Ministry of Justice, United Kingdom
Review of the Balance of Competences: Civil Judicial Cooperation

Submission of Dr Alex Mills[1]
Faculty of Laws
University College London

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Please note that this submission reflects the personal views of the author, and should not be attributed to the above organisation.

1. This submission is in response to the Call for Evidence launched by the Ministry of Justice in May 2013, "to examine the scope and nature of the EU's power to act in the area of civil judicial cooperation". It focuses on the power of the EU in relation to questions of private international law[2] in civil and commercial disputes[3] – principally, as exercised through the *Brussels I Regulation* (2001)[4], the *Rome I Regulation* (2008)[5] and the *Rome II Regulation* (2007).[6]

2. This submission is divided into four sections as follows:

   A. Background on private international law
   B. The exercise of power by the EU in matters of private international law
   C. Problems in the EU regulation of private international law
   D. Analysis and conclusions

[1] Senior Lecturer in the Faculty of Laws, University College London. BA (1st class hons, U.Syd.), LLB (1st class hons, U.Syd.), LLM (1st, Cantab.), PhD (Cantab.). Qualified (currently non-practising) lawyer at the Supreme Court of New South Wales, Australia. Taught at the University of Cambridge from 2006-2011, as a Fellow of Selwyn College and an Affiliate Lecturer at the Faculty of Law, before moving to UCL in 2011. My principal research and teaching interests are in public and private international law, and I convene and teach the courses on Conflict of Laws and International Commercial Litigation at UCL, which deal extensively with the rules of private international law (both EU and common law) which are applied by the English courts. I have published and lectured extensively and internationally on matters of public and private international law.

[2] Also known as the 'Conflict of Laws', particularly in the common law tradition.

[3] This submission does not directly address private international law issues in matters of family law, although many of the general comments in this submission are equally applicable in that context.

[4] Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters, EU OJ L 12, 16 January 2001.

[5] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), EU OJ L 177, 4 July 2008.

[6] Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), EU OJ L 199, 31 July 2007.

A. Background on private international law

3. Private international law deals principally with three questions as they arise in cross-border private legal disputes or relationships – first, the question of jurisdiction (which court can hear any disputes which may arise between two parties); second, the question of choice of law (which system or systems of law should be applied to regulate the relationship between two parties); third, the question of recognition and enforcement of judgments (the extent to which a judgment obtained in one state is viewed in another state as having settled the matters in dispute between the parties).

4. Private international law is a complex subject, both in terms of the technical character of its rules, and the range of competing policy interests at stake. The policy complexity is perhaps best understood as a consequence of the fact that private international law issues cut across a range of 'private' and 'public' interests, and can thus be viewed from a variety of perspectives.[7] Evaluating EU competence over matters of private international law is thus complicated by the fact that different historical and theoretical traditions of private international law have emphasised different objectives for the subject. Some have, for example, emphasised its role in protecting private rights, while others have emphasised more 'public' functions, such as articulating when it is appropriate for a state to exercise its regulatory authority. Other traditions have emphasised the potential for private international law to achieve 'systemic' or 'collective' objectives, like the reduction in potential conflicts between national legal systems which might be achieved through consistency in private international law rules between different states (for example, by aiming to ensure that wherever a dispute is litigated, the same substantive law will be applied). This important objective is often referred to as the goal of 'decisional harmony'.

5. Outside areas regulated by the EU, the modern common law approach to private international law has tended to be pragmatic and flexible, avoiding the adoption of a clear theoretical framework in favour of largely discretionary rules which allow the courts to reach what they consider to be the most appropriate result in each individual case.[8] Across the EU, prior to the emergence of unified European rules, the subject was characterised by diversity and a lack of coherence – a variety of national approaches, reflecting the distinct national traditions of private international law in the

[7] For this author's further views see generally Alex Mills, 'The Confluence of Public and Private International Law' (Cambridge University Press, 2009); Alex Mills, 'The Identities of Private International Law: Lessons from the US and EU Revolutions', Duke Journal of Comparative and International Law (forthcoming, 2013).

