

## Summary: Intervention & Options

<b>Department /Agency:</b> DCMS	<b>Title:</b> Impact Assessment of legislation to implement the EU Audiovisual Media Services Directive - non-EU satellite television channels	
<b>Stage:</b> Implementation	<b>Version:</b> 2.0	<b>Date:</b> November 2009
<b>Related Publications:</b>		

### Available to view or download at:

<http://www.culture.gov.uk>

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### What is the problem under consideration? Why is government intervention necessary?

The EU Audiovisual Media Services Directive (AVMS) gives the UK jurisdiction over non-EU television channels which are uplinked to satellites from locations within the UK for reception by viewers in the EU. This means that the UK is responsible under EU law for ensuring that these channels do not incite violence on grounds of race, sex, religion or nationality and that they meet other EU standards and requirements for television content. Such content can have negative consequences and costs for individuals and society. At present there is no legal mechanism in the UK which would allow the Government or Ofcom to intervene if a non-EU channel uplinked from the UK was not meeting these standards.

### What are the policy objectives and the intended effects?

The policy objective is to ensure that the UK can comply with the terms of the Directive. The effect will be to ensure Ofcom is able to intervene successfully if a non-EU television channel which is uplinked from the UK were to breach the EU standards.

### What policy options have been considered? Please justify any preferred option.

The Government considered three options. Option 1 was to do nothing. This would have potentially high political and legal costs and would not be acceptable. Under Options 2 and 3 Ofcom would have a new power to require the removal of a particular non-EU television channel from an uplink, and each channel would itself need to hold a UK broadcasting licence. Option 3 would additionally place a duty on uplinkers to ensure that each channel held a UK licence. Following consultation, the Government selected option 2. This will ensure that the UK is not in breach of the Directive, while minimising the costs for uplinkers.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

2012

### **Ministerial Sign-off** For implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:

*Siôn Simon* ..... Date: 9<sup>th</sup> November 2009

## Summary: Analysis & Evidence

Policy Option: 2

Description: Non-EU channels to hold a UK broadcasting licence and a power for Ofcom to require the removal of a channel from an uplink

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' The main costs will be on non-EU broadcasters which will now be required to hold a UK broadcasting licence. We estimate this will affect no more than 10 non-EU broadcasters. The licence fee will cover the cost to Ofcom of processing licence applications and carrying out regulatory functions.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 25,000</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 10,000</b>		<b>Total Cost (PV)</b> <b>£ 0.11 million</b>
Other <b>key non-monetised costs</b> by 'main affected groups' There will be some costs on satellite-uplink providers who uplink non-EU channels if Ofcom requests that they stop uplinking a channel. These costs may be greater for small uplink providers who may not have the technical equipment to separate out one particular channel from a multiplex of channels.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Not quantified.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£</b>		<b>Total Benefit (PV)</b> <b>£</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Non-EU channels uplinked from the UK will be required to meet minimum EU standards and additionally the requirements of Ofcom's Broadcasting Code. Ofcom will be able to take action to deal with non-EU channels which breach the requirements of the Directive and broadcast illegal or unacceptable material.			

### Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ -0.11million</b>
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What is the geographic coverage of the policy/option?	UK-wide			
On what date will the policy be implemented?	19 December 2009			
Which organisation(s) will enforce the policy?	Ofcom			
What is the total annual cost of enforcement for these organisations?	£			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	<b>Net Impact</b>	<b>£</b>

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **Background**

The AVMS Directive changes the criteria for determining which Member State has jurisdiction over non-EU television channels intended for reception in the EU.<sup>1</sup> Under the Television without Frontiers Directive, such channels were assigned to the jurisdiction of the Member State responsible for the satellite capacity being used. Under the AVMS Directive, it is the Member State with responsibility for the satellite-uplink which has jurisdiction over these non-EU channels.

The UK did not have any responsibility to regulate non-EU channels under the TVWF Directive because we do not have any satellites being used for broadcasting. However, we do have satellite uplinks. The AVMS Directive requires us to ensure that non-EU channels uplinked from the UK meet minimum EU standards and to be able to take prompt action against services, if, for example, they broadcast race hatred material.

### **The options for regulation**

The Government's 2008 consultation document set out three options for implementing this part of the Directive. They were:

1. do nothing;
2. include non-EU channels within the currently regulatory framework and ensure that the rules can be applied to non-EU broadcasters;
3. include non-EU channels within the currently regulatory framework and create a new regulatory responsibility for uplink providers.

The Government ruled out the 'do nothing' option – the Directive requires the UK to be able to take action in the event that there is a regulatory problem with a non-EU channel which uses a UK uplink facility.

Both options 2 and 3 would allow the UK to intervene if a channel broadcast illegal content and to inform non-EU channels about the UK's regulatory standards. In both scenarios, Ofcom would be able to require the uplinker to stop uplinking the channel if it deemed it necessary.

The difference between the two options lies in the role and the potential liability assigned to uplink providers. Under option 2, the uplink provider has an ex post responsibility: they must act when informed that they are uplinking an unlicensed or banned channel. Under option 3, the provider has an ex ante responsibility: to determine, and keep track of the licensing status of the channels they uplink.

Option 3 would appear to create a greater regulatory burden for the uplink industry and to go beyond the requirements of the Directive. The Government therefore preferred option 2. This would allow the UK to ensure appropriate regulatory oversight of the non-EU channels. In the light of the responses to the consultation, the Government confirmed this approach in March 2009.

