

IN-DEPTH

# Space Law

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# Space Law

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**Joanne Wheeler MBE**

Alden Legal Limited

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In-Depth: Space Law (formerly The Space Law Review) is a practical overview of the legal and regulatory frameworks governing space and satellite activities across key jurisdictions worldwide. With a focus on the most salient recent developments in this fast-evolving sector, it analyses the distinctive features of the law and commercial practice in each jurisdiction and looks at potential future trends.

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# Portugal

Magda Cocco, Helena Correia Mendonça and Cristina Melo Miranda

Vieira de Almeida & Associados

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## Introduction

Portugal has been taking important steps in the space sector in recent years. In addition to the approval of its space strategy in 2018 (Portugal Space 2030), Portugal also became part of the European Space Surveillance and Tracking programme (EU SST), launched the Atlantic International Research Centre (the AIR Centre), stated its intention to set up a spaceport in the Azores and approved its own National Space Act. Moreover, Portugal reinforced its contribution to the European Space Agency (ESA), appointed a national space authority (the Space Authority) and set up a space agency (Portugal Space).

Portugal has been taking important steps in the space sector in recent years. In addition to the approval of its space strategy in 2018 (Portugal Space 2030), Portugal also became part of the European Space Surveillance and Tracking programme (EU SST), launched the Atlantic International Research Centre (the AIR Centre), stated its intention to set up a spaceport in the Azores and approved its own National Space Act. Moreover, Portugal reinforced its contribution to the European Space Agency (ESA), appointed a national space authority (the Space Authority) and set up a space agency (Portugal Space).

### i Portugal Space 2030

Resolution of the Council of Ministers No. 30/2018 of 12 March 2018 approved Portugal Space 2030. Its strategic goals include:

1. promoting economic growth and the creation of skilled employment through space-related markets;
2. promoting the generation of satellite data through new space technologies and infrastructures;
3. contributing to the development of Portugal and international scientific cooperation, taking into consideration the geostrategic positioning of Portugal; and
4. guaranteeing the development and evolution of legal, financial, institutional, cultural and educational frameworks aimed at developing the space sector in Portugal.

The strategy contains three axes. The first relates to the exploration of space data and signals through space services and applications or as enabled by space technologies. The second axis relates to the development, construction and operation of space equipment, systems, infrastructures and services for space data generation, with an emphasis on mini-, micro- and nanosatellites. As part of the second axis, the development of a programme for access to space is mentioned. The third axis focuses on the development of national capability and skills in the space sector through scientific research, innovation, education and scientific culture.

The development of a specialised consortium in the space sector in the form of a collaborative laboratory and continuing to promote the incubation of new companies in close cooperation with ESA (e.g., through the ESA Business Incubation Centre in Portugal) are also referred to.

The core institutional framework for space in Portugal comprises the Space Authority, which is tasked with supervising and licensing space activities, and Portugal Space. The Space Authority is, provisionally, the National Communications Authority, which is also the competent entity for the assignment of orbital slots and frequencies.

Following the increasing relevance of outer space in defence, Portugal has also created a working group for a Space Defence Programme (PRESDEF) under Order No. 3732/2020 of 26 March 2020, which was tasked with developing a proposal for a National Defence Strategy for Space, including an action plan for its implementation and its governance structure, and identifying the guidelines for the development of the PRESDEF.

It also created a committee for monitoring the PRESDEF under Order No. 1768/2021 of 17 February 2021, which is tasked with overseeing the execution of the implementation plan of the National Defence Strategy for Space and with following up on the development of cooperative projects in the space domain, notably within the scope of the Permanent Structured Cooperation and the European Defence Fund.

The National Defence Strategy for Space 2020–2030 was presented in October 2021. It contains a set of strategic goals and axes, including the following:

1. the development of capacities in the space domain;
2. broadening access to space and related technologies and services;
3. promoting and integrating research, development and innovation in the space domain; and
4. setting up a governance structure that articulates the national defence structures with Portugal Space and other relevant bodies.

