

De Minimis Assessment: Self-Certification



Department for
Digital, Culture
Media & Sport

Title of regulatory proposal	European Electronic Communications Code (EECC) ¹ - Number Independent Interpersonal Communication Services
Stage	Final
Lead Department/Agency	DCMS
Expected date of implementation	Transposition Deadline: 21/12/2020
Origin	EU Directive
Date	24/06/2020
Lead Departmental Contact	eecc@culture.gov.uk
Departmental Triage Assessment	Equivalent Annual Cost to Business (EANDCB) = £152,938.72

Call in criteria check-list

Significant distributional impacts (e.g. significant transfers between different businesses or sectors)	No
Disproportionate burdens on small businesses	No
Significant gross effects despite small net impacts	No
Significant wider social, environmental, financial, or economic impacts	No
Significant, novel, or contentious elements	No

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SUMMARY

¹ European Parliament (2018), Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) Text with EEA relevance. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.321.01.0036.01.ENG

Rationale for government intervention

The Government recognises the importance of number independent interpersonal communication services² (NIICS). To ensure that the UK adopts an appropriate approach to these services, the definition introduced within the European Electronic Communications Code is being transposed into the Communications Act 2003. Ofcom's existing information gathering powers within their functions are to be extended so as to cover these services in the context of consumer protections. This will allow an evidence base to be developed for NIICS policy requirements.

The European Electronic Communications Code (EECC) was adopted by the EU in December 2018. It updates the existing regulatory framework (which comprises the Framework Directive 2002/21/EC³, the Access Directive 2002/19/EC⁴, the Universal Service Directive 2002/22/EC⁵ and the Authorisation Directive 2002/20/EC)⁶ to ensure that the telecoms framework continues to address market failures.

Given that the UK remains subject to its EU rights and obligations throughout the post-Exit Implementation Period, the Government is obliged to update domestic telecoms law in line with the provisions in the EECC. The EECC SI will be made under section 2(2) of the European Communities Act 1972 (as repurposed for the transition period by the EU (Withdrawal Agreement) Act 2020).

Policy options

Option 1 - The UK Government does not transpose the new definition of Number Independent Interpersonal Communication Services (NIICS) (do nothing).

Option 2 - The UK Government does transpose the new definition of Number Independent Interpersonal Communication Services (NIICS) to allow Ofcom to gather information from NIICS (Agreed Approach). The Government transposes the definition into UK legislation.

Summary of business impact

² NIICS include services such as Whatsapp and Facebook messenger

³ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002L0021>

⁴ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0019>

⁵ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0022>.

⁶ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive); Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0020>.

Option 1 has no direct cost impacts on businesses.

Option 2 has a direct one-off familiarisation cost to businesses, though relatively small. We estimated familiarisation costs to be equivalent to £150,161 (2019 prices). There is an implementation cost relating to Ofcom of £73,715. There is also a direct cost to business in regards to information gathering exercises by Ofcom, that can be conducted due to the change in definition. We estimate this to be £131,400 per year (2019 prices). No other direct cost on businesses has been identified. The proposed legislation will have no direct impact on the UK economy, besides a small familiarisation cost and a small annual cost for information gathering.

Benefits

The introduction of a definition enabling Ofcom to gather information from NIICS, will allow the evidence base to be gathered to support NIICS policy in an area that currently has no oversight.

SUPPORTING EVIDENCE

Rationale for government intervention

1. The UK is required to transpose the EECC which introduces the concept of number independent interpersonal communication services to the EU telecommunication regulatory framework. These services are largely functionally equivalent to traditional telephony services from an end-users perspective but run over the internet. The extension of Ofcom's information gathering powers to these services in a consumer protections context will enable an evidence base to be developed to support any future policy requirements. In the absence of the definition and the application of Ofcom's information gathering powers, the UK will be hampered in assessing the existing NIICS market.
2. The European Electronic Communications Code (EECC) was adopted by the EU in December 2018. It contains a number of provisions that update the current regulatory framework, with the objective of:
 - a. Incentivising investment in very high-capacity broadband networks; promoting more efficient spectrum management;
 - b. Ensuring effective consumer protection;
 - c. Strengthening the institutional framework.
3. The UK played an active part in EECC negotiations, and we are satisfied that the provisions provide a net benefit to the UK and support our ambitions to improve connectivity. Given that the UK remains subject to its EU rights and obligations throughout the post-Exit Implementation Period, the Government is obliged to update domestic telecoms law in line with the provisions in the EECC.

