

De Minimis Assessment: Self-Certification Template



Department
for Culture
Media & Sport

Title of regulatory proposal	European Electronic Communications Code (EECC) ¹ - End-user rights
Stage	Final
Lead Department/Agency	DCMS
Expected date of implementation	Transposition Deadline: 20/12/2020
Origin	EU Directive
Date	02/07/2020
Lead Departmental Contact	eecc@culture.gov.uk
Departmental Triage Assessment	Equivalent Annual Cost to Business (EANDCB) = £27,948.5 (2016 prices)

Call in criteria check-list

Significant distributional impacts (e.g. significant transfers between different businesses or sectors)	No
Disproportionate burdens on small businesses	No
Significant gross effects despite small net impacts	No
Significant wider social, environmental, financial, or economic impacts	No
Significant, novel, or contentious elements	No

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¹ European Parliament (2018), Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)Text with EEA relevance. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.321.01.0036.01.ENG

SUMMARY

Rationale for government intervention

The European Electronic Communications Code (EECC), an EU directive adopted in December 2018 and requiring implementation by EU Member States and the UK (requirement of the transition period) by December 2020, updates the existing regulatory framework (which comprises the Framework Directive 2002/21/EC², the Access Directive 2002/19/EC³, the Universal Service Directive 2002/22/EC⁴ and the Authorisation Directive 2002/20/EC⁵) to ensure that the telecoms framework continues to address market failures. Telecoms consumer protection rules were previously set out in the telecoms directive, the Universal Service Directive (USD) - the EECC has expanded existing consumer protection provisions, and introduced new ones.

Ofcom is the independent regulator of the telecoms sector, with a duty to further the interests of telecoms consumers. Through their General Conditions of Entitlement, Ofcom sets out rules that all providers of electronic communications networks and services wishing to provide services in the UK have to comply with. Ofcom previously implemented the consumer protection framework set out in the USD through General Conditions, and will be implementing or considering the majority of the new and updated rules set out in the EECC through the same route, including for Articles 98, 101 - 107, 111, 112 and 115 of the EECC. As part of this process, Ofcom will carry out the relevant impact analysis according to their statutory duty under section 7 of the Communications Act 2003, and will publish a consultation on implementation proposals in Q3 2019/2020.

As a result, this DMA focuses on:

- Providing Ofcom with additional powers to implement Article 107, by updating the General Conditions framework in relation to bundled offers.
- Article 107(2) relates to extending existing contract termination rights to bundles, which is covered in the Article 105 DMA.

² Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002L0021>

³ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0019>

⁴ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0022>.

⁵ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive); Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0020>.

Policy options

In relation to Article 107 (bundled offers), the following options have been considered:

Option 1: Do nothing

Under this option the Government would not take any action and this Article would not be implemented into the UK's legal and regulatory framework. This is not a viable option as Article 107 is mandatory and given that the UK remains subject to its EU rights and obligations throughout the post-Exit Implementation Period, the Government is obliged to update domestic telecoms law in line with the provisions in the EECC.

Option 2: Extend Ofcom's powers to allow implementation of Art 107 (Preferred option)

Under this option, the Government would extend Ofcom's general conditions powers to enable it to implement the consumer protection requirements set out in Article 107 through their General Conditions.

Implementing Article 107 requires new legislation. As such, we did not consider non-regulatory options.

Summary of business impact

Option 1: Do nothing

There are no direct costs or impacts on businesses resulting from this option.

Option 2: Extend Ofcom's powers to allow implementation of Art 107 (Preferred option)

Article 107 (bundled offers)

The intention is to provide Ofcom additional powers to implement the provisions through their general conditions framework. Given that Ofcom are expected to consult on their implementation proposals in Q3 2019/2020 and will for this purpose carry out the relevant impact analysis, a full assessment of business impacts resulting from Article 107 has not been undertaken. Below we have provided some qualitative analysis on potential impacts, this is only speculative as Ofcom will have to decide how to implement this article.

