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COMMENT BY EUTELSAT IGO TO THE 48th SESSION OF THE LEGAL SUBCOMMITTEE ON PEACEFUL USES OF OUTER SPACE ON THE FRENCH LAW ON SPACE OPERATIONS

The French Act on Space Operations was passed on 3 June 2008, and published in the French Official Journal on 4 June 2008. This Act derives from France's international obligations under the relevant clauses of the International Space Treaty which entered into force on 10 October 1967¹. The French Act aims to provide a framework for State responsibility as a Launching State and for the operations in Space of companies under French jurisdiction, including launch and operation of satellites.

There is no doubt in principle as to the legitimacy of a legal framework of this type and it is naturally the prerogative of a sovereign State to develop such a framework.

It should be stated that at present this legislation will apply in practice to the launch services provider Arianespace S.A. and to the satellite operator Eutelsat S.A.

With regard to this, the Assembly of the 48 States Member to the EUTELSAT Amended Convention, at its 35th meeting in May 2007, after studying the reports of the Advisory Committee and the Executive Secretary and a detailed presentation made by Eutelsat S.A., noted that the French draft Act on Space Activities (at the time the text had not been published) might have an impact on Eutelsat S.A.'s operations. The Assembly of Parties requested the Executive Secretary to follow the development of this new legal framework on behalf of EUTELSAT IGO and to keep the Advisory Committee and the Assembly of Parties informed on any events which might affect Eutelsat S.A.'s ability to respect the Basic Principles.

In a letter of 17 January 2008 addressed to the Organisation, the Chief Executive Officer of Eutelsat S.A. expressed the concerns of the company regarding the financial, operational and legal consequences of the draft law on the activities of Eutelsat S.A. The Executive Secretary and the Advisory Committee took into consideration the content of this letter during their work on this subject as well as the information provided by the Company on the consequences the new law might have on the company's competitiveness. For this reason, the Advisory Committee requested the Executive Secretary to commission a study, the contents of which were reviewed by the Committee prior to being presented to the Assembly of Parties at its next meeting.

As a reminder, the European Telecommunications Satellite Organisation (EUTELSAT) was established by an International Treaty (the Convention) to provide space capacity for telecommunications public services through its satellite system. The restructuring of this Organisation which took place on 2 July 2001, resulted in the transfer of all the assets and operational activities to a Company, Eutelsat S.A., operating under French law, and in the redefinition of the Organisation's role by means of amendments to the Convention. It is stated in the Amended Convention, the text of which was approved by consensus by the Member States, that in particular, EUTELSAT IGO would supervise Eutelsat S.A.'s activities in relation to principles (the so-called "Basic Principles") which the company is committed to respect. These are linked to obligations of coverage by the satellite system of the territory of all Member States, public service/universal service, non-discriminatory access to

¹ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, adopted on 19 December 1966 and opened for signature on 27 January 1967.

Eutelsat services and fair competition. It should be added that the Amended Convention also states that the State in which Eutelsat S.A. operates will provide a favorable environment to the establishment and operation of the company².

Obviously Eutelsat S.A., as a company operating under French law, is subject to all the laws and rules in force in France, in common with all other French companies. However the above mentioned points explain and justify EUTELSAT IGO's particular interest in the new national legal framework which will apply to Space operations in future.

The Executive Secretary has constantly followed the development stages of the French legislation and has made regular reports to the Advisory Committee. This matter is on the agenda of the next meeting of the Assembly of Parties which will take place 13 and 14 May 2009. At this meeting, two reports will be presented, one by the Executive Secretary and the other by the Advisory Committee, together with studies carried out on the subject.

Prior to its adoption, some positive amendments concerning operations in Space were made to the Act, which were particularly relevant for a Space operator like Eutelsat S.A. It appears that similar positive moves have occurred with respect to the enforcement decree, which has not yet been published. The final stage of the process will be the technical regulations which are currently being formulated in consultation with operators in this field.

Since the objective is to have this new legislative framework effectively in place in mid 2010, the Executive Secretary intends to continue to monitor on a regular basis the different stages of the process prior to full entry into force. After sufficient time has elapsed to observe the application in practice of the legislation, the Executive Secretary will make a report to the Assembly of Parties with the benefit of experience.

² Cf. Article II b) of the EUTELSAT Amended Convention "iii) Any Party in whose territory the Company Eutelsat S.A.'s headquarters are settled or in which assets are located and/or operated shall, in accordance with arrangements to be made between the Party and the Company Eutelsat S.A., take such measures as may be necessary to facilitate the establishment and operation of the Company Eutelsat S.A."
(http://www.eutelsatigo.int/en/docs/Amended_Convention.pdf)