**Checklist for analysis on EU proposals**

<table>
<thead>
<tr>
<th>Title of EU proposal:</th>
<th>Proposal for a Council decision on approval, on behalf of the EU, of the Hague Convention on Choice of Court agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead dept:</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>Other Government departments and agencies with an interest:</td>
<td>BIS, HMT</td>
</tr>
<tr>
<td>Date:</td>
<td>June 2014</td>
</tr>
</tbody>
</table>

**What is the commission proposing?**
The Commission is proposing that the European Union should approve the Hague Convention of June 2005 on Choice of Court Agreements. The Convention sets out the principle that an agreement between parties to a civil or commercial contract as to which contracting State's court should be the forum for resolution of any dispute will be respected in the courts of all States that accede to it.

**What are the main affected groups in the UK?**
- International corporations
- Commercial Courts and users
- HM Courts & Tribunals Service
- UK Taxpayers

**What are the main benefits to the UK?**
Ratification by the EU is likely to lead to wider ratification by countries outside the EU, which may potentially benefit the UK. Rendering such choice of court agreements more certain may lead to increased case volume for the Court and thereby result in higher fee revenue. Any increase in the volume of disputes being heard in the UK under English law, will likely benefit the UK based legal practitioners through legal fees. This benefit is expected to have a positive impact on HMG through their wider economic benefits and the taxes levied on these domestic legal firms. However, there is no reliable data on to what extent these foreign litigants commission UK based legal service providers and the associated fees these UK legal firms charge for advocating and litigating these international commercial disputes. Hence, the checklist does not quantify these benefits.

**What are the main costs to the UK?**
With the approval of the convention, there could be an increase in the number of international disputes heard at the London Commercial Court. This could potentially result in an additional cost burden on the UK taxpayers as the current court fee structure is not based on full cost recovery and is subsidised by the taxpayers.

**What is the overall impact?**
When assessing the quantifiable and non-quantifiable impacts together, the net impact of the approval of the convention could be positive if, as result of the increase in the volume of international cases heard in London, the benefits resulting from the increase in business activity for UK based legal firms and professionals outweigh the higher court costs. These issues are discussed in more detail at Annex A.

Non-monetised benefits include greater legal certainty attaching to choice of court agreements as a result of the Convention, and reputational benefits following from any enhanced use of UK courts, particularly in London, as the preferred resolution centre for disputes concerning international civil and commercial contracts – often following from the choice of the common law of England and Wales as the law governing such contracts.

**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: Date:
ANNEX A – COSTS AND BENEFITS

1. POLICY PROPOSAL

1. The UK has opted into the adoption and application of the Commission’s proposed Council Decision approving, on behalf of the EU, the Hague Convention on Choice of Court Agreements.

2. The Convention on Choice of Court Agreements was concluded on 30 June 2005 under the auspices of the Hague Conference on Private International Law. It is designed to offer greater legal certainty and predictability for parties involved in business-to-business agreements and international litigation by creating an obligation on courts in contracting states to hear (subject to limited exceptions) the case where the parties to a civil or commercial contract have made a choice of court agreement specifying that court, and on courts in other contracting states to recognise and enforce the judgment reached.

3. The Convention so far has been ratified by Mexico. It has been signed by the European Union and the United States of America. Ratification by the EU will bring the Convention into force. It is expected that other countries will ratify subsequently.

4. The proposal is brought forward on the basis of Article 81(2) TFEU, which falls within Title V, the JHA chapter, of the Treaty. Government policy is that, notwithstanding exclusive external competence, the UK’s JHA opt-in applies.

5. Matters relating to jurisdiction in civil and commercial matters attract exclusive EU external competence arising from the Brussels I Regulation (44/2001). Accordingly, the present proposal is for approval by the EU of the Convention. All EU Member States (except Denmark, whose opt-out protocol means that the EU measure will not apply there) would then be bound by the Convention.

6. The proposed opt in is of significance to UK not just because of the frequency with which international commercial contracts specify the London commercial court as the preferred dispute resolution centre but also because around one-third of international contracts worldwide is based on English common law, typically with London as the choice of court.

