

# Checklist for analysis on EU proposals

**Title of EU proposal:** Common European Sales Law (CESL)

**Lead dept/agency:** MoJ

**Other depts with an interest:** Department of Business Innovation & Skills, Scottish Government and Northern Ireland Executive.

**Date:** 27 February 2012

## ***What is the Commission proposing?***

The Common European Sales Law (CESL) aims to provide a single set of contract laws which parties involved in the cross-border sale of goods in the EU could agree to choose to cover their contract. The Commission envisage that the CESL would not replace the national contract laws of Member States but be available as an alternative to them. The Regulation aims to overcome barriers to businesses engaging in cross-border trade in the internal market and to increase the choice of goods available to consumers in the EU.

## ***Who are the main affected groups in UK?***

The main groups likely to be affected are: businesses engaged in cross-border trade using the CESL; Consumers involved in a sales or digital content contract whose contract is agreed on the basis of the CESL; legal services or consumer advisers involved in advising clients for example, where a contract is based on the CESL; justice system when considering cases where the applicable law to the contract is the CESL; consumer law enforcers and, other groups.

## ***What are the main benefits to the UK?***

Possible benefits to businesses could arise through new trading opportunities, as cross-border trading is currently perceived to be problematic due to the divergent national contract laws. A single system of European law for cross-border sales may help trading across borders as legal costs could reduce. There may also be potential benefits to consumers with a possible greater choice of goods available which could also be cheaper from increased competition. Consumers may also have greater certainty about the level of consumer protection for cross-border purchases. In so far as trade leads to mutual benefits for society as a whole, there may be increases in national welfare though such benefits. But these may come at the expense of some losers e.g. from domestic trade diversion.

## ***What are the main costs to the UK?***

There may be potential costs to consumers arising out of the complexity of having to deal with contracts under the new European law, as well as under domestic law (at present consumers can rely on domestic law protections in most cases). If the European regime has lower standards of consumer protection in some areas, there may well be further costs for consumers. There may also be potential costs on legal services from reduced demand for legal advice if the CESL is used. This may have the impact of reducing quantity of work demand (UK law firm revenues) in the medium-term. The potential for contractual disputes in the short-term, as the law is tested, may lead to impacts on the judiciary, with this effect diminishing going forward. There may also be increased costs for consumer law enforcers because of the need to be familiar with and apply two different systems of law.

## ***What is the overall impact?***

The overall impact of the proposals on the UK is currently uncertain. Much is dependant on three factors: the attractiveness of the proposals to businesses; its impact on legal services and the extent to which the consumer protection provisions represent a net improvement, possible reduction or are broadly equivalent to current UK legal protections. These issues are explored in more detail at Annex A: Assessment of Impacts.

**Ministerial sign-off:**

I have read the analysis above of the potential impacts of this proposal and I am satisfied that, given the significance of the proposal, the time and evidence available, and the uncertainty of the outcome of negotiations, it represents a proportionate view of possible impacts.

Signed by the responsible Minister:  
February 2012

A handwritten signature in black ink, appearing to be 'L.C.C.C.' with a flourish at the end.

Date: 27

Secretary of State and Lord Chancellor

## ANNEX A: ASSESSMENT OF IMPACTS

### 1. POLICY PROPOSAL

#### DESCRIPTION

1. On 11 October 2011, the Commission published their proposed Regulation for a Common European Sales Law (“the CESL”). The Regulation proposes a single set of contract law rules which parties to a cross-border sale of goods contract could agree to choose to cover their contractual relationship. This could include, for example a non-EU businesses wishing to sell in the EU or an EU businesses wishing to sell to a non-EU country. The Commission envisage that the CESL would form part of the national law of each Member State and would provide an alternative regime to the current divergent national contract laws. This alternative contract law regime would be available for cross-border business-to-consumer (B2C) or business-to-business (B2B)<sup>1</sup> contracts where at least one of the businesses is a Small or Medium Enterprise (SME), a definition which is offered in Article 7 of the proposed Regulation.
2. 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).
3. The Regulation will apply to all three distinct UK jurisdictions: England and Wales, Scotland and Northern Ireland. Gibraltar, though a British Overseas Territory, is subject to EU Regulations in this field. The UK has responsibility on behalf of Gibraltar for the negotiation of relevant European instruments and those instruments are directly applicable in Gibraltar.

