

NEWSLETTER

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SWITZERLAND MOVES TO REGULATE SPACE OPERATIONS — A NEW LEGAL ORBIT FOR THE SWISS SPACE INDUSTRY

INTRODUCTION

Following the public consultation on the preliminary draft of the Swiss Federal Space Operations Act – which generated generally positive feedback – the Swiss Federal Council (Switzerland's government) recently published a draft Swiss Federal Space Operations Act (the "**Draft SOA**"), accompanied by an explanatory message.

In accordance with the Swiss legislative process, the Swiss Federal Council submitted the Draft SOA to the Swiss Federal Assembly (Switzerland's parliament). The Swiss Federal Assembly may still amend the contents of the Draft SOA and will decide whether it shall be adopted or not. If adopted, the Draft SOA would be subject to an optional referendum and could ultimately be submitted to a popular vote.

The Draft SOA aims to establish a national legal framework governing "space operations" (*Raumfahrtaktivitäten/opérations spatiales*) as narrowly defined in the Draft SOA, falling within Swiss jurisdiction. The Draft SOA is intended to strengthen Switzerland's attractiveness for the space industry, by creating legal certainty and a predictable authorization framework, in particular by encouraging the establishment of satellite operators in Switzerland. The Draft SOA also seeks

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KEY TAKEAWAYS

1. ESTABLISHMENT OF A NATIONAL LEGAL FRAMEWORK

The Draft Swiss Federal Space Operations Act (SOA) establishes a dedicated, thematically narrow, legal framework governing space operations falling under Swiss jurisdiction, which implements UN treaties ratified by Switzerland.

2. INTRODUCTION OF A SPACE OPERATIONS LICENSE

The Draft SOA introduces a license requirement for the technical launch, positioning, control and monitoring of space objects.

3. INTRODUCTION OF A SPECIAL LIABILITY REGIME

The Draft SOA introduces a strict (causal) liability for damages caused by space objects on the surface of the Earth or to aircraft in flight, and a fault-based liability for damages caused to another space object or to persons or goods on board another space object.

4. INTRODUCTION OF A NATIONAL SPACE OBJECTS REGISTER

Space objects are, as a rule, to be registered in a national register of space objects. Swiss law applies to such objects, in principle.

5. STRENGTHENING SWITZERLAND AS A HUB FOR SUSTAINABLE SPACE OPERATIONS

The Draft SOA aims to enhance Switzerland's attractiveness as a hub for operators of satellite and other space objects, as well as to promote sustainable space activities and the long-term, peaceful use of outer space.



to ensure the long-term sustainability of space operations, to limit impacts on both the terrestrial and space environments, and to safeguard long-term access to and peaceful use of outer space for future generations.

The Draft SOA implements the four United Nations ("UN") treaties on outer space ratified by Switzerland, i.e., the Outer Space Treaty of 27 January 1967 (CC 0.790), the Rescue Agreement of 22 April 1968 (CC 0.790.1), the Liability Convention of 29 March 1972 (CC 0.790.2), and the Registration Convention of 12 November 1974 (CC 0.790.3). Switzerland is not a party to the Moon Agreement of 18 December 1979.

The core pillars of the Draft SOA consist of (i) establishing an authorization (infra 1) and supervisory regime (infra 2) for space operations (i.e., the technical launch, positioning, control and monitoring of space objects), (ii) introducing a special liability regime for damages caused by space objects (infra 3), and (iii) creating a national register of space objects (infra 4).

The Swiss Federal Council opted against a comprehensive federal statute regulating space operations and activities, and instead chose a thematically narrow, technology-neutral framework guided by the principle "as little regulation as possible, as much as necessary". The Draft SOA is largely limited to implementing the above-mentioned UN treaties and does not create a special framework for other important aspects of space activities. Matters such as export controls, sanctions, telecommunications, or use of the radio-frequency spectrum remain governed by existing sectoral legislation.