AFFECTED GROUPS

7. The policy proposal affects all of the United Kingdom, with particular impacts on the following groups and sectors:

- **International corporations** which internationally trade and operate;
- **Commercial Courts** and centres of resolution of financial, business and property litigation for business law and international dispute settlements;
- **UK International law firms** which are specialised in international commercial disputes;
- **Court Users** – those who use the civil court system;
- **HM Courts & Tribunals Service** – who administer the civil court system;
- **Taxpayers** – the subsidy currently provided by the UK Exchequer towards the running and operating costs of HM Courts & Tribunals Service.
2. RATIONALE FOR INTERVENTION

8. Currently under the Brussels I Regulation (1215/2012) the courts in the EU do not have any obligation to decline jurisdiction in favour of non-EU courts that have previously been chosen by the parties. If these EU courts accept jurisdiction it could work against legal certainty and, in certain cases, lead to the proceedings being substantially slowed.

9. This has undermined the confidence of commercial parties to be sure the jurisdiction they select to resolve their disputes will actually be where any disputes are heard. It has also created opportunities for tactical litigation in jurisdictions that have not been chosen by the parties earlier\(^1\). The result has been significant legal uncertainty and additional expense and delay in the settlement of international commercial disputes.

10. In light of this, the Commission proposes to approve the Hague Convention to enhance the effectiveness of choice of court agreements. Under the Convention, where the parties have designated a particular court to resolve their dispute, that court will, in principle, hear the case.

11. Under this proposal any other contracting state’s court has to stay its proceedings until the chosen court has either denied its jurisdictional powers or, in cases where the initial choice of court agreement is upheld, decline its jurisdiction for the dispute resolution. The Commission argues that this modification should increase the effectiveness of choice of court agreements and eliminate abusive litigation tactics in non-competent courts. Further, if third countries do ratify the Convention, then courts in the EU (as a contracting party to the 2005 Convention) will, in principle, have to decline jurisdiction in favour of a chosen court in that third country.

12. The proposal to approve the Hague Convention on Choice of Court Agreements also aims to achieve a harmonised conflict of law rule on the substantive validity of choice of court agreements. The purpose of such a rule is to ensure a similar outcome on this issue wherever the court seised is situated.

13. The underlying rationale for this proposal to approve the Convention is twofold: first, it seeks to reduce the inefficiency arising due to the legal uncertainty and additional expense and delay in settlement associated with parallel proceedings and tactical litigation in international commercial disputes. Secondly, it improves the certainty of contract enforcement under “choice of court” agreements. Effective ‘choice of court agreements’ are considered essential in minimising the likelihood of parties breaching their agreements in addition to achieving more efficient economic outcomes by expediting dispute resolutions more swiftly, economically and efficiently. The overwhelming majority of EU business involved in cross-border trade make use of choice of court agreements (almost 70% of all companies and 90% of large companies). By ensuring these agreements are more effective, it could potentially facilitate trade through improving trust and confidence among parties.

1. Reports suggest that parties have sometimes commenced proceedings in a court that they considered might advantage them, for example, by slowing proceedings. This difficulty is exacerbated by the delay in some Member States and third countries as resolving issues of jurisdiction.
3. ANALYSIS

14. This checklist has been prepared to accompany the Government’s opt-in to a Council Decision proposed by the European Commission for the approval on behalf of the EU of the Hague Convention on Choice of Court agreements.

15. It presents the evidence base on the rationale for intervention and assesses the likely costs, benefits, risks and wider impacts of opting in. It follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

16. The checklist aims to identify, as far as possible, the impacts of the proposals on society. A critical part of the process is to undertake a Cost Benefit Analysis (CBA) of the proposals. CBA assesses whether the proposals would deliver a positive impact to society, accounting for economic and social factors and where possible seeks to show how those impacts are distributed across the affected groups. The checklist should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resource government would save from certain proposals.

17. In assessing the impact, the IA checklist focuses mainly on key monetised and non-monetised impacts, with the aim of understanding what the net social impact to society might be from opting into the Council Decision proposed by the European Commission for the approval on behalf of the EU of the Hague Convention on Choice of Court agreements.

