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**OPINION OF THE LEGAL SERVICE<sup>1</sup>**

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From: Legal Service  
To: Working Party on Space

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Subject: Proposal for a Regulation on the safety, resilience and sustainability of  
space activities in the Union (EU Space Act)  
– Legal basis

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## I. INTRODUCTION

1. On 26 June 2025, the Commission submitted a legislative proposal for a Regulation of the European Parliament and of the Council on the safety, resilience and sustainability of space activities in the Union (EU Space Act) (hereinafter the “Proposal”, the “proposed Regulation” or “EUSA”).<sup>2</sup> The Proposal is based on Article 114 of the Treaty on the Functioning of the European Union (“TFEU”).
2. During the discussions at the Working Party on Space, delegations requested the Council Legal Service (“CLS”) to provide a legal opinion on the appropriateness of the proposed legal basis. This legal opinion responds to this request. Where indicated, the opinion takes into account developments in the work within the Working Party on Space.<sup>3</sup>

## II. AIM AND CONTENT OF THE PROPOSED REGULATION

3. As to the aim, Article 1(1-2) provides that the subject matter of EUSA is the “*lay[ing] down [of] rules for the establishment and functioning of the internal market of space-based data and space services*” in order to “*achieve a high common level of safety, resilience and environmental sustainability of space services through the operation and use of space infrastructure generating space-based data*”. Recital 137 describes EUSA’s objective as “*establish[ing] a single market for the space sector, through harmonised common rules that are meant to address key risks to space infrastructure and space services*”.<sup>4</sup>

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<sup>2</sup> ST 10935/25.

<sup>3</sup> In particular in the first Presidency Compromise (ST 16435/25).

<sup>4</sup> Compare recital 16: “*Therefore, to safeguard and improve the functioning of the internal market, a set of uniform, effective and proportionate mandatory rules which harmonise key aspects for space services in the context of authorisation of space activities should be established at Union level, to ensure unhindered provision of space-based data and space services across the internal market*”.

4. This stated objective captures the major components of the proposed Regulation. EUSA aims to improve the internal market for *operational space services* (i.e. operation and control of space objects, provision of launch services and maintenance of launch sites, in-space services and operations, and collision avoidance services) and for *the provision of space-based data* (i.e. data originating from space).<sup>5</sup> To that end, it harmonises standards in three areas, namely safety, resilience and environmental sustainability. Other aspects (for instance, ensuring that space activities comply with international law, or laying down liability or insurance requirements) are outside of the scope and remain a national responsibility.<sup>6</sup>
5. The content of the proposed Regulation can be divided into four parts.
6. First, it lays down authorisation, registration and supervision regimes. These consist of (i) an *internal* regime for the authorisation, registration and supervision of certain space activities carried out by Union-based entities;<sup>7</sup> (ii) an *external* regime for the registration and supervision (but not authorisation) of certain space activities carried out by international organisations or third-country based entities;<sup>8</sup> and (iii) provisions regulating certain provision of space-based *data* within the Union.<sup>9</sup> As to point (iii), these rules in essence require that data originating in space may only be provided if the originating space object was duly authorised and/or registered under the internal or external regime.

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<sup>5</sup> On these concepts, see further paragraphs 22-23 below.

<sup>6</sup> EUSA occasionally does regulate certain other aspects, notably in the case of Union-owned assets: see e.g. Article 12(1)(c) (removed in the Presidency compromise: see ST 16435/25, Article 7).

<sup>7</sup> Articles 6-13. This regime is primarily decentralised (executed by the Member States). However, where Union-owned assets (e.g. Galileo satellites) are involved, centralised authorisation also applies: Articles 11-13. Compare Presidency compromise (ST 16435/25), Articles 6-9 and especially Article 6(1b).

<sup>8</sup> Articles 14-23. This regime is centralised (executed by the Commission and the EU Agency for the Space Programme). Compare Presidency compromise (ST 16435/25), Articles 14-23.

<sup>9</sup> Articles 2(4), 5(22), 14(2) and 24-27. Compare Presidency compromise (ST 16435/25), Articles 5(22), 14(-1, -1a and 2) and 24-25.

7. Second, EUSA lays down the substantive safety, resilience and sustainability standards applicable to the space activities mentioned in points (i) and (ii) in the previous paragraph.<sup>10</sup> Space services and space-based data whose underlying space activities comply with these standards benefit from a free movement clause, subject however to “*objectively justified*” stricter national standards (Article 3).
8. Third, EUSA includes governance provisions for the centralised and decentralised regimes.<sup>11</sup> These frame the authorisation procedure, the nature and powers of relevant authorities, and rules on administrative sanctions. Furthermore, they establish an equivalence regime for third countries: accordingly, operators established in third countries covered by that regime are deemed to comply with EUSA’s substantive standards.<sup>12</sup>
9. Finally, EUSA provides for supporting measures (on capacity building, an information portal and a labelling scheme) and final and transitional provisions.<sup>13</sup>

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<sup>10</sup> Title IV (Articles 58-104) and Annexes I-VIII. Compare Articles 58-101b and Annexes I-VI and VIII in the Presidency compromise (ST 16435/25).

<sup>11</sup> In addition to Articles 6-27, see Articles 28-39 (decentralised), 40-57 (centralised), 105-108 (third countries and international organisations) and 115 (professional secrecy). Compare Presidency compromise (ST 16435/25), same provisions and Articles 112a (standards) and 115a (confidentiality).

<sup>12</sup> Articles 16, 17(7) and 105. Compare Presidency compromise (ST 16435/25), Article 17(7) and 17a(8).

<sup>13</sup> Articles 109-112, 113-114 and 116-119 respectively. Compare the same articles in the Presidency compromise (ST 16435/25).