In terms of quantifiable impacts resulting from the proposed legislative powers, the following has been considered in this De-Minimis Assessment (DMA):

- A direct one-off familiarisation cost to businesses - a relatively small conservative estimate of £240,572 is considered (more below).
- Aside from familiarisation costs, we have identified indirect additional impacts on Ofcom (more below).

Benefits - Article 107 is intended to improve information, choice and protection for consumers of communication services, including bundled services (i.e. where a landline, broadband and, potentially, pay TV and mobile services are sold together as part of the package). A full benefits analysis has not been undertaken as Ofcom will be undertaking the relevant impact analysis. Below we have provided some qualitative analysis on potential impacts, this is only speculative as Ofcom will have to decide how to implement this article.

Indirect costs - With respect to other impacts, there will be an administrative cost to Ofcom and DCMS in relation to Ofcom employees working on end-user rights

provisions. We expect this cost to be annually around £188,573 and in total of approximately £1m.

SUPPORTING EVIDENCE

Rationale for government intervention

Telecoms end-user rights framework and the role of Ofcom

The Communications Act 2003 (CA 03) gives Ofcom a general duty to protect the interests of communications consumers. As part of this duty, Ofcom have a broad discretionary power to set 'general conditions', which all communications providers must comply with. Additionally, CA 03 allows Ofcom to implement EU obligations for the purposes of consumer protection through their general conditions framework. The USD, part of the current European electronic communications framework, sets out the rights of end-users of electronic communication services (e.g. landline, mobile and broadband). These provisions were implemented by Ofcom through their general condition powers.

The EECC, which was adopted in December 2018, updates the European electronic communications framework, including the end-user provisions in the USD. In particular, the EECC expands upon a number of USD articles and introduces new end-user rights which must be implemented by EU Member States, given that the UK remains subject to its EU rights and obligations throughout the post-Exit Implementation Period, the Government is obliged to update domestic telecoms law in line with the provisions in the EECC by December 2020. In line with their responsibilities, Ofcom will be updating their general conditions to implement most of the EECC end-user rights provisions. These include Articles 98, 101 -107, 111, 112 and 115. As part of their implementation, Ofcom will carry out the relevant impact analysis according to their statutory duty under section 7 of CA 03, and will publish a consultation on implementation proposals in Q3 2019/2020. Therefore, these provisions are not subject to this DMA.

Ofcom's existing general condition powers are not sufficient to enable the regulator to implement Article 107.

As a result, this DMA concerns:

- **Article 107 (Bundled offers):** New consumer protection rules, see annex I for full legal text for consumers of bundled telecoms services (which could include non-telecoms related services in the bundle). Ofcom require an extension to their general conditions powers to be able to implement this Article, in particular to regulate non-communication elements of a bundle (which includes at least one telecoms service).

In order to enable Government and Ofcom to meet EU obligations with respect to the implementation of the EECC, Government intervention is required.

Policy options

Article 107 (bundled offers)

Option 1: Do nothing

Under this option the Government would not take any action, and as a result this Article would not be implemented into the UK's legal and regulatory framework. This is not a viable option as Article 107 is mandatory and required to be implemented by each EU Member State, including the UK.

Option 2: Transpose the text of the Article as set out in the EECC (Preferred option)

Article 107

The Government proposes to amend Ofcom's current general condition powers set out in the Communications Act 2003, to enable the regulator to set rules on bundled offers which include at least one telecoms service, in line with Article 107 of the EECC. Ofcom will then be able to implement the provisions of this Article through their general conditions framework.

No other non-regulatory options were considered, as they would not meet the requirement to implement these Articles by the UK.

Assessment of business impact

Direct business cost for option 1

Option 1 has no direct cost.