4. SCOPE OF ANALYSIS

18. The checklist only takes into account the articles that necessitate a change legislatively, operationally and practically.

19. The Government’s initial analysis of this proposal suggests that by approving the Hague Convention, the following three articles laid out in the convention will have an impact on the UK:

- Article 5 of the Convention: The chosen court must in principle hear the case. This article restricts the hearing of the case to only the court chosen by the parties at the time of the agreement. This would imply that international disputes that had initially chosen London as dispute resolution centre will have to be heard at the London court itself. This could affect the current case volume of international commercial disputes heard at the commercial court in London.

- Article 6 of the Convention: Any court not chosen must in principle decline to hear the case. This article applies to those disputes where the parties have, by agreement, chosen a particular court as the dispute resolution centre, but in fact proceedings are launched elsewhere. For example, if the parties have chosen a court in a third country as dispute resolution centre, but at the time of dispute one of the parties chooses London to launch proceedings, the London court would have to decline jurisdiction in favour of the court chosen by the parties in the contract. Similarly, if the parties have chosen the London court as the dispute resolution centre, then any other court in a third country that ratifies the

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2 Currently, under the Brussels 1 Regulation, EU Member States are already bound to respect choice of court agreements in contracts between parties within the EU. The Hague choice of Court agreement would require EU courts to respect choice of court agreements in cases where one of the parties is outside the EU.
convention is obliged to decline jurisdiction in favour of the London court. Moreover, the likelihood of a reduction of cases in London for this reason seems unlikely – see discussion under “Monetised costs”, below.

- Article 8 and 9 of the Convention: Any judgment rendered by the chosen court must be recognised and enforced in other Contracting States, except where a ground for refusal applies. This article affects the UK business and other litigants whose disputes would be determined in other countries which were chosen as the jurisdiction at the time of the agreement. UK courts would be expected to recognise and enforce judgments given by the specified court. Similarly, courts in other third country jurisdictions would be expected to recognise judgments made by UK courts.

20. There may also be either way pressures on the UK legal firms specialised in international commercial laws. It would depend on whether the number of international disputes heard at the London commercial court increases or decreases following the approval of the convention.

5. **BASE CASE**

**Description**

21. The Impact Assessment process requires that all options are assessed relative to a common “base case”. The base case for this impact assessment checklist is to “do nothing”. By “doing nothing” the UK Government would exercise the right not to opt in to the Decision approving the Hague Convention as proposed by the European Commission (it is, however, to be noted that the application of the opt-in is disputed by the European Commission and by other Member States; accordingly were the UK to purport not to opt in there is a strong risk of proceedings being brought in the Court of Justice of the European Union against the UK). Under the base case there would be no changes to current UK practice.

22. As the base case effectively compares itself against the net present value, this is therefore zero. However, the international nature of business has translated into a rising number of UK businesses engaging actively with counterparts in other EU and non-EU countries. If the UK were not to opt in to the proposal approving the Convention on behalf of the EU, all other EU Member States (with the exception of Denmark), would have common provisions in this area if the EU ratifies the Convention. In so far as there are UK citizens or businesses entering into agreements with choice of court agreements in favour of courts in other EU Member States, they would potentially benefit from those provisions without the UK incurring any additional costs or benefits.

23. As a judgment issued as a result of a court hearing in defiance of the Hague Convention is not automatically enforceable in a country that has ratified the Convention, even if UK does not opt in, there will be no incentive for the litigants to file the case to be heard in a court in UK in defiance of the original choice of court. This would, thus rule out the possibility of any rise in tactical litigation pursued in UK in breach of the Hague Convention.

24. Not opting in could potentially incur non-additional costs for UK over time. Costs could occur, albeit minimal, for the legal profession and Government in familiarising themselves with the terms of the Convention and to ensure

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3 As mentioned in the earlier footnote, the EU Member states currently abide by the choice of court agreement following the Brussels I agreement and hence the Hague Choice of court is relevant only in the context of non-EU (third countries).
procedures are in place to cover disputes where the new Convention applies. In effect, it would be the costs of running parallel systems in defiance of any initial choice of court agreement. However, these costs would not be additional to existing parallel systems that exist and in practice may even be lower due to greater harmonisation across the other countries that ratify the Convention. Thus, these costs could potentially be non-additional costs for UK.