It also highlights the role of defence in the development of the goals of Portugal Space 2030.

In addition, the autonomous region of the Azores presented its Space Strategy in November 2021. The Space Strategy aimed to enhance national and European space goals, taking into consideration the specificities of the Azores region, notably its geostrategic location. It comprises several objectives, including the development of space activities in the region, research and development (R&D), and positioning the Azores as an Atlantic hub.

## **ii Portugal Space**

Portugal Space was set up in March 2019 under Resolution of the Council of Ministers No. 55/2019. It is a private, non-profit association comprising only members from the public sector. The first members were the Foundation for Science and Technology; the National Agency for Innovation; the General Directorate for National Defence Resources, designated by the Ministry of Defence; and the regional government of the Azores, designated by the autonomous region of the Azores. In December 2019, the autonomous region of Madeira joined Portugal Space as an observer. Portugal Space may integrate other public entities whose activity relates to its purposes. It is the entity responsible for executing Portugal Space 2030 and is tasked with developing the national space sector. All national programmes relating to space are integrated within the agency, and they shall

be executed in close connection with the national space surveillance and tracking (SST) programme. It also serves as an ESA hub.

The participation of Portugal in the EU SST is addressed in Resolution of the Council of Ministers No. 116/2017 of 24 August 2017, which created, under the Ministry of Defence, a temporary body called the Space Surveillance and Tracking Project Group (GPSST). The GPSST was tasked with preparing and implementing national SST capabilities, as well as with preparing the national application for the EU SST. The GPSST was further tasked with approving the general terms of the governance model for the national SST programme and was the designated national entity in the EU SST consortium. The Portuguese application to the EU SST was approved in mid-2018 by the European Commission. The GPSST was originally set up for one year, but Resolution of the Council of Ministers No. 113/2018 of 31 August 2018 extended its mandate until 31 December 2018. Since this date, and in accordance with this Resolution, the General-Directorate for National Defence Resources has been responsible for managing the national SST programme (and is the designated national entity in the EU SST) and will continue to do so until a new governance model is defined. In May 2021, the national Centre of Space Operations, which processes SST data, was inaugurated in the Azores.

### iii AIR Centre

The AIR Centre is an international network research and innovation organisation tasked with implementing the Atlantic Interactions intergovernmental initiative, which aims to explore the Atlantic region in a sustainable way. In July 2017, the White Paper 'Atlantic Interactions' established an integrative approach to outer space, climate, energy and ocean science in the Atlantic, together with emerging methods of data science management. With regard to outer space, the White Paper stressed the importance of space systems and applications. Among other things, it highlighted:

1. the use of mega constellations and small satellites to closely study and monitor the ocean and the atmosphere;
2. the importance of fostering affordable access to space, especially with regard to the launch of small satellites to collect information on the Atlantic;
3. the use of space data to improve safety in the Atlantic; and
4. the use of the Atlantic islands for the implementation of ground facilities for SST.

Following the issuance of the White Paper, several declarations have been signed under High Level Industry Science Government Dialogues, which have been held in several countries. Under the Florianópolis Declaration, which was signed in November 2017, it was agreed that the AIR Centre should be established as an intergovernmental organisation with headquarters in the Azores and with a network of centres in the Atlantic. The Association for the Development of the AIR Centre was legally formed in April 2018 as a non-profit association, and Resolution of the Council of Ministers No. 29/2018 of 12 March 2018, among other things, tasked the Ministry of Science, Technology and Higher Education, through the Foundation for Science and Technology, to launch initiatives and support national programmes relating to the Atlantic. At the time of writing, the AIR Centre network comprises entities in Brazil, Cabo Verde, Angola, Namibia, South Africa and Spain.

