

<b>Title:</b> Common European Sales Law <b>IA No:</b> MOJ173 <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Department of Business Innovation and Skills Scottish Justice Department Department of Finance and Personnel (Northern Ireland)	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 17/10/2011		
	<b>Stage:</b> Development/Options		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> Primary legislation		
	<b>Contact for enquiries:</b> Victoria Latham, Europe Strategy, Ministry of Justice		

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-79m	£-79m	£m	Yes/No
			In/Out/zero net cost

**What is the problem under consideration? Why is government intervention necessary?**

To consider whether the UK should support the Common European Sales Law (CESL) as currently drafted. CESL aims to establish a single set of contract laws which parties involved in the cross-border sale of goods in the EU could agree to choose as the basis of their contractual relationship. The Commission envisage that CESL would not replace the national contract laws of Member States but be available as an alternative to them. The UK will be bound to the outcome of the negotiations. Government intervention is necessary to steer the UK negotiating approach.

**What are the policy objectives and the intended effects?**

The Regulation aims to eliminate contract law barriers that prevent the internal market operating efficiently and fairly. The Commission believes underlying differences in contract law should be removed in order to remove three market failures : high transaction costs and legal complexity for business, that constrain trade and limit consumer choice; coordination problems that give rise to increased legal fragmentation which can affect the internal functioning of the market; and, lack of uniformity in the current legal framework due to lack of single set of uniform substantive rules which cover comprehensively the lifecycle of a cross-border contract. The intended outcome is increase trade and economic activity.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The impact of introducing CESL, as currently proposed by the Commission, is examined against the base case of "do nothing".

**Base Case:** The UK will continue to be bound by existing national law. Although the CESL Regulation has been published it is currently being negotiated and is not therefore finalised. The appropriate base case is therefore the current situation (i.e. "do nothing").

**Option 1:** Agree the CESL Regulation as currently draft. This would see the UK bound by the new Regulation as published.

<b>Will the policy be reviewed?</b> It will/will not be reviewed. <b>If applicable, set review date:</b> Month/Year					
Does implementation go beyond minimum EU requirements?				Yes / No / N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes/No	<b>&lt; 20</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b>	
				<b>Non-traded:</b>	

**I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.**

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Common European Sales Law (As Drafted)

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -74	High: -85	Best Estimate: -79

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	40	8	74
High	52	8	85
Best Estimate	46	8	79

### Description and scale of key monetised costs by 'main affected groups'

There would be some upfront and continual legal investment costs for businesses, as businesses would still need to be aware of CESL. These would be in form of initial training costs for solicitors and lawyers advising small businesses and consumers and training costs for large legal firms. The latter would include special experts within law firms who will be advising on a longer term basis.

### Other key non-monetised costs by 'main affected groups'

Existing EU business currently using a UK law may decide to switch to CESL to exploit some of the weaker consumer provisions. This would lead to increased consumer protection costs for the UK. There also likely to be significant legal costs to legal firms and training institutions. Justice institutions would also need to invest in coping with changes.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised benefits by 'main affected groups'

There would be minimal benefits from growth due to the low likelihood that businesses would utilise the measure.

### Other key non-monetised benefits by 'main affected groups'

The general benefits would be minimal. UK businesses exporting to the EU are unlikely to see reductions in transaction costs hence the take up would be low. UK consumers (as importers) are unlikely to benefit because CESL is unlikely to stimulate additional trading by EU businesses. In the context of business-to-business transactions, the evidence suggests a near zero benefit to the UK due. This stems from the complex nature of business-to-business relations, the inherent uncertainty of CESL and the attractiveness of competing legal regimes.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The analysis of costs is sensitive to assumptions about the volumes of legal firms that would offer training and the opportunity costs of such training, including hourly assumed rates and the length of the actual training.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 9	Benefits: 0	Net: -9	Yes/No	IN/OUT/Zero net cost

## 1. INTRODUCTION

- 1 This Impact Assessment (IA) accompanies the Government's response to the *Call for Evidence* on the proposed Regulation for a Common European Sales Law ("CESL"). The IA assesses whether the proposal, as designed, will foster a stronger single market through the increased sale of goods across borders. The IA presents and reviews the evidence base provided by the Commission, its rationale for intervention and assesses, from a UK perspective, the likely costs, benefits, risks and wider impacts of the proposed Regulation. The assessment follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
- 2 The IA aims to identify, as far as possible, the impacts of the proposal on society. A critical part of that process is to undertake a Cost Benefit Analysis (CBA) of that proposed. CBA assesses whether the proposals would deliver a positive impact, taking account of economic, social and distributional considerations. The IA should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resources a Government would save from certain proposals.
- 3 The CBA underpinning this IA rests on answering two basic questions. First, what is the problem that CESL seeks to address? Secondly, in what way can EU wide intervention in the area of contract law, as envisaged under CESL, help mitigate any problems? In particular, to what extent would CESL have the desired impact on the EU and UK? To establish a case for EU-wide action, an assessment of the possible costs and benefits of EU intervention must show that benefits are likely to outweigh costs, not only for the EU as a whole, but the UK in particular.
- 4 In addressing these questions, this IA focuses mainly on key-monetised and non-monetised impacts, with the aim of understanding what the net social impact to the UK would be from being party to the Regulation.

## 2. LEGISLATIVE PROPOSAL

- 5 On 11 October 2011, the Commission published its proposed Regulation for a Common European Sales Law (CESL). This proposed a single set of contract law rules which parties involved in the sale of goods cross-border could agree to choose as the basis of their contractual relationship. This could include, for example, a non-EU business wishing to sell in the EU or an EU business wishing to sell to a non-EU country. The Commission envisage that CESL will form part of the national law of each Member State, providing an alternative regime to current national laws. This alternative contract law regime would be available for cross-border business-to-consumer or business-to-business contracts where at least one of the businesses was a Small or Medium Enterprise (SME), a definition which is offered in Article 7 of the proposed Regulation.
- 6 The proposed Regulation has evolved from work undertaken by the Commission's Expert Group, which was originally published in the form of a Feasibility Study (in May 2011).
- 7 The Commission's stated aim for CESL is to stimulate the internal market enabling SMEs in particular to use a uniform contract law to expand their businesses into new European markets. It is also intended to increase the value and choice of products available to both business and consumers and create a high level of protection for consumers shopping across borders.

## AFFECTED GROUPS

- 8 The Regulation will apply to all three distinct UK jurisdictions: England and Wales, Scotland and Northern Ireland.
- 9 The Regulation is likely to affect the following sectors, although this list is not exhaustive:

- **Businesses** exporting to other Member States whether this is directly to consumers or other businesses, particularly SMEs. This includes those trading online and/or directing their services to a particular EU country.
- **Consumers** importing goods from other Member States where the contractual relationship with the trader is based on CESL. This would include those purchasing goods online, but not restricted to those.
- **Legal services** involved in advising clients, for example, seeking to negotiate new cross-border contracts for clients or where a contract is based on CESL and there has been a breach of the agreement.
- **Justice system** as a means through which contract related disputes are resolved, particularly in relation to where the basis of the contract is CESL and a dispute/claim is placed before the court to resolve it.
- **Consumer law enforcers** who may need to investigate potential breaches and enforce consumer law.
- **Advisory bodies** such as consumer advisory bodies, who provide advice to consumers on legal and/or consumer matters, for example a consumer who had contracted with a trader on the basis of CESL and who requires help in understanding their rights in the event of a dispute. The same would apply to business advisory bodies that provide help and advice on contractual matters to SMEs.
- **Legal training institutions** such as universities and specialised training centres that provide legal training in relation to contract law.

### 3. RATIONALE FOR INTERVENTION

- 10 The Commission's case for intervention is set out under the "*problem definition*" and "*subsidiarity and proportionality*" sections of their IA<sup>1</sup>. To establish a strong case for action, the Commission seeks to demonstrate that there is a genuine economic problem that prevents the internal market operating efficiently and fairly in this area and that such problems can only be addressed through EU-wide intervention.

#### CURRENT PROBLEM

- 11 There are two main underlying problems suggested by the Commission which they state provides the basis for EU-wide intervention in the area of *differences* in contract law among Member States. These are explained below.

##### ***Problem 1: Differences in contract law hinder businesses***

- 12 According to the Commission, divergences in contract laws across the Member States inhibit businesses from trading in the internal market. Confidence in contract law is essential for trade to be effective. Cross-border trade introduces an additional dimension which necessitates parties to a contract agreeing which country's law should apply, or alternatively the provision of rules indicating which applicable law rules would apply if no choice of law was made by the parties.
- 13 The current legal framework is characterised by differences between the contact laws of each Member States. While a number of EU and international legal instruments have been adopted in this area (e.g. the Rome I Regulation on the law applicable to contractual obligations), there is no uniform or pan-European set of rules for businesses and consumers to use in cross-border

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<sup>1</sup> Commission's Impact Assessment, section 2, page 7

transactions in the EU which are easily accessible. These differences, the Commission claim, are hindering businesses from trading across borders and limiting their overall operation<sup>2</sup>.