4. The EU first established a comprehensive regulatory framework for telecoms in 2002⁷, in order to address market failures across the EU. The EECC updates that framework to ensure that it continues to address the market failures that still persist, including those in the UK telecoms market.
5. The current regulatory framework comprises the Framework Directive 2002/21/EC⁸, the Access Directive 2002/19/EC⁹, the Universal Service Directive 2002/22/EC¹⁰ and the Authorisation Directive 2002/20/EC¹¹. It also includes provisions adopted in 2009 updating these Directives (predominantly through the Better Regulation Directive 2009/140/EC) and a directly applicable Regulation (BEREC Regulation 1211/2009). These Directives were primarily transposed via the Communications Act 2003, the Wireless Telegraphy Act 2006 and the Office of Communications ('Ofcom') Act 2002. Other EU telecoms legislation is also applicable in the UK.
6. The EECC recasts the Framework, Access, Universal Service and Authorisation Directives in line with the requirement for the European Commission to review the framework every five years in light of market trends and technological developments. The EECC SI will be made under section 2(2) of the European Communities Act 1972 (as repurposed for the transition period by the EU (Withdrawal Agreement) Act 2020).
7. Transposing the NIICS definition from the EECC would meet our obligations in a transition period post-EU Exit.

Policy options

Option 1 - The UK Government does not transpose the NIICS definition from the EECC (Do Nothing): We will not transpose the definition of NIICS.

Option 2 - The UK Government does transpose the definition of NIICS, allowing Ofcom to gather consumer protection information from NIICS (Agreed Approach): The Government incorporates NIICS, limited to allowing Ofcom to gather information relating to consumer protections from NIICS only.

Assessment of business impact

Option 1 has no direct impact on businesses.

Option 2: We have assessed that the measure will only have a small direct impact on business.

⁷ See footnote 2

⁸ See footnote 1.

⁹ See footnote 2.

¹⁰ See footnote 3.

¹¹ See footnote 4.

The information gathering exercise by Ofcom is expected to have an estimated cost on business of £131,400 per year. This analysis is based on engagement with Ofcom, who have previously consulted on NIICS. This estimate is based on each information request taking 100 hours, with an hourly wage of £21.90¹² (the average pay for a telecommunications professional); this equates to £2,190 per company for each information request. Taking an upper estimate of the amount of requests per year as 6, the measure is estimated to cost £13,140 per company per year, however Ofcom believe this is more likely to be 3 a year. Ofcom believe that the largest number of companies who could be reasonably anticipated as having to reply to this information request as 10. Ofcom research has shown that consumer use is concentrated to a small number of providers. The information gathering exercise is therefore estimated to cost business an upper bound of £131,400 a year.

While the information gathering exercise will only apply to the largest firms in the industry, we considered the potential costs to all relevant smaller firms to familiarise themselves with the changes. This is estimated as one employee spending thirty minutes reading the legislation, multiplied by an average hourly wage of £21.90 (as above); this equates to £10.95 (£21.90*0.5) per company, plus an additional 22% in overhead costs which gives an estimate of £13.36 per company. A proxy for the number of businesses that would read the new legislation is taken from ONS Business Demography¹³ data, in 2018 there were an estimated 10,545 companies in the 'Information Service Activities' sector. We believe the true number of companies that would be impacted to be significantly less (a list of services that could be impacted are found in Annex I, there are 46 listed services which is significantly lower than 10,545). Therefore the estimated upper bound of the cost to business is £140,881 (£13.36*10,545).

Overall the analysis is based on Ofcom's experience understanding of how such information requests are processed internally by companies that Ofcom already regulates where, once the initial processes and any relevant systems are set up, the key resource/cost is limited to staff hours needed to respond. We note that a number of NIICS providers, in particular those that are more established or part of large corporate groups, such as Facebook, Google, Microsoft, already have large regulatory teams that are well versed in responding to similar requests. This means that the costs are likely to be substitutable and absorbed by existing team members, so the real impact is likely to be zero to negligible. However, in order to be overly cautious in our approach, we have tried to capture the upper end of potential resources and costs in our summary above.

