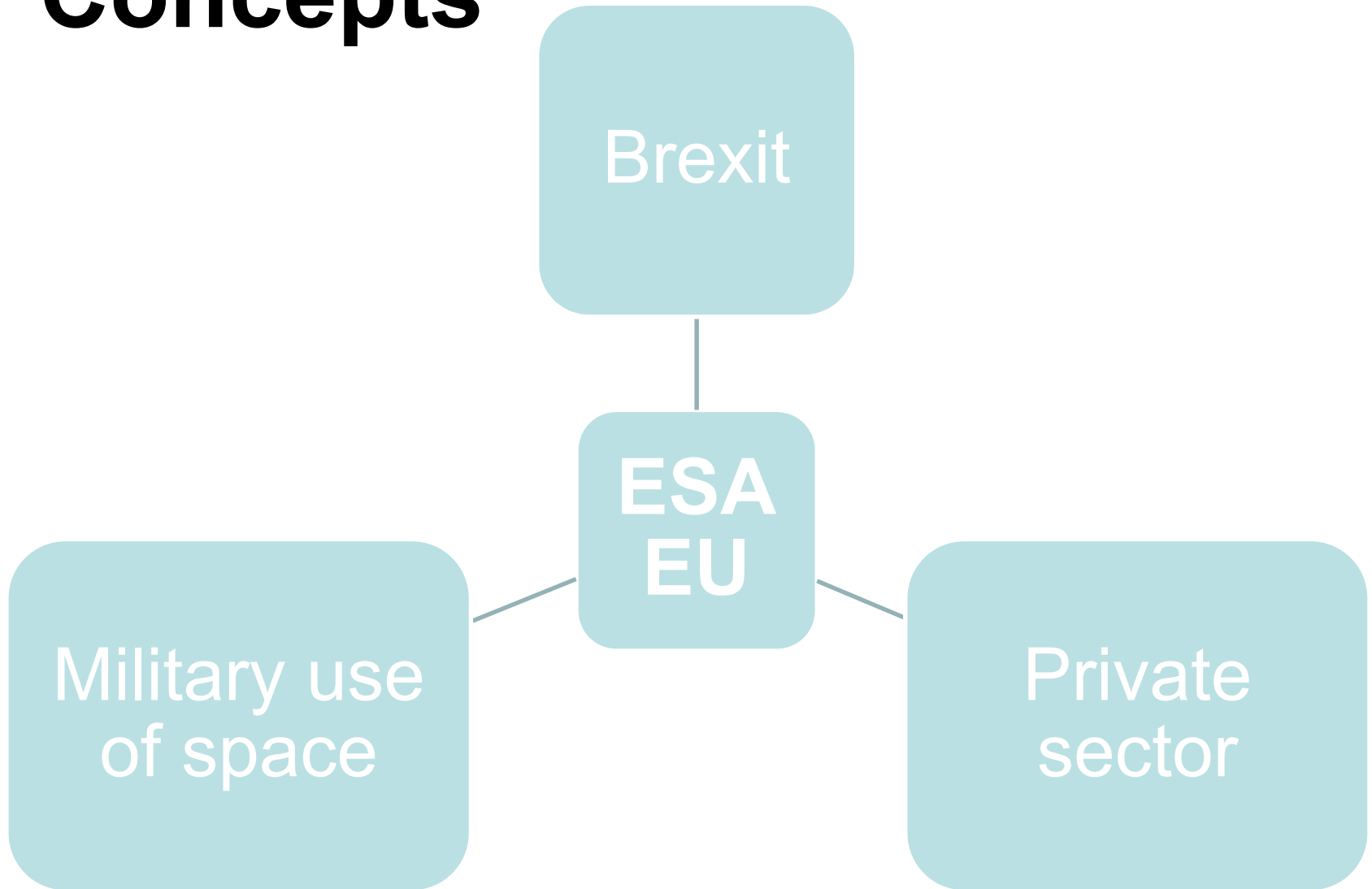
9 to 11 November 2020

CURRENT AND FUTURE DEVELOPMENTS

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Concepts



ESA & EU (I)

Intergovernmental organizations

Established by a Treaty

Regional dimension

ESA & EU (II)

Different origins (EC-EU 1957, ESA 1975)



Different nature, goals and competences (infra)



Different membership (27 EU vs. 22 ESA)



