

Decree of 13 November 2007, containing rules with regard to a registry of information concerning space objects (Space Objects Registry Decree)

On the recommendation of Our Minister of Economic Affairs on 10 July 2007,
no. WJZ 7080976;

Having regard to Section 11, subsections 2 and 4, of the Space Activities Act;

Having heard the Council of State (recommendations dated 1 August 2007, no. W07.002258);

Considering the further report of Our Minister of Economic Affairs dated 7 November 2007,
no. WJZ 7130082;

Have approved and decreed:

§ 1. General provisions

Article 1

The following definitions shall apply in this Decree:

- a. registry: means the registry referred to in Section 11, subsection 1, of the Space Activities Act;
- b. licence-holder: means the holder of a licence for space activities as referred to in Section 3 of the Space Activities Act.

§ 2. Registry

Article 2

1. The registry consists of a United Nations part and a national part.
2. The United Nations part contains information concerning space objects for which the Netherlands is the State of Registry – as referred to in Article I, point c, of the Convention on Registration of Objects Launched into Outer Space (Bulletin of Treaties 1981, 39), which was opened for signature in New York on 14 January 1975 – with regard to the space object in question.
3. The national part contains information concerning space objects that are used in connection with space activities as referred to in Section 2 of the Dutch Space Activities Act, not space objects as referred to in paragraph 2.

4. Our Minister shall be responsible for furnishing the information from the United Nations part to the Secretary-General of the United Nations.

Article 3

The registry contains the following information on the space object:

- a. the description and function;
- b. the orbital parameters;
- c. country and location of launch;
- d. expected and actual launch date;
- e. expected and actual decommissioning date;
- f. information on the licence-holder;
- g. other information pertaining to the space object (to be determined by Ministerial Order).

§ 3. Furnishing of information for the registry

Article 4

1. The licence-holder shall furnish Our Minister with the information referred to in Article 3 at least six months before starting to carry out space activities with the aid of a space object.
2. If the information relates to the actual launch or decommissioning date, the licence-holder shall furnish this information as soon as possible, and in any event within three weeks after this date.
3. At the request of Our Minister, the licence-holder shall furnish further supporting information and documents within three weeks.
4. In special cases, our Minister may grant exemption from the time limit referred to in paragraphs 1 and 3.

Article 5

1. The licence-holder shall notify Our Minister as soon as possible, and in any event within three weeks, of any changes to the information referred to in Article 3.
2. Article 4, paragraphs 3 and 4, shall apply *mutatis mutandis*.

Article 6

When furnishing and changing the information, use is made of a form stipulated by Ministerial Order.

Article 7

Entry in the registry shall be for an indefinite period.

Article 8

The registry is public.

§ 4. Concluding provisions

Article 9

Our Minister shall be responsible for the inclusion in the registry of information concerning space objects with which space activities are being performed at the time this Decree enters into force.

Article 10

This Decree shall enter into force on a date to be determined by Royal Decree.

Article 11

This Decree shall be cited as: the Space Objects Registry Decree.

Order and command that this Decree, together with the Explanatory Memorandum pertaining to it, shall be published in the Official Gazette of the Kingdom of the Netherlands.
Decreets.

The Minister of Economic Affairs,

EXPLANATORY MEMORANDUM

I. General

1. Purpose and rationale

This Decree fleshes out the basis for the creation of a registry of space objects as enshrined in Section 11, subsections 2 and 4, of the Dutch Space Activities Act (Bulletin of Acts and Decrees 2007, 80). The purpose of this Decree is, *inter alia*, to subdivide the registry into two parts, to specify the times at which the licence-holder should furnish the Minister of Economic Affairs with the information concerning space objects that is required for the registry, and to specify the manner in which the information to be entered in the registry should be supplied.

The registration procedure does not include a detailed evaluation of the space activities that are proposed in relation to the space object that is to be registered, since this occurs in connection with the issue of a licence. All that is considered is whether the space object is eligible for registration. The fact that the information is incorporated in the registry and this can be accessed electronically via the internet means that anyone can inspect the information concerning space objects used by a licence-holder for the purpose of his space activities.

Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on Services in the Internal Market (OJ, 27 December 2006, L 376, pp. 36 ff.; hereinafter referred to as: "the Services Directive") entered into force on 28 December 2006. In view of the fact that this Directive specifically requires the Member States to state reasons with regard to the adoption of legislation and regulations, it is necessary in the first instance to ascertain whether the provisions of the Space Activities Act and its licensing system fall within the scope of the Services Directive. This is, in fact, the case. This means that these provisions should comply with Article 9 of the Services Directive. Here it can be noted firstly that these provisions do not adversely affect access to and performance of the space activities. Secondly, the licensing system is necessary for reasons of overriding public interest, namely in order to safeguard the interests specified in Section 3, subsection 3, of the Space Activities Act (e.g. to ensure the safety of persons and goods, to protect public order and to comply with the State's international obligations). And thirdly, this goal cannot be achieved through a less restrictive measure, since *ex post* control would come too late to actually be effective. From this standpoint, the provisions contained in this Decree that relate to the obligations of the licence-holder are also

proportional. The specified submission deadlines and the types of information that the licence-holder will need to furnish are considered reasonable. The Decree also includes the possibility of gaining exemption from the submission deadlines.

