

PART 5 – SATELLITE TELEVISION BROADCASTS FROM OUTSIDE THE EU

Current Position

1. The TVWF Directive set out rules which ensured that every television broadcaster whose broadcasts can be received in the EU¹⁹ was assigned to the jurisdiction of one, and only one, Member State.
2. Paragraph 3 of Article 2 set out the rules which determine the jurisdiction for broadcasters which are established in the EU.
3. Paragraph 4 of Article 2 set out rules which determine the jurisdiction for channels which can be received with standard consumer equipment within the EU but for which the broadcasters are established in countries outside the EU. These channels were assigned to the jurisdiction of:
 - the Member State whose satellite capacity was being used to broadcast the channel into the EU;

or, if the channel was not using any satellite capacity belonging to an EU Member State
 - the Member State, if any, from which the channel was being uplinked to the satellite.
4. The UK does not currently have any television broadcasting satellite capacity; and there are at present no channels which fall to the UK's regulatory control as a result of their use of uplink facilities in the UK.

What the AVMS Directive requires

5. The AVMS Directive makes no change to the rules in Article 2 paragraph 3 of the TVWF Directive. It therefore makes no difference to Member States' jurisdiction, for the purposes of EU law, over television channels which are transmitted by broadcasters established within the EU.
6. However, the Directive reverses the rules in Article 2 paragraph 4 of the TVWF Directive. As a result, it assigns jurisdiction over satellite television channels which can be received with standard consumer equipment within the EU but which are established in countries outside the EU, to the Member State, if any, from which the channel is being uplinked. Only if the channel is not being uplinked from any EU Member State does the AVMS Directive assign jurisdiction to the Member State whose satellite capacity is being used to broadcast it in the EU²⁰.

¹⁹ References to the EU in text and footnotes also include the non-EU members of the EEA - Iceland, Liechtenstein and Norway. See footnote 1 to the Introduction.

²⁰ Neither the TVWF Directive nor the AVMS Directive require Member States to exercise jurisdiction over non-EU channels received in the EU which are neither uplinked from within the EU nor use satellite capacity belonging to an EU Member State. No Member State could exercise any practicable jurisdiction over such channels, and EU law does not require them to do so.

7. The consequence of this change in the AVMS Directive is that the UK will, as from the transposition date of 19 December 2009, have formal jurisdiction under EU law for non-EU satellite television channels which are broadcast into EU Member States by means of UK-based uplinks. The UK Government and Ofcom are working with other Member States and the European Commission to determine which non-EU channels will fall into UK jurisdiction as a result of this change in the rules.
8. Several other EU Member States (for example, Germany) are in the same position as the UK. They have no satellite capacity which is used for television broadcasting. But they host uplinks which are used to transmit non-EU television channels. The AVMS Directive therefore assigns to them jurisdiction over, and responsibility for, the content of those channels.
9. The change will mean that some other Member States lose jurisdiction over particular non-EU satellite television channels which are broadcast in the EU by means of satellites which form part of their satellite capacity but are uplinked elsewhere in the EU. Those countries like France which presently regulate large numbers of channels under the current system are likely to lose jurisdiction over some of these channels to other Member States.
10. The Commission has determined that the transfers of jurisdiction which arise as a result of this aspect of the Directive will take place simultaneously at the end of the implementation period in December 2009.

The UK's duties under EU law

11. Article 3(6) of the AVMS Directive requires that:

"Member States shall, by appropriate means, ensure, within the framework of their legislation, that media service providers under their jurisdiction effectively comply with the provisions of this Directive."

12. The legal position therefore is that the Directive requires each Member State to apply the rules which are relevant to television broadcasting services to all such services, including those from outside the EU, over which the Directive gives it jurisdiction. The rules in question are those which are set out at Articles 3a to 3g, Articles 3j and 3k, and Articles 4 to 23 of the Directive (see Part 1 of this consultation document).