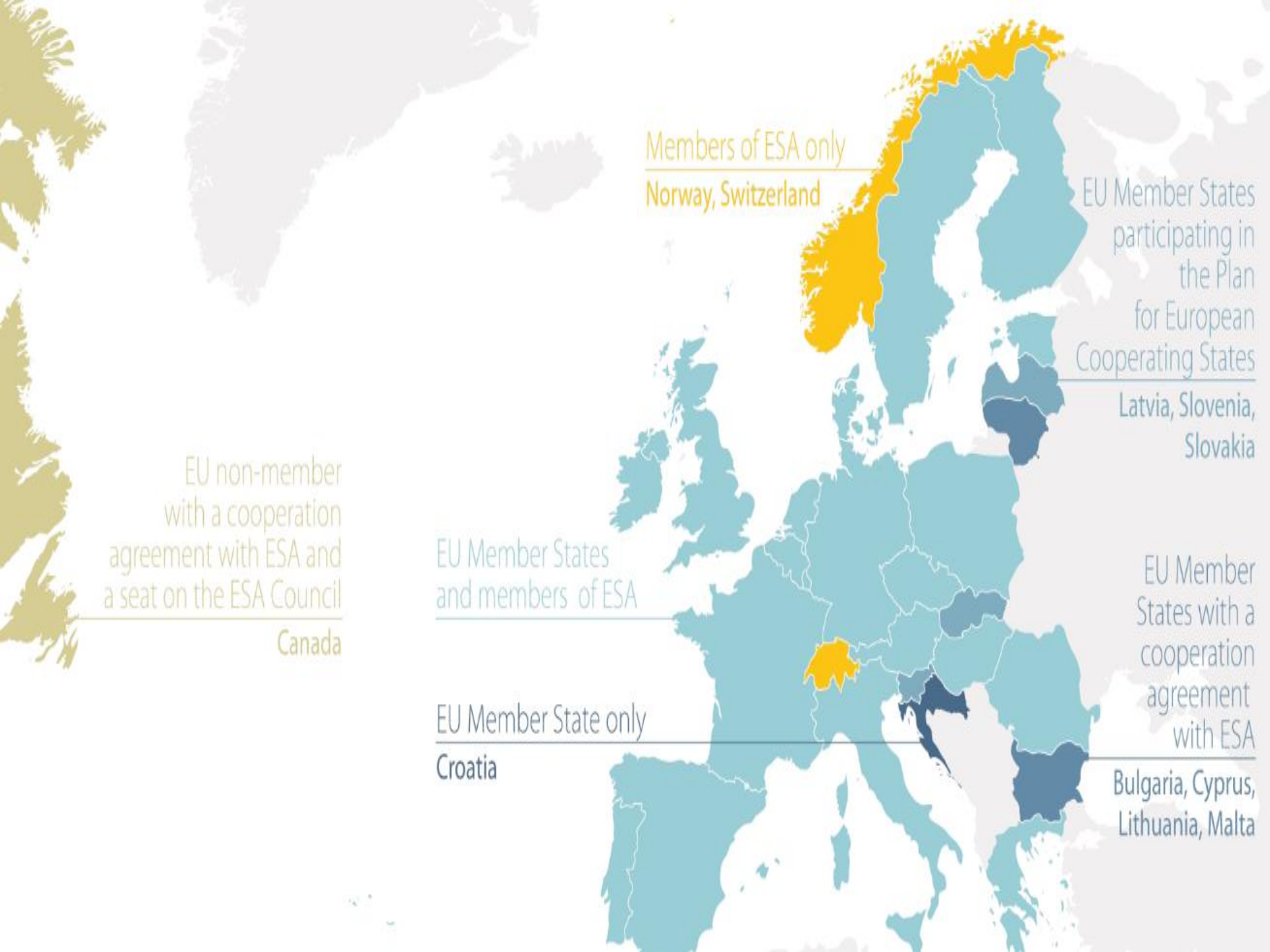
Different budget (about 172 billions EU vs. 6.7 billions ESA)



Different financial rules (infra)

ESA/EU (II)

- Art. 2 ESA Convention:
 - *“provide for and promote, for exclusively peaceful purposes, cooperation among European States in space research and technology and their space application”*
NO DIRECT LEGISLATIVE POWER
- Art 1 and 3 TEU:
 - *“creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen...”*
 - *“The Union's aim is to promote peace, its values and the well-being of its peoples”*
 - *The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties. LEGISLATIVE POWERS*



Members of ESA only
Norway, Switzerland

EU Member States participating in the Plan for European Cooperating States
Latvia, Slovenia, Slovakia

EU non-member with a cooperation agreement with ESA and a seat on the ESA Council
Canada