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1. SPACE OPERATIONS LICENSE

The Draft SOA provides that a space operator must obtain a license from the Swiss supervisory authority when it carries out space operations (i) on Swiss territory or on vessels, floating platforms or aircrafts registered in Switzerland, including where the operator is domiciled or has its registered office or place of business abroad, or (ii) outside Swiss territory, where the operator is domiciled or has its registered office or place of business in Switzerland.

Space operators must conduct space operations with due care and diligence, and maintain space operations until completion of the mission in accordance with the approved operational plan and regulatory requirements.

A distinction must be drawn between "space operations" (*Raumfahrtaktivitäten/opérations spatiales*) and "space activities" (*Weltraumaktivitäten/activités spatiales*).

Space operations consist of the technical launch, positioning, control and monitoring of a space object (i.e., any object launched, or intended to be launched, in outer space, such as a rocket or a satellite). *Space activities* are activities conducted in outer space or on a celestial body that relies on a space operation.

Unlike *space operations*, no license is required under the Draft SOA for *space activities* as such. Accordingly, activities performed through the payload - such as research, data collection, Earth observation or the provision of telecommunications services - do not require a license under the Draft SOA, although separate authorizations may be required under other applicable laws and regulations.

The license is operation-specific and is tied to the contemplated space operations and space activities. The operator may use the space object itself or entrust its use to third parties.

The granting of a license is subject, *inter alia*, to: (i) the applicant's organizational and financial capacity to carry out the mission, including its equipment, (ii) its right to use the space object without restriction throughout the operation, (iii) the good reputation and reliability of the applicant's board of directors and management, (iv) the expertise and trustworthiness of personnel responsible for the control and monitoring of the space object, (v) the conformity of the space object and its components with the state of the art, (vi) health, environmental and debris mitigation measures, (vii) compliance with applicable laws and regulations (including spectrum rules), (viii) absence of adverse effects on aviation safety, (ix) where appropriate, the conclusion of a civil liability insurance, (x) the existence of an appropriate contingency plan to be activated in the event of insolvency risk, (xi) consistency with Swiss space, foreign and security policies, and (xii) safe and sustainable termination of the operation.

The Swiss supervisory authority retains discretion to impose conditions and charges proportionate to the risk profile of the mission. Regulatory relief is contemplated for low-risk space operations.

Swiss-based operators may conduct space operations abroad on the basis of a foreign license, provided prior approval is obtained from the Swiss supervisory authority.

The license must specify, in particular, the authorized space operations, the authorized space activities, the persons responsible for carrying out the space activities (i.e., the operator itself or a third party), and any additional conditions or charges, such as minimum insurance coverage, compliance with international standards, use of subcontractors (which must themselves have qualified and trustworthy personnel, and must perform the subcontracted services themselves), and reporting and notification duties.

The Draft SOA imposes notification duties, including in relation to operational risks, changes affecting mission parameters, subcontractors, transfer of operations, termination of space operations, and risks of uncontrolled re-entry.

The transfer of the license requires approval by the Swiss supervisory authority. For low-risk space operations benefiting from regulatory relief, notification may suffice. In principle, approval is granted where the transferee meets the organizational, financial and personnel requirements applicable to obtain the license, although additional charges may be imposed. In the case of transfer of the license to a foreign space operator, the Swiss supervisory authority may require the conclusion of an international agreement, in particular to mitigate Switzerland's potential liability exposure.

A breach by a legal entity may lead to an administrative fine of up to 10% of annual turnover. Individuals acting as operators may be subject to criminal fines of up to CHF 20,000.

2. SUPERVISION OF SPACE OPERATIONS

A Swiss supervisory authority for space operations will be designated by the Swiss Federal Council. The Draft SOA deliberately leaves institutional structuring to ordinance level in order to preserve flexibility.

The Swiss supervisory authority is, *inter alia*, entrusted with (i) granting licenses, (ii) approving subcontractors and transfers arrangements where required, (iii) monitoring compliance with the law and the terms and conditions of the license (the breach of which may lead to withdrawal), and (iv) enforcing corrective measures and a contingency plan where necessary.