Implementing the AVMS Directive for Satellite Channels

13. The UK has implemented the requirements of the Television without Frontiers Directive for satellite and other television broadcasting services²¹ through:
 - the requirement in the Communications Act 2003 that channels under the UK's jurisdiction must be licensed by Ofcom; and
 - the requirement that licensed channels must comply with Ofcom codes such as the Broadcasting Code, and the Rules on the Amount and Distribution of Advertising.

²¹ Leaving aside for these purposes BBC and S4C services, where compliance is secured through arrangements other than licensing.

14. No substantive change is required or proposed to this approach in relation to the additional channels over which the UK will have jurisdiction following the implementation of the AVMS Directive. All channels which fall to the UK's regulatory responsibility under the AVMS Directive will be required to hold a licence from Ofcom and to comply with the Broadcasting and other codes.
15. The non-EU channels which will newly fall to the UK's jurisdiction are different from the channels which Ofcom currently regulate in an important respect: by definition, they will not have a business presence in the UK. This may mean that it is harder for Ofcom to secure their compliance with UK regulation – channel operators may be unwilling to comply with directions from the UK in the event that a breach of the regulations is identified. Equally, there is a risk that such channels may also ignore any sanctions which might be imposed by the UK authorities, whether these were warnings, fines, or the removal of a licence and consequent requirement that a channel cease transmission.
16. It is important to note in this context that the French Government took action in 2004 against two satellite television channels originating from the Middle East, which were relayed in Europe through the French Eutelsat satellite system, and which were carrying flagrantly anti-Semitic programming. Discussions between the French authorities and the broadcasters' European representatives did not prevent recurrences of the problem, which was ultimately solved by the removal of the channels from the satellite and its France-based uplink.
17. The UK Government welcomed the resolute action which the French authorities took to resolve these difficulties. The episode does however point to the need to consider whether the UK might itself have to take effective action against similar breaches of the AVMS rules by non-EU broadcasters which are uplinked from UK territory. However, ensuring that Ofcom can exercise a regulatory function in relation to these channels is likely to require an amendment to the Communications Act 2003.

Options for implementation in the UK

18. The Government considers that there might be a number of options for dealing with any specific (actual or alleged) infraction of the EU rules by a particular non-EU satellite TV channel which is being uplinked to satellite from the UK. In the first instance, Ofcom might wish to discuss the issue with the non-EU broadcaster, as they would with any other channel under UK jurisdiction.
19. It is unlikely that the broadcaster would be under any legal requirement within its own jurisdiction to adapt its output to comply with the UK regulations implementing the Directive or to comply with any Ofcom directions or sanctions decisions including licence revocation. Even so, it might be possible to seek to influence the behaviour of the channel through engagement between Ofcom and the relevant regulatory authority, or potentially at inter-government level.
20. However, we cannot rely upon the uncertain impact of such interventions to prevent continued breaches of UK or EU regulation. Ultimately, in order to ensure that the UK could prevent the continued broadcasting of a non-EU satellite channel which was in breach of the requirements of the Directive, the UK will require a power to intervene to prevent the channel from being uplinked from the UK. Such a power would ensure

that the power Ofcom has to stop a domestic channel from broadcasting (by revoking its licence), would also exist in relation to non-EU channels.

21. The nature and scope of the powers required and permitted under European and domestic law are still under consideration. However, the Government thinks that there are two possible ways of achieving the objective. These are:
 - empowering the Government or Ofcom to act against a channel by instructing providers to stop uplinking in specified circumstances – such as the channel's failure to comply with directions relating to the UK's regulation, or the absence or the removal of its broadcasting licence; or
 - subjecting uplink providers in the UK to ongoing regulation of some kind in relation to the non-EU satellite television channels which they uplink.
22. The Government takes the view that there are three underlying questions to answer before deciding what if any action the UK should take in respect of the non-EU satellite television channels for which the AVMS Directive gives it jurisdiction. These are:
 - should there be arrangements of some kind to regulate non-EU satellite television channels which are uplinked from the UK?
 - what legal powers should the Government or Ofcom have in order to ensure that there can be effective intervention if unacceptable content is broadcast? and
 - what responsibility, if any, should uplink providers have in relation to the channels they uplink?
23. Bearing these questions in mind the Government has identified three distinct options for consideration.