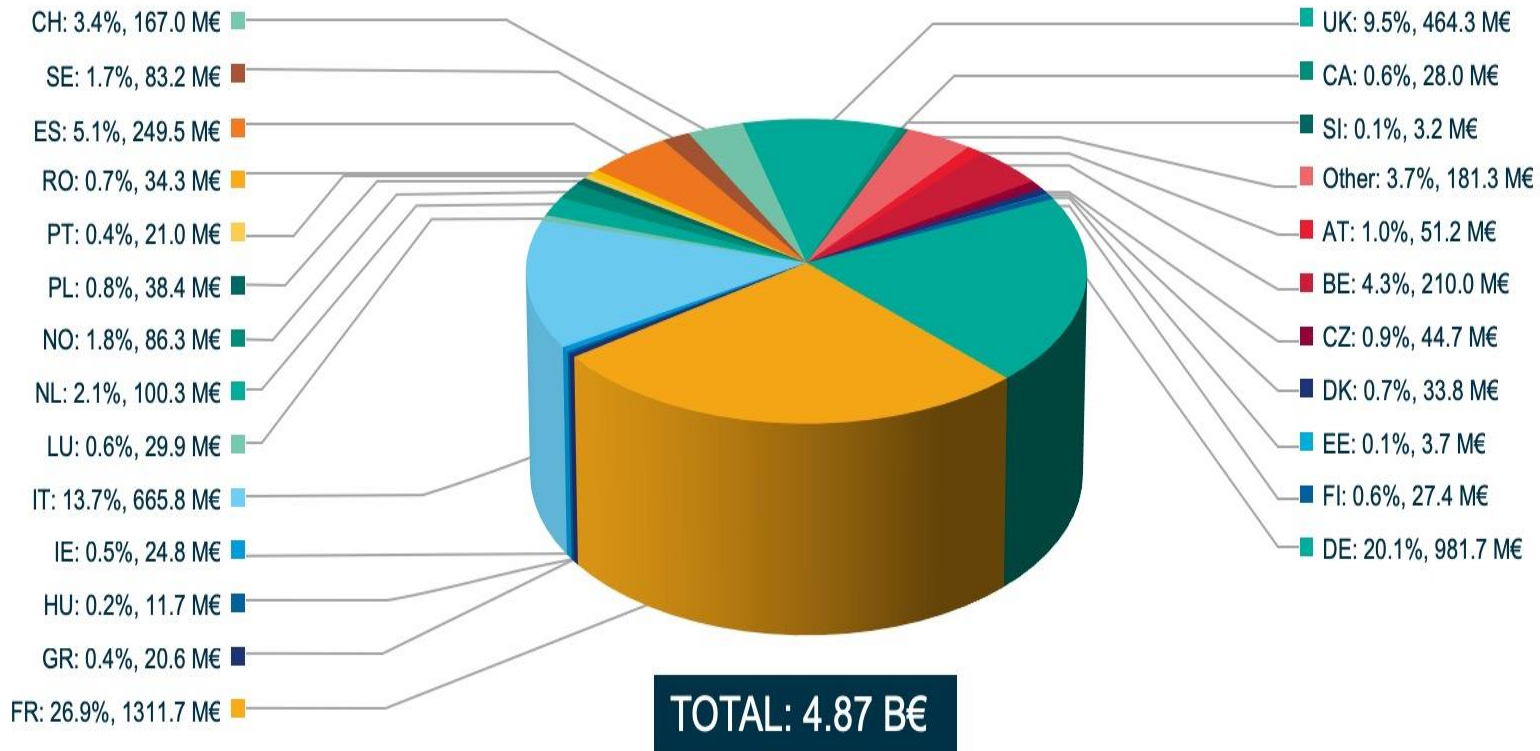
EU Member States and members of ESA

EU Member State only
Croatia

EU Member States with a cooperation agreement with ESA
Bulgaria, Cyprus, Lithuania, Malta