2. Content of the Decree

The registry consists of two parts. The first part of the registry, known as the United Nations part, is associated with the international obligations arising from the Convention on Registration of Objects Launched into Outer Space (Bulletin of Treaties 1981, 39; hereinafter referred to as: "the Registration Convention"). Under Article II of the Registration Convention, when a space object is launched into an orbit around the Earth or higher, the launching State registers that space object by means of an entry in a registry. If two or more states can be deemed launching States in respect of the space object, the states decide among themselves which one of them will be responsible for registration. Furthermore, the registering State – which must also be regarded as the launching State – is liable for any damage caused by this space object. See Articles VII and VIII of the Outer Space Treaty (Bulletin of Treaties 1967, 31). For a further explanation of the term "launching State", see the Explanatory Memorandum to the Bill (Parliamentary Papers II 2005/06, 30609, no. 3, pp. 5-7). It has also been pointed out that the Netherlands cannot easily qualify as a launching State in the light of the definitions used and current practice.

Articles III and IV of the Registration Convention then state that information on space objects registered under Article II should likewise be provided to the Secretary-General of the United Nations as soon as practically possible for inclusion in an international registry, for which responsibility rests with the UN Secretary-General. The Minister of Economic Affairs is responsible for sending the information from this United Nations part of the registry to the United Nations.

The second part of the registry, the so-called "national part", contains information regarding those space objects that are used in connection with national space activities over which the Dutch State may well wish to exercise jurisdiction and control, but for which the Netherlands cannot be deemed the launching State. Examples include satellites that are managed by a company operating under Dutch law and within the Dutch legal order. Ownership and management of these satellites is usually only transferred to the Dutch party after they have been launched and brought into their definitive position. In these cases the Netherlands is not

the launching State, but bears international responsibility for these space objects and lets this be known by including them in the national part of the registry. See page 12 of the Explanatory Memorandum to the Bill (Parliamentary Papers II 2005/06, 30609, no. 3) for a further explanation and background information. The information from the national part *will* be sent to the Secretary-General of the United Nations. The legal basis for this reporting process is not the Registration Convention, but Article 11 of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Bulletin of Treaties 1967, 31), which was opened for signature on 27 January in London/Moscow/Washington.

The registry includes various types of information. In theory, both parts of the registry contain the same types of information. An integral part of this data is the information that must be provided to the Secretary-General of the United Nations pursuant to Article IV of the Registration Convention, such as the description and the function of the space object, its orbital parameters, and the date and location of its launch. The registry also includes certain basic data with regard to the licence-holder as well as information relating to the (expected) decommissioning of the space object. The remaining information to be included in the registry is determined by Ministerial Order, taking into account the latest developments in the field of registration in connection with the UN Committee on Peaceful Uses of Outer Space (UN COPUOS).

At least six months before he performs the licensed space activities with his space object, the licence-holder is obliged to furnish the requisite information concerning the space object to the Minister of Economic Affairs for the registry. This six-month time limit is necessary in order to allow the information received to be evaluated for completeness and accuracy and then incorporated in the registry in good time. Timely submission of the information also enables the government to comply with the obligations arising from the Hague Code of Conduct against Ballistic Missile Proliferation (2002). Although this Code is not legally binding, the Space Activities Act and this Decree provide the government with the necessary framework to comply with its obligation under the Code to announce the launch of a space object internationally before the launch actually takes place. In some cases, the Minister of Economic Affairs already possesses certain information, since the applicant also has to furnish data with a view to assessing the nature of the space activities as part of the licensing process.

In order to assess the accuracy of the information furnished, the licence-holder may be requested to produce further information and documents. The licence-holder should submit this information within three weeks after this request.

The licence-holder will not be able to supply all of the information six months before the space activity. For example, it is usually possible to specify the expected launch date, but the date on which the space object is actually launched can, of course, only be furnished after the launch has taken place. The same applies with regard to the expected decommissioning date. In such cases, where the licence-holder is supposed to indicate the actual date, the licence-holder should furnish the Minister of Economic Affairs with this information as soon as possible after this date, but in any event within three weeks.

In special cases, exemption may be granted from the submission deadlines for the furnishing and amendment of the information. A special case may, for example, arise if ownership and management of an already functional satellite are transferred to a Dutch licence-holder at short notice or in a situation where the licence-holder is dependent on third parties for the submission of information. In addition, it is possible to obtain an exemption from the six-month time limit if the licence-holder wishes to carry out space activities with a space object within six months of the licence being issued. In such a case, the information on the space object will have to be furnished during the licence application procedure. When the licence is issued, the licensing authority will then also grant formal exemption from the deadline for submitting the registry data.