#### PURPOSE

4. The Commission’s stated aim for the CESL is to stimulate the internal market enabling SMEs in particular to use a uniform contract law to expand their businesses in the European Union. It is also intended to increase the value and choice of products available and create a high level of protection for consumers shopping cross-border.
5. The Regulation aims, according to the Commission, to resolve the problems caused by the divergent contract laws that exist across the Member States which are said to inhibit cross-border trade in the internal market. Confidence in contract law is essential for trade to be carried out effectively. 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. The current legal framework in the area of contract law is characterised by the

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<sup>1</sup> The Commission have limited the use of the CESL in B2B contracts where one of the parties is an SME. One particular aim of the Regulation is to stimulate growth amongst SMEs to give them greater access to trading opportunities in the internal market. The Commission suggest that the current regulatory regime and the costs involved discourage SMEs from extending their businesses in this area. Larger businesses in contractual relationships with other larger companies are likely to have to deal with more complex matters, involving larger sums of money and will proactively take legal advice to ensure their risks are minimised. They are therefore more likely to absorb the costs of contracting cross-border as a matter of routine.

divergence between the national contract laws. While a number of EU and international legal instruments have been adopted in the area of contract law (e.g. the Rome I Regulation on the law applicable to contractual obligations), there is no pan-European uniform or easily accessible set of rules for businesses and consumers to use in cross-border transactions in the EU.

6. The Commission consider that the divergence in contract laws may also prevent cross-border shopping by consumers. 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. Contract law includes rules protecting consumers and the certainty of these rules may be a factor in determining consumer confidence in cross-border shopping. The Commission considers that when consumers are confronted with different foreign laws they become uncertain about their rights. This may lead consumers to only shop domestically, which potentially limits their choice of goods. In the absence of competition from overseas suppliers, they may also pay more for such goods.

## **AFFECTED GROUPS**

7. The Regulation is likely to affect the following sectors, although this list is not exhaustive:
  - *Businesses*: The proposals may directly affect any business organisation involved in cross-border business transactions or those contemplating new business links with EU traders, particularly SMEs. This includes those trading online and/or directing their services to a particular EU country.
  - *Consumers*: Any consumer involved in purchasing goods from an EU country and where the contractual relationship with the trader is based on the CESL. This would include those purchasing goods online, but not restricted to those.
  - *Legal services*: When involved in advising clients, for example, seeking to negotiate new cross-border contracts for clients or where a contract is based on the CESL and there has been a breach of the agreement.
  - *Justice system*: When considering cases where the applicable law to the contract is the CESL and a dispute/claim is placed before the court to resolve a dispute.
  - *Consumer law enforcers*: When investigating potential breaches and enforcing consumer law.
  - *Advisory bodies*: Consumer advisory bodies, for example, 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 the CESL and who required help in understanding their rights in the event of a dispute. Business advisory bodies that provide help and advice on contractual matters to SMEs.
  - *Academics/Education establishments*: In establishing education programmes on the CESL.

## 2. BASE CASE

8. Assessment of the proposal on affected groups and nationally has been undertaken against the base case scenario of existing national contract laws of the Member States i.e. current UK and EU laws which apply in contractual matters between parties involved in a cross-border transaction for the sale of goods.
9. Changes in the base case do not represent *additional* impacts in economic appraisal, but understanding what the world looks like without the policy intervention allows us to compare the baseline with the impact of the policy proposal. This requires us to understand not only what the sectors look like now, but how they may change over time. The assessment has focused on the cross-border business and consumer sectors.

### BUSINESS

10. At the start of 2011, there were approximately 4.5 million private sector businesses in the UK. These businesses employ approximately 23.4 million people and have an estimated combined annual turnover of £3,100 billion. Almost two thirds (62.4%) of private sector businesses are sole proprietorships (i.e. a business entity that is owned and run by one individual and where there is no legal distinction between the owner and the business), 27.7% were companies and 9.8% were partnerships. SMEs accounted for 99.9% of all enterprises, 58.8% of private sector employment and 48.8% of private sector turnover. <sup>2</sup>
11. The number of private sector businesses in the UK has increased over the last 11 years (year-on-year). These increases/changes have been driven entirely by SMEs - their estimated number increased from 3.5 million to 4.5 million (31.1%) between the start of 2000 and the start of 2011. Meanwhile, the estimated number of large private sector businesses has decreased from 7,200 to 6,300 (12%) over the same period.

