
Frequently asked questions on linear television services and video on demand services after Brexit

1. Overview

These FAQs are aimed at linear television (TV) service providers and video on demand providers seeking further information on what arrangements apply after Brexit.

The UK Government has already made changes to the law that applies to broadcasting in and to the UK. The changes are made by the [Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019](#) ('the regulations'). Unless changed, the regulations will come into force on exit day, which is immediately after the end of the transition period. The transition period is expected to end at 11pm on 31 December 2020. We will aim to update these FAQs if anything changes.

2. During the transition period

During the transition period, the UK will continue to be subject to EU regulations. So the arrangements for linear TV services and video on demand services will remain the same as they are now – with the framework for TV licensing and video on demand notification system being based on the Audiovisual Media Services Directive (AVMSD).

3. The current system and context

The AVMSD is based on the 'Country of Origin' principle. This enables linear TV service providers and video on demand providers to transmit services across the EU, provided they comply with the rules of the country which has jurisdiction over the service. Jurisdiction is decided by a long list of factors, for example, the location of the service provider's head office and staff involved in providing the service.

The AVMSD also sets out content rules with which each country must comply.

After the transition period, this jurisdiction will fall away and be replaced by new criteria set out below.

4. The Government's amendments to linear TV and video on demand regulation after the transition period

After the transition period, the UK will no longer be party to the AVMSD and will be classed as a 'third country' under the AVMSD. So, if your linear TV or video on demand service is available in an EU Member State then you might require a licence or authorisation from an EU Member State. Further details about different scenarios are set out below.

As Ofcom's powers to license and authorise linear TV and video on demand services are based on the AVMSD, Ofcom's jurisdiction over those services will also change. To make the regulatory system

operable outside of AVMSD, the Government has made changes to the law that applies to broadcasting in and to the UK. Ofcom will have jurisdiction over TV and video on demand services as set out below.

Jurisdiction over linear TV services will be based on a number of factors:

- Where your service is based, e.g. where the head office and editorial decisions are made.
- Where your service is broadcasting to, e.g. to the UK or another country.
- How your service broadcasts, e.g. through cable, satellite or online.

The Government's amendments to licensing arrangements are two-fold:

- a) UK country of destination licensing: any TV service that appears on a 'regulated UK Electronic Programme Guide (EPG)' (see explanation below) needs to be licensed and regulated in the UK. The exceptions to this are TV services from countries party to the European Convention on Transfrontier Television (ECTT) (see explanation below), as well as the following Irish services: TG4, RTÉ1 and RTÉ2.
- b) European Convention on Transfrontier Television (ECTT and country of origin): The ECTT is a Council of Europe treaty that is based on a similar country of origin principle to the AVMSD. Where TV services based in the UK are broadcasting to another ECTT country (see list of countries below), they are regulated under the provisions of the ECTT. Where TV services broadcasting to the UK are based in an ECTT country, they will not need a licence from the UK but will be regulated to the standards required by the ECTT by that country.

In addition, the Government's video on demand regulation amendments set out that if your service's head office and editorial decision-making capacity are based in the UK, you will need to give an appropriate notification to Ofcom before providing the service. Where the provider wishes to demonstrate that their services are not available to members of the public in a given region, they will need to secure that the technical and commercial arrangements in place do effectively secure that. We note that the regulations do not change the statutory definition of the "public" to whom a service must be available in order to fall within Ofcom's jurisdiction. We therefore take the view that it will continue to mean what it means now, which is services available in AVMSD countries (see section 2 of the EU Withdrawal Act 2018.)

5. The revised AVMSD

The European Commission [revised the AVMSD in 2018](#). The revised AVMSD introduces a number of new rules, and updates others. The UK Government has to bring these new and updated rules into law ('transpose' them) by 19 September 2020 – so before the end of the transition period.

After the revised AVMSD has been brought into law, Ofcom will consult on what the changes mean for linear TV service providers and video on demand providers. For example, licences will need to be changed, and there will be some changes to the content rules that apply too.

