

The UK Audiovisual sector after Brexit

Key points taken from EU AV Observatory report

<https://www.obs.coe.int/en/web/observatoire/home>

After Brexit, UK audiovisual media services received or retransmitted in the EU will no longer benefit from the freedom of reception and retransmission laid down in Article 3 AVMSD. Therefore, EU27 member states will be entitled, based on their own national law and, where applicable, within the limits of the European Convention on Transfrontier Television, **to restrict reception and retransmission of audiovisual media services originating from the UK.**

ECCT Convention

Needs updating and has no enforcement mechanism

[Latvia has] regularly reminded the Commission that there are over 850 TV channels under UK jurisdiction targeting EU Member states. Even if the UK were to transpose the revised Audiovisual Media Directive, **there is no dispute resolution mechanism.**

Country of Origin principle

The UK government has well acknowledged the importance of the COO principle for the UK broadcasting industry. It has recently announced in its July 2018 White Paper on “the future relationship between the United Kingdom and the European Union” that the COO principle would no longer apply but that it would be seeking the best possible arrangements for the sector.¹³² However, **no concrete solution has been mentioned so far as to how to ensure such principle can be retained. Indeed, the COO principle cannot remain merely by virtue of existing UK law. It will continue to apply only if the remaining 27 Member States continue to allow UK-based companies to broadcast to their markets under UK rules and if the UK allows EU-based companies to broadcast in the UK under EU rules.** This could be achieved under an EEA or bilateral agreement between the EU and the UK. However, by leaving the Digital Single Market (DSM), the UK will also lose voting rights for DSM legislation within the Council of Ministers and the European Parliament, which means that the country will no longer have direct influence over these rules, a state of affairs which might complicate the practical implementation of any agreement reached in this field. In any case, the loss of influence over DSM should not affect the legal status of any arrangement reached over COO-type arrangement in any UK-EU bilateral agreement.

The House of Commons Digital Culture, Media and Sport Select Committee has assumed that negotiations on audio-visual media services aimed at keeping the UK within the COO rules would take place outside of the general negotiations on an EU-UK trade agreement, because of the “cultural exception” that, until now, has largely excluded audio-visual services from the main text of EU Free Trade Agreements.

¹³³ On the basis of this assumption, keeping the UK within the scope of the COO rules would **therefore require a separate agreement, “but this is far from assured”**, according to

the House of Commons Select Committee. The European Scrutiny Committee noted that there “is no precedent for a third country securing Single Market-equivalent access for broadcasters.”

134 As to the possibility of using the COO principle provided under the European Convention on Transfrontier Television (ECTT),¹

The European Scrutiny Committee considered that this would not be a viable alternative to the COO rules because the **ECTT is deficient in a number of respects, not least because it only applies to traditional “linear” broadcasts and not to on-demand services. The Committee concluded that the Convention “is severely limited and perhaps most significantly, it lacks any form of enforcement mechanism.”**

136 The Digital, Culture, Media and Sport Select Committee asked the government to set out the steps it is taking to avoid the cessation of the COO principle after Brexit and to explain its negotiation objectives, as well as the timescale for such negotiations. It has also asked the government to confirm as soon as possible that it intends for the UK to remain a member of the European Single Market, and under the terms of the current COO rules, for a transitional period after Brexit, until the end of 2020.

3.3.3. Possible impact of Brexit on quotas of European works Although, based on the UK’s Government’s stated position, it is assumed that adherence to AVMSD will not be mandatory for British broadcasters and VOD services after Brexit, it is important for UK (co)-produced content to continue to qualify as “European works”. Ceasing to qualify as European works would indeed mean that works originated in the UK would be excluded from the national quotas in favour of EU-produced content in TV channels and VoD catalogues.

3.5. State aids and fiscal incentives after Brexit

As mentioned in Chapter 1,¹⁵⁶ UK screen industries depend to a large extent on public support and fiscal incentives. Chapter 2 of this publication¹⁵⁷ also explained how State aid rules restrict the member states’ ability to provide public support for commercial undertakings, including in the domestic creative industries sector. Depending on the arrangement with the EU after Brexit, the rules surrounding the existing fiscal incentives in the audiovisual sector and the restrictions on selective state aid could, from a UK perspective, be “eased” in the future. **However, one could imagine that any request to access the Digital Single Market would require a certain degree of regulatory equivalence under which the EU rules would continue to apply. Similarly, even if the UK were completely free from EU constraints, the issue of state aids for the cultural sector would be likely to feature in negotiations over bilateral free trade agreements (where there is a constant demand from the US that there should be no cultural exception).**

OFCOM proposal on COO principle

The UK regulator, Ofcom, has proposed that a triple test be applied when deciding on which EU laws in the regulated sectors should continue to apply in the UK, based on: the priority interests of UK consumers and the wider public; the promotion of competition and investment; and the interests of UK companies. This filter would be used for retaining what

works in the EU framework; improving the framework where it may be deficient; and “avoiding making things worse, by inadvertently weakening powers or protections.”¹⁷⁹ **The COO principle is part of what Ofcom considers as “the best of the EU framework” on the regulatory side that should be kept, so that UK-based media companies do not feel compelled to move their operations to another member state.** Ofcom, however, points out that **retaining this principle after Brexit would demand constructive discussions with the EU, especially given the fact that the UK would no longer be able to shape the future EU framework and regulatory obligations applicable to broadcasters after Brexit.**