### CROSS-BORDER TRADING

12. In terms of imports and exports to the EU, the UK remains a net importer (imports are greater than exports).<sup>3</sup> From January to October 2011, the total trade imports to the UK from the EU and non-EU countries amounted to £330,138 million, with imports in trade to the UK from the EU totalling £168,132 million (51% of the total of all trade in imports to the UK). Exports in trade from the UK totalled £244,428 million. In terms of the EU, this amounted to £131,947m (54% of the total of all the UK exports).
13. The top five exports in terms of commodities from the UK are mineral fuels, mineral oils and products for their distillation, bituminous substances and mineral waxes although there has also been a recent increase (in November 2011) on pharmaceutical products. In terms of imports, the main commodities are vehicles, other than railway or tramway rolling stock, and parts and accessories for these.

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<sup>2</sup> The information contained in paragraphs 3.9 and 3.10 has been extracted from "Business population estimates for the UK and Regions 2010", published 24 May 2011

<sup>3</sup> The information contained in paragraph 3.13 has been extracted from [https://www.uktradeinfo.com/index.cfm?task=td\\_stactables](https://www.uktradeinfo.com/index.cfm?task=td_stactables)

## CONSUMERS

14. Spending by individuals and households is an important part of the UK economy. Official statistics in the UK call it Household Final Consumer Expenditure (or HHFCE). Data show that UK consumer spending accounts for about 60% of GDP. So changes in the numbers have a big impact on economic growth. UK households spent £473.60 a week in 2010<sup>4</sup> compared with £455.00 a week in 2009.
15. Spending on recreation and culture amounted to £58.10 a week (approximately 12% of a UK household weekly spend) in 2010. This category covered expenditure on TVs, computers, books, newspapers, leisure activities and package holidays. Spending on food and non-alcoholic drink purchases amounted to £53.20 a week per household (approximately 11%). Remaining costs on household expenditure can be attributed to transport (the purchase of vehicles, the operation of personal transport (such as petrol, diesel, repairs and servicing) and on other transport services such as rail, tube and bus fares. This amounted to some 14% of weekly expenditure. In addition, spending on housing (excluding mortgage costs), fuel and power amounted to approximately 13%.
16. The remaining 50% of UK household expenditure can probably be attributed to mortgage or rental costs, building maintenance, financial services such as insurance, pension and savings, child care costs and other such services.
17. A breakdown of spend against consumers in terms of purchasing goods from overseas from this category is not readily available. However, where spend could occur is that spent on recreation and culture (which covers the purchase of TVs, computers, newspapers, books, leisure activities and package holidays. In 2010, this amounted to 12% of weekly household spend.

## UK INTERNET SHOPPING

18. UK consumers are active online shoppers. In 2010<sup>5</sup>, about 62% of adults (or 31 million people) bought goods or services online. Collectively they spent about £50 billion on goods and travel, approximately £1,660 each. Clothing and sporting goods were the most popular both overall and among women. For men, it was film and music. Cost savings from online shopping, even when shipping and handling costs are included, can still be substantial. In a survey conducted by the Office of National Statistics, 60% of households (from the sample surveyed) said lower prices were the key reason for shopping on line across a range of product categories. The savings generated could amount to some £18 billion or £1,000 per online household annually.
19. In 2009, the size of the UK's internet economy was £100 billion or approximately 7.2% GDP (Gross Domestic Product). In terms of comparison, the internet share of the UK market was larger than that of the UK construction, transportation and utilities market and slightly smaller than the financial industry. Over the same period, almost 60% of the UK internet economy consisted of consumption which comprised two parts: consumer e-commerce (about £50 billion) and consumer spending on internet service providers and devices to access the internet (about £10 billion). The remaining internet economy was driven by Government spending and private investment.