### **III. RELEVANT LEGAL PRINCIPLES**

#### **A. CHOICE OF LEGAL BASIS**

10. Under settled case-law, the choice of legal basis of Union acts must be based on objective factors amenable to judicial review, including the aim and content of the measure.<sup>14</sup> Where an act pursues a twofold purpose, or comprises two components, and one of those purposes or components is identifiable as the main one while the other is merely incidental, then the act must be based solely on the legal basis required by the main purpose or component.<sup>15</sup> Exceptionally, where a measure simultaneously pursues several objectives, or has several components, which are inextricably linked and without one being incidental in relation to the other, that measure must be founded on the various corresponding legal bases.<sup>16</sup> Nevertheless, the combined use of two legal bases is not possible where the procedures laid down for each legal basis are incompatible with one other.<sup>17</sup>

#### **B. ARTICLE 114 TFEU: GENERAL PRINCIPLES**

11. Article 114 TFEU empowers the legislature to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their objective the establishment and the functioning of the internal market.

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<sup>14</sup> Judgment of 3 December 2019, *Czech Republic v Parliament and Council*, C-482/17, EU:C: 2019:1035 (henceforth “C-482/17 *Czech Republic*”), paragraph 31.

<sup>15</sup> *Ibid*, paragraph 31.

<sup>16</sup> Judgment of 2 September 2021, *Commission v Council*, C-180/20, EU:C:2021:658, paragraph 34.

<sup>17</sup> *Ibid*, paragraph 34.

12. This does not provide a general power to regulate the internal market.<sup>18</sup> Rather, such a measure must “*genuinely have as its object to improve the conditions for the establishment and functioning of the internal market*”<sup>19</sup> in a way that is “*actually and objectively apparent from the legal act*”.<sup>20</sup> Those measures must actually contribute to the elimination of obstacles to the free movement of goods or to the freedom to provide services, or to the removal of distortions of competition.<sup>21</sup> Those obstacles must arise from the national rules themselves.<sup>22</sup>
13. In this respect, Article 114 TFEU provides a legal basis where divergent national rules “*are such as to obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market... or to cause significant distortions of competition*”.<sup>23</sup> This extends to the prevention of “*the emergence of such obstacles to trade resulting from the divergent development of national laws*”, so long as that emergence is “*likely and the measure [is] designed to prevent them*”.<sup>24</sup> Conversely, “*a mere finding of disparities between national rules and the abstract risk of infringements of fundamental freedom or distortion of competition is not sufficient to justify*” reliance on Article 114 TFEU.<sup>25</sup>

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<sup>18</sup> Judgment of 5 October 2000, *Germany v Parliament and Council*, C-376/98, EU:C:2000:544 (henceforth “C-376/98 *Tobacco Advertising I*”), paragraph 83.

<sup>19</sup> *Ibid*, paragraph 83.

<sup>20</sup> Judgment of 2 May 2006, *United Kingdom v Parliament and Council*, C-217/04, EU:C:2006:279, paragraph 42.

<sup>21</sup> Judgment of 10 December 2002, *British American Tobacco*, C-491/01, EU:C:2002:741 (henceforth “C-491/01 *BAT*”), paragraph 60.

<sup>22</sup> CLS opinion in ST 16467/24 (European Defence Industry Programme), paragraph 70 and case-law cited.

<sup>23</sup> Judgment of 8 June 2010, *Vodafone and Others*, C-58/08, EU:C:2010:321 (henceforth “C-58/08 *Vodafone*”), paragraphs 32-33. Where divergent law causes obstacles to free movement, it is not necessary to also prove distortion of competition: judgment of 12 December 2006, *Germany v Parliament and Council*, C-380/03, ECLI:EU:C:2006:772 (henceforth “C-380/03 *Tobacco Advertising II*”), paragraph 67.

<sup>24</sup> C-58/08 *Vodafone*, paragraph 33. Compare C-482/17 *Czech Republic*, paragraph 37.

<sup>25</sup> C-58/08 *Vodafone*, paragraph 32. Compare C-482/17 *Czech Republic*, paragraph 34.

14. Moreover, a measure lawfully adopted under Article 114(1) TFEU may include certain provisions that do not directly aim to improve the conditions for the functioning of the market. In particular, it may include provisions which are “*necessary to ensure that prohibitions imposed in pursuit of that [internal market] purpose are not circumvented*”.<sup>26</sup>
15. Finally, Article 114(1) TFEU provides that it applies “[s]ave where otherwise provided in the *Treaties*”. Accordingly, and in light of the principle *lex specialis derogat lex generalis*, Article 114(1) may not be used if a more specific legal basis is appropriate.<sup>27</sup>
16. In light of the case-law set out above, the CLS has consistently summarised the conditions for relying on Article 114 TFEU as follows: (i) disparities between national laws exist or are likely to emerge and are such as to obstruct the functioning of the internal market or to cause significant distortions of competition; (ii) the purpose of the measure is genuinely to improve the conditions for the establishment and functioning of the internal market; and (iii) no other more specific legal basis is appropriate.<sup>28</sup>

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<sup>26</sup> C-376/98 *Tobacco Advertising I*, paragraph 100; C-491/01 *BAT*, paragraphs 82-91. Compare C-380/03 *Tobacco Advertising II*, paragraph 80.

<sup>27</sup> Judgment of 20 April 2023, *Autorità Garante della Concorrenza e del Mercato v Comune di Ginosà*, C-348/22, EU:C:2023:301, paragraph 58.

<sup>28</sup> CLS opinion in doc. ST 9328/24 (interest representation transparency), paragraphs 15-18.

### C. ARTICLE 189 TFEU

17. Article 189(1) TFEU provides that “[t]o promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space”. Article 189(2) enables the legislator to pursue those objectives referred to in paragraph 1 by establishing “the necessary measures, which may take the form of a European space programme, excluding any harmonisation of the laws and regulations of the Member States.” Article 4(3) TFEU clarifies that in the area of space, the Union has competence “to carry out activities, in particular to define and implement programmes”.

### D. INTERACTION BETWEEN ARTICLES 114 AND 189 TFEU

18. The Court has held that once the conditions for recourse to Article 114 TFEU are fulfilled, “the EU legislature cannot be prevented from relying on that legal basis on the ground that the safeguarding of general interests referred to in paragraph 3 of that article, which include safety, is a decisive factor in the choices to be made”.<sup>29</sup> The CLS has advised that this principle extends to all general interests, not only those specifically listed in Article 114(3) TFEU.<sup>30</sup> It follows that pursuing aims relating to space regulation and policy may be an essential public interest objective in a legislative act based on Article 114 TFEU, so long as the conditions for recourse to that article are fulfilled.<sup>31</sup>

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<sup>29</sup> C-482/17 *Czech Republic*, paragraph 36.