## iv Spaceports and the Azores International Satellite Launch Programme

The Azores International Satellite Launch Programme (ISLP) was the national initiative for the establishment of a spaceport in the Azores. The ISLP aimed to install an open spaceport whereby more than one type of launcher could be launched from the port. The purpose was to guarantee low-cost, frequent and regular access to space for small satellites. Under the ISLP, companies were called upon to submit expressions of interest (with a deadline of 31 October 2018). A total of 14 were submitted. In accordance with information provided by the Ministry of Science, Technology and Higher Education, interested companies included ArianeGroup, Virgin Orbit, Roscosmos, Sierra Nevada, Rocket Factory Augsburg, Elecnor Deimos, Avio and PLD Space. In total, the expressions of interest included 11 companies from the European Union, two from the United States and one from Russia. The purpose of this international call for interest was to encourage and invite enterprises and public organisations from around the world to collaborate with Portuguese enterprises and research laboratories to design, install and operate a spaceport in the Azores.

A formal open tender was launched in March 2019 for the construction, operation and exploitation of the spaceport,<sup>[2]</sup> and two final proposals were submitted by a consortium led by Rocket Factory Augsburg and Edisoft and by the Atlantic Spaceport Consortium, comprising ILEX Space and Optimal Structural Solutions. At the beginning of 2021, it was stated that launches from the port would start from 2023. However, the tender was not awarded as both proposals were excluded for not meeting all the required criteria, leading the regional government of the Azores to indicate that the project would be revised and updated. In April 2022, the government of the Azores authorised the launch of a new public tender for the construction, operation and exploitation of a spaceport in the Azores (Resolution 54-A/2022 of 6 April 2022). However, no such public tender has been published at the time of writing. The lack of news in this regard may be due to the fact that the legal framework for space activities is under revision, with a licensing regime for spaceports to be enshrined in law.

## v Legal framework

The National Space Act was approved by Decree-Law No. 16/2019 of 22 January 2019. The National Space Act sets out a number of provisions and measures aimed at facilitating and encouraging private space activity in Portugal. The Azores has also enacted the Azores Regional Space Act (approved by Regional Legislative Decree No. 9/2019/A), which regulates space activities taking place in the Azores and establishes the economic and financial regime for these activities. In addition, the Space Authority also issued Regulation No. 697/2019 on Access to and Exercise of Space Activities (the Space Authority Regulation), which sets out the procedures for obtaining licences and pre-qualifications, as well as for registering space objects and for transferring ownership of space objects. The Azores also issued Regional Implementing Decree 6/2020/A, which approved the Regulation of Licensing of Space Activities in the Autonomous Region of the Azores (the Azores Space Regulation). In September 2023, Order No. 279/2003, of 11 September (the Order), was published. The Order defines the minimum capital and

remainder minimum conditions of third-party liability, as well as the right of redress of the state.

The legal framework is expected to be amended in the short term, aimed at, among other topics, and as indicated above, introducing a licensing regime for spaceports. At the time of writing, however, no amendments have been published.

## vi International regimes

Portugal became a party to the United Nations Convention on Registration of Objects Launched into Outer Space (the Registration Convention)<sup>[3]</sup> in 2018 and the Convention on International Liability for Damage Caused by Space Objects in 2019.<sup>[4]</sup> It had previously acceded to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. It is also a signatory to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water; the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite; and the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations.

## Regulation in practice

### i National Space Act

The National Space Act sets out the national framework for accessing and performing space activities, which include space operations and launch site operations. Space operations comprise the following:

1. Launch and return operations: the activity whereby space objects are intended to be sent or launched into space, notably to be placed in or beyond orbit, and then returned to the Earth's surface. The launch and return operator performs launch and return operations.
2. Command and control operations: the activity consisting of exercising effective control over a space object. The command and control operator performs command and control operations of space objects in outer space, whether temporarily or in transit. Where the space object cannot be controlled or guided, the command and control operator will be deemed the natural or corporate person who hired the launch or exploits the space object, as notified to the Space Authority.

Launch site operations relate to the management, administration or direction of a launch site, the definition of which includes facilities intended for the return of space objects. The launch site operator manages, administers and directs a launch site.