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<sup>4</sup> The information contained in paras 14-17 are quoted from ONS statistics

<sup>5</sup> Statistics are quoted from "The Connected Kingdom – How the internet is transforming the UK economy" published by the Boston Consulting Group

20. In terms of goods and services ordered via the internet, in 2010<sup>6</sup> only 10% of individuals in the UK ordered such goods or services for private use from sellers in other EU countries. This compared to 64% of individuals ordering goods and services from national sellers. For consumers in the UK, purchasing goods via the internet at home, figures were similar with 11% purchasing goods from sellers/providers in other EU countries and 67% from national sellers, providers.

## **LEGAL SERVICES**

21. With many businesses aiming or becoming increasingly global, there is a need for them to consider a wide choice of laws, procedures and legal systems when selecting their external legal advisers, choosing the governing law for a contract, the best forum in which to resolve their dispute or their preferred means of dispute resolution. The UK has a reputation for the efficient handling of complex cases, with London in particular standing out as a global centre for international dispute resolution.
22. There are 319,700<sup>7</sup> people working in the legal services in the UK. The legal services sector generates significant income for the economy. Current estimates value the contribution at around £23.25bn which equates to around 1.8% of national GDP.

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<sup>6</sup> Consumer conditions scoreboard – Consumers at home in the single market – 5<sup>th</sup> edition – March 2011

<sup>7</sup> This information has been extracted from CityUK Report – January 2012, entitled Economic contribution of UK Financial and Professional Services

### 3. IMPACT OF REGULATION

23. The assessment of the Regulation has focused on addressing the impacts of the proposals relative to the base case. There are four areas under consideration: general principles of the Regulation; business-to-business (B2B); business-to-consumer trading (B2C) and the digital agenda.
24. In line with best practice, the focus of the assessment is on the *direct* (or 'first round') impacts, such as the initial benefits, disadvantages and costs, associated with the proposals. Much more speculative second round impacts, such as any longer term benefits or disadvantages and the costs associated with these are not discussed. These will be investigated over the consultation period.

#### GENERAL PRINCIPLES

##### Description

25. The proposed Regulation contains a uniform set of contract law rules which parties to a contract could choose to cover their contract. The general principles are:
  - The Regulation would form part of the national law of each Member State and provide an *alternative* regime from that currently offered under national law.
  - The use of this *alternative regime* would be *optional* but would provide a contract law regime that was common to all Member States as it would form part of each Member State's law.
  - The Regulation would be available for cross-border business-to-consumer (B2C) or business-to-business (B2B) contracts where at least one of the businesses is a Small or Medium Enterprise (SME).
  - The Common European Sales Law cannot be interpreted by reference to the existing national contract laws, but only by reference to its underlying principles, objectives and all its provisions.

##### Benefits of Principles

26. In terms of the principles described in paragraph 25, the Common European Sales Law may lead to additional *direct* benefits, over and above the base case, for businesses and legal services.

##### Businesses

27. Businesses are likely to benefit from:
  - *Increased trading choices* – An optional contract law regime, that enabled the application of a single EU contract law, could increase the number of potential EU countries that a trader could do business with without incurring additional legal costs carrying out due diligence. The extent to which this could increase such choice and how this is translated into greater trade depends on the nature of the alternative contract law proposed and its use.



- *Increased certainty* - A common (yet optional) regime of contract law would mean that businesses would no longer need to wrestle with the uncertainties which may arise from having to deal with multiple national contract laws. It could help minimise the risks and financial costs associated with cross-border trading. The extent to which increased certainty is translated in greater trade depends on the nature of the alternative contract law proposed, whether it is used and whether uncertainty in the area of contract law is the binding constraint it is claimed to be.

#### *Legal Services*

28. An alternative, yet optional contract law regime, could present new business potential for legal services in terms of offering advice on how it may work in comparison to divergent national contract laws and the benefits or not that may accrue from its use. This may lead to a short-term increase in demand for legal advice and/or dispute resolution services, until the European contract law becomes more defined. Although statistics are not readily available, the level of trade related cross-border disputes may well be minimal. This, however, will be considered further during consultation.

#### **Costs of Principles**

29. Against the principles described at paragraph 25, the main costs of providing an *alternative*, yet optional contract law regime for cross-border sales would be on legal services and legal institutions.

