

# Experience of Public Private Partnerships in ESA programmes: law and practice

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# Legal Framework of PPPs at ESA



## General framework:

- ❖ ESA Convention – ESA is R&D organisation (space technology, infrastructure, satellites)
- ❖ 1999: Framework for the implementation of PPPs
- ❖ 2000: Resolution on the Agency's framework for PPPs
- ❖ Policy guidelines
- ❖ Compatibility with national and EU law

## Specific Framework:

- ❖ ARTES Declaration in Telecom projects: ad hoc Elements and Artes 33 Element
- ❖ "Investing in Industrial Innovation" (InCubed) Element of the European Earth Watch Programme
- ❖ Navigation Innovation and Support Programme (NAVISP)



# Key Features of ESA Public Private Partnerships



- ❖ Long duration of the relationship
- ❖ Funding from the private sector
- ❖ Private party participates in different project stages (design, completion, implementation, funding)
- ❖ ESA defines the objectives in terms of technology development, the quality of services to be rendered and is responsible for monitoring compliance with objectives.
- ❖ Distribution of risks between public and private parties



- ❖ Concept
- ❖ Management and project efficiency (speed)
- ❖ Financial (cost savings, adequate financing)
- ❖ Contract model flexibility
- ❖ Commercial & Customer/User growth; innovation in the market
- ❖ Return of investment
- ❖ Efficient and balanced risk allocation – ESA on R&D and private sector on the market
- ❖ Regulatory stability

- ❖ Levels of funding contributed by ESA and the private partner
- ❖ IPR
- ❖ Ownership of developed technology
- ❖ Frequency allocation where applicable
- ❖ Operation Licence/ Insurance
- ❖ Insolvency
- ❖ Public International Law
- ❖ Liability arising from operations

**Context:** privatisation of inter-governmental operators (Intelsat, Eutelsat, Inmarsat)

**Types of activities:** new technology developed for products for existing commercial missions or for services not yet commercially available but with potential of commercialisation

## I. ESA-initiated PPPs:

- ❖ ESA co-funds the development of a new product to be commercialised
- ❖ Private partner takes the risk of flying the new product and exploits the system over its life time (Alphabus, Small Geo, Neosat)
- ❖ PPP with Large Space Integrators (LSI) and Operator interested to use an actual commercial mission to validate the new development or PPP placed directly with Operator interested to use an actual commercial mission to validate a new project development

Or

- ❖ ESA and the private partner initiate the development of an infrastructure needed for the delivery of new services
- ❖ Private partner takes the risk of developing the new services market and exploiting the system over its life time (EDRS, SAT-AIS)

## II. Industry-initiated PPPs

- ❖ Former Element 33 of the Artes Declaration within which new sub-elements for new projects are created – tailor made
- ❖ Innovative item to be proposed in terms of:
  - Technology
  - System
  - Service

For:

- Payload
- Platform
- Ground segment



# Legal Framework of the ARTES Programme



- ❖ Private Partner shall implement, test and operate a satellite system with innovative elements during the mission
  
- ❖ ESA places a contract with Operator; the latter with the Industry
  
- ❖ Funding principles:
  - ESA up to 50% of eligible costs (excluding Launch, insurance, launch and early operations phase) to be defined in each case
  - Private funds may not come from third party public entity
  - ESA may audit final costs
  - More flexible geo-return: no best practices – preference for PS
  
- ❖ ELECTRA, INDIGO, ICE, Quantum, ECO; GovSatcom  
Precursor, Pioneer, Lynxsat, Aidan



# Selection procedure

- ❖ ESA initiative for PPP: Competitive procurement (e.g. EDRS)
- ❖ Private Partner initiative for PPP: Direct Negotiation (e.g. Alphabus, Hylas, SAT-AIS, Small Geo, Artes 33)
  - assessment of business case,
  - benefit for participating states
  - compliance with Law and European policy

# Earth Observation – Navigation – Launchers - Exploration



- ❖ NAVISP (NAV)
- ❖ InCubed (EO)
- ❖ Ariane 6 and Vega C and evolutions
- ❖ Dream Chaser for European Utilisation Program



THANK YOU!