25. Not participating in the decision and the Convention would also mean that choice of court agreements in contracts specifying the UK as the agreed forum for dispute resolution need not be given effect in non-EU states that have ratified the Convention. However Brussels I would continue to apply in respect of cases where both parties were in the EU. UK courts would not be obliged to give effect to choice of court agreements made elsewhere (although they may do so in any event as a matter of domestic law). The reduction in legal certainty regarding such agreements risks making the UK a less attractive centre to do business or conduct litigation.

6. **IMPACT OF PROPOSED DECISION**

26. As a result of its participation in the proposal to approve the Convention, the UK would be bound by the terms of the Convention once adopted. This will mean that a similar rules will apply in relation to the recognition of choice of court agreements inside the EU and in countries outside the EU who are parties to the Convention. The section looks into the costs and benefits to the identified affected groups by approving the Convention.

**COSTS OF PROPOSAL**

**Monetised Costs**

27. This sub-section presents an analysis of the extent to which the provisions are likely to have monetised cost implications for the UK as a result of the articles identified earlier.

28. Article 5 of the Convention restricts the hearing of the case, in principle, to only the court chosen by the parties at the time of the agreement.

29. With the legal jurisdiction of England and Wales considered to be an attractive place to resolve legal disputes and is a first choice for business law\(^4\), as a result of enforcing Article 5 may lead to a rise in the number of international commercial dispute cases being issued at the London Commercial Court\(^5\).

30. Such an increase would result in an increase in associated cost to HMCTS.

31. Similarly Article 6 obliges a court in principle to decline to hear the case in favour of the court which was chosen as the original seat of arbitration at time of agreement.

32. Article 6 would imply that the London court will have to decline hearing international disputes in favour of courts in other non-EU countries which have ratified the

\(^4\) The survey by Queen Mary University revealed that English Law is the governing law most used by international corporations (40%). Similarly, the survey found London to be the preferred seat of arbitration, chosen by 30% of international corporations. Queen Mary University of London (2010), ‘2010 International Arbitration Survey: Choices in International Arbitration’.

\(^5\) Though, theoretically, any other courts in UK can hear international disputes, the Commercial and Admiralty Court housed in the Rolls Building, London hears all the international commercial disputes heard in the UK. The Commercial and Admiralty Court is the largest specialist centre for the resolution of financial, business and property litigation anywhere in the world.
Convention, which were chosen as the jurisdiction for dispute resolution at the time of agreement (The Brussels I Regulation already makes provision to this effect in relation to courts within the EU).

33. Although Article 6 would theoretically reduce the number of disputes heard at London, in practice, the decrease is unlikely as the London court currently examines the basis for its jurisdiction and decides, for example, on the basis of the doctrine of *forum non conveniens*\(^6\), not to hear the cases which have their initial choice of court agreement outside UK.

34. Article 8 and 9 imply that UK courts would have to incur the cost to recognise and enforce judgments given to UK business and other litigants whose disputes were determined by the specified court in other countries which were chosen as the jurisdiction at the time of the agreement.

35. To estimate the associated additional costs over the appraisal period as a result of the above articles (2015-2024), the following assumptions are made:
   - The additional cost implication for UK would result from the provision of the associated direct costs of providing services to these additional courts users during the different stages of their litigation.
   - Table 1 shows the number of Admiralty and Commercial cases issued at the Commercial Court of London:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Cases</th>
<th>Proportion involving a foreign party</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>1,132</td>
<td>65%</td>
</tr>
<tr>
<td>2009</td>
<td>1,468</td>
<td>69%</td>
</tr>
<tr>
<td>2010</td>
<td>1,239</td>
<td>72%</td>
</tr>
<tr>
<td>2011</td>
<td>1,332</td>
<td>81%</td>
</tr>
<tr>
<td>2012</td>
<td>1,363</td>
<td>76%</td>
</tr>
</tbody>
</table>

*Note: on average, 85% of the cases each year are commercial and 15% are admiralty related.*

   - The growth rate of cases heard at the Commercial and Admiralty court is assumed at 3.2% (based on 2010-2012).
   - The percentage of cases issued to the Commercial and Admiralty court that involves a foreign party is assumed to be 76% based on the 2012 figures.
   - The unit direct cost involved with each stage of litigation of Commercial and Admiralty cases at the Commercial court are laid out in Table 2.