Option 1 - Do nothing

24. Under the AVMS Directive the UK Government must ensure that the non-EU broadcasters under its jurisdiction meet the minimum content requirements which the Directive sets out. However, if a non-EU satellite channel which was uplinked in the UK began to broadcast unacceptable content which breached EU laws, and the UK had no system of regulation in place to address the matter, then the UK Government would be unable to meet this commitment.
25. The European Commission is responsible for ensuring that Community law is correctly applied. Where a Member State fails to comply with Community law, the Commission has the power to bring the infringement to an end (Article 226, EC Treaty), and where necessary, may refer the case to the European Court of Justice. This could result in a substantial penalty payment and/or lump sum (Article 228, EC Treaty).
26. This is a costly and time-consuming procedure with potentially high costs for the UK. It would be quite unacceptable for the UK to fail to act in circumstances where it had a legal responsibility, under Community law, for material in breach of Community law which was being broadcast from here to other Member States.

Option 2 - Include non-EU channels within the current regulatory framework and ensure that the rules can be applied to non-EU broadcasters

27. Non-EU broadcasters could be licensed in the same way as media service providers who are established in the UK. They would be subject to the Ofcom Broadcasting Code and obliged to pay a licence fee. Normally, Ofcom would have a range of sanctions against a licence holder which, for example, persistently breached the Code.
28. However, a broadcaster with no connection to the UK apart from the fact that its broadcasts are uplinked from the UK may well be beyond the effective reach of Ofcom in practical terms. The UK may have little or no influence or control over non-EU broadcasters who are not under direct UK jurisdiction.
29. In order to ensure that Ofcom could effectively sanction such channels, it will therefore need a contingency power to take a channel off air by issuing an instruction to an uplink provider. In this circumstance, the uplink provider would be required to stop uplinking the channel to a satellite.

Option 3 - Include non-EU channels within the current regulatory framework and create a new regulatory responsibility for uplink providers

30. An alternative to option 2 would be to place responsibility for the broadcasting of non-EU channels which breach the requirements of the Directive on the providers of uplink services.
31. This need not require the uplink providers actually to make decisions about the content of the services which they uplink. As with option 2, non-EU channels would be required to hold a licence from Ofcom and therefore be subject to Ofcom's Codes. However, the uplink provider would be responsible for ensuring that the channels it was uplinking were appropriately licensed, either by Ofcom or elsewhere in the EU.
32. In the event that a channel was not licensed in the UK or the EU, the uplinker would be liable. Equally, if a channel had its licence removed as a sanction by Ofcom, the uplink provider would be liable unless it promptly stopped providing uplink services for that channel.

Analysis and assessment of the options

33. Option 1 poses a clear risk of infraction proceedings. Even more importantly, it would be highly undesirable for the UK to be unable to act if it had regulatory responsibility within the EU for a satellite television channel from outside Europe which, for example, was broadcasting hate speech. For these reasons, failure to seek some means of intervention in relation to non-EU channels uplinked from the UK is, in the Government's view, not an acceptable option.
34. Both options 2 and 3 will allow the UK to intervene in the event that there is a regulatory problem with a non-EU channel which uses a UK uplink facility. However, both options will also create risks for the providers of uplink services in the UK.
35. The first of these risks emerges from the technical structure of digital satellite broadcasting, and is common to both options. In the analogue environment, each television channel occupied an uplink frequency slot and used a specific satellite

transponder. In the digital environment, a single frequency slot and transponder will carry as many as eight or nine channels, multiplexed into a single data stream. In order to remove a single channel from this data stream it is necessary first to demultiplex the stream, to remove the channel, and then multiplex the remaining channels into a single stream which is uplinked to the satellite.

