



# Regulatory Review

## EUROPE'S CONSTITUTION IN SPACE

By Gerry Oberst

In January 2003, the European Commission issued a consultation green paper to initiate new discussions on Europe's activities in space. It looks as if the European Union (EU) may finally define its space policy throughout the course of this year, with ramifications for the satellite industry. But the long-term effort depends on ratification of a new EU constitution, which in turn will depend on national referenda in certain EU member states.



The operational program of the European Council for 2005, released at the end of last year, includes among many other items, that the EU will "aim to contribute to the development of an overall European space policy."

That language is artfully worded to avoid actually promising when a space policy will be finished, but it places space policy at the highest level of political attention. Already in the early months of 2005, European policy makers have initiated awareness campaigns and even are sending a copy of the new EU constitution on a flight to the International Space Station in April.

This new constitution that they are sending into space is not yet in effect. The 25 EU member states signed the document in Rome on October 29 last year (with more limited signatures by countries that are candidates to become EU members). Member states now must ratify the constitution under their national laws, with almost half already committed to votes.

European politicians seek to raise public awareness of the new constitution, among other reasons, because there will be no European space policy without a constitu-

tion. The new constitution makes space a "shared competence" between the EU and its member states. Article I-14 would give the European Commission authority to act on space policy issues—at the moment its competence is mainly in the research and development areas, while the individual member states are in charge of national space programs.

This new provision would not freeze out member states. While it gives the EU competence to carry out actions and implement programs in the space arena, it also provides that the EU cannot prevent member states from exercising their own competence. This vague boundary should set up some interesting legal debates in the future.

In the meantime, the European Commission followed up its consultation with a white paper in November 2003 bearing the title "Space: a new European frontier for an expanding Union." That paper laid out steps that could be taken before the new constitution is effective, as well as an overall action plan.

Thus, the white paper divided its proposals into two phases. Phase one, from 2004 to 2007, covers the existing outlines of a space action plan, based on a framework agreement between the EU and the European Space Agency (ESA). Phase two, from 2007 onward, presumes the coming into force of the new constitution.

In phase one, it is business as usual, with renewed emphasis on several lines of development. The white paper emphasized that satellite telecommunications already are important tools for delivering broadband access to an estimated 20 percent of the EU's population, which otherwise cannot obtain such service in the medium term. That emphasis led the Commission to form a digital divide forum, which in June 2004 recommended that the European Commission should launch a "pan-European

initiative to assure broadband coverage via satellite."

The white paper supported the European Galileo program for radio navigation, jointly funded by the EU and ESA, as "an innovative and indispensable solution." When this gets off the ground, it will include a constellation of 30 satellites, as Europe's answer to the U.S. GPS network.

The white paper also put special emphasis on the new "global monitoring for the environment and security" program, known as GMES. This is a high-level effort, again through the European Commission and ESA, for earth observation and monitoring satellites. The white paper portrayed this as a framework to "federate user requirements at a European level," which in this context means to consolidate demand and projects.

The second phase is said in the white paper to give the EU "lead responsibility for federating society's needs for space-based services relevant to EU policies and for coordinating their delivery." The constitution expressly calls for a European space policy in Article III-150.

European policy makers are forging ahead as if the constitution is a done deal. Government ministers from the member states already met in the first "Space Council" in late November 2004, technically under the ESA framework agreement, but just after the constitution was signed. The various speeches and press releases drew a clear link between this first meeting and the expected long-term policy.

The fact that Europe's satellite policy is also wrapped up in the new constitution is probably one of the least important considerations for voters and politicians, but the satellite and space industry will keep a close eye on the constitutional progress. ♦

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