- 14 The Commission state that very few companies involved in the sale of goods export inside the EU. One of the reasons for this is that some companies are hindered by regulatory and practical barriers, with the former believed to be more significant than the latter. The Commission notes that “*contract law barriers*” rank amongst the top regulatory barriers in influencing a company’s decision to trade cross-border. As a result, EU businesses have a reduced opportunity to trade. Consumers also miss out on cheaper prices and wider product choice.
- 15 The Commission underpins its evidence on three areas :
- **Survey evidence** on the negative impact resulting from contract law differences. The Commission relies on a Euro barometer survey which asked companies about the impact and potential obstacles incurred when making a decision to sell or purchase across borders, whether to another business or to consumers. The Commission also cites evidence on the extent to which businesses refuse to sell to foreign consumers because of the different, but mandatory, “*consumer protection rules*” which exist in each Member State. These rules are given further weight by the Rome I Regulation (Article 6(2) which enables a consumer to sue a trader in the Member State of their habitual residence). This poses problems for traders as they continue to need to be aware, and need to comply with, the mandatory consumer laws of the State where the consumer is habitually resident. CESL would remove this burden making a single law applicable to all Member States therefore eliminating the requirement to comply with each Member States mandatory consumer law.
  - **Perception of legal complexity** is believed to be among the leading factors affecting the decision to embrace cross-border trade. Many consumers have a perception that the very existence of different contract laws implies a complex legal environment which dissuades them from shopping across borders. The Commission notes that of the 11 obstacles to cross-border trade cited by consumers and businesses, the difficulty in finding out about foreign contract law affected the highest percentage of export oriented businesses who transact with consumers and other businesses. These barriers are particularly more pronounced for companies with an interest, but no experience of cross-border trade.
  - **Transaction costs** stemming from differences in contract law. The Commission suggests that the need to apply different foreign contract laws generates significant transaction costs to businesses. The Commission’s IA quotes evidence from companies’ own estimates of their transaction costs, as well as an estimate based on findings from the Small Medium Enterprise (SME) panel survey.

## ***Problem 2: Consumers are hindered from cross-border trade***

- 16 The Commission argues that the divergence in contract laws also prevents cross-border shopping by consumers<sup>3</sup>. The Commission’s research indicates that only 1 in 4 consumers purchase goods from another country when they travel and only 1 in 10 from a distance. This is mainly attributed to supply and demand barriers. On the supply side, businesses limit their cross border operations and may refuse to sell to consumers in other Member States (e.g. because of costs related to the mandatory provisions of the consumer’s national law). On the demand side, most consumers are still reluctant to shop cross-border.
- 17 The Commission explains the barriers facing consumers as inherently due to differences in contract laws. It notes that “*the barriers reinforcing this reluctance are regulatory barriers (mostly related to contract law provisions protecting the consumer e.g. remedies for faulty goods, delivery and availability of redress) and practical barriers (e.g. language, geographical location, access to the internet)*”. It believes that with the gradual reduction in practical barriers, regulatory barriers have become more prominent and have become key factors for restricting consumer confidence in cross-border shopping.

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<sup>2</sup> Commission’s Impact Assessment, section 2.3, page 10

<sup>3</sup> Commission’s Impact Assessment, section 2.4, page 18

- 18 The Commission's evidence relies on the Euro barometer survey, which sets out data on the extent to which contract law differences impact negatively on cross-border shopping. It notes that many consumers are dissuaded from purchasing cross-border due to *uncertainty* about their consumer rights in general, and that evidence from Euro Barometer Survey 299a supports the view that these rights are "*contract law in particular*". Separately, it argues that there is "*increased legal complexity*", although it does not share any evidence on how that has hindered consumers.

## COMMISSION'S POLICY RATIONALE

- 19 Defining the problem is only one part of the rationale for intervention. The other part is to demonstrate that an EU wide level response is *necessary* and *proportionate*. The Commission believes this is the case and sets out these issues in the "*subsidiarity and proportionality*" section<sup>4</sup> of its IA.
- 20 The Commission believes the underlying differences in contract law contribute to the single internal market not functioning properly. Three inherent failures are cited:
- **High transaction costs.** As market trends evolve and Member States continue to take action independently, regulatory divergences grow. This leads to increased transaction costs and legal complexity for businesses. The result is constrained trade and limited consumer choice.
  - **Coordination problems.** The Commission believes that Member States are not able to address the problems in this area because the obstacles relate to "*the functioning of the internal market*" and have a "*clear cross-border dimension*". This is particularly so because the existence of differences in contract laws have led to legal fragmentation which can affect the functioning of the internal market.
  - **Lack of uniformity.** The Commission believes the objectives of facilitating the expansion of cross-border trade for business and purchases by consumers in the internal market cannot be fully achieved "*as long as businesses and consumers cannot use a uniform set of contract law rules for their cross-border transactions*". The current legal framework is not sufficient, as it lacks a single set of uniform substantive rules which cover comprehensively the lifecycle of a cross-border contract.
- 21 The Commission's IA does not explicitly address the extent to which CESL represents a proportionate response to the problem<sup>5</sup>. However, it does make clear that the Commission considers that the proposal adds value in that it will stimulate growth in the single market. In doing so, they appear to have abandoned their earlier proposals contained in their Green Paper, and in particular the option for a toolbox for legislators which had the support of the majority of Member States and the agreement of the Council.

## ASSESSMENT OF COMMISSION'S POLICY RATIONALE

- 22 The Commission's rationale for intervention makes a reasonable attempt to identify the existence of problems that hamper cross-border trade. Whether contract law can be considered to be a significant factor however is arguable. Although the current divergence in contract laws do attract some transaction costs<sup>6</sup>, the scale suggested by the Commission, and consequently the volume of suppressed trade, is difficult to ascertain.
- 23 The Commission's IA provides some evidence to help demonstrate the existence and scale of the problems. However, a review of their assessment suggests the need for caution. The cost savings projected are unlikely as the survey data used to estimate these savings is unreliable. There are also many other instances where the Commission's IA relies on inaccurate data. This only serves in creating a misleading impression of the actual need for the proposal.

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<sup>4</sup> Commission's Impact Assessment, section 2.5, page 22

<sup>5</sup> Alternatives were proposed in the Commission's 2010 Green Paper.

<sup>6</sup> Further discussion of these issues can be found at Section 5 of this IA

- 24 The Commission's heavy reliance on Euro barometer surveys in defining the economic problem is problematic. It is a weak method for data collection, particularly as it relies on data from "senior executives" through a telephone survey. This is ill-suited given the quantitative nature and the degree of complexity of the questions. The survey also suffers from inadequate coverage in critical areas. Again, this limits the extent to which the evidence presented by the Commission can be relied upon to prove unquestionably that differences in contract law are a significant barrier to trading across borders. There are also other basic problems. These include the sample size of the survey conducted by the Commission on 6465 senior executives or legal officers on the sale of goods to consumers across the 27 Member States of the EU and the extent to which the Commission' have used the results of this to produce evidence to underpin its decisions about the impacts on Member States. This is particularly relevant as the survey results cover areas such as financial and insurance services which are not covered by this Regulation. In most cases the results are therefore questionable in terms of the overall benefits assumed in comparison to the current legal position.
- 25 The Commission's IA does not offer sufficient evidence which demonstrates the need for the Regulation they propose to resolve the constraints suffered by businesses as a result of contract law differences. Nor is there any clear evidence on where contract law differences rank in comparison to other barriers to trade in order to define the scale of the problem at both Member State and EU level. Similarly, the evidence on transaction costs facing business is problematic. Estimates by the Commission suggest that the current cost of setting up a cross-border contract ranges between €9,800 and €12,700 per company<sup>7</sup>. These estimates, however, are based on a limited sample size. Further doubt is displayed by the SME panel assessment who caution against the reliability of these figures<sup>8</sup>.
- 26 For business-to-business transactions, the existence of differences in contract law may not be a significant constraint in hindering trade. For many the more dominant factors are likely to relate to language, tax regimes, delivery of goods, cultural differences, marketing and reputation of the brand. No real assessment has been made of how such issues rank in relation to "*contract law differences*".
- 27 Problems with the Commission's evidence also extend to the assessment made of the barriers which affect consumers. The Commission claim that 1 in 4 firms refuse to sell to a consumer in another Member State as a result of contract law differences and those stemming from the mandatory consumer laws that would apply. Closer examination of Eurobarometer survey 321 shows that only 1% of traders have consistently refused to sell to a consumer from another Member State.. Moreover, this 1% result is within the margin of error and therefore in effect indistinguishable from the current trading position. Similarly, the IA fails to sufficiently demonstrate that the "*uncertainty over consumer rights*" is due to contract law differences rather than more dominant problems relating to delivery challenges and faulty products. Indeed, the exact nature of the "*uncertainty*" is not properly addressed in the Commission's assessment.
- 28 The Commission has not provided sufficient evidence that consumers are hindered from shopping particularly in relation to contract law differences *per se*. Rather, it seems that other aspects pose more practical barriers. It is particularly noted that the Commission does not provide evidence on the *scale* of consumers allegedly affected. Indeed, there appears to be no proper analysis of the extent to which consumers rank barriers that hinder them from buying goods from abroad. In many instances consumers rarely consider contract law at all when purchasing across borders. Their main concerns<sup>9</sup> tend to relate to the long timescales involved in the delivery of goods, the non-delivery of goods, goods being damaged on their receipt, goods not matching the description or the wrong product had been delivered. Other consumer concerns tended to relate to the trustworthiness of the company, the language of the transaction and the cost of the goods. Contract law differences are only likely to become an issue when consumers run into problems with a transaction. Unfortunately the IA does not address these issues.