<sup>30</sup> See CLS opinions in ST 8089/23 (Media Freedom Act), paragraph 54 and ST 9328/24 (interest representation transparency), paragraph 45.

<sup>31</sup> Compare CLS opinion in ST 8089/23 (Media Freedom Act), paragraph 54.

19. Moreover, the fact that one legal basis excludes harmonisation of the laws and regulations of the Member States “*does not mean... that harmonising measures adopted on the basis of other provisions of the Treaty cannot have any impact*” on the same field.<sup>32</sup> However, those other provisions may, according to the Court, not be used “*as a legal basis in order to circumvent the express exclusion of harmonisation*” laid down by the Treaties.<sup>33</sup> While this case-law concerned Article 168(5) TFEU, this principle logically applies with equal force to the identical harmonisation exclusion contained in Article 189(2) TFEU.<sup>34</sup>
20. The fact that Article 189 TFEU falls in an area of (“parallel”) competence referred to in Article 4(3) TFEU does not affect this analysis. Article 4(3) TFEU provides: “*In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.*”
21. Article 4(3) TFEU thus requires that Union acts adopted under the space competence do not prevent Member States from exercising their competence. It does not affect Union acts adopted under other competences, even if these have an impact on the area of space. This is consistent with the principles set out in paragraphs 18-19 above and with the wording of Article 189(2) TFEU.

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<sup>32</sup> C-380/03 *Tobacco Advertising II*, paragraph 95.

<sup>33</sup> C-376/98 *Tobacco Advertising I*, paragraph 79.

<sup>34</sup> This is, moreover, consistent with the fact that both harmonisation exclusions are expressly limited to the relevant legal basis, rather than applying to the Treaties as a whole. Compare, analogously, Judgment of 8 December 2020, *Hungary v European Parliament and Council*, C-620/18, ECLI:EU:C:2020:1001, paragraph 80; Judgment of 21 December 2023, *European Superleague Company, SL v Fédération internationale de football association (FIFA) and Union of European Football Associations (UEFA)*, C-333/21, ECLI:EU:C:2023:1011, paragraphs 99-101; and CLS opinion in ST 8089/23 (Media Freedom Act), paragraph 24.

#### IV. LEGAL ANALYSIS

22. Before turning to the legal basis analysis, some conceptual refinement is necessary. EUSA distinguishes two major components: the provision of space services and the provision of space-based data (see paragraphs 3-4 above). However, the proposed Regulation also conflates those components. In particular, the provision of space-based data is a space service where it is the sort of provision that a '*primary provider of space-based data*' carries out.<sup>35</sup> By contrast, other provision of space-based data does not constitute a space service. This creates a partial overlap between the two concepts. Furthermore, it conflates two sets of services that primarily operate at different levels of the market and that raise distinct legal issues. In general, space objects produce data that are used not in the midstream economy (e.g. operating satellites), but rather in downstream markets (e.g. providing earth observational data or satellite communications).<sup>36</sup>
23. In order to avoid this confusion, this legal opinion uses the concept of *operational space services*, which means all space services other than the provision of space-based data,<sup>37</sup> i.e. the service of operating and controlling space objects, the provision of launch services and maintenance of launch sites, the provision of in-space services and operations, and the provision of collision avoidance services.<sup>38</sup> Part **A** addresses those services. Part **B** addresses the provision of space-based data. Both parts will apply the three conditions of the Article 114 TFEU test (paragraph 16 above).

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<sup>35</sup> Article 5(14), point (c) and Article 5(22). In the Presidency compromise (ST 16435/25), see Article 5(-1b), point (c) and Article 5(22). On the concept of primary providers of space-based data, see paragraph 49 below.

<sup>36</sup> See EUSA, recital 22 and the Impact Assessment (ST 10935/25 ADD3), p. 6.

<sup>37</sup> More precisely, it means the space services listed in Article 5(14), points (a), (b), (d) and (e). In the Presidency compromise (ST 16435/25), see Article 5(-1b), points (a), (b) and (d). In certain cases, provision of those space services will itself consist of, or require the provision of, space-based data (e.g. telemetry or tracking data necessary to operate a space object). In this case, the provision of that data would constitute an operational space service.

<sup>38</sup> In the Presidency compromise (ST 16435/25), collision avoidance services are deleted: Article 5(-1b).

## A. LEGAL BASIS: OPERATIONAL SPACE SERVICES

### 1. Disparities between national provisions and obstacles to trade

24. As regards divergent national laws, recital 5 explains that “13 Member States have already enacted legislations regulating the space activities while several others carry out preparations to enact similar legislations”. Those laws “share a common objective”, namely to authorise and supervise space activities in accordance with international legal obligations and, in particular, to “address emerging safety, resilience and sustainability risks” (recitals 6, 8 and 9). However, they “vary as to the extent and depth of the specific requirements to address the risks to the safety, resilience and sustainability of space activities” (recital 9; see further recital 11). Recital 12 gives the specific example of divergent national laws on the safety of spacecraft and satellites. Annex 6 to the Impact Assessment further substantiates these explanations.<sup>39</sup> Divergent laws therefore clearly exist as regards the conduct of space activity, particularly as regards safety, space debris and sustainability.
25. As regards obstruction of the functioning of the internal market, the recitals explain how these divergences in national law create barriers to the free movement of services. In particular, “[d]iverging national requirements may lead to the fragmentation of the internal market and decrease legal certainty needed by Union space operators” (recital 9). Moreover, fragmentation in authorisation conditions concerning “key elements of space infrastructure, such as spacecraft, or to cyber risk management rules when providing space services, or to the environmental impact of space activities, can adversely impact... the provision and deployment of space services in the Union” (recital 11). Recital 15 adds that the “cross-border nature of space activities in the Union is likely to intensify .... Against this background, diverging conditions across the national authorisation regimes are likely to create more barriers in the space sector...”.<sup>40</sup> Finally, recital 12 gives specific examples of such barriers, whereby divergent standards may prevent space operators from accessing launch or operation services in other Member States.