Because Ofcom will also need to consult on what the changes brought about by the Broadcasting (Amendment) (EU Exit) Regulations 2019 mean for linear TV service providers and video on demand providers, we will aim to consult on both sets of changes at the same time. We will aim to consult in Spring/Summer 2020 and implement the AVMSD changes by September 2020, and the Brexit changes by December 2020.

Please email BrexitBroadcastingEnquiries@ofcom.org.uk if you have any queries or comments.

6. Frequently asked questions

Linear TV service providers and EPG providers

1. What is the European Convention on Transfrontier Television (ECTT)?

This [treaty](#), which pre-dates the AVMSD, allows freedom of reception of broadcast TV services between the countries that are party to it.

The ECTT does not apply to video on demand services. Please refer to question 14 for further information.

2. Which countries are party to the ECTT?

The following countries are party to the ECTT: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Norway, Poland, Portugal, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom.

The following EU Member States are not party to the ECTT: Belgium, Denmark, Greece, Ireland, Luxembourg, The Netherlands and Sweden.

3. What does 'broadcasting to' a country which is party to the ECTT mean?

Where the service is distributed by satellite, the Broadcasting (Amendment) (EU Exit) Regulations 2019 define it as being receivable in an ECTT country when:

- The service can be received in all parts of the relevant ECTT country; and
- The service can be accessed through an EPG which is licensed or otherwise regulated in the relevant state. Or alternatively, the service can be accessed through an EPG whose head office is in the relevant State (if the state doesn't regulate EPGs).

Services that are broadcasting to an ECTT country and fall under the UK's jurisdiction for the purposes of the ECTT (see below) are required to have an Ofcom licence. This licence should allow those services to continue broadcasting into those countries on a country of origin basis, i.e. without further regulation in the country of destination.

4. How is jurisdiction determined under the ECTT?

Primary criteria

First, consider whether you are established in an EU country under the AVMSD 'primary establishment criteria'. These effectively decide what country you are established in for the ECTT too (see Article 5(2)(d) ECTT - the reference of the Directive mentioned is the same as Article 2(3) of AVMSD).

The AVMSD primary establishment criteria should be considered only by reference to the countries that are Member States of the EU. For this purpose, the UK is a 'third country'. You are established in an EU Member State as follows:

- If a broadcaster has its head office in that country and the editorial decisions about programme schedules are taken in that country.
- If a broadcaster has its head office in one country but editorial decisions on programme schedules are taken in another country, it will be considered to be established in the country where a significant part of the workforce operates.
- If a significant part of the workforce operates in each of those countries, the broadcaster will be considered to be established in the country where it has its head office.
- If a significant part of the workforce operates in neither the country where the editorial decisions about programme schedules are taken, nor the country where the applicant has its head office, the broadcaster will be considered to be established in the country where it first began broadcasting lawfully, provided that it maintains a stable and effective link with the economy of that country.
- If a broadcaster has its head office in a country but decisions on programme schedules are taken in a third country, or vice-versa, it will be considered to be established in the country concerned, provided that a significant part of the workforce operates in that country.

If you are established in an EU Member State under the criteria above, and that country is not in the ECTT, we take the view that you fall outside the ECTT.

If you are not established in an EU Member State under the criteria above, then you should consider where you are established under the remaining ECTT primary criteria (Article 5(3)(a) to (c)). For the list of countries party to the ECTT see question 2 above. The UK is not a 'third country' for this purpose, as the UK is a party to the ECTT.

The ECTT states that a broadcaster is established in a country (i.e. falls into its jurisdiction) in the following circumstances:

- If a broadcaster has its head office in that country and the editorial decisions about programme schedules are taken in that country.
- If a broadcaster has its head office in one country but editorial decisions on programme schedules are taken in another country, it will be considered to be established in the country where a significant part of the workforce operates.