#### *Businesses*

30. There will be initial costs to business in getting to grips with any new legal system, including costs to change standard contracts that they may already have. However, the costs associated with this are likely to be easily absorbed through increased trading opportunities. It could also be said that businesses will be able to control any negative effects of the Common European Sales Law as its use will be optional. If the effects are found to be sufficiently negative, the Common European Sales Law will not be used by business as the basis of their contracts. .

#### *Legal Services*

31. There is potentially a loss of revenue to UK legal services emanating from the reduced demand in drawing up contracts that provide legal certainty for the parties when trading across borders. Current practice dictates that a trader, if regularly trading with another country or countries in the EU, would obtain legal advice to ensure that he complied with all the necessary consumer protection and other rules that would be applicable in that particular country. The *alternative*, yet optional, contract law regime would be a competitor to existing national contract law and its use in cross-border contractual relations. Legal services in the UK currently have some competitive advantage here through their specialisation and local advantages. An alternative European contract law regime has the potential to reduce the demand for UK contract laws and the flexibility and legal certainty that they provide in international contracts.
32. Although the proposed *alternative* contract law regime could present new areas of opportunity in terms of increased trader activity, increased competition from other EU countries may also erode legal service revenues. However, this necessarily has to be balanced by the potential for some increase in cross- border trade, i.e. UK

traders seeking to enter EU markets and from possible demand in other areas, for example non-EU countries wishing to do business in the UK.

#### *Justice system*

33. The introduction of an *alternative*, albeit optional contract law regime would require that law to be enforceable in the UK judicial system. This may lead to administrative and resource burdens on Government in putting in place procedures which enable disputes concerning contracts conducted under CESL to be determined by the courts and enforced across the EU. There may also be the added burden of any added costs in relation to extending alternative dispute resolution systems to cover CESL based contracts as well as costs to advice and enforcement bodies as a result of the CESL. Costs of this are not readily identifiable.

#### **Net Impact of Principles**

34. Against the principles described in paragraph 25, the overall impact of the principle of an optional legal regime is unclear but could be of benefit to businesses although this is likely to be accompanied by some adverse impacts on UK legal services from loss of revenue in ensuring contractual compliance for business, particularly international businesses, trading in the EU.

#### **BUSINESS TO BUSINESS (B2B)**

##### **Description**

35. The CESL law is available for business-to-business (B2B) contracts, and would apply where:
- the contract concerned the cross-border sale of goods or digital content regardless of the method of sale.
  - its applicability would also cover those sales where “related services” formed part of that sale; and
  - one of the parties to the contract was an SME and at least one of them was based in the EU.

##### **Benefits of B2B Proposals**

36. An *alternative* optional contract law regime for B2B may lead to the following additional *direct* benefits for SMEs and larger businesses.

##### *Small Medium Enterprises*

37. There may be additional benefits for SMEs. In instances where an SME reaches agreement with another business to use the CESL as the basis of their contract, the practice may lead to:
- *Reduction in legal costs:* Whereas an SME currently needs to agree with the other party in a B2B contract the law that will apply to their contractual relationship, an SME may feel unable or disadvantaged by the use of a particular law or may be forced to use the law which the larger trader wishes

to use. CESL could offer a law that was more convenient and simpler for both parties to agree to, enabling them to contract on an equal footing. This may be seen as more advantageous for SMEs

- *Wider expansion in trading opportunities* – Whereas an SME may be discouraged from engaging in EU markets because of an uncertain and insufficient bargaining basis, the CESL may offer increased opportunities to trade because of the simplicity it aims to achieve through a single EU contract law system thereby enabling SMEs to contract on the same bargaining basis as a larger business.

38. Gauging the magnitude of benefits to SMEs depends, however, on the following:

- the ability of SMEs to be persuaded that the CESL provides them with significant benefits in comparison to that provided under the law of their own country; and
- the extent to which agreeing or being forced to use a particular law in a B2B contract disadvantages one of the parties, usually the SME.

#### *Larger businesses*

39. The benefits to large businesses, dealing with an SME, are likely to be minimal. Contract law differences are likely to be insignificant to their trading decision. This may be due to wide access to legal advice and the fact that larger businesses already have a presence in their areas of interest.

#### **Costs of B2B Proposals**

40. The provision of an *alternative* optional contract law regime for B2B is unlikely to lead to any additional costs for SMEs or larger businesses because the parties to the contract would be free to use it or not<sup>8</sup>.

