

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 22-1808

1 Annex

17 June 2022

### 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 Union Secure Connectivity Programme for the period 2023-2027 – [COM\(2022\) 57](#)**

#### **EXECUTIVE SUMMARY**

- *The EEA EFTA States welcome the proposal establishing the Union Secure Connectivity Programme which opens for participation by EEA EFTA States, and support the general objective of ensuring secure, flexible and resilient satellite communication services in Europe.*
- *The proposed legal basis for EEA EFTA States' participation in the Programme is imposing restrictions on full and efficient participation, and will in practice lead to an exclusion of EEA EFTA States' participation in the Secure Connectivity Programme.*
- *The EEA Agreement extends the Single Market to the EEA EFTA States and establishes a legal basis for cooperation with the EU in several areas. Participation in EU programmes is specifically mentioned as one of the forms of this extended cooperation.*
- *Broad cooperation in the field of space is key to strengthening Europe's industrial base as well as to preserving the integrity and well-functioning of the Single Market in the entire EEA.*
- *The proposed Regulation will entail budgetary implications for several other programmes that EEA EFTA States already participate in and financially contribute to.*
- *As long-standing and trustworthy partners to the EU, EEA EFTA States' participation could contribute to increasing the performance, robustness and security of the system, as well as fostering competition.*
- *Participation of the EEA EFTA States in the Programme should therefore be based on the EEA Agreement.*

## **1. INTRODUCTION**

1. The EEA EFTA States welcome the proposal for a Regulation establishing the Union Secure Connectivity Programme (“the Commission proposal”) and support the general objective of ensuring secure, flexible and resilient satellite communication services in Europe.
2. The EEA Agreement extends the Single Market to the EEA EFTA States and establishes a legal basis for cooperation with the EU in several areas outside the four freedoms, including research and technological development. Broad cooperation in the field of space is key to strengthening Europe’s industrial base as well as to preserving the integrity and well-functioning of the Single Market in the entire EEA.
3. Through the EEA Agreement, the EEA EFTA States actively participate in and financially contribute to several of the space-related EU programmes. All three EEA EFTA States participate in the Digital Europe Programme, and Norway and Iceland participate in the European Space Programme and Horizon Europe. Furthermore, Norway participates in the European Defence Fund.
4. The Commission proposal opens up for the participation of third countries, including the EEA EFTA States. However, within the above context, the EEA EFTA States find it necessary to raise their concerns regarding the proposed legal basis for participation and access, which could impose substantial restrictions on the EEA EFTA States’ participation and in practice exclude them from the Secure Connectivity Programme. The EEA EFTA States therefore propose amendments to certain articles of the Commission proposal. These suggestions, or similar amendments to the act to the same legal effect, would ensure full and efficient participation of EEA EFTA States in the Programme.
5. As long-standing and trustworthy partners to the EU, the EEA EFTA States note that their participation in the Secure Connectivity Programme through the EEA Agreement could contribute to the performance, robustness and security of the system, as well as increasing competition.
6. The EEA EFTA States are in the process of assessing the proposal and their possible participation in the Programme in accordance with established procedures under the EEA Agreement. These comments are given without prejudice to further comments from the EEA EFTA States and the assessment of the final act, which will be carried out by the EEA EFTA States once adopted.

## **2. LEGAL BASIS FOR THE EEA EFTA STATES’ PARTICIPATION**

7. The EEA Agreement contains a general commitment for the Contracting Parties to strengthen and broaden cooperation in the framework of the EU’s activities in a number of fields outside the four freedoms, including research and technological development.<sup>1</sup> It provides for a dialogue between the Contracting Parties with a view to identifying

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<sup>1</sup> Articles 78 and 79 of the EEA Agreement.

areas and activities where closer cooperation could contribute to the attainment of their common objectives.

8. Moreover, the EEA Agreement encourages the Contracting Parties to take the necessary steps to develop, strengthen and broaden cooperation in the framework of the EU's activities in fields not listed therein, where such cooperation is considered likely to contribute to the attainment of the objectives of the EEA Agreement, or is otherwise of mutual interest.<sup>2</sup> Participation in EU programmes is specifically mentioned as one of the forms of this extended cooperation.<sup>3</sup>
9. The proposed Regulation will entail budgetary implications for several other programmes that EEA EFTA States already contribute financially to, namely the Union Space Programme, Horizon Europe, the Digital Europe Programme and the European Defence Fund.
10. The proposed Programme should therefore be open for participation of EEA EFTA States based on the EEA Agreement.

