

Our position

Regulation on a space-based secure connectivity programme

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The EU's space-based Secure Connectivity Programme, adopted in October 2022, will create a low earth orbit mega-constellation to service Europe, Africa and the Arctic through high-speed broadbands. However, this constellation should not ostracise competition, a key component to the transatlantic partnership in an inherently interconnected global industry as space. Rather, a successful constellation should adequately integrate shared standards and security. Thus, EU policymakers should keep certain points in mind when developing the legislation for the system, including:

- Fomenting transatlantic cooperation in the development of this project.
- Carefully assessing public private partnership contracts with appropriate competition and the relevant authorities.
- Ensuring eligibility conditions for non-EU established or based entities fully align with all EU programmes (eg European Defence Fund, Horizon Europe).

Introduction

The rapid commercialisation of space and the increased development of policy and regulation has brought a host of new players to the field. New satellite-based connectivity services are increasingly creating overlap with terrestrial telecom markets competing for the same customers. Thus, the European Commission presented a proposal for a regulation on a space-based secure connectivity programme 2023 – 2027 on 15 February 2022.

The proposal's is to provide reliable, cost-effective, secure connectivity for governmental and commercial communications, with many other utilities and benefits, also covering Africa and the Arctic for high-speed broadband across the EU.

Satellite can significantly contribute towards achieving EU's connectivity ambitions outlined in the Digital Decade 2030. Pursuing these commendable goals requires leveraging the full potential of not only 5G or fibre but also technologies such as satellites, which can provide great benefits to various customer segments such as governments and populations living in rural areas or remote zones.

Industry involvement and industry standards

Since the publication of the proposal, the EU institutions have been advancing rapidly on the legislative process for the file. Rushing through this process has prevented legislators from making critical improvements to the legal text.

Following the political agreement on the legislative proposal on 17 November 2022, the European Commission announced it would soon present several implementing acts and prepare crucial details regarding tender specifications for setting up the Security Connectivity system. Adequate consultation with industry is critical before, during and after the adoption of EU legislation, including for the development of secondary acts in the context of the secure connectivity programme. The European Commission and other involved public stakeholders must make sure enough time is allocated to the discussions and consultations on the specification of the regulation after adoption, (the details of the

public-private-partnership [PPP]) which needs to contain adequate competition safeguards to avoid detrimental effects for companies that are not part of the PPP. Also, public stakeholders should seek for feedback from different companies that are not part of the PPP on the definition of technical standards for the EU constellation which should consider industry standards. The European Commission should use existing industry standards for the EU constellation, since an EU constellation that builds on established standards and ensures interoperability with third party suppliers will contribute to the success of the new networks.

At AmCham EU, we wish to submit some comments regarding the process and file:

1. Satellite connectivity: Another bridge for transatlantic cooperation

Foreseeing the EU's cooperation with international and like-minded partners is an essential element of the proposal. Partnering with Europe's Neighbourhood, Africa or the Arctic is important, but so is the Transatlantic dimension through cooperation with the US. Although separate, we encourage the EU to approach the programme with the same spirit of cooperation that inspires the approach around Space Traffic Management; seeking to foster synergies with the US. This cooperation could take place in the context of the EU-US Trade and Technology Council (TTC), with Working Group 4 (ICT Security & Competitiveness) dealing with similar issues, and/or through the already well-established EU-US dialogue on Space.

2. EU-funded infrastructure raises competition concerns

The Commission has determined that a PPP is the most appropriate model to achieve the objectives set out in the regulation. This approach differs from the traditional public-private procurement model as it involves not just the deployment of infrastructure, but also its operation. Selected providers will serve governments and private customers by using fully or partly EU-funded infrastructure. Besides this, governments shall use services provided through the PPP free of charge, which undermines competition from other providers who have to cover their investment costs.

Such an approach might undermine the principle of a level playing field, as it pertains to the provision of services in the EU single market by competing service providers, and risks using public funding for developing existing and competing commercial services. The provision of free services to governments by the EU constellation will seriously challenge the competitiveness of private companies in these areas. AmCham encourages the Commission to ensure that the market is contestable once the tendering is concluded, and that the PPP is operational.

As a general principle, PPP contracts should be carefully assessed with appropriate competition and relevant authorities, for risk of favouring anti-competitive agreements. This is due to the complexity of the model. At this stage, we believe that the proposed regulatory framework lacks clarity and predictability, for example on the approach to tendering.

3. Eligibility – need for clarity, consistency, predictability and transparency across programmes

The proposal for a regulation establishing the Space-based Secure Connectivity Programme must ensure that eligibility conditions for non-EU established or non-EU based entities that participate in

the Programme fully align with all EU programmes which seek to exploit synergies between civil, defence and space industries, among them the European Defence Fund, Horizon Europe and the Digital Europe program. The status quo lacks clarity, consistency, predictability and transparency to the detriment of these firms, placing them at a competitive disadvantage vis-à-vis European companies. Overly narrow eligibility conditions also limit the EU's ability to select those providers who are most likely to enable the EU's ambitious goals to be achieved. For instance, strategic autonomy in the technology domain appears as a tendering principle, a criterion that risks being vague and ambiguous. There needs to be more clarity regarding eligibility and participation, particularly of non-European players and how the barriers for non-EU players with adequate security requirements and waivers will be sufficiently taken into account for the development of the programme. This includes more clarity on ownership of the infrastructure and how the EU envisages existing commercial assets to be integrated or at least, compatible in a competition-friendly way, with the secure connectivity system. In any case, the application of eligibility conditions must not go beyond areas that require very high security requirements.

Conclusion

The development of an EU space-based secure connectivity programme and satellite constellation is of high importance for the European Union. There has been quick progress on the file, but there must be consultation with industry and use of existing industry standards to successfully develop the policy. A united and inclusive approach, including for the work on this programme, is necessary to achieve the EU's digital and connectivity targets. Therefore, the programme should remain open and competitive for non-European companies to offer the best services compatible with industry competition. The programme should include an element which remains opt to participation from third-country entities with considerable European footprint and players which are an integral part of the European space ecosystem. Any exclusion or discriminatory treatment of such economic contributors (eg market players with headquarters in the United States) would cause market distortions and additional barriers to new but also ongoing programmes of which they are legacy players or bring in capabilities that Europe has yet to build.