

Society of Trust and Estate Practitioners (STEP)

Q1 What are the advantages and/or disadvantages to businesses and/or individuals in the UK of EU civil judicial cooperation? You may wish to focus on a particular instrument.

As the Call for Evidence itself notes, significant numbers of EU citizens now live in a Member State other than the one which they are resident. Moreover growing numbers of EU citizens benefit from the single market either indirectly from the increased competitive efficiencies and choices it brings or directly by buying goods or services from another Member State. Eurostat estimates that around 1 million UK citizens live or work in other Member States while around 2 million citizens of other Member States live in the UK (around 3% of the total population). This latter statistic reflects the UK's (particularly London's) position as a global hub/gateway between the EU and the rest of the world, something which attracts not only greater international investment into the UK but also supports a range of professional service providers including private client lawyers, accountants and others who specialise in servicing the needs of international families living in the UK.

It is clear that civil judicial cooperation has played a significant role in facilitating the growing flow of business, investment and citizens across EU Member States by providing a more coherent framework and greater clarity on rights and obligations. In doing so it has significantly reduced transaction costs for consumers and business alike.

Q2 What is the impact of EU civil judicial cooperation on UK civil and family law?

While the UK has a different legal tradition to much of the rest of the EU, the decades since EU membership have seen growing harmonisation of EU private international law with consequent adjustment to both UK law and the law in most other EU Member States. From the point of view of private client practitioners Brussels I and IIa have been particularly important in providing a harmonised backdrop to Private International Law (PIL) in the EU. While far from perfect, the result is a notable improvement on the previous position.

We would also note, however, that quite apart from the direct impact of Civil and Family Law instruments noted in the Call for Evidence, the long term trend for growing legal links with the EU and growing mobility of both businesses and citizens across the EU has indirectly shaped much of the debate about the development of PIL in the UK. The impact of EU membership on the UK legal framework thus extends well beyond the direct impact of the instruments outlined in the Call for Evidence. This only adds force to the conclusion that it would now be extremely difficult to disentangle the UK from EU PIL in any sensible way.

Q3 How is civil judicial cooperation necessary for the functioning of the internal market? Which aspects support and/or hinder it?

The internal market strategy of the EU is aimed at dismantling barriers and simplifying existing rules to enable EU individuals, consumers and businesses to make the most of the opportunities offered by direct access to EU Member States which constitutes a market comprised of a combined population of over 480 million people. The single market therefore rests on the so called “four freedoms” – the free movement of people, goods, services and capital. As citizens and businesses alike take the opportunities provided by these four freedoms it is inevitable that legal systems in Member States will need to deal with a growing number of issues that raise cross-border considerations. Civil judicial cooperation reduces uncertainty in these circumstances by giving greater clarity on which legal system applies in particular situations and also reduces costs. We find it hard to envisage an aspect of civil judicial cooperation which would hinder the development of the internal market.

Q4 Are there any areas where EU competence in this area has led to unintended and/or undesired consequences for individuals and companies in the UK? Please give examples.

None, that we are aware of in the area of PIL.

Q5 What are the advantages and/or disadvantages of the opt-in for the UK?

While STEP recognises the particular issues raised in the area of civil judicial cooperation by the very different legal tradition in the UK compared with much of the rest of the EU, one of the main practical impacts of the opt-in mechanism for the UK has been to significantly limit our ability to influence the debate about reform of legal issues and institutions within the EU. It has undoubtedly reinforced the view in other Member States that the UK is semi-detached from the EU. The resultant lack of success in influencing the policy agenda within the EU is particularly striking given the unparalleled reputation of the UK in the area of legal services and the international strength of our legal services industry. In most other areas where individual Member States have particularly strong positions in a sector or industry, such Member States in practice normally assume a leadership role within the EU in terms of developing the debate about reform and harmonisation. The UK has notably failed to achieve this role in legal services in spite of the widely acknowledged international strength of its legal services sector and the sector’s importance to the UK economy.

Q6 What are the advantages and/or disadvantages of the cross-border requirement for the UK's national interests?

No response.

Q7 What impact might any future enlargement of the EU have on civil judicial cooperation?

No response.

Q8 What future challenges and opportunities are there in the area of EU civil judicial cooperation?

We have arrived at a situation where there are now a range of EU instruments that deal with the recognition of a variety civil law structures such as matrimonial property regimes. There has been little equivalent progress, however, in securing equivalent recognition of common law instruments. There is an opportunity, therefore, for the various common law jurisdictions such as the UK, Ireland and Cyprus to press for the recognition of common law structures such as trusts. In this context pressing for EU-wide ratification of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition would be a sensible first step.

Q9 What are the advantages and/or disadvantages to the UK of the EU's powers to act internationally in this area?

In those areas where the EU has external competence it is highly likely that it will have significantly more influence in international negotiations than any Member State acting on its own. This only highlights the importance, however, of ensuring that the UK maximises its ability to influence the EU in such areas. In this context our reservations noted in our response to question 5 regarding the practical impact of the UK opt-in arrangements in terms of limiting the UK's influence within the EU have particular significance.

Q10 What would be the advantages and/or disadvantages to the UK of action being taken at an international rather than EU level?

The growing mobility of both business and citizens across borders which has been a feature of EU development over the past few decades is mirrored, although to a lesser extent, in the broader international arena. The same arguments regarding the benefits of civil judicial cooperation in terms of reducing uncertainty and costs therefore apply. As we noted in our response to question 9, however, it may well be that UK can maximise its influence at the international level by ensuring that it has a strong effective voice at the EU level.