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EU AND NATIONAL SPACE LAWS: THE ROLE OF A REGIONAL INTERNATIONAL ORGANISATION IN THE INDIRECT HARMONISATION OF MEMBER STATES' SPACE LAWS.

Abstract

EU has been defined as an international organisation sui generis, referring to the competences and mechanisms that govern its functioning that led to often compare it to a State legal order rather that an international cooperation structure. One of the main peculiarities relies on the effects of EU legislation in national legal orders: EU law (at least a part of it) is directly applicable in the Member States and it enjoys primacy over national rules. In the domain of space law, however, the Eu has a particular kind of shared competence (once again defined as being sui generis) that does not allow the Eu to harmonise national member States laws, therefore limiting the role of the organisation in the field at stake. However space activities fall within other fields of regulation that fall apart the above mentioned limits (i.e. environmental protection, industrial development, free movement of people etc). The main reason for the above mentioned specific limitation is to be found on the security aspects connected to space-based applications and assets, since security within the EU is a field where Member States still retain the main regulatory competence, limiting (in different ways) the role of the IO. The limits and boundaries recognised to the internal competence of the EU are also reflected in the possibility of the EU to play an active role in the international arena, where the principle of the parallelism between internal and external competence is set in the Treaties. Despite all the above considerations, the Eu is undoubtedly a new space actor in the space domain, launching its space programmes and building international cooperation with other organisations and third States. The new Space Regulation, proposed in 2018 but which achieved political consensus in December 2020 and that is foreseen to enter into force in 2021, shows the evolution of the EU role in space, underlines the need for coordination with national laws, stresses the security implications of space assets and points out the need for the EU to enter international space regulation (i.e. the UN space Treaties). The aim of the contribution is to draw a picture of the existing role of the EU and the perspective evolution of its legislative role with reference to Member States and to third countries with a precise reference to security aspects.