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<sup>7</sup> Commission's Impact Assessment, page 33

<sup>8</sup> [ec.europa.eu/justice/policies/consumer/docs/report\\_sme\\_panel\\_survey\\_feb\\_2011\\_en.pdf](http://ec.europa.eu/justice/policies/consumer/docs/report_sme_panel_survey_feb_2011_en.pdf)

<sup>9</sup> Annex I – Country factsheets: Consumer market study on the functioning of e-commerce and internet marketing and selling techniques in the retail of goods – Civil Consulting – Sept 2011

- 29 Arguments based on the idea that Member States cannot reduce transaction costs without forced cooperation are inhibited by the Commission's failure to produce any evidence that shows that Member States are aware that there is such a problem but have no incentive to act despite recognising it. Whilst this may be correct the case for coordination is not made. It is not sufficient to simply point to poor coordination. A case must be made that such poor coordination restricts improvement in the single market. Similarly, no clear economic rationale is offered for pursuing uniformity of contracts in the *form* that is suggested – namely a “*Common European Sales Law*”, albeit an optional one. The lack of uniform practice across the EU is not in itself an economic rationale for intervention. Rather it is the potential external factors which are relevant - costs that Member States impose on other Member States for example, taxation and VAT rates which can differ across Member States). Moreover, uniformity at the EU level may not always be beneficial because of the divergence in culture and practice. Increased uniformity, particularly in the area of contract law, may be costly if not properly tailored to the specifics of each Member State.
- 30 The question of whether the EU has competence is a legal matter. It is not therefore discussed here. Of relevance to this review, however, is the extent to which the IA demonstrates that CESL proportionately addresses the market and institutional failures identified by the Commission. Although the Commission rightly note the theoretical possibility that where divergence in laws exists there may be potential for transaction costs for businesses and consumers, their ability to ground the proposal on that basis suffers from a lack of sufficient evidence. This leads to the inevitable conclusion that the Commission's IA has not sufficiently demonstrated that CESL appropriately targets the scale and nature of the problems it seeks to resolve.

#### 4. BASE CASE

- 31 An assessment of the impact of the proposal on affected groups nationally has been undertaken against the base case scenario of the existing national contract laws of the Member States (i.e. current UK and EU contract laws) and current patterns of UK cross-border transactions involving the sale of goods.
- 32 Changes in the base case do not represent *additional* impacts in economic appraisal, but aim to provide an understanding as to what the world looks like without policy intervention, enabling a comparison between the baseline and the impact of the policy changes being proposed. This requires an understanding not only of what the current patterns of cross-border trade between the UK and Member States look like now, but how they may change over time.
- 33 The main areas likely to be affected by CESL are transactions that underpin UK exports to consumers and businesses in the EU and UK consumer and business imports from the EU. The current and future profile of transactions in these areas *without* the proposed Regulation is discussed below.

#### UK EXPORTS TO CONSUMERS AND BUSINESSES IN THE EU

- 34 The value of UK exports to the EU in 2011 stood around £158bn<sup>10</sup>. Over the last decade annual growth has averaged at over 4%. Germany, Netherlands and France remain the largest destinations for UK exports. However, the EU's enlargement has opened up new export markets for British companies especially in Poland, Slovakia and Estonia where growth in exports has risen well above 10%. **Table A1** in **Annex A** provides further detail.
- 35 A significant amount of EU cross border trade occurs through retail trading, though online trading remains a lower proportion. A survey<sup>11</sup> conducted in 2010 suggests that the overall value of the EU retail market is over €2600bn<sup>12</sup> per annum, with internet retailing standing at just over €90bn

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<sup>10</sup> [www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Documents/Webtables\\_2011.XLS](http://www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Documents/Webtables_2011.XLS)

<sup>11</sup> Consumer Market Study on the functioning of e-commerce and internet marketing and selling techniques in the retail of goods – Civic Consulting – Sept 2011

<sup>12</sup> Excluding Malta, Cyprus and Luxembourg



per annum. Individuals shopping online have tended to be in countries with large markets and high internet penetration such as UK, Germany and France. Frequent online shoppers tend to spend more than occasional online shoppers, with the average purchase by a frequent EU online consumer averaging at around €1,615 whilst the occasional online shopper spends €643 per annum.

- 36 The survey also noted that UK retailers were favoured as the second destination within the EU for cross-border online shopping, with 24% of consumers buying products from UK retailers. Only Germany alone was higher at 27%. This would suggest that EU consumers value imports from the UK. **Table A2 in Annex A** provides further detail.
- 37 As well as exporting to the EU, UK has a large global exporting footprint. Around 23%<sup>13</sup> of UK SMEs export worldwide (according to a Small Business Survey). The UK has around 275,000 exporters who export worldwide although not all these firms export consistently or in significant volumes. The UK's main export destinations are the USA, followed by China. Increasing trade in India, China and Russia has become more prominent with UK exports in the last decade, growing above 16% in Russia and China and around 10% in India. Further detail at **Table A3 in Annex A**.

## UK CONSUMER AND BUSINESS IMPORTS FROM EU

- 38 The UK remains a net importer (imports are greater than exports)<sup>14</sup> within the EU, with growth in imports growing slightly faster than growth in exports. The value of imports to the EU was around €200bn (in 2011). Over the last decade imports have grown by over 4%. Germany, Netherlands and France remain the largest source of UK imports. However, the EU's enlargement has opened up new import markets. In Poland and Slovakia imports have grown by 18% and 24% respectively. **Table A4 in Annex A** provides further detail.
- 39 A significant portion of UK imports are in the retail market. The total value of the UK retail market is around €400bn (based on 2010 figures)<sup>15</sup> with internet retailing transactions valued at just under €31bn (or less than 8% of the total value of retailing in goods). The UK has the largest share of internet retailing in the EU in some sectors. The UK also has a large number of households who use the internet (80%) at home, with 69% using a broadband connection to access the Internet (compared to 70% and 61% of EU households on average, respectively). As a result, UK consumers tend to spend more on domestic online purchases (€1,093 per person over the last 12 months) but less on cross-border purchases (€664) than the average EU online shopper (€939 Euro and €693, respectively).
- 40 Around 71% of Britons who have internet access at home shop online at least once a month (compared to 48% of EU consumers on average). The main countries that UK consumers target when purchasing products in the EU is Germany (21% of online British cross border shoppers) and France (17% of UK online shoppers).
- 41 Precise figures on UK consumers purchasing goods from countries outside the EU are not readily available, although the import of goods continues to increase, recently showing an increase over imports from the EU<sup>16</sup>. **Table A5 in Annex A** provides further detail.

## 5. IMPACT OF CESL ON UK

### CHANNELS OF IMPACTS

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<sup>13</sup> Page 15, BIS Economic Paper No 17, UK Trade performance across markets and sectors – Feb 2012

<sup>14</sup> HMRC EU Overseas Trade Statistics – July 2012

<sup>15</sup> Retail is defined as sales of new and used goods to the general public for personal or household consumption. It is the aggregation of store-based retailing and non-store retailing.

<sup>16</sup> UK Trade information Statistics - 2011

- 42 The impact of CESL on the UK would depend on how the Regulation affects the three main channels, relative to the base case:
- (a) **UK business exports to EU consumers.** The Regulation would enable UK businesses directing their trade to the EU to offer CESL as the basis of their contractual relationship for the sale of goods in that Member State (as a substitute for the relevant UK law or the law of the Member State the business is contracting with. It will nevertheless remain necessary, if the trader is contracting under their own national law or that of the Member State with whom they are directing their trade, to comply with the relevant mandatory consumer law of that Member State as dictated in Article 6(2) of the Rome I Regulation. ).
  - (b) **UK consumer imports from EU business.** The Regulation would enable EU businesses directing their trade to the UK to offer CESL as the basis for their contractual relationship for sale of good transactions in the UK rather than their own law or the relevant UK law. The choice of which contract law to use would reside with the EU business rather than with the UK consumer. If the trader elects to use his or her own national law or the law of the UK as the basis of their contract, they will again be required to comply with the mandatory consumer laws of the UK.
  - (c) **UK business exports and imports with EU businesses.** The Regulation would enable UK businesses wishing to pursue sale of good transactions with other businesses in a Member States to use CESL as the basis of their contract. This would either be in terms of exporting to another business or a UK business importing from another business in the EU.
- 43 These impacts are discussed in more detail below. For each channel, the assessment examines the extent to which businesses are likely to use CESL (the “behavioural response”) and the overall consequential impacts in terms of costs and benefits to the UK. The assessment relies on a broad range of evidence including the Commission’s IA, the *Call for Evidence* responses and wider academic literature.

## UK BUSINESSES EXPORTING TO EU CONSUMERS

### Behavioural Response

- 44 The impact of CESL on UK business exports to EU consumers depends on the extent to which CESL will reduce costs for UK businesses and whether this would be sufficient to induce changes in trading activity. In particular, much would depend on whether CESL is likely to reduce transaction and legal costs, reduce consumer protection costs, increase legal certainty and stimulate consumer demand.

### *Drafting and legal costs*

- 45 One of the costs facing UK businesses wishing to expand into EU markets is the costs of ensuring compliance with the mandatory consumer protection laws of that Member State and the legal costs associated with this due diligence exercise. In addition, there will be costs associated with the preparation of standard contracts for each Member State a business expands into. The Commission believes that CESL would “*greatly reduce transaction costs because it allows businesses to use one set of rules for cross border trade irrespective of the number of countries they trade with*”. It estimates that the costs to businesses currently are between €9,800 and €12,700<sup>17</sup> for every market a business expands into. The Commission suggests that reducing these transaction costs will lead to more trading activity.
- 46 The Commission’s conclusion on both the scale of transaction costs and the savings that would accrue is problematic. A key problem is the limited sample size they have based their

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<sup>17</sup> Commission’s Impact Assessment, page 33. The average costs per company concluding a transaction under a foreign applicable law were calculated on the basis of the results of the SME panel of 609 respondents.

assumptions on. The average costs per company concluding a transaction under a foreign applicable law have been calculated on the basis of the results of an SME panel of 609 respondents. Indeed, the unreliability of the estimates has been confirmed by the SME panel assessment which concludes that though the responses may be representative across different types of SMEs, “*the methodology for conducting the survey does not ensure representativeness of the results for the whole of the EU*”<sup>18</sup>.