The National Space Act applies to space activities performed both in the national territory irrespective of the nationality of the operator and outside the national territory by Portuguese operators or operators established in the national territory.



Space activities are subject to a mandatory licence for launch or return operations, command and control operations, and registration of space objects. The National Space Act further created a voluntary pre-qualification system. Under this system, operators, systems, processes, features and specifications can be certified in a set of elements, which may include the technical, economic and financial capacity of operators, the compliance of systems and processes with applicable laws and regulations, and the features and specifications of space objects. Pre-qualification aims at streamlining the licensing procedure by waiving the need to submit the information set out in the pre-qualification certificate in the licensing procedure.

There are two types of licence: the individual licence, which is applicable to each type of space operation, and the blanket licence, which is applicable to a series of space operations of the same type. In addition, there are joint licences, which are those applicable to space operations of the same type or a different type that comprise one or more launch or return operations and the corresponding operations of command and control of space objects launched, even if performed by more than one operator. Under the joint licensing procedure, the same or different types of space operations may, even if carried out by more than one operator, be licensed to a single operator for itself and on behalf of other operators.

The licences are granted if the Space Authority is satisfied that a set of conditions have been met, including:

1. the applicant has the technical, economic and financial capacity for the space operations it intends to carry out;
2. the space operation duly safeguards damage to the Earth's surface, airspace and outer space, in accordance with applicable national and international commitments;
3. the space operation ensures the minimisation of space debris as much as possible, in accordance with international principles and commitments;
4. the space operation is compatible with applicable public security provisions, including on public health and citizens' physical safety;
5. the space operation does not jeopardise domestic security or the strategic interests of Portugal, nor does it breach Portugal's international commitments;
6. all other authorisations and certificates required for the purpose of the space operation have been issued by the relevant entities; and
7. the applicant carries mandatory civil liability insurance as required under the National Space Act.

In addition, the licence may stipulate other requirements, including in connection with environmental matters.

The decision to grant or withhold the licence must be issued by the Space Authority within 90 days of receipt of a complete application. The National Space Act also provides that a special licensing framework, which may consist of shorter deadlines or streamlined procedures, may be defined by the Space Authority for certain circumstances, such as:

1. if the applicant is a public entity or an international organisation acting under international agreements concluded with Portugal; or

2. if the intended space operation is performed exclusively for scientific, R&D, educational or training purposes, or consists of activities with experimental purposes with demonstrable low risk for the Earth's surface, airspace and outer space, including for public health and citizens' physical safety.

The National Space Act also addresses circumstances whereby a licence for space operations has been obtained in another country. First, and in general, the special licensing procedure referred to above can be established for cases where the applicant secured authorisation for the performance of the space activity from another state whose legal framework ensures compliance with applicable international commitments. Second, space operations performed abroad but subject to the National Space Act may be exempted from mandatory licensing if the operator is able to demonstrate to the Space Authority's satisfaction that it secured the proper authorisations and that it abides by the law of a state with which Portugal has an agreement in place to ensure compliance with its international commitments.

In relation to registration, the National Space Act establishes that space objects for which Portugal is the launching state are subject to registration with the Space Authority, in accordance with Portugal's international commitments. The elements to be registered broadly correspond to those of the Registration Convention. In addition, the National Space Act also provides that the following must be registered with the Space Authority:

1. space objects whose launch, return or command and control are performed by operators licensed in Portugal;
2. the transfer of ownership of any space objects whose launch, return or command and control is carried out by operators licensed under the National Space Act;
3. the end of the useful life of a space object operated and controlled by a command and control operator licensed in Portugal; and
4. any incident or serious accident suffered by the space object.