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Commercial Cases</th>
<th>Admiralty Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit Cost</td>
<td></td>
<td>Unit Cost</td>
</tr>
</tbody>
</table>

\(^6\) *Forum non conveniens* is the doctrine, found mostly in common law countries, whereby courts may refuse to accept jurisdiction over cases when there is a more appropriate forum available to the parties.

\(^7\) The unit costs include both the fixed cost and the variable costs associated with the judicial service being provided. The fixed cost would consist of the costs of the court infrastructure and facilities.
<table>
<thead>
<tr>
<th>Litigation Stage</th>
<th>(£, '13/14 prices)</th>
<th>(£, '13/14 prices)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACC - Issue</td>
<td>254</td>
<td>258</td>
</tr>
<tr>
<td>ACC - Allocation: Multi Track</td>
<td>565</td>
<td>565</td>
</tr>
<tr>
<td>ACC - Listing: Multi Track</td>
<td>562</td>
<td>562</td>
</tr>
<tr>
<td>ACC - Hearing: Multi Track</td>
<td>17,893</td>
<td>9,020</td>
</tr>
<tr>
<td>ACC - Enf: Charging order</td>
<td>266</td>
<td>266</td>
</tr>
<tr>
<td>ACC - Enf: 3rd party debt order</td>
<td>266</td>
<td>266</td>
</tr>
<tr>
<td>ACC - On notice</td>
<td>468</td>
<td>468</td>
</tr>
<tr>
<td>ACC - Without notice</td>
<td>101</td>
<td>101</td>
</tr>
<tr>
<td>ACC - Satisfaction of judgement</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>ACC - Witness Summons</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>ACC - Requests for Office Copies</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>ACC - Warrants of Arrest</td>
<td>805</td>
<td>805</td>
</tr>
<tr>
<td>ACC - Arbitrations</td>
<td>1,467</td>
<td>1,467</td>
</tr>
</tbody>
</table>

- We assume that costs are constant at 2013/14 cost levels.
- Since there is no evidence on how the number of cases may change as a result of the approval of the convention, the analysis models four scenarios (in addition to a 'no change in scenario') to assess the potential change in baseline caseload.

1. Scenario 1: 10% increase in international cases heard at the London Commercial court
2. Scenario 2: 25% increase in international cases heard at the London Commercial court.
3. Scenario 3: 50% increase in international cases heard at the London Commercial court.
4. Scenario 4: No change in international cases heard at the London Commercial court.
5. Scenario 5: 25% decrease in international cases heard at the London Commercial court.⁸

36. The analysis estimates that over the 10 year appraisal period (2015-2014), the change in the number of cases that will be heard at the Commercial court as a result of UK opting into the approval of the Hague Convention would range from a reduction of 3300 to an increase of 6700 cases, with the main estimate of increase of 3400 cases depending on factors such as the number of cases with London specified as choice of court, but which are heard elsewhere currently.

37. The additional costs to UK over the 10 year appraisal period as a result of the opt in would be in the range of £1mn to £11mn with the main estimate of £5mn

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⁸ The reduction in the international case volume is also considered as a possibility in the case where the EU (including UK) ratifies the convention, but most third countries don’t ratify the convention. This could lead to less international commercial agreements choosing London as the preferred seat of arbitration.
depending on the scale of any change in the volume of cases heard at the London commercial court following ratification of the convention, and how many third non-EU countries will ratify the convention.\(^9\)

**Non- Quantified Costs**

38. In addition to the above costs there may be the following indirect and non-quantified costs:

- There may be a cost to UK nationals who may now only be able to challenge proceedings in the country where the original choice of court is located and hence it is likely to increase their costs e.g. travelling etc. However, this additional cost, if any is likely to be minimal as currently the UK court on the basis of the doctrine of *forum non conveniens*, doesn’t hear the cases which have their initial choice of court agreement outside UK and also because presumably, UK nationals would take into consideration the implications of agreeing to a choice of court where travel would be needed in case of a dispute.