- 47 The SME panel based calculations are not sufficiently robust to be used as a basis for calculating transaction costs, let alone for drawing inferences for the domestic markets in each Member State. The Commission’s IA attempts to side-step the problems associated with the SME panel evidence by cross checking it against the EBTP panel survey. However, with a sample size of only 140 firms across the EU, the use of the data from this survey fails basic statistical robustness and is considered more inadequate than the SME panel data.
- 48 In addition, the Commission makes no attempt to explain how transaction costs vary among Member States. It is unclear how contract law related costs estimated by the Commission are incurred by businesses in practice. In particular, it is noted that the Commission appear not to have considered the possibility that such costs may be absorbed as fixed costs for trade associations that a business may belong to. Many trade associations already assist businesses through the provision of standard term contracts which helps to reduce costs for businesses trading across borders. The ability of businesses to transfer knowledge in this area appears not to have been considered.
- 49 Responses to the Government’s *Call for Evidence* suggests that though there may be some reduction in transaction costs, the use of CESL in the form suggested by the Commission is unlikely to achieve these. Some respondents suggested that legal costs under CESL may even increase and this may undermine any new potential savings anticipated. Others noted that many SMEs exporting to the EU do not necessarily hire legal counsel. As a result, the savings anticipated by the Commission here would not be accrued. Where such services were used by SMEs they may constitute part of a broader purchase of legal advice which might cover a range of other legal issues.
- 50 The *Call for Evidence* responses are also supported by wider academic literature. Posner (2012)<sup>19</sup> notes that the optional nature of CESL is likely to lead to substantial increase, rather than a reduction in transaction costs and that the benefits from uniformity, if any, would be minimal. In general the proposal is judged to be unlikely to be attractive to businesses. Similarly, Whittaker (2012)<sup>20</sup> notes that CESL is likely to generate new costs to parties who choose to be governed by it.
- 51 However, an alternative is offered by Gazuna and Gomez (2012)<sup>21</sup> who suggest that the efficiency gains of lower production costs by some firms, coupled with savings in verification and “legal diversity” costs, would allow space for some firms to operate under CESL, though volumes are difficult to determine. It notes in particular, that evidence from firms willing to use the European Patent Convention (EPC) Office instead of national offices shows that such time and cost savings may be important.
- 52 Although the view is not unanimous, the broad consensus of evidence seems to suggest that though UK businesses may benefit from some savings in transaction and legal costs, in general the impact here is likely to be minimal. Certainly the savings are not deemed sufficient enough to induce positive behavioural change on that basis alone. There is a strong possibility that transaction costs may well increase due to the need for businesses to investigate CESL in parallel with their domestic regime or that of the Member State they are trading in, especially in the short to medium term until knowledge of CESL increases.

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<sup>18</sup> [ec.europa.eu/justice/policies/consumer/docs/report\\_sme\\_panel\\_survey\\_feb\\_2011\\_en.pdf](http://ec.europa.eu/justice/policies/consumer/docs/report_sme_panel_survey_feb_2011_en.pdf)

<sup>19</sup> The Questionable Basis of the Common European Sales Law: The Role of an Optional Instrument in Jurisdictional Competition (April 2012). [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2049594##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2049594##)

<sup>20</sup> Identifying Legal Costs of the Operation of the Common European Sales Law: Legal Framework, Scope of the Uniform Law and National Judicial Evaluations

<sup>21</sup> Optional Law for Firms and Consumers: An Economic Analysis of Opting into the Common European Sales Law (March 2012) [www.law.uchicago.edu/files/files/Gomez%20paper\\_0.pdf](http://www.law.uchicago.edu/files/files/Gomez%20paper_0.pdf)

## **Consumer protection costs**

- 53 UK businesses as profit maximisers would prefer contracts that are less onerous and which reduce their costs of doing business. In their relations with EU consumers this inevitably would be those contracts which are less binding on them and which have weak contractual obligations or standards. Stronger standards under CESL relative to the contract regimes of individual Member States would raise consumer protection costs to UK businesses and make CESL less attractive.
- 54 The Commission IA discusses the consumer protection impacts<sup>22</sup>. It concludes that most of the provisions would strengthen consumer protection across the majority of Member States with businesses picking up costs rather than consumers. The Commission disagrees that the costs of increased consumer standards in CESL would be passed on to consumers.
- 55 Responses to the Government's *Call for Evidence* suggests that some UK businesses believe they would incur significant consumer protection costs under CESL and this would dissuade them from using CESL when trading with EU consumers. A number of respondents noted various measures which were likely to prove onerous. For example, the "right to terminate" was suggested as an unnecessarily high standard in comparison with current individual laws of Member States standards, especially for some sectors such as booksellers.
- 56 This is echoed by some academic evidence, which points to a number of areas where CESL may increase costs for businesses, particularly in those Member States who already have low standards. This would be through new mandatory provisions that have the potential to raise the cost of products associated with the contract. For example, the requirement placed on a trader to provide pre-contractual information to the buyer (and the costs associated with providing such) and the differences between CESL and national law in seeking to withdraw from the contract.
- 57 The overall consensus appears to accept the Commission's assessment that in a number of Member States if CESL were used it would increase consumer standards (though not the UK – see below). This inevitably makes CESL less attractive to UK businesses, particularly those sensitive to lower contract costs.

## **Legal certainty**

- 58 UK businesses directing trade at EU consumers are more likely to use CESL if it increases legal certainty over other competing contract regimes in the countries they are doing business with. The more legally certain a contract is, the consequence will be a reduction in "unexpected" or "legal discovery" costs.
- 59 The evidence for UK businesses in this area, however, appears to suggest the opposite, with CESL likely to create more legal uncertainty. This would either lead to more legal costs for businesses or more likely dissuade them from using it, all things being equal.
- 60 The evidence from the legal community particularly highlights that CESL has structural problems which would prevent lawyers advising clients that it offers a viable basis of choice on which to contract. The lack of jurisprudence offers little assurance to many businesses. In so far as UK businesses expanding abroad may rely on domestic legal advice, this suggests a general logical conclusion that CESL, as a new regime, is more uncertain and that as such it is unlikely to increase certainty in transactions for UK businesses.

## **Consumer demand**

- 61 The Commission's IA argues that CESL would stimulate demand for trade because a contract developed by the Commission would act as "mark of quality"<sup>23</sup>. This, it is suggested, would lead to a generation of new demand by EU consumers that would not otherwise have undertaken cross-

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<sup>22</sup> Commission IA, pages 39-42 and Annex VIII

<sup>23</sup> Commission's IA, page 37

border shopping. Where the “demand generation” effect is high, UK businesses would have a strong incentive to use CESL. This effect has been particularly noted for small businesses who the Commission believes will benefit over time as consumers increasingly make use of CESL. This is argued to lead to benefits for small firms in the form of an increasing their consumer base.

- 62 There is, however, no evidence offered by the Commission to support its views that demand would stimulate growth here. There is also no evidence provided to demonstrate that those firms using CESL will signal confidence and therefore be willing to incur the costs of its increased consumer protection provisions. Equally, claims that CESL will increase the customer base of small businesses is unproven. Indeed, the opposite is suggested.
- 63 The Government’s *Call for Evidence* shows that many consumer groups believe that CESL is significantly weak in key areas. More importantly, the extent to which CESL would stimulate demand depends on the extent to which contract law differences prove to be a blockage to consumer shopping relative to other areas. A large bulk of consumer surveys, as well as other evidence, identifies practical issues (rather than legal matters) as the main reasons behind consumers not wishing to purchase goods across borders.

## Benefits

### *Economic benefits*

- 64 The benefits to the UK economy would depend on the extent to which UK businesses would be inclined to use CESL to undertake trade. Assuming that many UK businesses use CESL, there are two potential forms of benefit that may accrue:
- (a) *Trade related benefits.* These would include transaction cost savings to UK businesses in the form of a reduction in legal costs of carrying out due diligence and in drawing up contracts for each new Member State traded with. Such benefits would be to *existing* UK exporters over time. However, there may also be new trading opportunities for UK firms who would previously have been *suppressed* from cross-border trade due to “contract law costs”.
  - (b) *Wider economy benefits.* These would include potential GDP impacts from increased trade. Increased cross border trade from reduced transaction costs may also increase competition across sectors. Small businesses may grow leading to wider economic benefits.
- 65 As part of the assessment, it has been necessary to review the Commission’s analysis of the benefits. The general conclusion is that the Commission’s assessment is unreliable, representing a significant overestimate of benefits in the UK business context. This is primarily because the broad consensus from the behaviour response analysis above is that UK businesses are unlikely to switch to CESL. As a result, no new UK business activity would be stimulated or significantly aided by it.
- 66 The Commission’s assessment is also fraught with data and methodological errors. In particular:
- (a) *Transaction savings.* The Commission estimates that transaction savings would be in the range of €3.7bn and €4.3bn per year<sup>24</sup>. Closer examination suggests that this evidence suffers from inadequate consideration of the extent to which such benefits are *cashable* to businesses. The Commission have relied on survey data to gauge the extent to which CESL may be attractive to businesses. This is unreliable and contains factual errors which impact on the validity of the estimates made<sup>25</sup>.
  - (b) *New trading opportunities.* The Commission state that reducing contract law costs would reduce *suppression* of trading activity and generate benefits ranging between €26bn and €184bn annually. A key assumption made by the Commission is that businesses currently not

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<sup>24</sup> Commission’s Impact Assessment, page 34

<sup>25</sup> For example the transaction savings in the IA is predicated on 82.4% being sufficiently informed about foreign law, including the new contract to determine whether to use it in business and consumer transactions. This is based on EB 321 Q1 – “How well informed are you about the consumer protection provisions in the contact laws of the EU countries where you sell or wish to sell to final consumers?”<sup>25</sup> The actual numbers who are informed to some degree should be 49.4%. This has the impact of significantly reducing the Commission’s assumed transaction savings.

exporting are totally suppressed i.e. no trade is occurring at all. This is unlikely to be the case as many may have already been involved in domestic trade. Removing the assumed contract related problems may therefore only lead to diversion of domestic (intra-national) trade to cross-border trade. The extent of the diversion is difficult to determine, but it is likely to be significant in the short to medium term as business seek higher value without tailored market entry into foreign markets. The Commission does not sufficiently account for this dimension and therefore it is difficult to gauge whether in effect much of the assumed suppression is in effect domestic transactions already taking place. The assessment also incorrectly relies on a wider definition of contract law related problems than that currently provided for under CESL, overestimating its impact.