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<sup>39</sup> ST 109355/25 ADD4. See notably pp. 49-111.

<sup>40</sup> Compare recital 3.

26. Furthermore, the CLS considers that these divergent requirements are likely to create obstacles to the free movement of goods. For instance, divergent safety standards for satellites are likely to impede the free movement of satellites manufactured in one Member State to other Member States.<sup>41</sup> This additional effect could be clarified in the EUSA.

27. In light of the above, the first condition of Article 114 TFEU is fulfilled.<sup>42</sup>

## 2. Improving the internal market

28. Recital 137 states that the aim of the proposed Regulation is to “*establish a single market for the space sector, through harmonised common rules that are meant to address key risks to space infrastructure and space services...*”. In harmonising national law regarding safety, resilience and environmental sustainability, the proposed Regulation purports to improve the establishment and functioning of the internal market by removing obstacles to the free movement of those operational space services (recital 16).

29. Additionally, recitals 13 and 15 claim that the obstacles created by divergent law are likely to affect “*the continuity of the supply*” of space services and space-based data “*which in turn support many areas of activity in the internal market, including critical sectors and infrastructure*”. However, it has not been shown that national rules designed to address continuity of supply risks had emerged or were likely to emerge, nor that such divergent rules would create obstacles to cross-border trade or would distort competition. Only then could harmonisation remove those obstacles or distortions, and so fulfil the second criterion.<sup>43</sup> It is therefore appropriate to focus solely on the first stated aim in this opinion.

30. In general, the content of the Proposal is consistent with that first aim.

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<sup>41</sup> Compare Annex 7 to the Impact Assessment (ST 10935/25 ADD 4, p. 114).

<sup>42</sup> Recital 14 also claims that divergent law could cause distortions of competition. If this can be substantiated, it would further strengthen the conclusion that the first condition is fulfilled.

<sup>43</sup> Compare, as regards supply shortages, CLS opinions in ST 7515/23 (Single Market Emergency Instrument), paragraph 23 and ST 16467/24 (European Defence Industry Programme), paragraphs 77-78.

31. First, the Proposal establishes a common set of standards for the safety,<sup>44</sup> resilience<sup>45</sup> and (in part) environmental sustainability<sup>46</sup> of operational space services.<sup>47</sup> These standards are coupled with a free movement clause covering certain cross-border cases (Article 3). In principle, these common standards are capable of reducing the barriers to the free movement of such services (and, consequently, goods). For instance, the harmonised standard for space debris mitigation<sup>48</sup> should make it easier for a satellite operator established in Member State A to order its satellite from Member State B, launch its satellite in Member State C, and operate it from Member State D, without needing to understand and reconcile up to four separate standards.
32. Second, it establishes common governance standards and procedures for the authorisation, registration and supervision of space activities, both centralised and decentralised (paragraphs 6 and 8 above). This ensures “*effective enforcement of this Regulation across the internal market*” (recital 107). Furthermore, by increasing the transparency and consistency of the enforcement of the common rules, the governance rules increase the mutual confidence on which free movement partly depends.<sup>49</sup>

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<sup>44</sup> E.g. safety standards for launch and re-entry, flight safety, space debris mitigation, trackability and manoeuvrability, collision avoidance and orbital traffic rules. See Articles 58-74 and 102-104 and Annexes I-VI.

<sup>45</sup> E.g. resilience standards for cybersecurity and physical risks, contingency planning, incident handling and reporting. See Articles 75-95 and Annex VII. Compare the Presidency compromise, Articles 75-75a, 93 and 118a.

<sup>46</sup> Principally a requirement for space operators to calculate the “*environmental footprint*” of their space activities. See Articles 96-100 and further paragraph 40 below.

<sup>47</sup> With lighter or stricter standards in certain cases: e.g. Articles 73 and Annex VI concerning constellations.

<sup>48</sup> Articles 61 and 70 and Annexes II and V.

<sup>49</sup> Compare judgment of 6 May 2021, *Analisi G. Caracciolo srl v Regione Siciliana - Assessorato regionale della salute - Dipartimento regionale per la pianificazione and Others*, Case C-142/20, ECLI:EU:C:2021:368, paragraphs 37-41.

33. Third, it regulates third country operators and international organisations providing space services in the Union, as well as establishing an equivalence regime for third countries. This is said to “*create equal conditions for operating in the internal market*” and “*preven[t] the risk of circumvention of rules to the disadvantage of Union consumers and businesses, and safeguar[d] the efficiency of the objectives pursued by this Regulation*” (recitals 23 and 25).
34. Finally, it includes certain supporting measures, notably supporting space operators and others in complying with the Regulation (Articles 109-110), thereby contributing indirectly to the Regulation’s goals.
35. In general, therefore, the proposed Regulation genuinely aims to foster the cross-border circulation of operational space services and goods and to improve the conditions for the establishment and functioning of the internal market. In doing so, it also pursues other general objectives, such as aiming to achieve a high level of resilience of space infrastructure (recital 79) and stimulating innovation in the space sector (recital 17). The latter does not preclude reliance on Article 114 TFEU, since the internal market goal of the measure remains genuine (see paragraph 18 above).
36. However, certain elements of the proposed Regulation require further clarification or adjustment in light of the second condition of Article 114 TFEU.

37. First, some elements of the material and territorial scope of the proposed Regulation are unclear. As regards material scope, the central concept of *service* is not defined. It appears that the intention is to limit EUSA to services in the sense of Article 57 TFEU, i.e. services that are normally provided for remuneration. Space activities that lack any link to the internal market would therefore be excluded from the scope. However, this is not clear in the text, and certain provisions suggest that space activities with no such link are within the scope of EUSA.<sup>50</sup> Strikingly, the proposed Regulation's title refers to *space activities*, not *space services*. If the intention is to exclude space activities with no link to the market, then this should be made explicit in the text. If the intention is to include (some or all) such activities, then that inclusion should be made explicit and adequately justified.<sup>51</sup>
38. As regards territorial scope, the proposed Regulation appears to aim to regulate operational space services *in the Union* (EUSA's title; recital 23).<sup>52</sup> Yet Article 6(1) appears to require Union space operators to obtain authorisation for space activities *globally*. This would include, for instance, space services provided solely in a third country by a branch of a Union space operator. It is unclear whether this broader scope is intended. If it is, EUSA should make this scope explicit and explain its internal market justification.<sup>53</sup>

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<sup>50</sup> Notably provisions on research and educational space activities (Article 5(25), Article 10(2) and Article 62); provisions regulating all provision of space-based data, whether or not this is a service (e.g. Article 14(2)); and provisions which appear to apply to all space activities of a space services provider, whether or not the activity is linked to a service (e.g. Article 6(1) and 29(1)).