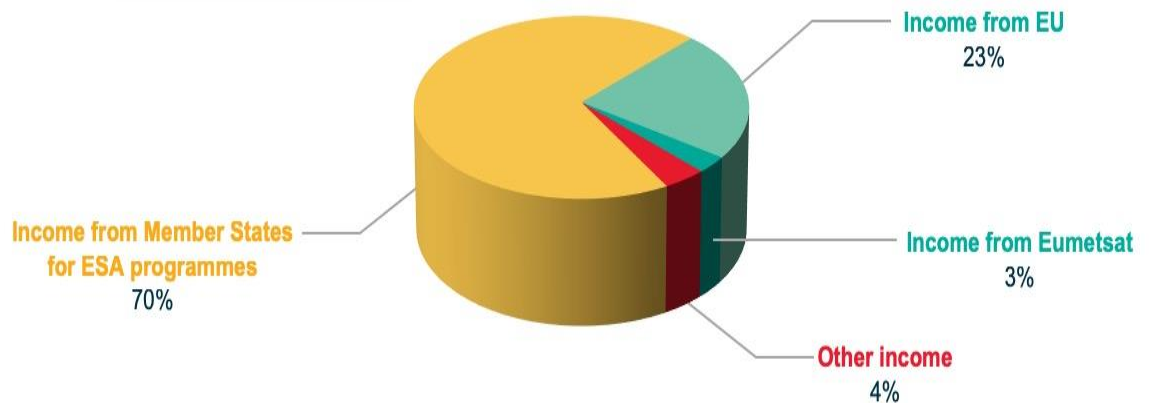
BUDGET 2020

ESA Activities and Programmes



BUDGET 2020 BY FUNDING SOURCE

TOTAL: 6.68 B€



ESA model of European space governance (i)

- Council of Ministers of ESA
Member States meetings every 2-3 years (policy, resources, programmes)
- One State/one vote, no vote for opting out States, unanimity or majority
- Day-by-day business dealt with by Member States delegates to ESA HQ (Paris) + Director General + administrative staff

ESA model of European space governance (il)

- Exploration of the universe (science) + use of space to improve life on earth (space applications)
- mandatory programmes funded according to GDP (mainly R&D)
- optional programmes funded “à la carte”: programme accepted by simple majority BUT opting-out right
- “fair return” rule: the percentage of funds invested by a country in a given programme is then redistributed in contracts to its industries

ESA model
of European
space
governance
(iii)

- Promoting cost-effectivity
- Improving competitiveness of industry
- Using existing European industrial capacity
- Preference for European industry
- Equitable participation of MS
- Competitive bidding advantages




(inter alia)

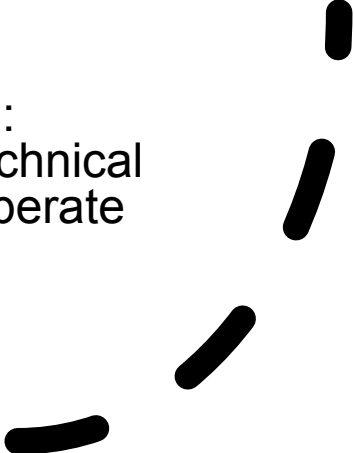
industrial policy tool for Europe

EU involvement in space (i)

- Space NOT a primary concern of EC/EU, left to MS until 90'.
- After the European Act (1986), EC/EU involved in space sector, mainly as a “regulator”, eg.:
- a) space as part of the R&D agenda and funds
- b) satellite telecommunication services to be subject to internal market rules + export control rules on “dual use”
- c) EU as a data customer: *sui generis* copyright protection of database of space generated images



First contacts ESA/EU Commission:
Commission acknowledgment of technical
superiority of ESA and need to cooperate

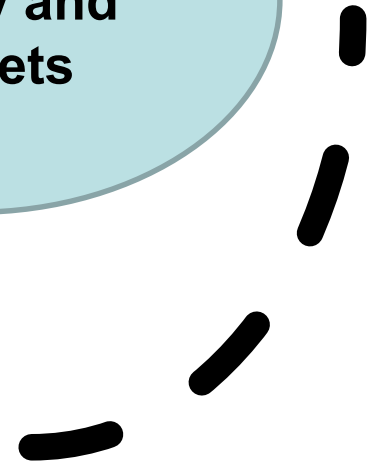


EU involvement in space (ii)

European Space Strategy (2000)

ESA: R&D, scientific projects, launch capabilities

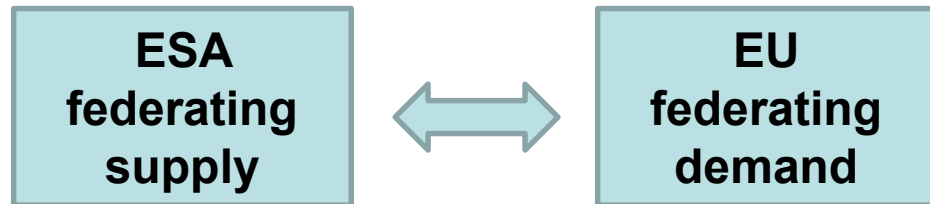
EU: benefits for society and markets



2003 ESA/EU Framework Agreement

(2004-2008 with automatic renewal)