- If a significant part of the workforce operates in each of those countries, the broadcaster will be considered to be established in the country where it has its head office.
- If a significant part of the workforce operates in neither the country where the editorial decisions about programme schedules are taken, nor the country where the applicant has its head office, the broadcaster will be considered to be established in the country where it first began broadcasting lawfully, provided that it maintains a stable and effective link with the economy of that country.
- If a broadcaster has its head office in a country but decisions on programme schedules are taken in a third country, or vice-versa, it will be considered to be established in the country concerned, provided that a significant part of the workforce operates in that country.

If you think you are not established in an ECTT country or an EU Member State, you should consider whether your service falls to the jurisdiction of an ECTT country under the following criteria:

Subsidiary technical criteria (Article 5(4))

If the primary establishment criteria do not apply, broadcasters may still fall into the jurisdiction of an ECTT country in the following circumstances:

- If a broadcaster uses a frequency granted by that country.
- If a broadcaster uses satellite capacity relating to that country.
- If a broadcaster does not use satellite capacity relating to that country but does use a satellite uplink situated in that country. This subsidiary criterion will apply if jurisdiction of any country cannot be established under the 'satellite capacity' criterion referred to above.

5. What is a 'regulated EPG'?

Broadly speaking, an Electronic Programme Guide (EPG) is a service that consists of the listing or promotion of programmes or programme services and provides access to them. (The full applicable definition is in section 310(8) of the Communications Act 2003.)

After the end of the transition period, any EPG being provided by a provider that holds a Television Licensable Content Service or Digital Television Additional Service licence for it immediately before the end of the transition period will be 'regulated'.

Regulated EPG providers will be required to have a licence, as will any TV services on those EPGs (with the exception of those under the jurisdiction of another ECTT country and TG4, RTÉ1 and RTÉ2).

EPGs are designated as 'regulated' EPGs by several means.

Beyond day one, if EPG providers met the criteria below, they could be designated by the Secretary of State:

- a person who is providing a guide that is used by members of the public in the UK as a facility for obtaining access to television programme services; or

- a person who is providing, or has informed Ofcom of an intention to provide, a guide with a view to it being used by members of the public in the UK.

6. After the transition period, will EPG providers be required to take action?

The Broadcasting (Amendment) (EU Exit) Regulations 2019 require Ofcom to vary the licences of EPG providers to ensure that the services on their platform (other than TG4, RTÉ1 and RTÉ2) are appropriately licensed or authorised to broadcast either by Ofcom, or a country that is party to the ECTT. Ofcom will vary the licences to add a condition reflecting this obligation.

7. I hold an Ofcom licence and provide my service only to UK audiences. Is my existing Ofcom-issued licence still valid, or do I need to re-apply for one?

If you still require a licence under the jurisdictional criteria above, your existing Ofcom licence remains valid. There is no need to re-apply.

If you broadcast a linear TV service online only, you will need to consider whether your service is accessible via a regulated EPG in the UK. Information about all licences issued is available [on our website](#). If your service is not accessible via a regulated EPG in the UK (i.e. and when it is not available in an ECTT country as set out in question three), it is likely that you will no longer require your Ofcom licence. (Please refer to questions 14 and 15 below for further information about video on demand services which are regulated differently from linear online services).

We will vary licences to reflect the new legislative framework, which means that we will consult all existing TLCS and DTAS and DTPS licence holders by writing to them.

8. I hold an Ofcom licence and my service is available in both the UK and in the EU. Do I need to take action to be able to legally provide my service in the EU? Do I still need an Ofcom licence?

If all of the EU Member States in which your service is available are also party to the ECTT, you may be able to rely on the ECTT. However, because satellite signals cross territorial boundaries, this may be hard to achieve in practice. You may well fall to the jurisdiction of an EU Member State under the terms of the AVMSD. We suggest you consider the jurisdictional criteria of the AVMSD and the ECTT combined and contact the media regulator in that Member State to enquire about obtaining a licence or authorisation as necessary.

In addition, if you still require an Ofcom licence under the new jurisdictional criteria set out above, your existing Ofcom licence remains valid. There is no need to re-apply for a new one.