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<sup>1</sup> The Directive does not apply to services intended exclusively for reception in third countries and which are not received with standard consumer equipment directly or indirectly by the public in one or more Member States.

## **Benefits and costs**

This change in the criteria generates few additional direct benefits for the UK, since the protections afforded are already available under the existing TVWF regime. The real benefits accrue on a pan-European level. Member States will be able to deal more quickly with unacceptable services (for example, broadcasting race hate material) as they will now be able to take action at the point of the uplink before the signal reaches the satellite. The rationale for having content standards in the first place is to protect viewers from harmful content such as content that incites violence on grounds of race, sex, religion or nationality. Such content is associated with negative consequences and costs for individuals and society. There is also an indirect reputational benefit to the UK in demonstrating a commitment to these values and not providing a base to broadcast harmful content.

The Directive imposes some burdens on UK satellite-uplink providers. Uplinkers will need to ensure that they are in a position to stop uplinking a channel if they are required to do so by Ofcom, whether or not they have the technical equipment to do this themselves. They may also be required to notify Ofcom as to the non-EU channels they uplink.

The main costs will fall on the non-EU television channels themselves. They will need to have a UK television broadcasting licence (a television licensable content service - 'TLCS' - licence) issued by Ofcom. Ofcom's fees and charges are related to relevant turnover with a minimum fee, progressive and cumulative percentage fees as turnover increases and a maximum cap beyond which no further fees are payable.

Current indications are that fewer than 10 non-EU channels will transfer to UK jurisdiction as a result of the AVMS Directive. The total one-off cost of new application fees for these channels will be £25,000 (10 TLCS licences at £2,500 each). Each subsequent year licences require renewal at a cost of £1,000 each. Shopping channels pay a flat annual fee of £2,000, but it is not clear that any of the channels affected fall into this category.

There will also be some administrative costs for Ofcom in dealing with applications for tics licences for these non-EU channels and in the event of complaints about a particular channel or other need to take measures against it. However, such costs should be covered by the fees charged to licensees.

We would not expect Ofcom to use the power to require the removal of a channel from an uplink in more than a handful of cases. These non-EU channels have already been subject to EU regulation in the Member State which has responsibility for the satellite and therefore, the number of services in breach of EU standards is likely to be few and far between.

## **Competition assessment**

The impact on competition within the UK is likely to be negligible. All uplinkers based in this country will be affected equally, in that any non-EU television channels they carry will need to have an Ofcom licence. However, there may be an issue in relation to the possible requirement on uplinkers to cease carrying a particular channel, which might bear more heavily upon smaller-scale operators (see the small firms impact assessment below).

There may be an impact on competition between uplinkers in the UK and those elsewhere in the EU. The new AVMS rules will mean that all Member States will require some form of regulation of non-EU channels which are uplinked from their territory. However, not all other Member States have a licensing system. To the extent that this is so, the requirement for an Ofcom licence with its initial application fee of £2,500 (though a relatively small sum in comparison to the overall cost of uplinking a satellite channel, which is thought to be in the region of £50,000 pa) may impact upon decisions by non-EU channels as to the satellite which they use for transmission into the EU and/or the ground station from which their signal is uplinked to that satellite.

## **Small Firms Impact Assessment**

The requirement to terminate an uplink provision for a non-EU channel may adversely affect small satellite-uplink providers and could present barriers to new entrants in the market. We do not know how many uplink providers would not have the necessary technical equipment to stop uplinking a channel which was part of a multiplex. We think that this is likely to be no more than 5-10 operators<sup>2</sup>, and the number of occasions on which it might be necessary to terminate an uplink are likely to be few. Uplink providers did not express any concerns about this in response to the 2008 consultation.

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<sup>2</sup> Based on Ofcom's estimate that there are between 40-50 uplinkers who uplink TV channels and EutelSat's estimate that 90% of the channels carried on their satellites are multiplexed and uplinked by an integrated service provider.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## **Legal Aid**

There might be an impact on the legal aid budget if any uplinker were to seek legal aid in order to challenge in the Courts either the implementation arrangements for the regulation of non-EU satellite-uplinked channels or, in due course, a decision by Ofcom to require an uplinker to stop uplinking a channel. However, no challenges are anticipated, and the Government expects that all sides will work together to resolve any problems or disagreements without the need for legal action.

## **Sustainable Development**

There will be no impact on sustainable development from the requirements of the Directive and the plans for regulating non-EU satellite channels uplinked to satellite from the UK.

## **Carbon Assessment**

There will be no impact on carbon emissions from the requirements of the Directive and the plans for regulating non-EU satellite channels uplinked to satellite from the UK.

## **Other Environment**

There will be no impact on the environment from the requirements of the Directive and the plans for regulating non-EU satellite channels uplinked to satellite from the UK.

## **Health**

There will be no impact on health from the requirements of the Directive and the plans for regulating non-EU satellite channels uplinked to satellite from the UK.

## **Race / Disability / Gender Equality**

Article 3b of the AVMS Directive requires Member States to ensure that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality. The change in the technical criteria for determining jurisdiction over non-EU satellite-uplinked channels means that for the first time the UK will have a responsibility for non EU satellite-uplinked channels in this respect.

## **Human Rights**

There will be no impact on human rights from the requirements of the Directive and the plans for regulating non-EU satellite channels uplinked to satellite from the UK.

## **Rural Proofing**

There will be no impact on rural issues from the requirements of the Directive and the plans for regulating non-EU satellite channels uplinked to satellite from the UK.