

[GB] DCMS publishes UK transition rules for broadcasting and video-on-demand services from 1st January 2021

IRIS 2020-10:1/19

*Julian Wilkins
Wordley Partnership*

The Department for Digital, Culture, Media & Sport (DCMS) has published new rules for broadcasters and video-on-demand providers which will apply once the United Kingdom's transition period for leaving the European Union has expired, that is to say, on 31 December 2020. On 1 January 2021, the Audiovisual Media Services Directive (AVMSD), including the country of origin principle, will no longer apply to UK services broadcasting to the European Union.

The Council of Europe's European Convention on Transfrontier Television (ECTT) framework, which came into force in 1993, will continue to apply. The United Kingdom is an ECTT signatory, along with 20 other EU signatory members, allowing freedom of reception of services within the United Kingdom. The ECTT does not apply to UK services not available in the European Union, and the Ofcom licence will remain valid after the transition period has ended .

The ECTT guarantees freedom of reception between parties and sets out that they must not restrict the retransmission of compliant programmes within their territories. Regarding UK services available in the European Union, two licences may be required: first, an Ofcom licence for services receivable in the United Kingdom and other ECTT countries, plus licences covering services receivable in seven non-ECTT EU countries (Belgium, Denmark, Greece, Ireland, Luxembourg, The Netherlands and Sweden).

The European Union's "Notice to Stakeholders" for audiovisual media services has confirmed that works originating in the United Kingdom will continue to be classed as European Works after 1 January 2021. EU services available in the United Kingdom are classified as services from countries that have signed and ratified the ECTT, so no action is needed. The seven EU countries who have not signed and ratified the ECTT will need a licence from Ofcom to continue to be received in the United Kingdom. Alternatively, the broadcaster could change the way it operates so that it falls within the jurisdiction of another ECTT country.

The ECTT's enforcement mechanism is managed by a standing committee for disputes, including arbitration between ECTT parties. Service providers must ensure that they have a valid licence or authorisation. A service which is available

in only one of the 20 EU parties to the ECTT will have freedom of reception in other ECTT jurisdictions. The United Kingdom will uphold the Good Friday Agreement by providing licence-free reception for the Irish broadcasters TG4, RTÉ1 and RTÉ2.

A service available in one or more of the 7 non-ECTT countries must ensure that it has the correct licensing agreement on 1 January 2021 by complying with the AVMSD jurisdiction. The ECTT does not provide for freedom of reception for video-on-demand services, so compliance with the AVMSD applies, although regulation and authorisation is determined locally. A UK service provider will be treated as a third-country broadcaster in the European Union under the AVMSD if appropriate action is not taken. EU countries would be free to impose further conditions on services transmitting into their territories, subject to the provisions of the ECTT.

After 1 January 2021, a UK provider can have an AVMSD EU jurisdiction qualification even with a UK head office, provided that editorial decisions are taken in an EU country, or that the provider has a significant part of its workforce located there. A service provider is considered as being established within an EU country (Article 2 (3) AVMSD) when its head office and editorial decisions for a service are taken within an EU country. If the head office is in one location but editorial decisions are taken in another EU country, establishment is based on the location of the office where a significant part of the workforce is located. If the provider does not have a significant workforce within an EU country, the technical criteria may still apply as set out in Article 2 (4) AVMSD, for instance, if a service is provided via a satellite uplink in an EU country, then it would fall under the jurisdiction of that country. Where there is more than one uplink, it would fall under the jurisdiction of the EU country where the first uplink was established. If the uplink is in the United Kingdom, it would fall under the jurisdiction of the EU country which operates the relevant satellite capacity, usually Luxembourg or France.

The AVMSD (Directive 2010/13/EU) sets out a country of origin principle, where providers of broadcasting channels and video-on-demand services based in one country are only subject to one set of rules and regulations from a "country of origin". In the United Kingdom, a broadcasting licence issued by Ofcom is valid in the whole of the European Union, so providers only need to comply with Ofcom rules, regardless of where the licensed service is received within the European Union. However, the ECTT sets out that EU countries should apply the AVMSD, not the ECTT, between each other. This means that even the EU countries who have signed the ECTT only observe the AVMSD rules inside the single market.

Guidance for DCMS sectors during the transition period and after 1 January 2021, Government of the United Kingdom

<https://www.gov.uk/government/collections/guidance-for-dcms-sectors-during-the->

[transition-period-and-after-1-january-2021](#)