### **3. THE EEA AGREEMENT AND ASSOCIATION TO EU PROGRAMMES**

11. Where cooperation in accordance with the EEA Agreement takes the form of participation of EEA EFTA States in an EU framework programme, specific programme, project or other action, the EEA EFTA States enjoy a number of rights and obligations. This includes full access to all parts of the programme with equal rights and obligations for institutions, undertakings, organisations and nationals of EEA EFTA States as those applicable to partner institutions, undertakings, organisations and nationals of EU Member States. 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.<sup>4</sup>
12. 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.<sup>5</sup>

### **4. PROPOSED AMENDMENTS TO THE COMMISSION PROPOSAL**

13. Based on the above, the EEA EFTA States propose amendments to the Commission proposal as shown in Annex 1, or similar amendments of the act to the same legal effect, enabling participation of EEA EFTA States in the Secure Connectivity Programme through the EEA Agreement, in line with the general commitment to strengthen and broaden the cooperation between the EEA EFTA States and the EU.

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<sup>2</sup> Article 87 of the EEA Agreement.

<sup>3</sup> Articles 78 and 80 of the EEA Agreement.

<sup>4</sup> Article 81 of the EEA Agreement.

<sup>5</sup> Article 82(1)(a) of the EEA Agreement.

**ANNEX 1****AMENDMENT PROPOSALS TO ARTICLE 5**

1. Article 5 of the Commission proposal sets out provisions regarding the infrastructure of the secure connectivity system. The EEA EFTA States are concerned that the provisions, in particular Article 5(3) regarding location of ground infrastructure centres and Article 5(5) regarding the location of launch service providers, in practice will lead to a restriction for participation.
2. Article 5(3) in its current wording seems to restrict the location of ground infrastructure centres to the territory of the EU Member States. In the view of the EEA EFTA States, the Regulation should allow for location of centres also in EEA EFTA States participating in the Programme based on a hosting agreement taking the form of an administrative agreement between the Union and the EEA EFTA State concerned.
3. Article 5(5) of the proposed Regulation sets a similar limitation to the location of launch service providers. The EEA EFTA States note that launching of the space assets of the infrastructure is part of the possibilities for industrial participation in the programme. Furthermore, access to Arctic launch sites will be strategically important for the programme and for the EU. The Regulation should therefore open for launch service providers in EEA EFTA States participating in the Programme, and for launching from the territories of EEA EFTA States participating in the programme.
4. While acknowledging that the key elements of the proposal are of relevance to the security interests of the EU, the EEA EFTA States want to highlight that they have for many years provided similar services to various components of the European Space Programme and have proven to be trustworthy and long-standing close partners to the EU, in particular as long-standing providers of infrastructure and services for European space projects, and by hosting ground stations in the Arctic and in Antarctica that are important for the performance, robustness and security of the systems.
5. Connectivity in the Arctic is highlighted in the EU Arctic Policy addressing infrastructure such as telecommunication and transport. EEA EFTA States are already an integrated part of the European infrastructure for transport as well as communication, forming important interlinks between maritime and land transport and with several ports in the High North supporting the Trans-European Transport Network (TEN-T).

6. The EEA EFTA States propose the following amendments to Article 5 and corresponding preambles:

<b>Text in the proposal</b>	<b>Proposed amendment</b>
<p><b>Article 5(3) second and third paragraph</b></p> <p>For the protection of the security interests of the Union and its Member States the centres referred to in the first subparagraph shall be, where possible, located in the territory of the Member States and governed by a hosting agreement taking the form of an administrative agreement between the Union and the Member State concerned.</p> <p>Where it is not possible to locate the centre in the territory of the Member States, the Commission may determine the location of such centre in the territory of a third country, subject to a hosting agreement between the Union and the third country concerned concluded in accordance with Article 218 TFEU.</p>	<p>For the protection of the security interests of the Union and its Member States the centres referred to in the first subparagraph shall be, where possible, located in the territory of the Member States <b>or members of the European Free Trade Association (EFTA) which are members of the European Economic Area (EEA) and are participating in the Programme</b>, and governed by a hosting agreement taking the form of an administrative agreement between the Union and the Member State <b>or EEA EFTA State</b> concerned.</p> <p>Where it is not possible to locate the centre in the territory of the Member States <b>or members of the European Free Trade Association (EFTA) which are members of the European Economic Area (EEA) and are participating in the Programme</b>, the Commission may determine the location of such centre in the territory of a third country, subject to a hosting agreement between the Union and the third country concerned concluded in accordance with Article 218 TFEU.</p>
<p><b>Article 5(5)</b></p> <p>In order to protect the security interests of the Union, the space assets of the secure connectivity system shall be launched by a launch service provider that comply with the conditions set out in Article 19 and, where possible, from the territory of the Member States.</p>	<p>In order to protect the security interests of the Union, the space assets of the secure connectivity system shall be launched by a launch service provider that comply with the conditions set out in Article 19 and, where possible, from the territory of the Member States <b>and members of the European Free Trade Association (EFTA) which are members of the European Economic Area (EEA) and are participating in the Programme</b>.</p>