<sup>51</sup> For instance, the inclusion of non-market activities could be necessary to avoid circumvention of the main rules. See CLS opinion in ST 5125/25 (cross-border associations), paragraph 14.

<sup>52</sup> In conformity with international law, this would include Union-launched satellites in outer space. See Articles VI and VIII Outer Space Treaty 1967 (610 UNTS 205) (the latter read with Articles I and II Registration Convention 1975 (1023 UNTS 15)) and, by analogy, Judgment of 24 November 1993, *Mondiet*, C-405/92, ECLI:EU:C:1993:906, paragraph 12.

<sup>53</sup> The Presidency compromise (ST 16435/25) would clarify that the scope is limited to services provided in the Union. See Article 6(1).

39. Second, as drafted, the free movement clause (Article 3) permits Member States to impose stricter standards in certain cross-border cases.<sup>54</sup> Conversely, it appears that Member States may not impose stricter standards in purely internal cases. Rather than promoting the free movement of services (by ensuring that EUSA-compliant services are not hindered by stricter national standards), this drafting obstructs it (by permitting stricter standards only in cross-border cases), directly undermining the legal basis. The legally safest course would be to prohibit the application of stricter standards in cross-border cases, with or without an option to apply stricter standards internally.<sup>55</sup>

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<sup>54</sup> Namely where a Union space operator intends to operate in, or launch from, a Member State other than its Member State of establishment: Article 3(2).

<sup>55</sup> See Judgment of 4 May 2016, *Philip Morris v Secretary of State for Health*, C-547/14, ECLI:EU:C:2016:325, paragraphs 71-83, especially 71-72. See further C-491/01 *BAT*, paragraph 74 and C-380/03 *Tobacco Advertising II*, paragraphs 73-78.

40. Third, the justification as regards sustainability and voluntary space labelling schemes is unclear. Divergent national laws regarding environmental sustainability exist (paragraph 24 above). However, EUSA's sustainability provisions do not lay down substantive environmental standards. They only require the calculation and publication of, and access rights to, information on the "*environmental footprint*" of space activities (Articles 96-100). It is unclear whether divergent national law on such information exists or is foreseeable, such that laying down a single standard in this respect would genuinely improve the functioning of the internal market.<sup>56</sup> Similarly, EUSA establishes voluntary Union labelling schemes, said to create "*a common approach for Union space operators willing to go further than the baseline mandated by this Regulation*" (recital 127). However, the Proposal does not explain how these schemes for higher standards would improve the conditions for the functioning of the internal market, taking into account that EUSA would already establish baseline standards that should remove the relevant obstacles to cross-border services.<sup>57</sup> Consequently, the justification for including environmental footprint obligations and voluntary labelling schemes in EUSA should be assessed and, if considered appropriate, more clearly articulated in EUSA's recitals.
41. Subject to the caveats set out in paragraphs 37-40 above, the second condition of Article 114 TFEU is fulfilled.

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<sup>56</sup> This analysis assumes that EUSA's harmonisation is limited to *environmental footprints*, rather than purporting to harmonise *all environmental sustainability requirements* (and requiring that these be limited to environmental footprints).

<sup>57</sup> Compare recitals 67-69 of Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act) (OJ L 151, 7.6.2019, p. 15). These explain how a common approach would reduce legal barriers to free movement.

### 3. Lack of more specific legal bases

42. As regards this condition, first, it should be considered whether Articles 53(1) and 62 TFEU would constitute a more appropriate legal basis, given that EUSA's stated aim is to improve the freedom to provide services. As the CLS has previously explained,<sup>58</sup> Articles 53(1) and 62 TFEU provide a legal basis for the adoption of directives for the coordination of provisions laid down by Member States concerning the taking-up and pursuit of services by service providers in the internal market. In contrast, measures based on Article 114 TFEU typically pursue broader objectives beyond simple liberalisation or access to a service sector in different Member States. The Court has recognised that Article 114 TFEU may constitute the appropriate legal basis when the measure contributes to the improvement of the internal market by removing obstacles to the freedom to provide services.<sup>59</sup>
43. EUSA removes obstacles to both the freedom to provide services and the free movement of goods.<sup>60</sup> Article 53(1) and 62 TFEU would not, therefore, be appropriate legal bases for the entire act. Moreover, even those aspects of the proposed Regulation that do concern operational space services aim to improve the functioning of the internal market as a whole, by eliminating obstacles stemming from divergent national laws and by ensuring the safety and resilience of services that in turn support the entire internal market, rather than regulating the taking-up and pursuit of an activity throughout the Union. Article 114 TFEU is therefore the more appropriate legal basis.

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<sup>58</sup> CLS opinions in ST 9328/24 (interest representation transparency), paragraphs 50-53 and ST 8089/23 (Media Freedom Act), paragraphs 62-68.

<sup>59</sup> E.g. C-491/01 *BAT*, paragraph 60; Judgment of 22 January 2014, *United Kingdom v Parliament and Council*, C-270/12, ECLI:EU:C:2014:18, paragraph 114.

<sup>60</sup> See paragraphs 25-26 above.