- (c) *GDP impacts*. The Commission's attempt to illustrate the potential GDP impact relies on data from the Euro barometer report which has been transposed into numbers to provide relevant answers<sup>26</sup>. Such arbitrary transformation of qualitative data into numbers renders the conclusions highly speculative.
- (d) *Small firms*. The assessment of benefits to small businesses also suffers from a number of critical factors including:
  - the absence of clear evidence on the scale of benefits;
  - the failure to explain how small businesses would find CESL more attractive in the consumer context if CESL also results in higher consumer protection provisions. This would be less favourable to small firms; and,
  - the unsubstantiated claims that CESL would increase the customer base of small businesses because CESL would be seen as a "mark of quality"<sup>27</sup>.

67 In light of the above, the general conclusion is that CESL would have minimal benefits to the UK economy for UK businesses trading with EU consumers.

### **Small businesses**

68 Some respondents to the Government's *Call for Evidence* suggested that there may be significant benefits for UK small businesses exporting to other Member States. This position is also supported by the Commission's impact assessment which argues that CESL would generate significant positive benefits for SMEs trading with more than 1 Member State, relative to the base case (do-nothing). In making its case the Commission highlights the following benefits:

- (a) CESL means "the trader would have to consider only one set of rules – those of the optional Common European Sales Law". According to the Commission, "*it would no longer be necessary to consider other national mandatory provisions as they would normally have to when concluding a contract with a consumer from another MS*".
- (b) Small business will be able to use CESL as "a mark of quality", which would ensure "*the high level of protection consumers would enjoy under its rules*". Overtime the Commission believes consumer confidence will increase through the use of CESL leading to benefits for small firms in the form of an "*increasing...businesses customer base*".

69 The Commission acknowledges that there may be some "*administrative costs where the provision of information would be required*", but these would be "*unlikely to outweigh the cost savings, especially for those companies trading in multiple Member States*". Though not explicitly stated, the underlying conclusion by the Commission seems to suggest that small firms would be extremely keen to use CESL as benefits would be significantly greater than costs.

70 Although the Commission may have a point that small firms could accrue benefits in using CESL as a result of a reduction in contractual differences, its assessment of the benefits that would accrue and their attractiveness to a small firm, is inadequate in the following areas:

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<sup>26</sup> Commission's Impact Assessment, Annex IV, page 87.

<sup>27</sup> Commission's Impact Assessment, page 37

- (a) the absence of any clear evidence on the scale of benefits to small firms. Much of the evidence provided by Commission is qualitative, with no objective basis on which the benefits can be compared.
  - (b) The Commission's IA incorrectly claims that under CESL, small businesses will only need to consider one set of rules. In practice this will not be the case. The introduction of CESL could increase rather than reduce costs for businesses. Currently, UK businesses trading in another Member State would have acquired knowledge on two bodies of law. With the introduction of CESL, they would have to have knowledge of three. Parties to a contract will always make an initial investment to determine whether using CESL is likely to offer more certainty and benefits to their transaction than another law. This investment would also apply to small businesses who would carry out a risk and compliance assessment to be assured of their position in the market forum trading in, for example they would need to ensure their compliance with the relevant tax and VAT variations when considering trading overseas.
  - (c) The Commission's assessment does not explain how a small business would find CESL more attractive if, as it claims elsewhere, it would result in higher consumer provisions. This is less favourable to small firms. Whilst not explicitly stated, the Commission appear to suggest that the resolution to this contradiction would be that CESL would become a "mark of trust". However, no evidence is provided to demonstrate the take up by businesses (i.e. those who would use CESL) and how this would signal confidence. Nor is any evidence given which proves that businesses would be willing to incur the costs of its increased consumer protection provisions.
  - (d) The claims that CESL would increase the customer base of small businesses are also unproven. Crucially the extent to which it would impact depends on the extent to which it would be attractive to small businesses. The Commission provides no evidence to this effect for either business-to-business or business-to-consumer contracts.
  - (e) The Commission has ignored a number of issues related to small firms, particularly in how they currently deal with differences in contract law. Where small firms procure legal services jointly or through a trade association such costs are likely to be minimal and will not be greatly reduced through a new contract law regime.
- 71 Based on the assessment above, it is concluded that there would be minimal benefits to the UK as there would be no increased inclination of businesses to use CESL than at present. Nor is there any evidence to suggest that small businesses would necessarily benefit from CESL.

## Costs

- 72 The costs to the UK economy would depend on two factors:
- a) The inclination of UK businesses to use CESL to increase trade related activities with EU consumers (i.e. quantity effect). Higher inclination would lead to legal dispute resolution costs where such cases are resolved in the UK rather than in the Member State where the consumer resides.
  - b) Wider external costs to the UK of being part of the regime, irrespective of the levels or distribution of CESL volumes. For example, the extent to which UK businesses and institutions would still need to make upfront and on-going investment to cope with the introduction of CESL.
- 73 Evidence received to the Call for Evidence suggests that the volume of trade induced by CESL is likely to be insignificant and as a result would have minimal legal dispute resolution costs to UK businesses. However, there may still be additional costs to the UK in the form of *upfront investment* in the following areas:
- (a) *Businesses*. Academic evidence suggests that businesses would still need to invest in an optional regime without necessarily using it in practice. This would be a pure inefficient cost. A number of respondents to the Call for Evidence exercise also suggest that CESL, as an

optional instrument, would lead to increased transaction costs because businesses would still need to invest upfront in legal knowledge. This cost may be passed on to EU consumers through higher prices.

(b) *Legal profession.* There would be negative impacts to the UK legal sector in the form of implementation costs resulting from new legislation. This would be in the form of training (initial and on-going) as CESL develops. This is discussed in more detail in the context of UK-EU consumer imports and UK-EU business trading at paragraphs 93 and 107 respectively.

74 The general impact is likely to be that although UK businesses are unlikely to use CESL to expand trade in the EU, even in the early stages this is unlikely to generate lower costs due to the requirement for upfront investment. Indeed, it may well be that costs initially rise for the UK business and legal sectors. The precise scale is difficult to estimate.

## **Net Impact**

75 Overall, the benefits assumed by CESL are likely to be minimal as businesses are unlikely to use CESL to export to EU consumers. However, there may still be costs incurred by UK business and legal sectors in the form of upfront investment. This suggests an impact that is broadly neutral to negative in terms of UK business to EU consumer trading.

## **UK CONSUMERS IMPORTS FROM EU BUSINESSES**

### **Behavioural Impact**

76 The impact of CESL on UK consumer imports from EU businesses is likely to depend on the extent to which EU businesses would use CESL. These factors are similar to those discussed for UK businesses trading with EU consumers. In particular, the response of EU business would depend on the extent to which CESL reduces the cost of doing business in the UK in terms of reducing consumer protection and transaction costs and generating new demand in the UK. These are discussed in more detail below.

### ***Drafting and legal costs***

77 As in the case of UK businesses directing trade to EU consumers, EU businesses trading with UK consumers would be more likely to use CESL if it reduced the cost of expanding their business in the UK.

78 The Commission does not offer any specific evidence that EU businesses would be more inclined to use CESL in trading with UK consumers. Similarly, during the Government's *Call for Evidence* exercise no evidence was provided on the extent to which EU businesses would be more likely to use CESL in trading with UK consumers.

79 Given the geographical size of the UK, and the wide use of English as a language, it could be presumed that in most instances EU businesses with an international posture would already have invested time and money in understanding the contract laws which exist in the UK. Indeed, even if an optional regime was available, they would have investigated it.

80 In the absence of any evidence of savings to EU businesses, it is reasonable to assume that there may not be any significant cost savings to EU businesses specifically those seeking to trade with UK consumers under CESL.



