

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

Ref. 18-3831

31 October 2018

SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

EEA EFTA Comment

on the Commission proposal for a Regulation of the European Parliament and of the Council establishing the Digital Europe programme for the period 2021-2027 (COM(2018) 434 final)

1. EXECUTIVE SUMMARY

- The EEA EFTA States – Iceland, Liechtenstein and Norway – welcome the Commission proposal for a regulation establishing the Digital Europe programme and believe that it will play an important role in responding to the challenge of digital transformation in Europe.
- The EEA EFTA States raise their concern regarding provisions in the Commission proposal establishing the Digital Europe Programme that may be interpreted to impose restrictions or limitations on their participation in part of that programme.
- The EEA EFTA States provide clarification on the relevant provisions of the EEA Agreement which are referenced as the legal basis for association in the proposal.
- The EEA EFTA States request for further clarification on whether the EEA EFTA States can designate candidate entities to be selected for the network of Digital Innovation Hubs.
- The EEA EFTA States propose specific amendments to the proposed regulation to provide for more legal clarity on their participation in the programme.

2. INTRODUCTION

1. The EEA EFTA States welcome the Commission proposal for a regulation establishing the Digital Europe programme and believe that it will play an important role in responding to the challenge of digital transformation in Europe.
2. The EEA Agreement extends the Internal Market of the EU to the EEA EFTA States (Iceland, Norway and Liechtenstein) and establishes a legal basis for cooperation with the EU in a range of areas, such as technological developments and research, which are relevant for the good functioning of the Internal Market. Participation in EU programmes is essential for cooperation in these fields.
3. The EEA EFTA States are assessing the proposal establishing the Digital Europe Programme and their possible participation. During this process the EEA EFTA States have identified provisions that may be interpreted to impose restrictions or limitations to their participation in part of the programme. For that reason, the EEA EFTA States would like to provide clarification on the relevant provisions of the EEA Agreement which are referenced as the legal basis for association in the proposal. The EEA EFTA States would also like to propose specific amendments to the text to provide for more legal clarity on their participation in the programme.

3. THE EEA AGREEMENT AND ASSOCIATION TO THE PROGRAMME

4. Association to the Digital Europe Programme is governed by Article 10 of the Commission proposal. It provides that the programme shall be open to the EEA EFTA States, in accordance with the conditions laid down in the EEA Agreement.
5. The participation of the EEA EFTA States in EU programmes is regulated in Article 81 of the EEA Agreement. It provides that where cooperation takes the form of participation by EEA EFTA States in an EU framework programme, specific programme, project or other action, the EEA EFTA States shall have access to all parts of the programme.¹
6. It also states that at the project level, institutions, undertakings, organisations and nationals of EEA EFTA States shall have the same rights and obligations in the EU programme or other action in question as those applicable to partner institutions, undertakings, organisations and nationals of EU Member States.² The EEA EFTA States, their institutions, undertakings, organisations and nationals shall also have the same rights regarding dissemination, evaluation and exploitation of results as those applicable to EU Member States, their institutions, undertakings, organisations and nationals.³
7. When a decision to participate in an EU programme has been taken, the EEA EFTA States contribute financially to the programme through annual payments towards the relevant budget lines of the Commission budget, as determined by the EEA EFTA

¹ Article 81(a) of the EEA Agreement.

² Article 81 (d) of the EEA Agreement.

³ Article 81(e) of the EEA Agreement.

proportionality factor⁴. The EEA EFTA financial contribution is added onto the EU budget of the programme.

4. LIMITATION TO PARTICIPATION IN ALL PARTS OF THE PROGRAMME

8. Article 12(7) of the Commission proposal states that: “*the work programme [of the Digital Europe programme] may also provide that legal entities established in associated countries and legal entities established in the EU but controlled from third countries are not eligible for participation in all or some actions under Specific Objective 3 [cybersecurity and trust] for security reasons. In such cases calls for proposals and calls for tenders shall be restricted to entities established or deemed to be established in Member States and controlled by Member States and/or nationals of Member States.*”
9. Furthermore, Article 18(5) states that “*the work programme may provide that participation is limited to beneficiaries established in Member States only, or to beneficiaries established in Member States and specified associated or other third countries for security reasons or actions directly related to EU strategic autonomy.*”
10. The possibility to limit the participation in specific actions leads to legal uncertainty regarding access of the EEA EFTA States to parts of the programme and whether participants from EU Member States and EEA EFTA States would enjoy the same rights and obligations in the programme. The EEA EFTA States thus believe that Article 12(7) and 18(5) are not in line with the Article 81 of the EEA Agreement.
11. To provide certainty that the provisions to limit participation in the programme do not apply to the EEA EFTA States, which could become associated to the programme through the EEA Agreement, the EEA EFTA States propose the following amendments:

- Article 12(7)

*The work programme may also provide that legal entities established in associated countries and legal entities established in the EU but controlled from third countries are not eligible for participation in all or some actions under Specific Objective 3 for security reasons. In such cases calls for proposals and calls for tenders shall be restricted to entities established or deemed to be established in Member States **and EEA EFTA States** and controlled by Member States and/or nationals of Member States **and EEA EFTA States**.*

- Article 18(5)

*The work programme may provide that participation is limited to beneficiaries established in Member States **and EEA EFTA States** only, or to beneficiaries*

⁴ Article 82(1)(a) of the EEA Agreement; *EEA EFTA proportionality factor* = $\frac{\text{EEA EFTA GDP}}{\text{EEA EFTA GDP} + \text{EU GDP}}$

*established in Member States, **EEA EFTA States** and specified associated or other third countries for security reasons or actions directly related to EU strategic autonomy.*

5. DIGITAL INNOVATION HUBS

12. Article 16 of the Commission proposal provides for the procedure on the establishment of network of Digital Innovation Hubs. The EEA EFTA States note that the provision exclusively refers to Member States as being competent to designate candidate entities for this network. The EEA EFTA States would be interested in receiving further clarification on this point and whether the EEA EFTA States will also be permitted to designate candidate entities to be selected for the network.

13. In order to provide for more certainty that the EEA EFTA States will have the equivalent rights as the Member States to designate candidate entities for the purposes of the establishment of network of Digital Innovation Hubs, the EEA EFTA States proposed to amend Article 16(2)-(4) accordingly:

- Article 16(2):

*For the purpose of the establishment of the network mentioned in paragraph 1, each Member State **and the EEA EFTA States** shall designate candidate entities through an open and competitive process, on the basis of the following criteria:*

- Article 16(3):

*The Commission shall adopt a decision on the selection of entities forming the initial network. These entities shall be selected by the Commission from candidate entities designated by Member States **and the EEA EFTA States** on the basis of the criteria mentioned in paragraph 2 and the following additional criteria:*

- Article 16(4):

*Additional Digital Innovation Hubs shall be selected on the basis of an open and competitive process, in such a way to ensure the widest geographical coverage across Europe. The number of entities of the network shall be proportional to the population of a given Member States **or EEA EFTA State** and there shall be at least one Digital Innovation Hub per Member State. To address the specific constraints faced by the EU outermost regions, specific entities may be nominated to cover their needs.*