#### **Net Impact of B2B Proposals**

41. The overall impact of the proposals on UK businesses in the B2B sector could be positive. The scale of the impact though would depend on a number of factors where further evidence is needed:

- *Wider applicability of the proposals* – in particular, whether it would apply to all businesses, albeit that one must be an SME, and whether it is confined to cross-border sale of goods or is extended, as is suggested in Article 13 of the proposed Regulation, to cover domestic sale of goods too. Crucial here is the number of businesses that may potentially benefit.
- *Underlying incentives of businesses* – the number of businesses which decide to use the CESL in practice for their various activities would depend on the extent to which it adds value. Larger firms may decide not to use the CESL in large numbers when contracting with SMEs. Equally significant is the assumed legal certainty that the CESL would bring to the contractual

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<sup>8</sup>The CESL may potentially generate new costs to businesses associated with using the CESL. This would be in form of one-off costs (e.g. legal, administrative burdens / training). However, such costs are not regarded as *additional* because they would have been incurred in any case.

relationship between parties relative to other factors that affect transactional arrangements (e.g. taxation, licensing, redress etc). Consideration is needed on how these issues vary by sector e.g. internet traders, small businesses, large businesses.

- *Economic environment* - the extent to which cross-border activity is likely to be shaped by the medium to long-term outlook of the EU economic situation.

## **BUSINESS TO CONSUMER (B2C)**

### **Description**

42. The CESL is available for all business-to-consumer (B2C) contracts. It would provide the following:

- the contract concerned the cross-border sale of goods or digital content regardless of the method of sale.
- its applicability would also cover those sales where “related services” formed part of that sale;
- it aims to offer a high-level of consumer protection in all Member States;
- the provisions on consumer protection would reflect existing Consumer acquis covering sale of goods and unfair contract terms and would include the provisions agreed in the Consumer Rights Directive;
- the level of consumer protection offered, if the CESL is used, would be the same in all Member States; and
- clear rights to consumers if digital content is defective and an increased level of consumer protection for digital content if the CESL is used.

### **Benefits of B2C Proposals**

#### *Business*

43. The benefits to business in the context of transactions with consumers are:

- *New trading opportunities* – the Commission believes the biggest gain would come from what they call ‘reducing the opportunity costs of intra-EU trade’. These are benefits from reducing the contract law costs that currently *suppress* trading activity for SMEs. The Commission’s argument is that the absence of a single European contract law leads to failed intra-EU trade with SMEs giving up due to the difficulties. These lost opportunities may potentially be recovered using the CESL.
- *Reduction in transaction costs* – an important component of the benefits of the CESL to businesses is the potential to reduce the legal costs of drawing up contracts by businesses for each new Member State they choose to undertake trading activities with. The Commission believes the measure 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*”. The benefit would be to *existing* and future exporters over time. These are

taken to be current and future exporters who would be operating regardless of whether the proposal is adopted or not.

- *Complying with the consumer protections under Rome I* – whereas currently a business may need to draw up different contracts that take account of the mandatory consumer rules of the country or countries with which they are trading (in order to comply with Article 6 of the Rome I Regulation), in theory the use of the CESL would mean that they would only be required to comply with one set of rules, i.e. those contained in the CESL. The requirement to comply with the rules under Rome I would no longer be necessary. The possible benefit of this would be to simplify matters and avoid the costs of carrying out due diligence in each country in which a business conducts trade with consumers to ensure that they are compliant with that country's particular law.

### Consumers

44. The direct benefits of B2C proposals for consumers may include:

- *Provide a high level of consumer protection* - the Commission believes that the CESL is likely to provide a high-level of consumer protection for consumers when engaged in cross-border transactions in the EU. The level of consumer protection would be the same across all Member States when the CESL is used providing certainty for consumers.
- *Increased transparency and confidence* – According to the Commission, consumers would have the option of choosing to agree to a contract which was formed on the basis of the CESL. It is proposed that an information notice would be available to consumers which would inform them of their rights in their language. This information will be provided in the form of a standard information notice between the trader and consumer and is to be made available in all languages.
- *Greater choice of products* – consumers could potentially have access to a wider choice of products, which through greater competition between traders, may be available at lower prices. The Commission's research statistics suggest that in a one-year period, at least 3 million consumers searching for better deals across the EU, particularly online, were refused sale or delivery by the trader over a one-year period. According to the Commission the reasons for this were mainly as a result of regulatory burdens on traders.
- *Potentially cheaper products* – increased opportunity for cross-border trading may lead to greater competition, which may lead to cheaper goods.