## Consumer protection

- 81 As profit maximisers, EU businesses would prefer contracts that are less onerous to reduce their cost of doing business in the UK. EU businesses are more likely to use contracts which are less binding on them and where they believe weak contractual obligations or standards exist in the UK. Given CESL is an optional regime, weaker standards in CESL relative to current UK consumer standards is likely to induce greater use of CESL. Conversely, stronger CESL standards relative to domestic UK contract laws will eliminate the incentive for EU businesses to use it in this context. It is therefore vital to assess the extent to which CESL would increase or reduce UK consumer protection provisions.
- 82 A review of CESL consumer protection provisions in comparison with those in the UK suggests that though CESL offers a mixture of stronger and weaker protections, on balance it is weaker than UK consumer protection. The following *examples* are noted:
- (a) *Right to reject.* Although in principal the provision appears to be stronger than current practice, there are a number of features of this particular right that suggests it may be weaker than current UK protections. For example, consumers may be required to pay for any use they have made of the goods prior to rejection (Article 174, CESL). Under existing UK laws, although the regime under Part 5A of the Sale of Goods Act 1979 may lead to a reduction in the repayment of the price to the consumer by a sum representing allowance for use, these provisions are alternative to and do not replace the general law, where a breach of condition results in the consumer having a short term right to reclaim the price without any such reduction.. Although such remedies exist under the consumer acquis, Member States were empowered to keep their higher standards in this area if they wished. The UK choose to do so.
  - (b) *Damages.* These are not available for distress and inconvenience. Whilst damages for such loss are not routinely available in UK laws and courts approach the issue with caution, there is the possibility of recovering such damages in specific situations. In particular, there is case law which indicates that where a major objective of the contract was to provide enjoyment or to avoid distress, damages for distress and inconvenience are available. In addition, as a matter of policy, if a consumer has suffered loss and is able to prove such loss, they should not be prevented from recovering it.
  - (c) *Remedies.* Consumer remedies can be amended after the lack of conformity has been identified (Article 108, CESL). This appears to provide more significant discretion on the part of a business to limit the scope of any remedies in the event of subsequent faults. Of particular concerns is the inclusion of the duty of good faith (Article 2) that is imposed on *consumers*. The fear from consumer bodies is that this could be used by traders to place obstacles in the way of a consumer getting a remedy.
  - (d) *Obligations on revised costs estimate.* The obligation under Article 152 of CESL places a requirement on businesses to inform consumers if initial costs are set to increase. This provision might raise the possibility of abuse by traders where a price has been agreed as part of the contract terms and” lead to traders adopting a drip-price strategy.
- 83 This list is not exhaustive. It does, nevertheless, echo the responses from the Government’s *Call for Evidence* which broadly supports the position that CESL would offer, in some instances, weaker levels of protection in comparison with that available under UK laws. A number of respondents to the *Call for Evidence* suggested that in reality, a consumer had no real “choice” of the law applicable to their contractual relationship as in the majority of cases the choice is either to buy on the trader’s terms (including choice of law) or not buy at all. In addition, in most instances consumers were unlikely to be able to evaluate for themselves whether or not UK law afforded greater or lesser protection than CESL. Others suggested that CESL provided a lower level of protection than current UK consumer laws whilst still other respondents made the point that many of CESL’s provisions were covered by the Consumer Rights Directive.
- 84 In general the conclusion appeared to be that CESL could reduce consumer protection costs for businesses in those areas where domestic consumer law had higher standards. As a result, this could make CESL broadly attractive for EU businesses directing trade to the UK on that basis alone.

## ***Legal certainty***

85 EU businesses trading with UK consumers are more likely to offer CESL if it provides greater legal certainty than current UK law. This is unlikely to be the case for reasons already discussed at paragraph 60.

## ***Consumer demand***

86 As discussed under paragraph 62, CESL is unlikely to stimulate new demand.

## **Benefits**

87 The benefits to the UK economy would depend on the extent to which EU business would be *more* inclined to trade with UK consumers under CESL than under their own law or one of the laws of the UK. Based on the assessment above, the general impact on volumes is likely to be minimal, though there may be some “substitution” which may take place with businesses that have previously used a UK contract law but switch to CESL to exploit lower consumer protection standards.

## **Costs**

88 The costs to the UK economy would depend on three factors:

- (a) Whether EU businesses will be inclined to use CESL to increase trade related activities (i.e. quantity effect).
- (b) Whether EU businesses, who currently trade with the UK under a UK law or their own national law, will switch to CESL to exploit lower consumer protection standards, without a discernible shift in volumes (i.e. substitution effect).
- (c) The wider external costs to the UK of being part of the regime, irrespective of the levels or distribution of CESL associated volumes. For example, the extent to which UK businesses and institutions would still need to make upfront and on-going investment to cope with the introduction of CESL.

89 The costs associated with these factors on consumers, justice institutions and wider society is discussed below.

## ***Consumers***

90 The negative impact on UK consumers of CESL would *not* stem from more EU businesses trading with UK consumers but would emerge from the “substitution effect”. Some businesses currently using a UK contract law may shift to using CESL because it has features that weaken current UK consumer protection provisions. This would lead to a reduction in consumer welfare, with those affected unable to switch purchasing behaviour due to limited choices.

## ***Justice institutions***

- 91 The general impact on the justice system is likely to be limited. However, the small volume of business and consumer related disputes involving CESL would still require upfront costs for the judiciary in the form of additional training. There may also be other costs associated with dispute resolution which may be significant due to the longer examination of arguments in the early phases, and the fact that judges would now be dealing with two contract law regimes – their national law and CESL.

## ***Legal Services***

- 92 The legal profession would require training on CESL in order to be able to offer legal advice to consumers and businesses. Training would result in upfront costs and would largely fall to legal firms albeit that the costs of this may in part be borne by consumers and small businesses in the long term.
- 93 Small medium sized legal firms may be more likely to deal with SMEs that may use CESL. SMEs are expected likely to need advice on whether CESL offers them benefits compared with the combination of their own national contract law together with the requirements of the Rome I Regulation. In 2010 there were over 10,000 solicitors' firms registered in England and Wales, with over 95% having between 1 and 25 partners. It is unclear what approach many of these firms would take in terms of training. Assuming that around 25% of these firms undertook some form of legal training on CESL, the initial training increase anticipated could be around £15m. Further ongoing training costs could amount to an additional £2m per annum to account for general knowledge update and new entrants to the profession.

## ***Consumer Advice Centres***

- 94 The introduction of a second contract regime in the UK would place additional cost burdens on consumer advisers and enforcement bodies. These costs would relate again to training on CESL to enable them to be in a position to advise their clients on CESL, particularly in terms of its implications and how it compared to UK law.

## ***Net Impact***

- 95 The overall impact is likely to be negative. Although take up of CESL to underpin expansion in the UK by EU business is likely to be minimal and would not result in any discernible benefits, the introduction of CESL is likely to impose some costs on the UK. These would stem from two sources. First, there may be EU businesses already trading with UK consumers who may be attracted to using a new instrument that offers lower consumer protections and potentially minimises their cost of doing business. Secondly, there would be wider costs to the UK of being part of the regime, irrespective of the levels or distribution of CESL associated volumes. Businesses, institutions and consumer supporting groups would still need to make upfront and ongoing investment to cope with the introduction of CESL. We have estimated that legal services in particular would incur around £29m over the appraisal period under consideration. Though some of these costs may be in the context of larger business to business contracts rather than transactions between an SME and another business or a consumer transactions.

## UK BUSINESSES TRADE WITH EU BUSINESSES

### Behavioural Response

96 The impact of CESL on UK/EU business trade would depend on the extent to which UK businesses would be willing to use CESL in practice. Many of the factors that may influence the extent to which CESL would be used in the consumer context are also relevant in the business context. However, two additional factors are particularly critical – legal advice and bargaining strength.

### Legal advice

97 Many business-to-business contracts are more complex than consumer contracts. As a result, these are largely dependent on expert legal advice. This makes the assessment by the legal community on the extent to which CESL is a viable option in the context of a contractual relationship very important.

98 The Commission's IA does not present evidence in this area. Therefore this IA relies on the Government's *Call for Evidence* which suggests that the legal profession are unlikely to advise their clients to use CESL to underpin business transactions for the following reasons:

- (a) *Limited scope.* CESL would be available for business-to-business transactions where at least one party is an SME and one party is based in another Member State. There are many cross border transactions that involve large firms which would not fall within the definition of SME as provided by the Regulation.
- (b) *Complex contracts.* A high proportion of international sales transactions involve back to back contracts. It is unusual in goods transactions for a shipper, for example, to sell directly to a receiver. There is at least one trader (or several) interposed between the parties. Before a decision to use CESL is made, all parties in the chain may have to agree to use CESL. It is often the case that a trader buying from a shipper will, at the time of contracting, not yet know who the ultimate receiver will be. This makes it highly impractical for parties in this type of sales transactions to choose CESL as the basis for their contractual relationship. Few such businesses involved in such transactions are likely to be advised to do so.
- (c) *Competing regimes.* Many alternative systems, some neutral to both parties, are already available in business-to-business contracts. Some of these already include some level of harmonised law, for example the Convention on Contracts for the International Sale of Goods (CISG). Parties to a contract also have autonomy under the Rome I Regulation to determine the law applicable to their contractual obligations. Respondents to the Government's Call for Evidence suggested that there was insufficient evidence that businesses were unable to settle upon a governing law suitable for their transactions. This suggested that there was already a crowded market of the options available in business-to-business contracts. CESL was unlikely therefore to make a difference.
- (d) *Uncertainty of application regime.* Certainty and predictability are essential in the choice of legal regime in underpinning business-to-business transactions. It is suggested that CESL raises significant uncertainties both as to its operation, and as to its relationship with the Rome I Regulation and national laws, particularly in terms of:
  - the choice of law by the parties to the contract;
  - mandatory laws;
  - the boundaries under which CESL operates and how it inter-relates with those areas of national law where it does not cover the relevant concepts;
  - the scope provisions and the definitions of the parties and transactions covered;
  - the requirement for three agreements (to the contract; choice of law and CESL);

- how CESL operates when it is chosen in part;
- how many of its substantive provisions will be interpreted, and
- the scope of its application and its overriding mandatory duty of good faith and fair dealing to which the exercise of all rights is made subject.