44. Next, it should be considered whether Article 189 TFEU would constitute a more appropriate legal basis. Article 189 TFEU provides a legal basis for measures necessary to promote joint initiatives, support of research and technological development, and coordination of the efforts needed for the exploration and exploitation of space, and this with a view to promoting scientific and technical progress, industrial competitiveness and implementation of Union policy (paragraph 17 above). Those measures “*may take the form of a European space programme*” (Article 189(2) TFEU) and, more broadly, the Union’s competence under this legal basis is “*to carry out activities, in particular to define and implement programmes*” (Article 4(3) TFEU). Legislation based on the Article 189(2) TFEU legal basis reflects these goals and this nature. The Union Space Programme funds various components, including the Galileo global navigation satellite system, a space surveillance and tracking system, and a satellite communication service for critical public infrastructure.<sup>61</sup> Similarly, the Union Secure Connectivity Programme complements the Union Space Programme by funding activities to ensure secure and reliable space-based satellite communication services for governmental use.<sup>62</sup> Contextually, Article 189(2) TFEU shares certain features with Article 173(3) TFEU, which provides a legal basis for measures ensuring that the conditions necessary for the competitiveness of the Union’s industry exist, and Article 182 TFEU, which provides a legal basis for research funding programmes.<sup>63</sup>

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<sup>61</sup> Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ L 170, 12.5.2021, p. 69), Articles 1 and 3.

<sup>62</sup> Regulation (EU) 2023/588 of the European Parliament and of the Council of 15 March 2023 establishing the Union Secure Connectivity Programme for the period 2023-2027 (OJ L 79, 17.3.2023). See notably recitals 8, 10 and 77.

<sup>63</sup> See moreover recital 15 of Regulation (EU) 2021/696, stating that the Programme “*shares similar objectives with other Union programmes*”, including programmes partly based on Articles 173(3) and 182 TFEU.

45. While the Proposal may contribute to improving competitiveness,<sup>64</sup> there is nothing in the Proposal which indicates that the latter is an aim of the Proposal. The aim is not to create a programme, to support the European space industry or to fund research.<sup>65</sup> Nor is it to coordinate efforts for the exploration and exploitation of space. Rather, the aim is to provide common market rules for space services providers in order to improve the functioning of the internal market for space services. By definition, the achievement of this internal market aim requires choices to be made that have implications for space regulation and policy. The simple fact of affecting the area of space does not, however, mean that Article 189 TFEU could serve as a legal basis, nor that recourse to Article 114 TFEU is excluded (see paragraphs 18-21 above). It follows that Article 189 TFEU is not an appropriate legal basis.
46. It is noted that Article 108 EUSA provides for the conclusion of an agreement with the European Space Agency “*to advance the objectives pursued by this Regulation and to strengthen the cooperation between the Union and ESA.*” Advancing the objectives of the Regulation is closely linked to EUSA itself, and so can properly be considered ancillary. However, strengthening cooperation with ESA could be interpreted as envisaging a broader agreement regarding other aspects of cooperation between the Union and the European Space Agency. This ambiguity seems unintentional as the Article in its entirety clearly focuses on matters relevant for the implementation of EUSA.<sup>66</sup> The text could be rephrased to avoid this ambiguity. In any case, the substantive legal basis of that future agreement will have to be assessed on its own merits.

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<sup>64</sup> E.g. Explanatory Memorandum (ST 10935/25), p. 1 and recitals 24-25.

<sup>65</sup> Article 109 on capacity building does provide for support for space operators. However, this support is strictly limited to supporting them “*in the implementation of this Regulation*”, and so aims to ensure full implementation of EUSA’s internal market rules. See similarly paragraph 34 above.

<sup>66</sup> See Article 108(2-4) EUSA, all of which relate to this aspect.

47. Finally, given that EUSA includes certain rules regarding environmental sustainability, it is appropriate to address Article 192 TFEU.<sup>67</sup> The environmental aspects of EUSA are limited and, subject to paragraph 40 above, aim to pursue the internal market goal. Harmonised rules on environmental sustainability (Articles 96-100) are designed to remove a barrier to free movement (recitals 11 and 93). Provisions concerning space debris, including those regulating end-of-life space vehicles, primarily address divergent space debris law and protect the safety of space objects.<sup>68</sup> Article 72 on light and radio pollution arguably comes closest to pursuing an environmental goal, and its internal market goal could be more clearly articulated.<sup>69</sup> However, even if its objective is environmental, it is a single article that would only be ancillary. It follows that Article 192 TFEU is not an appropriate legal basis.
48. The third condition of Article 114 TFEU is therefore fulfilled as regards operational space services. Consequently, and subject to the caveats set out in paragraphs 37-40 above, Article 114 TFEU is the appropriate legal basis in this respect. The exclusion of harmonisation laid down in Article 189(2) TFEU does not apply and is not circumvented.

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<sup>67</sup> See generally CLS opinion in ST 10626/21 (batteries), paragraph 32.

<sup>68</sup> Recital 57; compare recital 58. Amongst other things, the requirements concerning end-of-life space vehicles directly concern those vehicles' design (e.g. Annex II, point 1.2.2; Annex V, point 3.2.1) and conception of the space service itself (e.g. Annex II, point 2.1); moreover, the removal of space objects is itself a space service (e.g. Annex V, point 3.3). Contrast Opinion in ST 10626/21 (batteries), paragraph 34.

<sup>69</sup> Recital 65 justifies it by reference to "*research and planetary defence capabilities*"; the Impact Assessment, Annex III, instead refers to the safety of space objects (ST 10935/25 ADD4, p. 18).

## B. LEGAL BASIS: PROVISION OF SPACE-BASED DATA

49. As explained in paragraphs 22-23, EUSA's second major component consists of rules regarding the provision of space-based data to the downstream market. Space-based data are "*data received from space*".<sup>70</sup> This appears to extend beyond the initial receipt directly from space, such that data originating in space and transmitted onwards via Earth would remain space-based data.<sup>71</sup> Article 2(4) requires space objects generating "*space-based data that are used in the Union*" to comply with EUSA's safety rules. Articles 14(2) and 27 regulate all provision of space-based data by international organisations and primary providers of space-based data (hereinafter "primary providers"): international organisations must have an agreement with the EU to provide such data, and primary providers must ensure that the originating space object is registered in an EU registry (and thus complies with EUSA, see e.g. Article 24). Primary providers are persons that "*initiate the first processing of space-based data which is technically sufficient to enable any subsequent provision of space-based data*", including providers of electronic communication services and the first processors of earth observation data (Article 5(22)). Finally, Article 26 regulates provision *for the first time* of space-based data by space services providers:<sup>72</sup> such providers must possess an e-certificate regarding that data (thus attesting that the originating space object and mission comply with EUSA, see Article 25(2)).
50. The apparent aim of these rules is to ensure that data received from space may be provided and used in the Union only where the originating space object complies with EUSA. To that end, EUSA obliges relevant space services providers, international organisations and primary providers to ensure that space-based data are only provided where that condition is fulfilled. Primary providers' role here is of particular importance, as they "*play a key role as intermediaries*" between the space sector and the broader economy (recital 22).