The above benefits would also apply to digital content. The first bullet on '*Providing a high level of consumer protection*' would be particularly true for digital content contracts, where rights and remedies available to the consumer are currently especially unclear. The Commission has judged that the optional increased legislation surrounding digital content in the CESL increases consumer protection above the current UK law for digital content (but note that clarification of UK law on consumer rights when purchasing digital content is one of the subjects the Government is considering for inclusion in a consumer bill later in the current Parliament).

45. The extent of these benefits to UK consumers would depend on the following:

- *Business response* - the CESL would be intermediated by businesses as offered to consumers. Consumers will not receive any of the potential benefits if businesses refuse to trade using the CESL.
- *Cross-border consumer demand* – much of the benefit depends on the current level of suppressed opportunities for the supply of goods and services across borders and on whether variations in contract law are the real source of that suppression of opportunity
- *Level of consumer protection* – in particular, the extent to which the level of consumer protection differs to that provided under national law and whether this is likely to increase or decrease trading activity.
- *Degree of certainty* – any increase will depend on how quickly consumers appreciate how their rights will operate in practice under CESL and how easily they can understand the differences between these rights and the rights they have under domestic law.

## **Costs of B2C Proposals**

### *Consumers*

46. The main costs of the CESL for B2C contracts are likely to arise from confusion amongst consumers about their rights under CESL, as opposed to their rights under national law. Consumers expect at the moment to be able to resolve disputes using national law and it is possible that resolving disputes under CESL will be seen as more risky and uncertain, rather than easier than the current regime. Consumers, in reality, are unlikely to have the choice of whether the CESL should form the basis of the contract or not because the transaction is likely to be driven by the trader's terms, which is similar to current practice. Subject to whether the consumer protection being offered by the CESL is lower or higher than that available under national law, there could be reduced consumer protection. The costs to consumers are therefore those potentially associated with any specific reduction in consumer protection rather than the principle of contracting under CESL. There may also be potential costs of any enforcement proceedings undertaken on the basis of a dispute where the contract is based on CESL.
47. The potential cost of reduced consumer protection would not apply to digital content. As noted above, the Commission has judged that the optional increased legislation surrounding digital content in the CESL increases consumer protection above the current UK law for digital content.

### *Businesses*

48. Where consumer rights are higher under CESL than under national law, this will impose costs on business. This would be true of the optional increased legislation surrounding digital content, where business are not already offering this level of redress.

### *Enforcers and advisers*

49. Public enforcers and advisers will have to invest time and money in training to become aware of consumer rights under CESL and how they differ from rights under national law.

## Net Impact of B2C Proposals

50. The overall impact of the proposals on UK consumers from the *principle* of businesses using the CESL is unclear. Much depends on the extent of the business response and on exactly what, if anything, is impeding cross-border business activity at present.
51. The net impact of the use of the CESL depends heavily on the extent to which the consumer agrees to its use as the basis of the contract between him/her and the trader. Whether this leads to enhanced or decreased consumer protection and whether benefits may outweigh any costs cannot easily be assessed. The Government is seeking evidence which may help address this issue.

## DIGITAL AGENDA (DA)

### Description

52. The CESL is one of several proposals contained in the Digital Agenda for Europe which the Commission believe necessary to create a true *digital single market*. The Digital Agenda, published in May 2010, is one of seven flagship strategies related to the *EU 2020* strategy. The *EU 2020* strategy aims to ensure that the EU retains its global competitive edge in an increasingly globalised world. The creation of the *digital single market* is further discussed and built upon in the recent communication entitled “*A coherent framework for building trust in the Digital Single Market for e-commerce and online services*”, published in January 2012.