As regards liability, the National Space Act indicates that operators are liable for damage caused in the performance of the space activity, as follows: (1) strict liability for damage caused by the space object to the surface of the Earth or aircraft in flight; and (2) liability in the event of fault for damage falling outside the scope of point (1). There is also a mechanism of redress by means of which, if Portugal is held liable, pursuant to its international commitments, for any damage caused by a space object, the state has a right of recourse against the operator that, under the National Space Act, is responsible for that space object. The right of redress is capped at the amounts defined in the Order. However, the cap will not apply in certain circumstances, including in the event of liability for damage due to wilful misconduct or gross negligence, or if the operator fails to comply with its licensing obligations.

Licensed operators are obligated to take out civil liability insurance, with minimum capital also defined in the Order.

The National Space Act contains a set of provisions for incident and accident reporting, which also include the obligation to notify any manoeuvre, malfunction or anomaly of the space object, or other circumstances arising from or in connection with the space activity

that may result in an incident or serious accident. Operators are also subject to obligations relating to the Space Authority's supervision and inspection powers, including the following:

1. allowing and facilitating free access to the facilities and their annexes, as well as to their devices and instruments;
2. providing all the information and assistance required for the performance of the supervision and inspection; and
3. maintaining in their facilities in Portugal a duly organised and updated file containing all relevant documents and records relating to the space activities they perform and to the licensing and pre-qualification procedures.

In addition to its powers relating to licensing, registration, pre-qualification, supervision and inspection, the Space Authority is tasked with assessing and deciding on requests or claims by the operators and resolving disputes in connection with the obligations arising from the National Space Act between entities subject to these obligations and without prejudice to the possibility of resorting to courts. The Space Authority is also tasked with initiating and dealing with administrative offence proceedings and applying the penalties. In this respect, infringements of the National Space Act are administrative offences that may lead to the application of penalties of between €250 and €44,891.81, depending on whether the operator is a natural or a corporate person and the gravity of the offence. There are also ancillary penalties, consisting of the prohibition to perform space activities for a certain period of time and the suspension of licences.

Three additional points are worth mentioning. First, the National Space Act contains provisions on the transfer of a licence and on the transfer of ownership of space objects. The first is subject to authorisation by the Space Authority (which shall be approved only if all legal requirements for its issue are met) and the second is subject to notification to the Space Authority.

Second, there are regulations and orders that complement the National Space Act. These include the regulation by the Space Authority for licensing, registration, pre-qualification and transfer of ownership of space objects and the Order.

The Space Authority Regulation was approved in July 2019. This Regulation aims to create simple and effective procedures with a view to promoting private activity. However, some points may create challenges, such as the following:

1. The Space Authority Regulation does not create a special licensing procedure for the cases foreseen in the National Space Act but instead establishes that it is the applicant who must require a simplified procedure, and the Space Authority, within 10 days, must communicate the ad hoc specific procedures to be followed. This could create uncertainty for the industry regarding the licensing requirements and process to be taken.
2. The Regulation does not seem to be fully aligned with the National Space Act regarding who can obtain a launch licence (as it seems to limit this licence to the launch operator, whereas the National Space Act extends it to whoever intends to launch a space object, thus also covering payloads). This may raise doubts as to the types of licences operators must obtain.

3. The Regulation seems to limit the possibilities of joint licences for different types of operations, thus preventing these licences from being used for operations of the same type performed by different operators – an option expressly envisaged by the National Space Act.
4. The Regulation requires a level of information from the applicant that may be too burdensome, especially detailed information relating to the spaceport from which a space object will be launched.

In relation to liability and insurance, the Order defines the minimum capital and remainder minimum conditions of third-party civil liability, as well as the cap of the state's right of redress. In accordance with the Order, the insurance contract insures the obligation of the operators to indemnify third parties for damages caused by their space activity. The insurance contract insures:

1. strict liability for damage caused by the space object to the surface of the Earth or aircraft in flight; and
2. liability in the event of fault for damage falling outside the scope of item (a).

