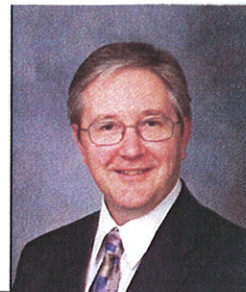


GLOBAL REGULATIONS



By Gerry Oberst

European Space and Security

European policy makers are seeking a more coordinated strategy for using satellite resources for their national security and defense, but these efforts could be stymied by a key legal development in 2008. In any event, that strategy is overlooking the contribution that the commercial space sector already provides for security issues, even without a common European space approach.

Ambitious plans for Europe Union (EU) space policies are reflected in a report on "Space and Security," adopted in June by the European Parliament's committee on foreign affairs. The report argues that space system "common capabilities" are needed to contribute to European strategy in areas as diverse as telecommunications, information management, observation and navigation. But it also premises these capabilities on a common European policy in space, which in turn depends on authority in the EU Treaty of Lisbon that hit a roadblock earlier this year.

The Treaty of Lisbon was signed by EU governments in December 2007, in Lisbon, Portugal. To become effective, it requires ratification by all EU member states. Most member states avoided public input on the treaty after a previous constitutional treaty was rejected by voters in France and the Netherlands. Ireland, however, allowed its citizens to vote on the new treaty — which they rejected in June.

This situation has thrown the politicians of Europe into a tizzy, but for the space field, the result has a special impact.

The Treaty of Lisbon included a sentence giving Europe's central government the authority to create a common space policy. The same provision was included in the constitutional treaty that was rejected earlier. This provision was not a high-profile item — probably only space insiders knew that a four-line paragraph on space policy lurked within the almost 300-page treaty or that the word "space" was sprinkled in a few other places of the treaty.

Nevertheless, for a common European space policy, this missing sentence is crucial. The committee report states unequivocally that the Lisbon Treaty establishes "a legal basis" for European space policy as well as cooperation on

space-related security and defense matters. The committee seems to peg the entire policy on that treaty, which is awkward now that the treaty's status is in jeopardy.

When the treaty changes were first proposed more than five years ago, European officials said it would "open the door to a new phase in European space activities." That door has been closed twice now, as European voters have rejected treaties that would have inserted this key language.

Even with this door closed, we nevertheless expect European policy makers to find some window to climb through in order to continue moving towards a centralized space policy. In fact, the EU has ample authority to establish a budget line for space and defense for the 2013-2020 period, which is one of the ambitions of the current French EU Council presidency.

Some other issues stressed in the committee report could be addressed with no change in current legal authority. For instance, a strangely missing element of the report is the concept of exploiting commercial satellite communications.

The report acknowledges that "military and security communities are increasingly relying on commercial systems to provide larger bandwidth for complete military systems." Yet the report otherwise discusses only military satellites with no acknowledgment that governments could better use commercial infrastructure already in place without the need for a new space policy. The report's short section on telecommunications addresses only governmental systems, while ignoring the vastly larger European commercial space infrastructure.

Commercial operators have sent the message to policymakers on more than one occasion that their facilities are used often for the same purposes identified in the report. They are cheaper, can be encrypted as required and often have more resilient use of various bands and backup satellites than dedicated national facilities.

Some of the concepts examined in the committee report would affect all satellite systems, government and commercial alike. The report suggests that Europe develop "legally or politically binding rules of the road" for space operators, refers to a European code of conduct on space objects and even calls for Europe to promote a conference to review the Outer Space Treaty.

Clearly, European policy makers are promoting an ambitious space policy that could affect the commercial field. Putting that house in order, however, may require new thinking on the necessary legal authority and bringing the commercial sector on board. ▀

Gerry Oberst is a partner in the Hogan & Hartson Brussels office.