After the information is received, the space object and the accompanying information will be entered either in the United Nations part or the national part of the registry, depending on whether the Netherlands is deemed the launching State for the space object.

It is, of course, necessary to keep the registry up to date and complete. Consequently, the licence-holder is expected to report any change in the information as soon as possible. The communication of a change to an entry in the registry is normally a straightforward administrative procedure and therefore the licence-holder can generally be expected to give notice of the amended entry within a few days. The changes should, in any event, be reported within three weeks. If several entries are changed within the space of a few days, it is permissible to combine these reports in order to avoid unnecessary administrative costs. It is also possible, for example, that the actual launch of a space object may be postponed by one or more days. In such a case, it is sufficient for the licence-holder to submit a combined report and

he should, in any event, give notice of this launch date as soon as possible after the actual launch.

The licence-holder will need to use a form stipulated by Ministerial Order both when submitting additional and amended information. The form is electronic and can be obtained free of charge from the Minister of Economic Affairs. Additional and amended information is to be furnished in writing.

The information is entered in the registry for an indefinite period. The information on a given space object remains on the registry even after the licence-holder has stopped using that space object (e.g. when a satellite is sold to another company or after the satellite has been decommissioned and placed into a "decommissioning orbit"). Thus it will be possible, even after a considerable number of years, to find out who was responsible for operating the space object (e.g. in order to establish liability for damage caused to other space objects, etc.).

The registry is public. This means that the information, too, is in the public domain once it has been entered in the registry. With this in mind, the registry will be made universally accessible via the internet. Where the licence-holder has also furnished information and documents pursuant to Article 4, paragraph 3, this will only be made available to the public subject to the relevant publication rules laid down in the Government Information (Public Access) Act.

Besides registering the information furnished by the licence-holders, the Minister of Economic Affairs is also tasked (under Section 11, subsection 3, of the Space Activities Act) with registering space objects that are used in connection with space activities performed under the responsibility of one or more Ministers. To facilitate the registration of such space objects, the same information is included in the registry as was recorded in respect of the licence-holders and a similar, internal, registration procedure is also adopted.

3. Administrative costs

As indicated in the Explanatory Memorandum to the Bill (see Parliamentary Papers 2005/06, 30 609, no. 3, pp. 13/14), the Act – and thus also this Decree – only concerns a limited number of companies. For an overview of the registration costs, I would refer you to the above Parliamentary Paper.

4. Implementation and enforcement

Agentschap Telecom will manage the registry on behalf of the Minister of Economic Affairs. In addition, Agentschap Telecom is responsible for monitoring compliance with the rules adopted by or pursuant to the Act. Where an infringement of rules adopted under this Decree is encountered, it will be possible to impose an administrative fine of up to €100,000, in accordance with Section 15, subsection 2, of the Act. The amount of the administrative fine will depend on the seriousness of the infringement. Thus it will be possible to impose a maximum fine if, for example, the licence-holder has not furnished any information at all.

II. ARTICLES

Article 2

The registry consists of two parts. Article 2 forms the basis. Under paragraph 2, information is recorded in the United Nations part with regard to space objects that the Dutch State is responsible for entering in a national registry pursuant to Article II of the Registration Convention. This only applies if the Dutch State is also deemed the launching State for the space object in question. The information from this part is passed on to the Secretary-General of the United Nations.

The national part of the registry (referred to in paragraph 3) includes information on space objects for which the Dutch State is not deemed the launching State. In practice, it will be this part, in particular, that is filled with information on space objects. As stated earlier, the information from the national part will also be sent to the Secretary-General of the United Nations.

Article 4

This article lays the foundations for the furnishing of information by the licence-holder. According to paragraph 1, the licence-holder should furnish the Minister of Economic Affairs with the information referred to in Article 3 within six months, unless he has obtained an exemption from this time limit. Under paragraph 2, it is possible to deviate from this time limit for certain information (e.g. if it is the actual launch date or the actual decommissioning date that is requested). Under paragraph 3, the licence-holder may be requested to support of the information that he has furnished with further evidence.

Article 5

Paragraph 1 requires the licence-holder to report any change to the information in the registry as soon as possible. As with the first entry in the registry, the licence-holder may be requested to submit additional information and documents to support the amended information within three weeks. In special cases, exemption may be granted from this time limit. The registry will be adjusted upon receipt of this amended information.

Article 6

This Article lays the foundations for the mandatory use of a form stipulated by Ministerial Order for the submission of additional and amended information by the licence-holder.

Article 9

Pursuant to Section 25 of the Space Activities Act, space activities that are already taking place when the Act enters into force can be continued without a licence for a period of 12 months. Where these activities also involve the use of space objects, the information about these objects must be incorporated in the registry as soon as possible in order to ensure that the registry is kept up to date and complete. This is the purpose of this Article.

The Minister of Economic Affairs,