### ***Bargaining strength***

99 Unlike business-to-consumer contracts, business-to-business relations are usually conducted on the basis of bargaining and negotiation. They may also involve more repeated transactions. The extent to which businesses are likely to use CESL would largely be driven by who has the greater bargaining strength, whilst taking on board the overall goal of maximising profits over a repeated transaction cycle. In most cases it is expected this advantage would rest with larger firms. Where transactions do take place under CESL it may be that larger firms pass on any costly obligations to smaller firms in other ways. If the Commission's intention is that the use of CESL will be protective to SMEs, and it has such an effect, this is likely to cause larger businesses to refuse to agree to its use.

### **Benefits**

100 Some Respondents to the *Call for Evidence* suggested that there may be significant benefits for SMEs in using CESL. This view is shared by the Commission who suggest that SMEs involved in business-to-business transactions could find that "*the negotiation of an applicable law between similar sized companies are likely to become easier*". However, no evidence has been provided in support of this case. As referred to above, the complexity of business-to-business contracts would suggest that each party will want to know whether CESL has different distributable effects from those available under national contract law. If one party learns that the other party benefits from using CESL, relative to the alternative, then it will either resist application of CESL or demand a deposit or discount payment.

### **Costs**

101 The costs to the UK would largely stem from the extent to which the introduction of CESL would generate costs for UK institutions and businesses, irrespective of take up. The evidence suggests that there would be four main areas of impact – regulatory requirements, justice institutions, law firms and legal training centres.

#### ***Regulatory Costs***

102 There may be some costs to business in terms of providing pre-contractual information to the buyers. These are difficult to assess at this stage. In practice we would expect such costs to be passed on to consumers.

#### ***Justice institutions***

103 Introducing CESL will involve training judges across the UK. This cost will fall on the UK Government and the Commission. The extent of Commission funding is unclear though it is recognised in the Commission's IA.

104 There may also be costs associated with resolving any litigation in a small number of cases where CESL is chosen. A key aspect is that CESL potentially allows for a much wider range of evidence in relation to issues of interpretation (Article 59), including negotiations and subsequent conduct. It also enables greater reliance to be placed on "usages" and "practices" and what is or is not "good commercial practice". This may widen the extent and expense of documentary disclosure required. This and other provisions (e.g. Article 2 good faith and fair dealing) are also likely to increase the scope and consequent expense of evidence gathering, including expert evidence for trial

preparation and conduct. These costs would not just fall to the judiciary but also to the parties and their legal representatives involved in the trial process.

- 105 There may also be additional costs and delays due to the possibility of references being made to the Court of Justice of the European Union (CJEU). The test for referring is set as mandatory for the national court of last resort except where the case has an obvious interpretation. A lower court can also always refer cases to the CJEU where it considers that a reference is necessary to enable it to give a judgement. The potential for references in relation to a new instrument such as CESL is considerable. This may create additional *uncertainty* and delay for the courts and litigants. Any references will delay the resolution of disputes. At present references to the CJEU can take more than a year, with some references taking much longer.

### **Legal Costs**

- 106 CESL will involve training lawyers across the UK (both private practice and in-house). These training costs will include both one-off and ongoing costs. The costs will fall to both large and small legal firms.
- 107 **Large legal firms** are likely to handle most of the business-to-business contracts. Their lawyers will continue to need to be trained on developments on CESL, just as they are on developments in national contract law or other European instruments.
- 108 It is difficult to provide a precise assessment of the level of costs involved for legal training as this will largely depend on the *minimum* level of legal investment as well as uptake. Additional cost calculations are also complicated by the fact that this would be an entirely novel regime. CESL is intended to operate as an autonomous instrument meaning those being trained cannot have regard to pre-existing national concepts. Practitioners would still need to be trained, however, in both CESL and national law so they can consider the scope of CESL, assess how it differs to national law and advise on the relevant differences.
- 109 Some respondents to the *Call for Evidence* suggested that it is possible that regardless of take-up, all larger law firms may decide that *all* lawyers should at least have *minimum* legal training in order to undertake an initial comparative analysis of the CESL and UK laws. Larger firms are likely to provide this initial training to all associates and partners (and possibly trainees). In addition, there may be a need for additional core groups of “experts” within large law firms who become more familiar with the provisions of CESL.
- 110 Training costs assumed by the 15 largest law firms in the UK have been estimated between £25m and £36m in the initial year of introduction. This is based on the following assumptions:
- (a) a large proportion of commercial lawyers require initial training (60% - 100% of top firms);
  - (b) 8000-9000 lawyers are likely to take part in the training. This would be a significant cost reflecting the forgone hour rates during the period of the course. The volumes are assumed to grow 2% annually;
  - (c) tailored expert groups to handle ongoing complex advice beyond the initial training phase. These would be trained initially;
  - (d) there are further ongoing training costs which would amount to £3m. The total costs over the appraisal period are estimated at between £45m and £51m (discounted).
- 111 **Small and medium sized legal firms** are likely to deal with SMEs who may decide to use CESL in business-to-business transactions. Given that most legal advice at this level would also relate to consumers, the estimation of these impacts has been undertaken in the context of business-to-consumer transactions.
- 112 CESL will also require changes to **pre-qualification legal training**. This will include law students at university and those on vocational courses. These costs would partly fall on university funding and partly on legal firms training new entrants. It is assumed that the ongoing training costs of legal firms would include such costs.

## Net Impact

**113** The overall impact is likely to be negative at around £45m and £51m (discounted). Although the take up of CESL in the business-to-business context is likely to be very low, there would still be significant training costs for legal firms and the judiciary. Initial training costs to the legal community are likely to be in the region of around £25m and £36m initially. There would be other year on year costs perhaps around £3m, though much would depend on the level of take up and queries for advice on CESL. In addition, contractual disputes involving CESL may also make their way to court which may result in substantial delays leading to further negative impacts.

## 6. SUMMARY OF IMPACTS

114 **Table 1** below sets out the broad impacts associated with CESL focusing on three main channels through which CESL would interface with UK consumers and businesses.

<b>Table 1 : Summary of Impact of the CESL on UK</b>			
	<b>Benefits</b>	<b>Costs</b>	<b>Net Impact*</b>
<b>UK business exports to EU Consumers</b>	There are potential benefits to UK businesses from reduction in transaction cost. However, the general impact on the UK economy is likely to be minimal because take up of CESL is assumed to be low	There would be some upfront legal investment costs for business, as businesses would still need to be aware of the potential of CESL. These would be in the form of legal costs.	Impact would be broadly neutral to negative
<b>UK consumer imports from EU businesses</b>	The benefits of CESL to the UK economy are likely to be minimal because few EU businesses are likely to use CESL as the basis for undertaking expansion into the UK.	Existing EU businesses may be attracted to using a new instrument which offers lower consumer protections  Businesses, institutions and consumer supporting groups would still need to make upfront and on-going investment to cope with the introduction of CESL. We have estimated that legal services in particular would incur around £15m. The ongoing training costs would be in the region of £3m	Impact would be negative – any trade gains offset by weak protections, with other costs to firms, HMG and consumer bodies. We estimate a cost to legal service training for small and medium legal firms in the region £29m.
<b>UK business exports and imports with EU businesses</b>	The level of take up by UK businesses would be very <b>minimal</b> due to the complex nature of business to business relations; the inherent uncertainty of CESL; and the attractiveness of competing legal regimes, especially English law	There would be significant legal costs in terms of investment particularly by larger legal firms in the form of training. These costs would also extend to small legal firms advising small firms; and, law students. These costs have been estimated around £25m and £37m initially, with £2m ongoing.	Impact would be broadly negative due to training costs estimated at around £45m and £56m.
*All net present costs are discounted at 3.5% and assessed over 2014-2023			

## Annex A

**Table A1: Trade with EU Countries - Exports: 2004 to 2011**  
**General Trade: ranking based on value of trade in 2011 (£ millions)<sup>28</sup>**

	2004	2005	2006	2007	2008	2009	2010	2011	Average Annual Growth Rate
Germany	21,540	22,897	27,147	24,478	28,454	24,829	28,539	33,038	5.5
France	18,452	19,822	29,012	17,935	18,746	18,018	20,262	23,056	2.8
Netherlands	11,957	12,646	16,622	14,966	19,367	17,613	20,537	22,671	8.3
Irish Republic	14,049	16,205	17,202	17,632	18,586	15,484	16,375	17,219	2.6
Belgium	10,190	11,120	13,091	11,741	13,099	10,533	12,946	15,354	5.3
Italy	8,351	8,743	9,465	9,102	9,309	8,229	8,798	9,888	2.1
Spain	9,044	10,617	12,461	9,888	10,037	8,985	9,700	9,449	0.5
Sweden	4,329	4,562	5,169	4,863	5,095	4,106	5,408	6,141	4.5
Poland	1,410	1,644	2,789	2,349	2,932	2,703	3,676	4,187	14.6
Denmark	2,030	2,301	3,856	2,161	2,562	2,427	2,681	2,939	4.7
Czech	972	1,073	1,574	1,388	1,508	1,396	1,766	1,853	8.4
Portugal	1,572	1,690	2,330	1,467	1,599	1,494	1,778	1,693	0.9
Austria	1,087	1,323	1,683	1,361	1,435	1,250	1,429	1,630	5.2
Finland	1,353	1,506	1,818	1,940	1,863	1,333	1,454	1,600	2.1
Hungary	930	831	837	854	985	827	1,052	1,144	2.6
Greece	1,397	1,359	1,468	1,340	1,614	1,574	1,314	1,126	-2.7
Romania	607	644	606	659	737	666	760	922	5.4
Cyprus	321	356	1,046	412	525	599	545	668	9.6
Slovakia	223	257	275	377	446	369	452	534	11.5
Malta	256	238	316	358	471	389	386	432	6.8
Bulgaria	155	220	224	201	248	195	244	319	9.4
Luxembourg	259	212	1,633	268	199	190	240	272	0.6
Estonia	107	115	468	227	214	147	186	270	12.3
Lithuania	141	166	237	308	277	167	223	262	8.1
Slovenia	161	167	194	202	219	174	213	235	4.8
Latvia	92	101	586	145	168	108	164	228	12.0
<b>Total EU</b>	<b>111,746</b>	<b>121,677</b>	<b>152,941</b>	<b>127,484</b>	<b>141,678</b>	<b>124,670</b>	<b>142,130</b>	<b>158,373</b>	