**BENEFITS OF PROPOSAL**

**Monetised Benefits**

39. Benefits to the UK as a result of the ratification of the Hague Convention lie in the potential for the increase in the volume of international commercial cases heard at London. If realised, this would result in:

- Court fees: increase in court fees collected
- Wider economic benefits: Legal fees: increase in income in the form of legal fees from the international litigants for the UK legal professionals and firms specialising in international commercial law.

**Court Fees**

40. Any increase in volume of cases would be driven by those disputes that would have to be litigated in London because of the London court being chosen as the original seat of arbitration at the time of agreement, which in the absence of approval of the Convention could have been heard else where in a third country.

41. To estimate the additional benefit from the fees as a result of the increase in the volume of cases, the following assumptions are made.

- The volume and scenario assumptions follow the same assumptions made for cost analysis.
- The current fee structure for commercial disputes is assumed as detailed in table 3.

<table>
<thead>
<tr>
<th>Table 3: Unit Fee of litigation process at Commercial Court</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Case Type</strong></td>
</tr>
<tr>
<td>Litigation Stage</td>
</tr>
<tr>
<td>ACC - Issue</td>
</tr>
</tbody>
</table>

\(^9\) As none, or negligible, if any, international disputes litigations are filed in the respective Commercial courts of Scotland and Northern Ireland in a year, the additional costs for Scotland and Northern Ireland by opting into this proposal will form only a negligible share of the total additional costs for the UK as a whole. Thus, the estimates mainly reflect the cost implications to E&W only.
| ACC - Allocation: Multi Track | 220 |
| ACC - Listing: Multi Track | 110 |
| ACC - Hearing: Multi Track | 1,090 |
| ACC - Enf: Charging order | 100 |
| ACC - Enf: 3rd party debt order | 100 |
| ACC - On notice | 80 |
| ACC - Without notice | 45 |
| ACC - Satisfaction of judgement | 15 |
| ACC - Set aside judgement | |
| ACC - Witness Summons | 40 |
| ACC - Requests for Office Copies | 5 |
| ACC - Warrants of Arrest | 225 |
| ACC - Arbitrations | 480 |

- The IA checklist assumes that fee income is constant from 2015/16 onwards.

42. The benefit in the form of additional fees that accrue to the UK over the 10 year appraisal period would be in the range of £2mn to £9mn, with the main estimate of £5mn depending on the increase in the volume of cases, how many disputes with London as choice of court are heard elsewhere currently and how many third non-EU countries will ratify the Convention during the appraisal period.\(^{10}\)

**Wider Economic Benefits: Legal fees**

43. With the increased volume of cases, UK lawyers specialising in international commercial law may gain from an increase in their fee revenue as a result of being required to provide legal advice and litigation on additional cases that are heard in the London commercial court as a result of the Hague Convention. This is based on the assumption that currently some of these disputes even though choose London as the choice of court initially, would prefer the case to be heard in another court or jurisdiction at the time of the dispute. However, it is not known to what extent these foreign clients are commissioning legal service providers based in the UK and the associated fees that UK legal firms charge for advocating and litigating these international commercial disputes. Hence the checklist doesn’t quantify these benefits.

44. Any revenue raised by UK legal firms would also result in a less than proportional increase in government revenue through the tax levied on these firms.

**Non-Monetised Benefits**

45. The following potential benefits identified as a result of Articles 8 and 9 have not been monetised:

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\(^{10}\) As none, or negligible, if any, international disputes litigations are filed in the respective Commercial courts of Scotland and Northern Ireland in a year, the additional costs for Scotland and Northern Ireland by opting into this proposal will form only a negligible share of the total additional costs for the UK as a whole. Thus, the estimates mainly reflect the cost implications to E&W only.
Cross border transactions: article 8 and 9 may improve the access to justice for individuals and companies involved in cross-border disputes, making it easier and less time consuming to litigate in a third country that ratifies the Convention; and enhancing legal certainty for choice of court agreements and directly enforceable judgments.