The minimum insured capital corresponds to amounts calculated on the basis of the mass of the space object (with the amounts varying from €2 million for masses equal to or lower than 50kg to €60 million for masses above 500kg) or, if lower, to the maximum probable loss as calculated by the Space Authority in accordance with norms determined and published by it on its website. Note that the Order clarifies that the minimum capital calculated on the basis of the mass is for individual licences. For blanket licences, the minimum insured capital corresponds to the sum of 70 per cent of the minimum insured capital required for each of the operations. In the case of operations that are jointly licensed, the minimum insured capital is the one applicable to each licensed operation. For space operations taking place exclusively in another launching state, the insurance contract concluded by the operator can be accepted by the Space Authority, provided that such contract ensures, in similar conditions to the ones required by national law, the liabilities of the operators and of the Portuguese state under the United Nations Liability Convention, and the insurance institution provides solvency guarantees in conditions similar to the ones required for entities in the European Union. The Order also contains provisions for the time frame of the insurance, exclusions where the insurance does not apply and exclusions that can be established in the insurance contract, the deductible (amount which the policyholder must pay him or herself) that the insurance contract can establish, the cases where the insurer can go against the insured and the termination of the insurance contract.

In relation to the right of redress against the state, the Order provides that the cap corresponds to the total amount of the insured capital applicable to the licensed space operation that caused the damage.

The Order also indicates that the Space Authority may waive the insurance obligation or decide on a reduction of its amount in the following circumstances:

1. operations of launch, return, and command and control of space objects of small dimensions, as defined by the Space Authority;
- 2.

- space operations conducted exclusively for scientific, R&D, or educational and training purposes;
3. operations that demonstrably entail reduced risks, as determined by the Space Authority; and
  4. if the operator submits another financial guarantee, notably a deposit or bank guarantee.

The National Space Act also addresses the economic and financial regime applicable to space activities by indicating that it shall promote the economic and financial sustainability of the activities carried out by the Space Authority, notably by means of the collection of fees and levies from the companies and other entities subject to its supervisory powers.

Finally, the National Space Act establishes that the procedures for the licence, pre-qualification, registration and transfer of space objects in connection with activities to be developed in the autonomous regions of the Azores and Madeira, and the corresponding economic and financial framework, are to be established by means of a regional legislative decree.

At the time of writing, the National Space Act is under revision, with amendments expected to some of the provisions above and, notably, with the introduction of a licensing regime for spaceports.

## **ii Azores Regional Space Act and Space Regulation**

As mentioned in Section I.v, the Azores Regional Space Act was enacted in 2019 and contains the legal framework for licensing, pre-qualification, registration and transfer of space objects relating to activities developed in the Azores (defined as those activities based on both offshore and onshore infrastructures or platforms, including, in this instance, the maritime areas adjoining the archipelago). The Azores Regional Space Act duplicates the provisions of the National Space Act, with some new features. The Azores Regional Space Act:

1. creates a regional space authority (EER) responsible for the licensing, pre-qualification, registration and transfer of space objects and the supervision of space activities in the Azores;
2. indicates that the procedures for licensing, pre-qualification, registration and transfer of space objects are subject to the prior technical review of the Space Authority;
3. indicates that the EER must communicate to the Space Authority all required information so that the Space Authority can comply with the applicable international obligations (especially those relating to registration of space objects);
4. clarifies that the EER and the Space Authority shall cooperate in the above procedures, as well as in the supervision of space activities; and
5. introduces a fee for the use of space, the legal framework of which is unclear and has no parallel in other jurisdictions.

By replicating the conditions of the National Space Act and creating the EER, the Azores Regional Space Act may lead to the duplication of processes that private operators will have to comply with for pursuing space activities in the Azores. For instance, it seems that operators will have to obtain two licences: one from the Space Authority and one from the EER. In addition, it seems that the breach of either Act will lead to fines, meaning that operators may be subject to fines twice. However, despite duplicating most of the provisions of the National Space Act, the Azores Regional Space Act has placed some wording in different sections or drafted it in a manner closer to previous versions of the National Space Act (which may indicate that the Azores Regional Space Act was based on an old version of the National Space Bill), which further complicates the coordination and interpretation of the Azores Regional Space Act in relation to the National Space Act.

