

SUBMISSION BY ESOA TO UNIDROIT MAY 2010

ESOA's Consideration of the UNIDROIT Space Assets Protocol

ESOA commends the work of Unidroit in the fields inter alia of railway rolling stock and aircraft equipment, where the applicable Conventions may add value to uncertainties surrounding the financing of these assets.

ESOA believes however that the situation in the space industry is different, with no known examples of projects with a valid business plan failing to attract investment. Indeed within the ESOA membership, there are several companies, who are modest start-up businesses about to launch their first satellite who have successfully raised finance without such a Protocol being in place. These companies also subscribe to the ESOA view that the proposed Space Assets Protocol would in fact have hindered the raising of this financing. Equally examples of developing countries such as Vietnam and Kazakhstan who recently procured and launched satellites, demonstrate that ample satellite financing is available. These examples demonstrate that the proposed regime of new supranational law, however well intended, may only serve to create confusion, uncertainty and potential conflicts that will *deter* the very capital flows to the space industry that the Space Assets Protocol aims to facilitate.

More specifically, several issues under the proposed Space Protocol listed below are of particular concern to us:

- ***Unclear Sphere of Application of the Protocol***
- ***Potential Conflicts regarding Priority of Competing Rights Regarding Components***
- ***Public Service Exemption from Default Remedies would deter bank financing***
- ***Risks related to Recognizing Salvage Interests in Space Assets create undo risk***
- ***Uncertainty regarding Identification of Space Assets for Registration Purposes***
- ***Confusing Provisions regarding Debtor's Rights & Assignment of Debtor's Rights***

The statements of other satellite industry associations concur with ESOA's assessment and together, we believe that the concerns expressed above justify taking a step back to reassess the need for the Protocol in order to make sure that the law of unintended consequences does not create unanticipated and undesirable outcomes in an already complex environment of satellite financing. ESOA therefore asks UNIDROIT to undertake a process of review as to whether this Protocol should go forward, or as a minimum, substantially improve the issues that have been raised by industry. Individual ESOA members may choose to work with Unidroit on this last goal.

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