36. In the majority of cases, this is unproblematic, as the provider of the uplink service also provides multiplexing services and therefore will also be in a position to isolate and remove a specific channel. For example, EutelSat estimate that 90% of the channels carried on their satellites are multiplexed and uplinked by an integrated service provider. However, in some cases, the multiplexing operation is separate from the provision of uplink services.
37. If uplink provision and multiplexing are separate, the task of removing a single channel is more complex. The uplink provider would have to be in a position to de- and re-multiplex the data stream using their own technical equipment (effectively tying up the expensive plant, if they owned it, or requiring it be hired or purchased if they did not).
38. Alternatively, the uplink provider could ensure through the structure of its contract with the upstream multiplex operator that it could demand the removal of a channel from the multiplex on request. The second of these looks likely to have the smallest direct impact on uplink providers, and would be an acceptable means for uplink-only providers to address their new potential liability. However, it does nevertheless introduce a new business risk, for which uplink-only providers will need to allow in their contracts with channels or multiplex operators.
39. The difference between options 2 and 3 lies in the role and the potential liability assigned to uplink providers. Under option 3, the provider of uplink services takes on a regulatory responsibility: to ensure that the channels to which it provides service are legitimate AVMS services, because they are either:
 - licensed by Ofcom; or
 - established in, and regulated by, another EU Member State.
40. Under option 2, the uplink provider is not assigned a regulatory responsibility in relation to the channels it uplinks and has no additional duties. It will bear some business risk, as a result of the (remote) possibility that a channel which it uplinks is banned by Ofcom, leading to a requirement to terminate the provision of uplinking.
41. Under both options 2 and 3, UK uplink providers will have to allow for this possibility in the contracts they strike with channel operators. However, 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. For this reason, option 3 would appear to create a greater regulatory burden for the uplink industry.
42. Under both options 2 and 3, Ofcom would need to be able to identify the relevant uplink provider for a non-EU channel which was in breach of the Broadcasting Code or had failed to obtain a licence from Ofcom, in order to ask the uplink provider to terminate the uplink.

Preferred Option

43. The basic regulatory framework for media and telecommunications in the UK distinguishes content providers, with editorial responsibility and liability for the characteristics of content services, and communications services providers. In general, communications services providers do not have responsibility for the characteristics of the content services they may uplink. The clearest example of this is in relation to traditional telephony – telephone companies are responsible for connecting people or businesses, but not for the content of their customers' conversations.
44. However option 3 would create a link between the uplinking of a service and the characteristics of that service and thus introduce a new level of responsibility on uplink providers which they currently do not have.
45. Option 2 would not create such a link, and therefore results in a lesser regulatory burden on uplink providers.
46. Option 1 creates two undesirable risks – of infraction and of the continued uplinking by UK uplink providers of potentially illegal content services – each of which is in itself unacceptable.
47. The Government therefore prefers option 2.

QUESTIONS

39. **Should there be arrangements of some kind to regulate broadcasts from non-EU broadcasters which are uplinked from the UK?**
40. **What legal powers should the Government or Ofcom have in order to ensure that there can be effective intervention if unacceptable content is broadcast by a non-EU channel uplinked from the UK?**
41. **What responsibility, if any, should uplink providers have in relation to the channels they uplink?**
42. **Are there any other options, besides those described in this document, which would achieve the objective of ensuring that non-EU satellite channels uplinked from the UK comply with the requirements of the Directive and enabling the Government or Ofcom to take appropriate action against those that do not?**

The Government would also welcome information from respondents about the potential impact of the options for regulating satellite television broadcasts from outside the EU in response to the five impact and competition assessment related questions at the end of the list of questions in Part 6.

Summary: Intervention & Options

Department /Agency: DCMS	Title: Impact Assessment of legislative options for implementing the EU AVMS Directive - non-EU satellite television channels	
Stage: Consultation	Version: 1.0	Date: July 2008
Related Publications:		

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. At present there is no legal mechanism in the UK which would allow the Government or Ofcom to intervene if such a channel 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 has considered three options. Option 1 is to do nothing. This has potentially high political and legal costs and is not 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. The Government's preference is for option 2. This would ensure that the UK was not in breach of the Directive but would minimise costs for uplinkers.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 2011.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Andy BurnhamDate: July 2008

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

COSTS	ANNUAL COSTS		Description and scale of key monetised costs 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 100 non-EU broadcasters.
	One-off (Transition)	Yrs	
	£ 250,000		
	Average Annual Cost (excluding one-off)		
	£ 105,000		Total Cost (PV) £ 1.153 million
Other key non-monetised costs 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 do not have the technical equipment to separate out one particular channel from a multiplex of channels.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Not quantifiable at this stage.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Existing 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 also be able to take action more quickly to deal with non-EU channels (uplinked from the UK & broadcasting illegal material) than they otherwise would.			