On 22 July 2021, Regional Legislative Decree No. 24/2021/A amended the Azores Regional Space Act by establishing that the use of infrastructure and platforms situated on Azores land or in its sea space that integrate the development of space activities in the region is exercised exclusively by an administrative concession contract to be concluded with the regional government of the Azores. This raises questions of whether the new decree is compatible with both the National Space Act and the Azores Regional Space Act. Indeed, it seems that an entity seeking to engage in space activities through infrastructure and platforms located in the Azores will have to obtain a concession contract, in addition to licensing for the performance of space activities as provided for in both Acts. The new wording seems to require a concession contract for the 'use' of infrastructures and platforms in the performance of space activities (such as launches) and not only for their construction or operation.

The Azores Regional Space Act also indicates that regional regulations will be approved for the procedures to license, pre-qualify, register and transfer space objects. In this regard, the Azores Space Regulation was issued on 17 February 2020. The Azores Space Regulation is similar to the Space Authority Regulation, although some differences can be identified, such as in relation to the level of information to be provided, which can be considered more market friendly than the Space Authority Regulation. However, the Azores Space Regulation does not expressly address coordination issues with the Space Authority, except in relation to pre-qualification, by indicating that requirements for pre-qualification delivered to the Space Authority but relating to space activities to be performed in the Azores shall be analysed and issued by the EER.

The Azores Regional Space Act also indicates that a regional order will be approved in relation to insurance, which may further lead to incompatibilities or duplicated obligations, given that a national order on insurance under the National Space Act is also envisaged. The regional order has not been approved at the time of writing.

From a strictly legal perspective, the National Space Act only indicates that the procedures for the licensing of space activities and the pre-qualification, registration and transfer of space objects in connection with activities to be developed in the autonomous regions of the Azores and Madeira are to be defined by a regional legislative decree. However, the Azores Regional Space Act appears, in practice, to replicate the national regime.

## Distinctive characteristics of the national framework

The National Space Act contains a number of innovative solutions aimed at encouraging private activity in Portugal, which are outlined below:

1. In addition to an individual licence for each space operation, an operator can obtain a blanket licence covering a set of operations, which will facilitate the launching of constellations of satellites. A joint licence for several space operations, even if performed by different operators, can also be obtained, which will simplify the licensing of related space operations.
2. A simplified licensing procedure may be implemented in certain situations, as indicated above, such as for operations that are carried out exclusively for scientific, R&D, educational or training purposes, or for experimental operations with low risk.
3. In the event of space operations carried out by Portuguese nationals abroad, the requirement for a licence can be waived, provided that certain other requirements are met. In addition, if the operator obtained a licence abroad, it may also obtain the Portuguese licence under a simplified licensing procedure.
4. A pre-qualification regime has been created to expedite the licensing process, removing the need to resubmit the same information for future licences.
5. A liability cap favouring operators in cases where Portugal is internationally liable for space activities has also been established, with an approach that aims to be favourable to space actors and to take into consideration the possible risk brought by the space operation.
6. There is mandatory civil liability insurance, but the insurance may be waived or the insured amount reduced in certain cases, such as for small satellites, space operations carried out exclusively for scientific, R&D, educational or training purposes, or operations with low risk. Insurance may also be waived or reduced if the operator submits another financial guarantee.
7. A breach of the National Space Act carries fines only, which cannot exceed €44,891.81. Ancillary sanctions prohibiting the carrying out of space activities or suspension of licences are established for certain cases.

The Space Authority is a one-stop shop, meaning that it may also assume responsibility for communicating with all other competent authorities whose authorisation may be required for a space operation, thus avoiding the need for operators to deal directly with the authorities.