Using the BIT Impact assessment calculator the Estimated Annual Net Direct Cost to Business (EANDCB) is £152,938.72; using a ten year appraisal period, 2019 prices and a discount rate of 3.5%.

Non business related costs

¹² ONS (2018), Employee earnings in the UK: 2018. Available online: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2018>

¹³ Business demography UK (2019), Office for National Statistics (ONS), available at: <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/business-demographyreferencetable>

There is also a cost to Ofcom to carry out the information requests, however this is not a direct cost to business and therefore not included in the EANDCB. It is estimated it would take between 0 and 1 full time employee at Ofcom to undertake the information gathering exercise. Taking the upper estimate of 1 and the median Ofcom salary of £57,548¹⁴ (18/19) and an additional 22% in overhead costs, we get an estimated cost to Ofcom of £70,209.

Benefits

Number Independent Interpersonal Communications Services do not currently have any regulatory oversight. Incorporating the definition of NIICS to allow Ofcom to gather information from these services, will provide the evidence base for policy or regulation.

Implementing the definition also meets the obligations of transposition for the EEC which prevents the potential cost of infraction.

Risks and assumptions

Assumption	Evidence	Risk	Sensitivity (&page that full analysis can be found on)
Each information request takes 100 hours to complete	Ofcom estimate	We do not have evidence from industry on this	Page 5.
Number of information requests per year	Ofcom estimate	Ofcom could send out as many requests as they wanted	Page 5. Lower bound of 3, used upper bound of 6 for estimate.
Number of companies responding to the information requests	Ofcom estimate	Ofcom could request more companies to provide information	Page 5. 10 is largest number that are likely to respond the requests
Number of companies that would read the legislation	DCMS estimate based on ONS business demography data	We do not know for certain how many companies would be impacted	Page 5. Used an upper bound estimate although we believe this will be lower
Time taken to read the legislation	DCMS estimate		Page 5. This section of the legislation will be short and therefore not require much time to read, likely less than the 30 minutes.

¹⁴ Ofcom Annual Report 18-19, Ofcom, available at; https://www.ofcom.org.uk/data/assets/pdf_file/0024/156156/annual-report-18-19.pdf

Call-in check list explanations

Distributional Impacts

The legislation will only have a not have significant impact on any group of citizens, only on large NIICS.

Conclusion: There are no significant distributional impacts

Small and Micro Business Assessment (SaMBA)

Due to their limited personnel, familiarisation costs affect SaMBA operators disproportionately to larger businesses. However, given that total familiarisations costs for all operators is small and only larger services will be subject to information requests, it is reasonable to assume this effect is negligible. We have no other reason to believe this legislation disproportionately affects small or micro businesses; as the information gathering requests will fall on larger companies.

Conclusion: SaMB's will not be exempt from the regulation, however the impact on them will be minimal.

Gross Effects

Conclusion: There are no significant gross effects

Wider Impacts

Conclusion: There are no significant wider effects

Significant, Novel, or Contentious

Conclusion: There are no significant, novel or contentious impacts

Annex I: Known Services that could be in scope of the legislation

	High reach (>5%) calling/messaging services	High reach (>5%) email services	Business communication tools	Device specific services	Social apps or sites with a communications channel or function
1	WhatsApp	Google	Teams	Amazon Echo drop-in	Bumble
2	Facebook Messenger	Microsoft	Zoom	Apple Watch Walkie-talkie	Badoo
3	FaceTime	Yahoo	Slack	Android Wear Walkie-talkie	FourSquare
4	Skype	Apple (iCloud, Mac)	Google Meet		Happn
5	Zoom	BT Email (IAS)	Trello		Lasso

6	Instagram DM	Virgin (IAS)	Asana		Tinder
7	iMessage	AOL	Basecamp		TikTok DM
8	Twitter DM	TalkTalk (IAS)	Monday.com		
9	Google chats	PlusNet (IAS)	GotoMeeting		
10	Snapchat	Samsung	Flowdock		
11	Houseparty		WebEx		
12	WeChat		Redbooth		
13	KIK		Wimi		