Key Assumptions/Sensitivities/Risks

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ -1.153million
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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

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of	£	Decrease of	£
Net Impact			£

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.²² 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 three options

The three options for implementing this part of the Directive and which are outlined in the consultation document are:

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.

Analysis and assessment of the options

The Government has ruled out the 'do nothing' option. The UK must 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 necessary.

The difference between options 2 and 3 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, so the Government's preference is for option 2. This would allow the UK to ensure appropriate regulatory oversight of the non-EU channels.

²² 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 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.

Under either Option 2 or Option 3 the main costs of the proposal 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.

Assuming that in total less than 100 additional channels will be affected by the AVMS Directive's provisions, the total one off cost of new application fees will be under £250,000 (100 TLCS) licences at £2,500 each. Each subsequent year might see 10% of these licences requiring transfers/variations at £1,000 each. Shopping channels pay a flat annual fee of £2,000 and assuming five of these and 95 editorial TLCS licences at a minimum cost of £1000 each, then additional annual TLCS licenses would total £105,000 in 2008-2009 at 2008-2009 prices.²³

There will also be some administrative costs for Ofcom in dealing with applications for tlcs licences for these non-EU channels and in the event of complaints about a particular channel or other need to take measures against it.

Scale

At this stage it is difficult to determine how many satellite uplinkers will be affected by the new Directive and to what extent. It is also rather difficult to predict with much accuracy how many non-EU channels the UK will assume jurisdiction over. In order to establish these we would need to verify:

- how many UK satellite-uplink providers uplink non-EU television channels and how many channels they uplink; and
- whether they have the technical equipment to stop uplinking a channel if they are instructed to do so by Ofcom and where the channel is being uplinked as part of a multiplex of channels.

Ofcom currently provides around 200 Permanent Earth Station (PES) licences but uplinkers are not required to provide information on the type of service they are carrying. As well as carrying television channels, uplinkers could also be carrying a range of other services, including television contribution, Internet backbone, direct to home internet connectivity, trunk telephony and private networks. Ofcom does not have a detailed picture of the number of uplinkers uplinking non-EU television channels and whether they have the necessary technical equipment.

Ofcom's current estimate is that between 40 – 50 satellite-uplinkers might be affected by the new Directive and that the number of non-EU channels being uplinked is likely to be no more than 100.

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

²³ Ofcom's Tariff Tables 2008-9, p.9 (<http://www.ofcom.org.uk/about/account/tariff/table0809/tariff0809.pdf>)

Member State which has responsibility for the satellite and therefore, the number of illegal services is likely to be few and far between.

Competition assessment

The impact of Option 2 or Option 3 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 test 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. As mentioned, 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 operators²⁴, and the number of occasions on which it might be necessary to terminate an uplink are likely to be few. However, we need more information in order to assess these impacts properly.

²⁴ 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

Annexes

ULegal 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 options set out in the consultation document.

Carbon Assessment

There will be no impact on carbon emissions from the requirements of the Directive and the options set out in the consultation document.

Other Environment

There will be no impact on the environment in respect of implementing the requirement in the Directive to regulate non-EU satellite-uplinked channels and the options for doing this set out in the consultation document.

Health

There will be no impact on health in respect of implementing the requirement in the Directive to regulate non-EU satellite-uplinked channels and the options for doing this set out in the consultation document.

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 options set out in the consultation document.

Rural Proofing

There will be no impact on rural issues from the requirements of the Directive and the options set out in the consultation document.