Direct business cost for option 2

There is likely to be a direct cost to businesses. Each communication provider operating in the UK would need to familiarise themselves with the new legislation. For this reason, we assume that an employee in each telecoms business operating in the UK will need to spend one hour in order to read the end-user rights provisions. We have calculated the familiarisation cost by multiplying £21.90, the average hourly pay for a telecoms professional⁶, by 8,450, the number of telecoms businesses operating in the UK⁷ and 1 (as one hour will be required to read the end-user rights provisions). We have also uplifted the implementation costs by 30% to include overheads⁸. This cost of £240,572 has subsequently been translated to 2016 prices for the Equivalent Annual Cost to Businesses by using the BIT Impact Assessment Calculator, i.e. by annualising the cost and applying a GDP deflator and a discount rate to calculate the estimated annual net direct cost to businesses.

⁶ ONS (2017), ASHE survey. This is for the latest available year, which is 2015, however we expect the current average hourly pay to be aligned. Available online at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/adhocs/006608annualsurveyofhoursandearningsashepublicandprivatesectorsplitby1to4digitsocode>

⁷ ONS (2017), UK business: activity, size and location. Available online at: <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation>

⁸ OECD (2005), International Standard Cost Model Manual. Available online at: <https://www.oecd.org/regreform/regulatory-policy/34227698.pdf>

Non business related costs and benefits for option 2

According to the European Commission Impact Assessment on the EECC⁹, each Member State competent authority will employ 25 full time employees (FTEs) in order to implement the EECC¹⁰. We have taken this number and divided it for the number of existing directives recast into the EECC (four directives) and assumed that six employees (three from DCMS and three from Ofcom) will work on implementing each directive. As the Universal Service Directive (USD) splits into Universal Service Obligations, covered by another DMA, and end-user rights obligations, covered by this DMA, we have assumed that three FTEs from DCMS and Ofcom will work on implementing the end-user rights aspects of the EECC. We have then taken the average between the median pay for an Ofcom¹¹ and a DCMS¹² employee and multiplied by three (the number of employees that will work on these provisions). We have subsequently multiplied this annual cost by six, as we assume that Ofcom and DCMS employees will continue to work on these provisions for six years, from 2020 up until 2026, when these policies will be reviewed. Finally, we have also uplifted the implementation costs by 30% to include overheads (for example sick leave)¹³. These costs in a best estimate scenario are annually £188,573, coming up of a total for the six years of approximately £1m.

Indirect costs and benefits for option 2

The quantitative analysis provided here is only related to extending powers to Ofcom. Ofcom will carry the necessary impact analysis when implementing Article 107. Below we have provided some lines on potential businesses impacts, however this is highly dependent on how Ofcom will decide to implement the provisions.

The new EECC protections on bundles will remove the harmful effect of consumers being 'locked-in' to contracts, when at least one element of the bundle gives rise to termination rights. With the current legislation a consumer can only cancel the broadband element of the bundle but will have to keep all the other elements up until the contract ends. The EECC will update this legislation so that consumers will be able to cancel any bundle element they are not satisfied with and keep what they are happy with. While this will be extremely beneficial for consumers, it might negatively impact businesses that currently profit from consumers being "locked-in" to contracts for longer periods of time. However, Ofcom will have to decide how these provisions will be implemented, so it is not possible for us currently to estimate the impact on businesses. It is probable that businesses will not suffer a loss of profits, i.e. businesses might decide to restructure their profit strategy and access revenues through other channels. Furthermore unhappy consumers locked-in currently switch operators after their

⁹ European Commission (2016), COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT accompanying the document Proposals for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) and a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications. Online at: <https://ec.europa.eu/digital-single-market/en/news/proposed-directive-establishing-european-electronic-communications-code>

¹⁰ We have also consulted Ofcom on the implementation cost and they have agreed that the European Commission proposed number is in line with the expected implementation cost.

