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THE EU SPACE COMPETENCE AS PER THE TREATY OF LISBON: SEA CHANGE OR EMPTY
SHELL?

Abstract

The entry into force of the Treaty of Lisbon late 2009 introduced a so-called ‘space competence’ of the European Union into the already complicated legal European ‘spacescape’. It has been hailed by some as a sea change, a watershed following which the EU finally and irreversibly has entered the realm of legislating for space, whereas others fail to see it as more than an empty shell, a fig leaf for politicians to be able to show at least some progress towards a united European approach and policy with respect to space. Whilst some discussion has focused on whether this ‘shared competence’, a specific term of art in EU law, would not better be qualified as a sui generis ‘parallel competence’, no notable attention has been paid to the more fundamental question to what extent the inclusion of the relevant clause in the Treaty of Lisbon has resulted in a real change as to the legislative and regulatory side of space activities undertaken in the European context. The present paper will therefore try to analyse in somewhat more detail what the real significance of this new ‘space competence’, is, might or will be. This analysis will be undertaken with reference not only to the terminology of the Treaty of Lisbon and a related clause of the preceding but aborted Constitutional Treaty, but also with reference to the previous legislative efforts of the European Union relevant to space, the few national space legislations of EU member states, and the role of ESA in this context.