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<sup>70</sup> Article 5(12).

<sup>71</sup> See notably recital 22, Article 5(22) and Article 27(1) (whereby the data remains space-based after the primary provider of space-based data's initial processing).

<sup>72</sup> Except collision avoidance space services providers.

## 1. Disparities between national provisions, obstacles to trade, and improving the internal market

51. EUSA suggests two justifications for these rules regarding space-based data under the main conditions of Article 114 TFEU. First, aspects of EUSA suggest that the purpose of these rules is to remove barriers to the free movement of space-based data and the freedom to provide that data (notably recitals 11 and 16 and Articles 1(1) and 3(1)). However, neither the recitals nor the Impact Assessment suggest that divergent national laws on the provision or movement of space-based data exist or are likely to arise. Moreover, EUSA does not establish any standards regarding that data (such as integrity or quality requirements) beyond requiring that the data originate in space objects which comply with EUSA's standards (contrast recital 48). It is therefore not demonstrated that legal barriers to the freedom to provide services exist (first condition of Article 114 TFEU) nor that the requirement to ensure data originates from a EUSA-compliant satellite would remove such barriers (second condition).
52. Second, recital 15 suggests that one of EUSA's objectives is to ensure the continuity of supply of space-based data, which is in turn crucial for the internal market (compare recitals 1-2, 13 and 69). However, as explained above (paragraph 29), this could only justify recourse to Article 114 TFEU if there were existing or foreseeable divergences in national law aiming to ensure the continuity of supply of space-based data which would create barriers to the internal market. No such divergent laws have been identified, and so it is not demonstrated that the first condition of Article 114 TFEU is fulfilled.

53. If the legislature wishes to regulate the provision of space-based data for the purpose of improving those data's free movement or the freedom to provide those data, it would therefore be necessary to analyse and demonstrate how the first and second conditions of Article 114 TFEU are fulfilled.<sup>73</sup> The CLS observes that internal market law has previously harmonised divergent national law so as to ensure the free movement of personal data.<sup>74</sup> Similarly, previous and proposed internal market law have harmonised<sup>75</sup> or would harmonise<sup>76</sup> national law regarding the provision of certain satellite communications services within the Union, which is likely to partly overlap with the provision of space-based data. It is conceivable that divergent laws regarding the provision or free movement of space-based data in general exist or are foreseeable, and that harmonising those laws would remove obstacles to the internal market. At present, however, this has not been demonstrated.

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<sup>73</sup> No additional or specific issues arise with regard to the third condition.

<sup>74</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31), recitals 8-9 (prior to the introduction of Article 16 TFEU as a distinct legal basis on the protection of personal data).

<sup>75</sup> E.g. Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.1993, p. 15); Directive 98/13/EC of the European Parliament and of the Council of 12 February 1998 relating to telecommunications terminal equipment and satellite earth station equipment, including the mutual recognition of their conformity (OJ L 74, 12.3.1998, p. 1); and Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS) (OJ L 172, 2.7.2008, p. 15).

<sup>76</sup> Proposal for a Regulation of the European Parliament and of the Council on digital networks (Digital Networks Act) (ST 5600/26), recitals 124-135 and Articles 36-45. See also, on divergences in national law, the Impact Assessment (ST 5600/26, ADD2), p. 27-30 and its corresponding Annex sections.

## 2. Preventing circumvention of internal market provisions

54. EUSA includes a third justification for regulating the provision of space-based data. Rather than regulating the provision of data for the sake of eliminating internal market barriers relating to the provision of those data, EUSA regulates such provision as a means to enforce the rules regarding operational space data. Recital 22, for instance, explains that primary providers “*play an important role in the space sector, by ascertaining that the space-based data which they pass down in the value chain originates from space operators that are compliant with this Regulation*”. Recital 25 explains that EUSA applies where space-based data are provided in the Union “*thereby demonstrating a substantial connection to the internal market, preventing the risk of circumvention of rules*”. The rules regarding space-based data do not directly improve the internal market, but rather aim to prevent circumvention of the ‘main’ rules regarding operational space services. By way of analogy, EUSA does not impose standards regarding *the “product”* (the data themselves); rather, it imposes standards regarding the “*factory*” (the satellite providing the data). It then prohibits the provision of data originating from non-compliant satellites so as to prevent circumvention of the standards relating to them.

55. As noted above, the Court has held that an Article 114 TFEU measure may include such anti-circumvention provisions.<sup>77</sup> In line with this case-law, the CLS has advised that it is lawful to include “*certain limited activities*” that are not services in an act primarily aiming to achieve the free movement of services, where this aims “*to prevent easy circumvention of its requirements by using artificial commercial or contractual schemes*”.<sup>78</sup> In light of the case-law, the CLS considers that the legislature has a margin of discretion in assessing the risk of circumvention and the scope of rules necessary to prevent or mitigate this.<sup>79</sup> Nevertheless, there must be a plausible argument that the rules aim to prevent or mitigate circumvention, and those rules must be broadly proportionate to that aim.<sup>80</sup>
56. In the instant case, the essential argument of recital 25 EUSA – namely, that there is a risk of circumvention of the main rules which would be mitigated by rules regarding the provision of data from space – is plausible. In particular, the downstream market consists of “*services and applications that use satellite data*”,<sup>81</sup> notably for navigation, satellite communication and Earth observation.<sup>82</sup> Space services providers could therefore circumvent EUSA’s standards by launching or operating from a third country instead of the Union, before providing precisely the same positioning, broadcasting, telecommunications or Earth imagery data in the Union market. Rules regarding the provision of data from space appear capable of mitigating or preventing that risk.