¹¹ Ofcom (2018), The Office of Communications Annual Report & Accounts. Online at: https://www.ofcom.org.uk/__data/assets/pdf_file/0021/115185/annual-report-1718-interactive.pdf

¹² Institute for Government (2018), Civil service pay. Available online at: <https://www.instituteforgovernment.org.uk/explainers/civil-service-pay>

¹³ OECD (2005), International Standard Cost Model Manual. Available online at: <https://www.oecd.org/regreform/regulatory-policy/34227698.pdf>

contract ends, these provisions will encourage businesses to offer better deals to consumers, to respond to an increase in the number of consumers switching. Providers might put additional focus on increasing the satisfaction of their current consumers. These provisions will also increase competition in the market, as consumers will be able to switch easily, facilitating providers with lower market shares but better consumers offerings.

The analysis for this DMA is based on evidence collected from stakeholders and research from DCMS before the public consultation, which was published on the 16th July 2019. No further evidence or information has been brought forward since the consultation. We therefore believe the impact estimates provided to be accurate and the analysis proportionate.

Risks and assumptions

The risks/assumptions set out below are indicative and high-level as the design of the policy and implementation of Article 107 will be a matter for Ofcom.

Assumptions

- This analysis assumes that Article 107 will improve consumers' experience in the telecoms market by way of better protections for consumers of bundled services. Furthermore, it is assumed that the Articles more likely to improve competition in the market.

Risks

- Giving Ofcom powers to regulate non-communication elements of a bundle which includes at least one telecoms service creates the possibility of regulatory clash. This is due to Ofcom potentially regulating services that are subject to separate regulatory regimes - e.g. energy. However, we believe the potential of such regulatory clashes to be low as non-communication services, i.e. energy providers, are not usually bundled with telecoms services, and we are consulting on views on how to deal with any clashes that may arise in the future. Furthermore Ofcom will launch their consultation later during the year, to understand how bundles will be defined and who will regulate the different sectors included in the bundles.

Call-in check list explanations

Distributional Impacts

There are no significant distributional impacts.

Small and Micro Business Assessment (SaMBA)

The EECC end-user rights provisions affect all telecoms businesses, from SMEs to multinationals. We assume that the impact of familiarisation costs will be greater on small and micro businesses as they have fewer employees who have less flexibility to re-allocate tasks within their workforce. However as the familiarisation cost is minimal, we don't anticipate the cost to be significant for small and micro businesses. Currently we are not aware how sectors, other than telecoms, included in the bundles are going to be regulated. After consultation we will have a clearer idea on the sectors regulated by the legislation, so we will be able to provide for the final DMA an indication on the SMEs affected.

Conclusion: There are no disproportionate impacts on small businesses, beyond minor familiarisation costs.

Gross Effects

There are no significant gross effect.

Wider Impacts

There are no significant wider impacts.

Significant, Novel, or Contentious

We do not consider the EECC end-user rights provisions to be significant, novel or contentious.

Annex I - EECC Legal Text

Article 107: Bundled offers

1. If a bundle of services or a bundle of services and terminal equipment offered to a consumer comprises at least an

internet access service or a publicly available number-based interpersonal communications service, Article 102(3),

Article 103(1), Article 105 and Article 106(1) shall apply to all elements of the bundle including, mutatis mutandis, those

not otherwise covered by those provisions.

2. Where the consumer has, under Union law, or national law in accordance with Union law, a right to terminate any

element of the bundle as referred to in paragraph 1 before the end of the agreed contract term because of a lack of

conformity with the contract or a failure to supply, Member States shall provide that the consumer has the right to

terminate the contract with respect to all elements of the bundle.

3. Any subscription to additional services or terminal equipment provided or distributed by the same provider of

internet access services or of publicly available number-based interpersonal communications services shall not extend the

original duration of the contract to which such services or terminal equipment are added, unless the consumer expressly

agrees otherwise when subscribing to the additional services or terminal equipment.

4. Paragraphs 1 and 3 shall also apply to end-users that are microenterprises, small enterprises, or not-for-profit

organisations, unless they have explicitly agreed to waive all or parts of those provisions.

5. Member States may also apply paragraph 1 as regards other provisions laid down in this Title.