



Department
for Education

Sir William Cash MP
European Scrutiny Committee
House of Commons
London
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Dear Sir William,

25th April 2019

12258/16: Proposal for a Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmission of television and radio programmes

Thank you for your report of 27 March 2019, in which you seek further clarification of a number of matters related to the Directive and granted a scrutiny waiver to allow the UK to vote in its favour in the Council. Since I last wrote, the European Parliament has voted in favour of the Directive and it passed to the Council for the final vote. This took place on 15 April and the Directive was formally adopted by the Council.

Direct injection

We ask the Minister to confirm whether there is any underlying uncertainty about how pure direct injection will operate under the provisions of this proposal. If there is, we ask the Minister to clarify the position and confirm why the Government is content with it.

The provisions on so-called 'pure' direct injection in the Directive set out that both a broadcasting organisation and the signal distributor are considered to be participating in a single act of communication and shall have to obtain authorisation to do so. The flexibility is incorporated in how the authorisation will be obtained. Any suggestion in my previous letter that there was uncertainty rather than an acceptable level of flexibility was unintentional.

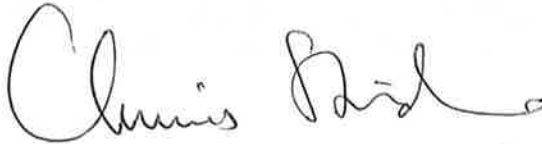
Directive implementation

If the proposal is passed soon, and if the draft Withdrawal Agreement were ratified by the UK and EU, it is likely that the UK would be required to introduce this proposal into UK law during the Withdrawal Agreement's transition period. On the basis of the current information, we are unable to comment on the likelihood of this occurring. We request an update from the Minister on this point. As a related point we also note that the Minister has not provided any assessment on the impacts of this proposal (if any) that would be relevant to the UK as a third country rather than a Member State. We would welcome an assessment from the Minister on this point.

I can confirm that the implementation period for this Directive is 24 months, beginning from its entry into the EU Official Journal. The implementation period was extended more than once at the request of Member States who needed to make amendments to domestic legislation, and by compromise ended at 24 months. The UK would be satisfied with this period, as the provisions on direct injection will need adequate time for consultation with broadcasters, providers of direct injection services, and rights holders. By the end of this 24 month period Member States must have introduced it into their domestic law. Whether the UK is required to implement the Directive will therefore depend on the nature of our departure from the EU. If the transposition deadline of this Directive goes beyond the end of the implementation period for the UK's departure from the EU, the UK will not be able to implement the Directive under the powers of the Withdrawal Act. Should the Government wish to implement the policy proposals contained in the Directive in the UK, it would need separate legislation. However, should the transposition period for the Directive fall within the implementation period then the UK would be required to implement the Directive.

The application of the Directive in the UK after our exit from the EU will be subject to the nature of the future relationship between the UK and EU. This is due in large part because of the cross-border nature of the provisions. The country of origin extension to catch up services, for example, creates a legal fiction that one copyright clearance in the originating territory is sufficient for allowing access to content in other Member States. This would not work if the UK were a third country, so clearances would have to take place along current lines (clearing in each territory). A reciprocal arrangement would need to be included in the FEP if UK broadcasters (and ultimately consumers) were to benefit from a simpler, lower cost, rights clearance process. This also applies to the other parts of the Directive, as they are intended to operate across borders.

I hope this information is useful in answering your questions. Unless there are any outstanding issues, I once more request final scrutiny clearance of this measure.

Yours etc,


CHRIS SKIDMORE MP
Minister of State for Universities, Science, Research and Innovation