Reduce bad faith arrangements. The proposal may also have the incentive of reducing instances of bad faith by parties trying to circumvent existing agreements. This could generate benefits in two specific ways. First, it may eliminate or reduce the costs and delays currently borne by business as a result of bad faith attempts by contractual parties. Secondly, it may incentivise businesses and consumers to engage in cross-border trade, in particular for Small and Medium Enterprises (SMEs).

There is also the possibility that any reduction in international commercial dispute cases being issued may convey positive benefits to UK taxpayers. This is because the existing issuance of international disputes is not set at a full cost recovery rate.

Net Impact of proposal

46. The net monetised impacts for UK by opting into this EU proposal of approving the Hague Convention can be summarised as follows:

- Considering the quantifiable aspects, if case volumes do rise then, the net impact is likely to be negative with additional costs for the UK over the appraisal period expected to be around £1.5mn, within the sensitive range of £0.5mn and £3mn. The net quantifiable impact is estimated to be negative due to the increase in the case volume and the current court fee structure, which is not currently based on full court cost recovery. Thus the UK taxpayers would have to subsidise the un-recovered cost of providing judicial services to the additional international dispute litigants at the Commercial court in London.

- Considering the non-quantifiable aspects, the net monetised impact is likely to be positive, potentially having wider positive implications on the UK economy and HMG depending on the change in the volume of international cases heard in London, the legal fees charged by the UK legal firms specialising in international commercial law, and the income tax paid by these legal firms and professionals, and the broader benefits to all UK businesses from greater legal certainty.

47. When assessing both the quantifiable and non-quantifiable impacts together, the net impact of opting in could be positive if the benefits (i.e. the increase in the tax collected by HMG and the other benefits associated with the wider economic implications through increase in business activity and thereby the fee revenue for the UK legal professionals and firms and the benefits of greater legal certainty for businesses generally) outweigh the costs (increase in costs due to any increase in case volumes).

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11 In 2011/12 and 2012/13, the Ministry of Justice recovered only part of the cost of the civil court system. Figures in HM Courts & Tribunals Service Annual Report and Accounts 2012/13 showed a gross deficit, before the cost of remissions is taken into account, of £115 million (in 2013/14 prices).
7. SENSITIVITIES / RISKS

48. It is possible that the Convention will not prove as successful, in terms of the number of non-EU countries that ratify it, as is hoped. This would result in a reduced advantage for the EU including the UK, as any increase in the case volume of international cases heard at London foreseen as a result of the Convention might be reduced as a result. To account for this risk, a sensitivity test has been involved in the analysis to see how a reduction in the volume of cases will impact UK.

49. There may be some political sensitivity because the proposal attracts exclusive external EU competence. This is, however a settled law and is not seen as open to dispute in this case, and any such arguments should be more than balanced by the likely benefits to UK interests of applying the Convention within the EU.

50. If case volumes do change, and if the current proposal to revise court fees go ahead, potential benefits would therefore change as follows:

- Based on the new proposed fee scheme, the additional fee that accrues to UK over the 10 year appraisal period as a result of the approval of the Hague Convention would be in the range of £8mn to £18mn, with the main estimate of £12mn depending on the increase in the volume of international disputes heard at the London commercial court, how many disputes with London as choice of court are heard elsewhere currently and how many third countries would ratify the Convention.

- The net quantified impact of participation in the Convention is estimated to be positive when considering the new proposed fee schedule, which is based on full court cost fee recovery.

- With the proposed new fee schedule, the net monetised and quantified impact of The Hague Convention is likely to be positive with the monetised benefit for the UK over the appraisal period expected to be around £1mn, within the sensitive range of £0.5mn and £2mn. The net impact is positive because of the new proposed fee schedule that aims for full cost recovery across all court systems taken together.

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12 We assume that the legislation to allow enhanced fee charging will be in place by 2015/16.
13 We assume that user demand will not change in response to planned fee rises i.e. that court fee changes themselves will not change court case volumes as qualitative evidence conducted to date do not support any firm evidence to support an alternative assumption. Source: MoJ Internal Analysis.