### Benefits of DA Proposals

#### *Business*

53. The overarching benefit of the digital agenda is to secure growth in the EU by increasing the current low rates of cross-border trade within the EU. One major barrier is believed to be the requirement for traders to have a full understanding of contract and consumer law in each Member State in which they wish to trade. This can result, *in extremis*, in a requirement to understand 27 different sets of requirements, each forcing the trader to incur costs associated, for example, with legal advice. Whilst larger businesses can absorb such costs through volume of trade, SMEs do not have the same capacity. Thus, this barrier to cross-border trade could be removed and cross-border rates could increase by allowing businesses to adopt a single common legislative framework for trading. It is suggested that such a framework would potentially be beneficial to SMEs as it would remove the costs incurred with trading with individual Member States whereas only a single cost would apply in contracting through the CESL. This could therefore encourage increased engagement in cross-border trade. It is generally considered that the potential area of growth within the EU exists within SMEs.
54. The growth of the digital services industry as a result of CESL is likely to be more significant than other industries. This is because the digital services industry is less affected by physical geographical barriers so it is easier for them to expand.

### Costs of DA Proposals

#### *Businesses*

55. It is difficult to quantify the overall costs of the 101 actions and 33 legislative proposals contained in the *Digital Agenda* as each is both separate and interrelated. There may be an initial cost to all businesses as a result of these proposals but only if the business concerned opt to use the CESL.
56. Businesses facing possible increased customer care costs may elect not to use the CESL. Therefore this proposal could in fact discourage growth in digital services.

#### **Net Impact of DA Proposals**

57. The net impact of this specific proposal is difficult to ascertain given that it would be subject to a number of confounding variables including the rate of up-take by businesses. Nevertheless, the proposed Regulation has the potential to have an overall net positive impact.



## SUMMARY OF IMPACTS

<b>Table 1 : Summary of Direct Impacts of Proposals</b>						
		<b>General Principles</b>	<b>Business 2 Business</b>	<b>Business 2 Consumers</b>	<b>Digital Agenda</b>	
<b>Benefits</b>	<b>Business</b>	<ul style="list-style-type: none"> <li>▪ Wide array of trading opportunities</li> <li>▪ Increased certainty in transactions</li> </ul>	<ul style="list-style-type: none"> <li>▪ Potential benefit to SMEs from reduced legal costs ; and, possibility of wider trading opportunities</li> </ul>	<ul style="list-style-type: none"> <li>▪ Reduction in currently suppressed trade would lead to more revenues</li> <li>▪ Efficiency savings from reduction in legal costs for businesses</li> </ul>	<ul style="list-style-type: none"> <li>▪ Increased growth in the digital services sector</li> <li>▪ Potentially reduced unit costs as a result of an increase in the amount produced</li> </ul>	
	<b>Consumers</b>	-	-	<ul style="list-style-type: none"> <li>▪ High-level of consumer protection throughout the EU</li> <li>▪ Increased transparency and confidence</li> <li>▪ Greater choice of products</li> <li>▪ Potentially cheaper products</li> </ul>	<ul style="list-style-type: none"> <li>▪ As for Business 2 Consumers</li> </ul>	
	<b>Legal Services</b>	<ul style="list-style-type: none"> <li>▪ New business potential for legal service advice</li> </ul>	-	-	-	-
	<b>Justice System</b>	-	-	-	-	-
<b>Costs</b>	<b>Business</b>	-	-	-	<ul style="list-style-type: none"> <li>▪ Increased consumer costs potentially pushing businesses out of the digital services industry</li> </ul>	
	<b>Consumers</b>	-	-	<ul style="list-style-type: none"> <li>▪ Costs of consumer “lock in” (TBC)</li> <li>▪ Potential reduction in consumer protection</li> </ul>	<ul style="list-style-type: none"> <li>▪ As for Business 2 Consumers</li> </ul>	
	<b>Legal Services</b>	<ul style="list-style-type: none"> <li>▪ Reduced quantity of legal service demand in existing areas of competence – applies to both B2B and B2C contracts</li> </ul>	-	-	TBC	
	<b>Justice System</b>	<ul style="list-style-type: none"> <li>▪ Administrative / resource costs in registering judgements</li> <li>▪ Judicial dispute resolution related costs for B2B and B2C</li> <li>▪ Impacts on consumer advisers and enforcement bodies</li> </ul>	-	-	TBC	