## AMENDMENT PROPOSAL TO ARTICLE 19

7. Article 19 of the Proposal sets out conditions on eligibility and participation, emphasising the security of the operational systems and the strategic autonomy of the EU. The increasing focus on security and strategic autonomy in the EU raises concerns for the EEA EFTA States in the space-related EU programmes, in particular as regards industrial participation. The EU's efforts to strengthen the European autonomy should not lead to the exclusion of the EEA EFTA States, whose close involvement in the EU's space-related programmes would not incur any additional risks.

8. The EEA EFTA States believe that the continued close cooperation between long-standing and like-minded partners would lead to a higher level of security and integrity of European satellite-based infrastructure. Furthermore, the participation of the EEA EFTA States would increase competition and potentially lower costs for the supply industry. The EEA EFTA States participate in a number of EU programmes and cooperate extensively with the Union also beyond the Single Market.
9. The EEA EFTA States will provide significant added value to the Secure Connectivity Programme with strategic locations, industrial expertise and close institutional affiliation with the EEA Agreement.
10. As close partners to the EU in space-related EU programmes, entities in the EEA EFTA States should be able to participate and fairly compete on the relevant tenders in the Secure Connectivity Programme.
11. The EEA EFTA States propose the following amendment to Article 19:

<b>Text in the proposal</b>	<b>Proposed amendment</b>
<p><b>Article 19</b> Eligibility and participation conditions shall apply to the award procedures carried out in the implementation of the Programme, where necessary and appropriate to preserve the security, integrity and resilience of the operational Union systems as set out in Article 24 of Regulation (EU) 2021/696, taking into account the objective to promote the Union's strategic autonomy, in particular in terms of technology across key technologies and value chains, while preserving an open economy.</p>	<p>Eligibility and participation conditions shall apply to the award procedures carried out in the implementation of the Programme, where necessary and appropriate to preserve the security, integrity and resilience of the operational Union systems as set out in Article 24 of Regulation (EU) 2021/696, taking into account the objective to promote the Union's strategic autonomy, in particular in terms of technology across key technologies and value chains, while preserving an open economy. <b>Eligible legal entities of the members of the European Free Trade Association (EFTA) which are members of the European Economic Area (EEA) and are participating in the Programme shall have the same eligibility and participation conditions as eligible legal entities in Member States as set out in Article 24 (2) of Regulation (EU) 2021/696.</b></p>

#### **AMENDMENT PROPOSAL TO ARTICLE 36**

12. According to Article 36 of the proposal, EEA EFTA States may participate in the Programme on the basis of a separate agreement concluded in accordance with Article 218 TFEU. In accordance with the principles set out in the EEA Agreement, and following the precedent from EEA EFTA participation in other space-related EU programmes (Union Space Programme, Horizon Europe, Digital Europe Programme and European Defence Fund), EEA EFTA States' participation in the proposed Programme should be based on the EEA Agreement. The process of negotiating and

concluding a specific agreement in accordance with Article 218 TFEU would in practise exclude the EEA EFTA States from participating in the 2023-2027 programme period, and is not in line with the principles as set out in the EEA Agreement.

13. A swift and timely process for establishing participation by the EEA EFTA States in the Secure Connectivity Programme through the EEA Agreement, including ensuring the implementation and use of Secure Connectivity in the Arctic, would be mutually beneficial for the EEA EFTA States and the EU.
14. The EEA EFTA States propose the following amendment to Article 36:

<b>Text the proposal</b>	<b>Proposed amendment</b>
<p><b>Article 36, paragraph 1</b></p> <p>1. In accordance with the conditions laid down in a specific agreement concluded in accordance with Article 218 TFEU covering the participation of a third country to any Union programme, the Programme shall be open to the participation of members of the European Free Trade Association (EFTA) which are members of the European Economic Area (EEA), as well as of the following third countries: ...</p>	<p><b>1. The Programme shall be open to the participation of the members of the European Free Trade Association (EFTA) which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the Agreement on the European Economic Area.</b></p> <p>2. In accordance with the conditions laid down in a specific agreement concluded in accordance with Article 218 TFEU covering the participation of a third country to any Union programme, the Programme shall be open to the participation of members <del>of the European Free Trade Association (EFTA) which are members of the European Economic Area (EEA), as well as</del> of the following third countries: ...</p>