- **Institutional cooperation: Space Council**
- Management by ESA of EU space-related activities, under EU law (delegation agreements, R&D + construction, including procurement), participation of EU in ESA optional programmes, jointly coordinated and fund initiatives, joint subsidiary bodies
- **Specific arrangements** for each initiative



ESA run EU projects

- Copernicus Earth observation (50-50%)
- Galileo Europe's global satellite navigation system (100%EU)
- EGNOS European Geostationary Navigation Overlay Service
- SST Space surveillance and tracking support framework
- New GOVSATCOM initiative:
communication services for EU and national public authorities managing security critical missions and infrastructures

**2007- ESS
defence and
industrial policy**

**2011-EDA/ESA
Agreement**



EDA coordination (mil.
requirements)



An uneasy relationship (i)

1) Membership asymmetry:

22 MS, 20 EU Members (Norway and CH out). As cooperation grows, unanimity vote gives leverage to non EU members over EU matters + difficult to impose loyalty duties upon them (e.g. sensitive technologies being sold to third countries)

2) Security and defence matters:

Problem when security and defence matter of the EU are at stake, such as management of classified EU data (ESDP: combination of civil and defence dimension of space)

3) Absence of mechanisms of policy coordination:

no formal mechanism ensuring compatibility between ESA initiatives and EU policies (case by case approach to be negotiated)

4) Lack of ESA parliamentary accountability:

No ESA accountability to EU citizens. Around 75% of EU space budget delegated to ESA (EU as largest ESA contributor)

5) Mismatch of financial rules:

«fair return» vs. EU market rules , i.e. non discrimination among economic operators (free competitive bidding based on best value for money) and prohibition of State aids

An uneasy relationship (ii)

- “Fair return” silently accepted:
 - a. specificity of space as a market sector: barriers to entry, is there a real competition?
 - b. risk of weakening European industry vs. other countries (e.g. Japan and US consortia) - strategic implications and overriding EU general interest in derogating to competition rules
 - c. Art. 5.3 of ESA-EU Framework agreement: in case of joint initiatives

“Under no circumstances shall the European Community be bound to apply the rule of 'geographical distribution' contained in the ESA convention”

EU portion given to companies of EU choice according to own rules



art. 189 TFEU

- *“To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall **draw up a European space policy**. To this end, it may **promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space**.*
- European space programmes established by EU law
- *The Union shall establish any appropriate relations with the European Space Agency”*



More EU political involvement in shaping policy (through ESA)



Recent shifting pattern

- **Proposal for a regulation establishing the Space programme of the Union and the EU Agency for Space Programme (COM(2018)447)**
- Unified system of governance + sufficient budget
- Strategic role of space and need to adapt to changing environment
- Reinforce Europe's autonomy in accessing space in a safe and secure environment (EU strategy for Space 2016)
- Ensure a globally competitive and innovative European space sector (**funding to SME**)

- **EUSPA to gain technical capabilities**
- **Protective and exclusionary language (art. 25 ff.)**
- **From cooperation to division?**

+ Funding opportunities under ESDP instruments & Horizon 2020

+ **New DG Defence Industry and Space (DEFIS) – long resisted by UK**

**EU
international
liability?!**

European (space) FDIs control

- **Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union**
- Cooperation mechanisms for FDI capable to affect **security or public order**
- Duty to notify the Commission and other MSs FDI undergoing screening at national level
- If **project of Union interests** at stake, **opinion** issued by Commission
- Projects of Union interests listed in Annex I: (significant share of EU funding or covered by EU law as regards critical infrastructures, technologies or inputs)
- **Copernicus, Galileo & EGNOS** included (+ telecom, energy, transport networks, defence projects)

**EU exclusive
competence in
commercial policy as
ground for more
strategic action**

Race to arms

- Peaceful nature of both ESA and EU – national competence
- EU: traditional opposition of MS to defence/military considerations in EU space policy – slowly changing but different feelings of MS
- International Code of conduct for outer space activities 2007-2013 (UE-USA). No support by Russia and China India and Brasil.
- ESA long tradition of international cooperation in science and exploration programmes (ISS+Lunar gateway: USA, Canada, Japan, ESA)

BREXIT

- UK-ESA partnership untouched
- UK participation to space treaties untouched
- Role of UK in existing ESA/EU projects
- Fundamental freedom application: human capital of UK space sector industry, goods and continuity of supply chain
- Access to EU funds
- Export control regime (Regulation 428/2009) mutual recognition of other MS licenses issued under the common framework

Scenarios

- Export licence issued by one of the 27 EU countries for export from UK
- Export licence issued in the UK for export from EU MS
- Inclusion of UK in Union General Export Authorization?

Q&A

THANK YOU!