9. I have an Ofcom licence for my TV service which is only available outside the UK. Do I still need my licence?

Cable and satellite services are caught by the ECTT. If you fall to Ofcom's jurisdiction under the ECTT jurisdiction criteria set out above, and you are broadcasting to a country that is party to the ECTT (i.e. see question 2) then you are still required to have a licence from us.

If you fall to Ofcom's jurisdiction under the ECTT jurisdiction criteria set out above, but you are only broadcasting to a country that is not party to the ECTT, then you will not require a licence from us. We do not consider that online-only services are caught by the ECTT, so these will only require a licence if they appear on a UK-regulated EPG service.

Please refer to questions 14 and 15 below for further information about video on demand services, which are regulated differently from linear online services.

10. I am providing a TV service to the UK but I am based in the EU and therefore hold a licence or authorisation to do so from one of the EU Member States. Do I need to take any action?

If you are 'established' (according to the primary criteria described in question 4 above) in an EU Member State that is also a party to the ECTT, you do not need to do anything. Many EU countries are also party to the ECTT (see list in question 2 above).

If you are licensed or authorised in an EU Member State because of the location of your satellite uplink, or due to your satellite capacity, you may still also fall to the jurisdiction of another ECTT party, and you should look at the criteria described in question 4 above.

If you are 'established' in an EU Member State that is not in the ECTT, you will need to hold an Ofcom licence to provide a TV service on one of the regulated EPGs in the UK. There is a six-month grace period from exit day before your service is required to be licensed by Ofcom, allowing time for the application and issuing process for the new licences. Ofcom will aim to publish a revised application form and accompanying guidance notes on our website and start processing the applications from Autumn 2020.

11. What if I no longer need my Ofcom licence?

If you don't need your Ofcom licence because you no longer fall under UK jurisdiction, an authorised representative of the licensee should email broadcast.licensing@ofcom.org.uk to let us know.

12. After the transition period, will TG4, RTÉ1 and RTÉ2 be required to take action?

As noted in the Broadcasting (Amendment) (EU Exit) Regulations 2019, TG4, RTÉ1 and RTÉ2 will be exempt from the requirement to hold Ofcom licences due to UK's commitments under the Good Friday Agreement and the European Charter on Regional and Minority Languages. Therefore, no action is required on their part.

13. After the transition period, will there be changes to the content rules broadcasters have to follow?

For licensed services based in the UK that are provided only to UK audiences there are no immediate changes to the content rules that have to be followed due to the UK leaving the European Union. However, there will be some changes to the content rules that apply after the revised AVMSD has been brought into law (see 'The revised AVMSD' section above).

For licensed services based in the UK that are broadcasting to countries that are party to the ECTT, there will be some changes to the rules that these services must follow. This is because the ECTT includes some rules that are different from the current Broadcasting Code rules. These changes mostly relate to advertising scheduling.

Ofcom will aim to consult on the changes required in Spring/Summer 2020, implement the AVMSD changes by September 2020, and the Brexit changes by December 2020. Licensees are not expected to follow these rules until they have been implemented.

Video on demand services

14. How are video on demand services now regulated?

The ECTT does not apply to video on demand services, so UK-based video on demand services will no longer be afforded freedom of reception in the EU through this means.

There will be no 'country of destination' style regulation for video on demand services and Ofcom will only regulate a service if both its head office and editorial decision-making capacity are based in the UK. Video on demand services not under UK jurisdiction that are currently available to UK audiences will continue to be available. For example, the UK will continue not to regulate Netflix, which is based in the Netherlands, and it will continue to be available in the UK. If issues arose with services based in other jurisdictions, the UK will cooperate with the relevant regulator.

Video on demand providers should seek legal advice and contact EU media regulators to check if a separate licence or authorisation will be required for their service in the EU.

15. After the transition period, will there be changes to the content rules video on demand services have to follow?

There will be no immediate changes to the content rules that have to be followed due to the UK leaving the European Union. However, there will be some changes to the content rules that apply after the revised AVMSD has been brought into law (see 'The revised AVMSD' section above). Ofcom will aim to consult on the changes in Spring/Summer 2020 and implement the AVMSD changes by September 2020.