For supervisory purposes, the Swiss supervisory authority may request information and documentation from operators and third parties involved in the space operations. The Swiss supervisory authority may further access their premises and technical facilities.

In the event of imminent danger to safety, national security, or the environment on Earth, in airspace or in outer space, and where the operator cannot avert such danger, the Swiss supervisory authority may order necessary measures to be taken at the operator's expense, including by another operator or an administrative unit or an international organization conducting space operations.

3. LIABILITY REGIME FOR DAMAGES CAUSED BY SPACE OBJECTS

The Draft SOA introduces a specific national liability regime intended to reflect Switzerland's international liability exposure under the UN treaties, while providing a domestic cause of action.

The regime establishes:

- (i) a strict (causal) liability for damages caused on the surface of the Earth or to aircraft in flight, as well as for consequential damages caused on the surface of the Earth or to aircraft in flight arising from damages caused by a space object to another space object or to persons or goods on board such object; the operator may invoke limited exoneration grounds consistent with the international liability framework (e.g., force majeure or material fault of the injured party or a third party, and absence of fault attributable to persons for whom it is responsible, and absence of defect of the space object that contributed to the damages), subject to statutory conditions; and
- (ii) a fault-based liability for damage caused to another space object or to persons or goods on board another space object.

The Swiss Federal Council shall cap the above liabilities by ordinance. Where civil liability insurance is required as part of the license, liability is limited to the insured amount specified in the license.

If Switzerland is required to compensate damages under the Liability Convention, it is entitled to exercise a right of recourse against the operator.

The Draft SOA also provides a mechanism enabling persons domiciled or having their registered office in Switzerland to request the initiation of international claims proceedings under the Liability Convention to seek compensation for damages caused by a foreign operator.

Cantons must designate a single cantonal instance to adjudicate civil liability claims under the Draft SOA.

4. REGISTER OF SPACE OBJECTS

The Draft SOA establishes a national register of space objects for which Switzerland has granted a license, subject to international agreements.

Subject to such agreements, Swiss law applies to registered space objects a flag-State principle analogous to maritime law.

5. TRANSITORY PROVISIONS

Operators domiciled or having their registered office or place of business in Switzerland already conducting space operations at the time of the entry into force must notify the Swiss supervisory authority within six months.

Existing operations are generally deemed authorized, although the Swiss supervisory authority might impose additional conditions. Where compliance concerns arise, a formal licensing application may be required.

In addition, operators domiciled or having their registered office or place of business in Switzerland conducting operations on the basis of a foreign license must apply for Swiss approval within six months.

CONCLUSIONS

The Draft SOA provides greater legal certainty regarding the regulatory framework applicable to space operations and clarifies Switzerland's domestic liability architecture in light of its international obligations. It enhances Switzerland's credibility as a jurisdiction for space operators, reduces its exposure to international liability, and promotes sustainability principles.

The Draft SOA introduces additional compliance requirements and supervisory oversight, which may increase administrative complexity for operators. However, the Swiss Federal Council has explicitly sought to avoid disproportionate burdens and to preserve competitiveness by limiting the law's scope and delegating technical details to ordinance level.

While the Swiss supervisory authority retains discretion to impose mission-specific conditions, this discretion is framed by statutory criteria and subject to judicial review, thereby mitigating concerns of regulatory unpredictability.

The Swiss Federal Council is empowered to enact implementing provisions and may incorporate internationally recognized standards at ordinance level, such as those developed by the International Organization for Standardization (ISO), the European Cooperation for space Standardization (ECSS), the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), as well as UN guidelines and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct.

As the Draft SOA remains subject to parliamentary deliberation and an optional referendum, its final content and timing of entry into force remain uncertain.

If adopted with the current transitional regime, existing operators should not face retroactive disruption, although additional supervisory conditions may be imposed where justified.

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