<sup>28</sup> [www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Documents/Webtables\\_2011.XLS](http://www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Documents/Webtables_2011.XLS)



**Table A2 : Retail and Online Trading in the EU**

Country	Value of total retailing in 2010 (in million €) [1]	Value of Internet retailing in goods in 2010 (in million Euro)[2]	Main countries purchasing from online (in cross-border context) [3]	% of online shoppers from particular Member State purchasing goods from the UK[4]
Austria	65,285	709	Germany & UK	13%
Belgium	81,775	1,756	France, Netherlands, Germany & UK	20%
Bulgaria	9239	29	UK, Germany & France	41%
Cyprus	Not available	Not available	UK, Germany & Greece	74%
Czech Republic	31,618	1,083	Germany, Poland & UK	17%
Denmark	43,811	2,354	UK, Germany & Sweden	48%
Estonia	4,350	15	UK, Germany & Sweden	35%
Finland	39,835	1,597	UK, Germany & Sweden	40%
France	441,608	17,325	Germany & UK	29%
Germany	458,803	17,775	Austria, UK & Netherlands	20%
Hungary	29,825	340	UK, Germany & Austria	27%
Ireland	33,535	523	UK & Germany	74%
Italy	314,371	3,019	Germany, UK & France	29%
Latvia	4,317	34	UK & Germany	33%
Lithuania	5,903	64	UK & Germany	39%
Malta	Not available	Not available	UK	93%
Netherlands	105,915	3,660	Germany, UK, Belgium & France	21%
Poland	84,808	1,968	Germany & UK	23%
Portugal	48,303	366	UK, Spain, Germany & France	41%
Romania	27,198	197	Germany, UK & Italy	19%
Slovakia	13,152	109	Czech Republic, Germany & UK	15%
Slovenia	7,375	129	Germany, UK & Austria	34%
Spain	232,462	3,188	UK, France & Germany	28%
Sweden	66,064	2,618	UK, Germany & Denmark	34%

*Greece and Luxembourg are excluded from the table above as they did not register the UK as a country which they tended to purchase goods from.*

[1] Statistics extracted from Consumer Market Study on the functioning of e-commerce and internet marketing and selling techniques in the retail of goods – Civic Consulting – Sept 2011

[2] Statistics extracted from Consumer Market Study on the functioning of e-commerce and internet marketing and selling techniques in the retail of goods – Civic Consulting – Sept 2011

[3] Information extracted from Consumer Market Study on the functioning of e-commerce and internet marketing and selling techniques in the retail of goods – Civic Consulting – Sept 2011

[4] Statistics extracted from Consumer Market Study on the functioning of e-commerce and internet marketing and selling techniques in the retail of goods – Civic Consulting – Sept 2011

**Table A3: UK Top 10 Trading Partners<sup>29</sup> - Non-EU Exports (2004-2011)**  
**General Trade: ranking based on value of trade in 2011 £ millions**

	2004	2005	2006	2007	2008	2009	2010	2011	Average Annual Growth Rate
USA	28,682	31,153	32,158	32,239	34,964	33,570	37,413	38,949	3.9
China	2,378	2,824	3,279	3,781	4,870	5,129	7,225	8,773	17.7
India	2243	2812	2704	2,964	4119	2,893	3,952	5,411	11.6
Switzerland	2,947	5,128	4,289	3,845	4,607	3,879	5,218	5,375	7.8
Hong Kong	2,642	3,104	2,872	2,651	3,470	3,512	4,202	5,062	8.5
Canada	3,327	3,284	3,877	3,287	3,596	3,616	4,318	4,848	4.8
Russia	1472	1,879	2,069	2,833	4,132	2,286	3,451	4,781	15.9
UAE	2,702	5,576	3,640	2,756	3,686	3,556	3,892	4,715	7.2
Japan	3,784	3,812	4,013	3,762	3,685	3,363	4,101	4,395	1.9
Australia	2,405	2,521	2,431	2,513	2,961	2,795	3,175	4,179	7.2

**Table A4: Trade with EU Countries<sup>30</sup> – Imports (2004 to 2011)**  
**General Trade: ranking based on value of trade in 2011 £ millions**

	2004	2005	2006	2007	2008	2009	2010	2011	Average
Germany	35,606	37,507	40,004	44,197	44,460	39,628	45,617	49,025	4.1
Netherlands	18,010	19,102	20,673	22,785	25,327	21,561	26,215	28,072	5.7
France	19,794	20,149	21,295	21,666	23,191	20,502	21,780	23,089	1.9
Belgium	12,719	13,306	14,274	14,825	16,103	14,894	17,025	18,681	4.9
Italy	12,055	11,935	12,549	13,188	14,061	12,100	14,001	14,106	2.0
Irish Republic	10,108	10,005	10,417	11,249	12,020	12,264	12,735	12,952	3.1
Spain	8,780	9,641	10,442	10,112	10,291	9,124	9,967	10,753	2.6
Sweden	5,121	5,239	5,750	5,224	6,702	5,423	6,514	7,475	4.8
Poland	1,843	2,180	3,191	3,675	4,240	4,604	6,067	7,036	18.2
Denmark	3,075	3,808	4,618	3,392	4,062	3,770	4,069	5,945	8.6
Czech	1,297	1,809	2,222	2,967	3,529	3,292	3,966	4,202	15.8
Hungary	1,585	1,794	2,047	2,365	2,492	2,510	3,232	3,064	8.6
Austria	2,338	2,172	2,441	2,476	2,318	2,254	2,609	2,914	2.8
Finland	2,340	2,344	2,808	2,604	2,741	2,091	2,146	2,437	0.5
Portugal	1,918	1,848	2,821	1,455	1,681	1,396	1,719	1,775	-1.0
Slovakia	262	356	652	1,269	1,602	1,584	1,610	1,504	24.4
Romania	790	775	827	929	784	770	1,232	1,268	6.1
Romania	790	775	827	929	784	770	1,232	1,268	6.1
Luxembourg	889	832	1,507	682	811	585	931	896	0.1
Greece	657	688	664	633	615	535	667	645	-0.2
Lithuania	271	256	277	298	343	363	549	556	9.4
Latvia	670	674	737	579	348	280	380	379	-6.9
Slovenia	169	195	280	316	310	247	353	356	9.8
Bulgaria	150	164	198	235	212	179	227	281	8.2
Bulgaria	150	164	198	235	212	179	227	281	8.2
Estonia	381	350	476	226	144	123	153	190	-8.3
Malta	186	171	158	175	136	105	166	161	-1.8
Cyprus	200	239	1,286	147	132	75	103	122	-6.0
<b>Total EU</b>	<b>142,155</b>	<b>148,475</b>	<b>163,636</b>	<b>168,835</b>	<b>179,652</b>	<b>161,208</b>	<b>185,492</b>	<b>199,429</b>	

<sup>29</sup> [www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Documents/Webtables\\_2011.XLS](http://www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Documents/Webtables_2011.XLS)

<sup>30</sup> [www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Documents/Webtables\\_2011.XLS](http://www.uktradeinfo.com/Statistics/NonEUOverseasTrade/Documents/Webtables_2011.XLS)

**Table [A5] : UK Top 10 Trading Partners - Non-EU Imports: 2004-2011**  
**General Trade: ranking based on value of trade in 2011 £ millions**

	2004	2005	2006	2007	2008	2009	2010	2011	Average Annual Growth Rate
USA	22,975	22,993	26,367	26,365	28,877	28,422	31,352	30,296	3.5
China	10,628	13,194	15,559	18,794	21,968	22,871	28,228	30,156	13.9
Norway	8,806	12,444	14,791	14,595	20,646	15,085	19,459	24,245	13.5
Japan	8,237	8,732	7,984	7,981	8,106	6,232	7,529	8,509	0.4
Switzerland	3,574	4,000	4,474	4,878	5,955	5,724	8,428	7,688	10.0
Hong Kong	5,894	6,719	7,494	6,988	7,659	7,178	7,553	7,326	2.8
Russia	3,548	5,063	5,826	5,488	6,694	4,452	5,172	7,264	9.4
Canada	4,278	4,242	5,040	5,868	6,251	5,270	6,810	6,252	4.9
India	2,340	2,833	3,188	3,773	4,266	4,325	5,447	5,869	12.2
Turkey	3,370	3,617	4,037	4,729	4,676	4,317	5,050	5,398	6.1