



Ensuring regulatory compliance for small satellites through procurement and grant conditions

ITU Symposium, Prague, 2-4 March 2015

Dr. Ingo Baumann & Dr. Oliver Heinrich

Introduction and Overview

International compliance through national legislation

National laws and regulations are means to ensure compliance with the UN Space Treaties and to ensure compliance with the ITU procedures under the Radio Regulations.

However, there are a number of issues:

- **Is there any national space legislation in place?** Only a limited number of States has enacted national space legislation.
- **Are small satellites in the scope of national space legislation?** Some legislations refer to operation & guidance of a space object (NL) or effective control of a space object (BEL).
- **Specific rules on small satellites?** Very small number of existing national space legislation has specific rules for small satellites, and not even covering all of them (only “for educational purposes”).
- **Are the licensing and other requirements (financial capacity, insurance, operations etc.) appropriate for small satellites?** Some requirements cannot even be objectively complied with.
- **How to enforce compliance of small satellite projects with the applicable national laws?**
Many projects are not on the radar of the competent authorities.

State of play in National Space Legislation

- **Belgian** Government interprets the term “operator” as used in its national space legislation quite broadly in order to allow small satellites to fall inside its scope of application.
- In the **Netherlands**, small satellites are currently not authorized and supervised. However, the Netherlands are working on an amendment to its national space legislation in order to address small satellites.
- Some States already adopted **special provisions** in their national space legislation for small satellites, namely regarding **financial responsibilities and licensing requirements** for space activities for “educational purposes” (e.g. Austria, Australia).
- Other States are assessing the need for **amendments** to national space legislation (e.g. UK, NL).

State of play in National Space Legislation

- **Amendments** to national space legislation (and to national telecommunications law) **require time**.
- Legislative processes may take several years.
- Specific rules do not ensure
 - that **licensing authorities are aware** of small satellite projects;
 - that **entities undertaking small satellite projects are aware** of licensing requirements.
- In the absence of specific national laws and regulations and awareness of existing rules, **how can compliance of small satellite projects be ensured?**

Ensuring compliance through procurement conditions

Ensuring compliance through procurement conditions

- Current only few Small Satellite Projects are subject to the **procurement rules** of public contracting authorities such as international or national agencies or other public bodies.
- This may change in the **future** – already today there is a market for space services with small satellites.
- The **public demand** for services from small satellites may increase as technology advances and small satellites become more potent.
- In such cases contracting authorities could ensure compliance with national space legislation through **specific procurement conditions**.
- **Examples** for other areas already exist: Additional procurement requirements e.g. safeguard compliance with standards of the International Labour Organisation for the manufacturing of supplies or payment of minimum wages for services. Tenderers failing to comply are **excluded** from the procurement.
- Also the **awarded contracts** could include provisions requiring the contractor to comply with international space law standards throughout the lifetime of the contract.

Ensuring compliance through procurement conditions

- The ESA's **General Conditions of Tender** are forming an integral part of ESA ITTs.
 - The **Special Conditions of Tender** will state the applicability of ESA's General Conditions of Tender to a specific ESA ITT and may either modify them, supplement them or add further specific conditions to be addressed by economic operators in their tenders.
 - The **draft contract** is attached to the ITT in order to specify the requirements and conditions that will be applicable during execution of the work should a contract be awarded. This would typically include:
 - ✓ **Specific Contract Conditions**, including price, delivery and payment provisions
 - ✓ Statement of Work
 - ✓ Technical Specification(s)/Requirements
 - ✓ Project Management Requirements Document
- ➔ **In the future**, they could include requirements for compliance with international space law.

Ensuring compliance through grant conditions

Ensuring compliance through grant conditions

- Small Satellites Projects may particularly receive support through public grants:
 - ✓ National Research Programmes
 - ✓ EU Horizon2020
 - ✓ Special funding mechanisms, e.g. by ESA
- Compliance with space and telecommunications law for public supported projects can be ensured.
 - ✓ by specific grant conditions and
 - ✓ terms and conditions in grant agreements
- Even in absence of specific legislation such approach holds potential for enforcing compliance in a large number of projects.
- Specific grant conditions and contractual conditions can be set up rather quickly.

Generic or more specific conditions - examples

- **Generic Tender/Grant Condition:** “The tenderer/applicant shall demonstrate compliance with the applicable international and national laws and regulations. As far as any licenses or authorizations are necessary for the execution of the work or for the provision of the services, the tenderer/applicant shall provide evidence of such licenses and authorizations as part of its proposal.”
- **Specific Tender/Grant Condition:** “The tenderer/applicant shall demonstrate to the Agency that the satellites have been entered in the national register of the state where the tenderer/applicant has its legal seat. The tenderer/applicant shall further demonstrate the its has obtained authorization of the competent national authority for use of frequencies and provision of the services.”
- **Specific Contract Conditions:** “The contractor/beneficiary shall ensure that he has obtained all necessary licenses and authorizations for the execution of the work/provision of the services, namely regarding the use of frequencies, and shall comply with all procedures with the competent authority regarding the registration of the satellites in the national register and the register of the United Nations.”

Supporting measures for compliance

Supporting measures for compliance

- Generic or specific conditions in procurement/grant conditions and contract terms for services contracts or grant agreements are formally a suitable mechanism for ensuring compliance with space and telecommunications law.
- However, additional measures for creating awareness within universities/companies may be necessary.
- Universities/companies may also need support in the preparation and execution of frequency assignment and registration procedures.
- Such support should be provided by the contracting/granting authorities, by space agencies and national authorities (for the registration on the one side, for the frequency assignment on the other side).

Supporting measures for compliance

- Such measures could include:
 - Handbook for small satellite projects
 - Specific training for project managers etc.
 - Website providing information and links to competent authorities
 - Support team within the contracting/granting authority
 - Support team within space agency (ESA, national agencies)
 - Information Days
- As national space and telecommunications laws are (sometimes strongly) diverging between individual States, the above measures would have to be tailored for each individual State.
- In addition, international bodies (UNCOPOUS, ITU, ESA) could issue general guidelines and handbooks (with description of situation in individual countries and links to competent authorities).

Conclusions

- Implementation of specific national laws and regulations regarding Small Satellites usually takes many years to complete.
- Many Small Satellite Projects are receiving public grants, either from specific international funding instruments (Horizon2020, ESA) or under national R&D programmes.
- With increasing number of commercial operators, public bodies may also increasingly procure small satellite services under public procurement procedures.
- Specific conditions for grants/procurements, and specific terms in grant agreements or services contracts are suitable tools to enforce compliance with space and telecommunications law.
- Especially specific conditions for grants, and resulting grant agreements could capture a considerable number of projects.
- Additional measures should be taken to support universities and companies, raise awareness, and make compliance easier.
- Such instruments may include handbooks, trainings, info days and special support teams.

Questions and Discussions



Contact

BHO Legal Cologne

Hohenstaufenring 29-37
50674 Cologne

Tel.: + 49 (0) 221 270 956 0
Fax: + 49 (0) 221 270 956 222

cologne@bho-legal.com

BHO Legal Munich

Hermann-Schmid-Str. 10
80336 Munich

Tel.: + 49 (0) 89 20 06 26 92
Fax: + 49 (0) 89 20 06 26 93

munich@bho-legal.com