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<sup>77</sup> Paragraph 14 above and case-law cited.

<sup>78</sup> CLS opinion in ST 9328/24 (interest representation transparency), paragraph 36. Contrast CLS opinion in ST 5125/25 (cross-border associations), paragraph 15.

<sup>79</sup> See C-380/03 *Tobacco Advertising II*, paragraph 64 (“*conceivable*”) and C-491/01 *BAT*, paragraph 89 (“*may reasonably be thought*”) and contrast C-376/98 *Tobacco Advertising I*, paragraph 100 (“*quite clear*”). This is also consistent with the legislature’s discretion as regards the method of approximation under Article 114 TFEU: C-482/17 *Czech Republic*, paragraphs 60 and 62.

<sup>80</sup> See C-376/98 *Tobacco Advertising I*, paragraph 100 (“*necessary*”) and the assessment in C-491/01 *BAT*, paragraphs 86-91. This test is part of the legal basis analysis. It is distinct to the assessment of proportionality under Article 5(4) TFEU or of fundamental rights.

<sup>81</sup> Impact Assessment (ST 10935/25 ADD3), p. 3.

<sup>82</sup> Impact Assessment (ST 10935/25 ADD3), p. 4, Figure 1.

57. However, it is not clear that the proposed anti-circumvention rules remain broadly proportionate to that aim. EUSA imposes far-reaching obligations affecting the downstream economy and satellites whose connection to the Union market may be remote. Article 2(4) purports to require all space objects generating “*space-based data that are used in the Union*” to comply with its standards, although it is not entirely clear how this would work.<sup>83</sup> Additionally, certain persons (namely international organisations, most space services providers, and primary providers) may only provide space-based data in the Union where they have ensured that the data originate in a registered space object; space services providers, in particular, must include the relevant e-certificate in any contract for the provision of space-based data (Article 26(2)). The Presidency compromise, for its part, has clarified how EUSA’s obligations apply, without reducing the proposed scope. Under this compromise, any person placing data “*on the Union market for the first time... in return for payment or free of charge*” is subject to EUSA and must ensure an e-certificate exists.<sup>84</sup> In both cases, EUSA becomes applicable in any case where data originating in space – even after several rounds of terrestrial processing, transmission or sale – are provided within the Union. This could apply, for instance, where an EU resident accesses a third-country educational website hosting third-country satellite images.

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<sup>83</sup> While the Article 2(4) obligation concerns all use of space-based data in the Union, EUSA’s personal scope is limited to certain persons (Articles 2(1), 14, 26 and 27). It is unclear how Article 2(4) would apply in cases where no such person was in scope.

<sup>84</sup> ST 16435/25, Article 5(22) and Article 14(1a).

58. These obligations would not protect EU consumers from the circumvention of any EU *space data* standards, since the EUSA does not set out such standards.<sup>85</sup> Rather, they would indirectly serve to uphold EU *space operations* standards. They would do so by aiming to prevent data from non-compliant satellites entering the Union directly or indirectly, thereby significantly restricting the freedom of information (Article 11 of the Charter of Fundamental Rights) and placing duties on persons with only an indirect connection to operational space services. In the absence of adequate evidence and explanation, it is questionable whether this approach is proportionate and remains within the limits of the proposed legal basis.
59. Accordingly, if the legislature wishes to prevent or mitigate the risk of circumvention identified above, it should identify and justify a proportionate approach to that effect.<sup>86</sup>
60. One option could be that the EUSA would only apply to the provision of data directly from space to the Union territory. This would significantly narrow its scope, excluding all subsequent processing and provision. That direct provision is closely connected to operational space services themselves. While the main obligation would apply to the data's provider, it is possible that effective enforcement would require placing obligations on certain recipients too.<sup>87</sup> This approach would not prevent circumvention of the main rules in the case of Earth observation and other observational data, as such data could be received in a third country before being sent, via Earth, into the Union. However, it appears that Earth observation data are the smallest part of the downstream space economy by value.<sup>88</sup>

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<sup>85</sup> Contrast Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (OJ L, 2024/1689, 12.07.2024), recital 22.

Compare paragraphs 51-53 above.

<sup>86</sup> Unless an Article 114 TFEU case for regulating the provision of space data as such is made out (paragraphs 51-53 above) or adequate evidence and explanation is offered justifying the existing approach on an anti-circumvention basis (paragraph 58 above).

<sup>87</sup> E.g. those providing a good or service which depends on the data (e.g. the manufacturer, digital services provider and/or telecommunications provider of a satellite telephone).

<sup>88</sup> Impact Assessment (ST 10935/25 ADD3), p. 4.

61. Other intermediate options could be considered. For example, conceivably, obligations could be designed in such a way as to apply to the provision of space-based data where this is the essence of, or essential to, the service provided, excluding ancillary or minor provision of such data in the Union and/or excluding the provision of such data for educational purposes. Any such approach would require careful analysis of the nature of the space economy, and particularly the space data market, and of the proportionality of the approach, in light of available evidence.

## V. CONCLUSION

62. In the view of the CLS, the Regulation's provisions concerning operational space services are correctly based on Article 114 TFEU insofar as they regulate operational space services. However, that conclusion is subject to the caveats set out in paragraphs 37-40, in essence:

- The scope should be made explicit and adequate justification provided if it is considered that EUSA should also cover space activities that are not linked to services and/or that it should cover space services outside the Union;
- The free movement clause in Article 3 should be redrafted so as to genuinely promote the free movement of services and goods; and
- The justification for including environmental footprint obligations and voluntary labelling schemes in EUSA should be assessed and, if considered appropriate, more clearly articulated in EUSA's recitals.

63. The exclusion of harmonisation laid down in Article 189(3) TFEU does not apply and is not circumvented.

64. By contrast, based on the Proposal and available information, the CLS considers that it is questionable whether the proposed broad scope of the Regulation's provisions concerning the provision of space-based data is proportionate and remains within the limits of the proposed legal basis. Narrower provisions regarding space-based data may be justifiable as a means to prevent or mitigate circumvention of the rules concerning operational space services.