

SYMPOSIUM ON COMMERCIAL SPACEFLIGHT SAFETY ISSUES (D6)
Commercial Space Flight Safety and Emerging Issues (1)

Author: Dr. Michail Chatzipanagiotis
Greece, m.chatzipanagiotis@hotmail.com

ASKING THE ORACLE: THE VALIDITY OF INFORMED CONSENT UNDER EUROPEAN LAW

Abstract

Oracles in antiquity were famous for their ambiguous answers. Given that currently no special rules on manned private spaceflights have been enacted in Europe, the same ambiguity surrounds the validity under European law of the informed consent that a spaceflight participant (SFP) would sign to fly on board a private commercial space vehicle. Provided that the law of a European State is applicable, the validity of the informed consent would be judged according to the national provisions implementing Directive 93/13/EC on unfair terms in consumer contracts. A "consumer" under the Directive is any person who concluded a contract in his/her personal capacity. Informed consent under European law is a form of exclusion or limitation of liability for death or injury. The Directive stipulates that, depending on the circumstances, such clauses could be unfair and thus invalid. However, the Directive does not prohibit EU Member States from establishing stricter rules. Thus, some States follow the Directive's provisions as they are, some States stipulate that liability exclusions for death or injury are invalid in any case, while other States define the consumer in broader than the Directive. This paper analyzes the pertinent provisions of Directive 93/13/EC, the laws of the Member States that have transposed the Directive into national law, the relationship of such laws to eventual future special rules on manned private spaceflights and the practical implications arising from the above.