To ensure that the solutions listed above are effective, careful coordination with the Azores Regional Space Act is required. The Azores Regional Space Act duplicates the conditions for licensing, pre-qualification, registration and transfer of space objects and may, as a result, create unexpected burdens for operators. Clarification of the procedures established in the Space Authority Regulation and the harmonisation of these procedures with the National Space Act may also have to be evaluated to guarantee a clear, simple and predictable legal framework.

A licensing regime for spaceports is also being devised in the National Space Act, which is expected to facilitate access to this activity in the country to interested operators.



## Year in review

Portugal has been active in recent years when it comes to space activities, as indicated in this chapter. The National Space Act and the Azores Regional Space Act have been enacted, with the National Space Act having been drafted with due attention to the need to respond to the advent of small satellites and constellations of satellites. The Order on insurance and liability has also been issued.

A relevant project is being developed under the Portuguese Recovery and Resilience Programme for the construction of an Atlantic constellation of microsatellites in collaboration with Spain, together with the development of the Earth observation (EO) data platform Digital Planet.

Additionally, two EO satellites (Deimos-1 and Deimos-2) were acquired by GeoSat in 2021. As a result, GeoSat has become one of the biggest satellite operators in Europe and the first Portuguese company to own and operate EO satellites.

We further note that, in 2021, Portuguese entity CEiiA signed a partnership with Rocket Factory Portugal for the production of launching systems in Portugal.

A feasibility study is also under way for assessing the Azores as a landing site for the ESA Space Rider, which aims to provide ESA with affordable and routine access to space.

Finally, Portugal ratified the Square Kilometre Array Observatory Convention on 12 March 2019. Resolution No. 1/2021, approving this Convention, was published on 15 January 2021.

## Outlook and conclusions

The National Space Act contains a set of innovative solutions for Portuguese and foreign operators in the country. Together with Portugal Space 2030 and the projects that are currently under way, it is paving the way for increasing space activities and furthering the development of the private sector and R&D in Portugal. The increasing contributions to ESA, as well as the strengthening of international cooperation (including with the European Maritime Safety Agency and the EU Agency for the Space Programme), as indicated in Portugal Space 2030, are also relevant incentives for encouraging space activities in Portugal.

A new legislative approach to spaceport installation and operations at a national level is also under way and may bring about a clearer framework for those activities in a unified manner throughout the Portuguese territory.

The possibility of a framework for EO data, space mining and human space flight has not been discussed. However, the expected growth in space activities and the increased visibility the current initiatives will inevitably bring to the country may lead to greater awareness in these areas and contribute to the approval of relevant regimes. The clear investment in EO may well lead to a legal framework in this area in the short to medium term. In relation to suborbital flights, the development of a legal framework in this respect was announced by the Minister of Science and Technology at a September 2023 event to celebrate 30 years of the first Portuguese satellite (PoSAT-1). Though the National Space



Act can be interpreted to include suborbital flights of space objects, a dedicated set of rules is welcome to bring more clarity to the requirements and obligations that apply for these types of flights. The work of both the Space Authority and Portugal Space will naturally continue to play an important role in clarifying, detailing and encouraging initiatives and activities in the sector.

## Endnotes

- 1 Magda Cocco is a partner, Helena Correia Mendonça is a principal consultant and Cristina Melo Miranda is a managing associate at Vieira de Almeida & Associados. ^ [Back to section](#)
- 2 The tender for construction, operation and exploitation of a spaceport enabling a new generation of launch services, located on the island of Santa Maria, Azores (Procedure Announcement No. 3074/2019 as published in the national Official Journal). ^ [Back to section](#)
- 3 By means of Decree 24/2018 of 4 October. The Convention became binding for Portugal on 2 November 2018, in accordance with Notice No. 143/2018 of 28 November 2018. ^ [Back to section](#)
- 4 By means of Decree 14/2019 of 16 April 2019. ^ [Back to section](#)



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**Magda Cocco**  
**Helena Correia Mendonça**  
**Cristina Melo Miranda**

mcomm@vda.pt  
hcm@vda.pt  
mcomm@vda.pt

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Vieira de Almeida & Associados

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