[8] "There is no sacred principle that pervades all decisions, but when the circumstances indicate that the internal law of a foreign country will provide a solution more just, more convenient and more in accord with the expectations of the parties than the internal law of England, the English judge does not hesitate to give effect to the foreign rules. What particular foreign law shall be chosen depends on different considerations in each legal category. Neither justice nor convenience is promoted by rigid adherence to any one principle … Private international law is no more an exact science than is any other part of the law of England; it is not scientifically founded on the reasoning of jurists, but it is beaten out on the anvil of experience." – James Fawcett and Janeen M. Carruthers, 'Cheshire, North and Fawcett: Private International Law' (Oxford University Press, 14th edn, 2008), p.37.

various Member States. An internationally unifying influence on private international law has been provided by the Hague Conference on Private International Law, an international organisation devoted to harmonisation of the field[9], although it has had limited success in achieving compromises acceptable to states from both common law and civil law traditions.

B. The exercise of power by the EU in matters of private international law

6. Within the EU, the conception and function of private international law has been transformed over recent years.[10] Instead of being viewed as part of the diverse traditions of national law, private international law has developed a new 'European' legal identity as part of the rules developed to facilitate the efficient functioning of the internal market. In 1999, the Treaty of Amsterdam gave the institutions of the EU a new competence in the field of private international law.[11] As amended and renumbered by the Lisbon Treaty (2009), Article 81(2) of the Treaty on the Functioning of the European Union (previously the Treaty on the European Community) now provides (in part) that:

> the European Parliament and the Council . . . shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:
>
> (a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases; [and]
>
> . . .
>
> (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction[12]

7. This enhanced regulatory capability has received expression in an active law-making programme which sees private international law developing an increasingly prominent role in the European legal order. The *Brussels I Regulation* (2001) on jurisdiction and

[9] See generally, eg, Geert De Baere and Alex Mills, 'T.M.C. Asser and Public and Private International Law: The life and legacy of "a practical legal statesman"' (2012) Netherlands Yearbook of International Law 3.

[10] See further eg Alex Mills, 'Federalism in the European Union and the United States: Subsidiarity, Private Law and the Conflict of Laws' (2010) 32 University of Pennsylvania Journal of International Law 369 at p.400ff.

[11] See generally eg Andrew Dickinson, 'European Private International Law: Embracing New Horizons or Mourning the Past?' (2005) 1 Journal of Private International Law 197; Oliver Remien, 'European Private International Law, the European Community and its Emerging Area of Freedom, Security and Justice' (2001) 38 Common Market Law Review 53 at p.60ff; Peter North, 'Private International Law: Change or Decay?' (2001) 50 International and Comparative Law Quarterly 477; Jurgen Basedow, 'The communitarization of the conflict of laws under the Treaty of Amsterdam' (2000) 37 Common Market Law Review 687.

[12] Consolidated version of the Treaty on the Functioning of the European Union, 2010 OJ (C 83) 47, 30 March 2010.

the recognition and enforcement of judgements, which updated and strengthened the *Brussels Convention* (1968)[13], is perhaps the most prominent recent development. Rules dealing with the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, initially developed in 2000, were replaced and expanded with the *Brussels II* bis *Regulation* (2003)[14], which came into effect in March 2005. The *Rome I Regulation* (2008) on choice of law in contractual obligations, which took effect from December 2009, was the culmination of a project to both update the *Rome Convention* (1980)[15] and bring it more clearly within the European legal framework. The *Rome II Regulation* (2007), which took effect from January 2009, introduced further harmonised European choice of law rules for disputes involving non-contractual obligations.

8. There are several other recent EU Regulations in this field which are not (at least at present) applicable in the UK. A new *Rome III Regulation* was adopted and came into effect in 2012 in certain Member States (under enhanced cooperation rules)[16], dealing with choice of law in divorce and legal separation – the UK has not elected to participate in these arrangements.[17] An EU Regulation on private international law matters relating to succession and wills was also recently adopted[18] and is scheduled to come into effect in 2015, although the UK has at present exercised its power (as described in the Call for Evidence) not to opt-in to this Regulation. The UK has also not at present opted in to two further proposals for Regulations on matrimonial property[19] and the property consequences of registered partnerships[20] (known as the *Rome IV Regulations*), which were presented in March 2011.

9. The significance of this European law-making is that it has effected a transformation not only in the source of rules of private international law – from national law to European law – but a transformation in their character and function. Within the EU,

[13] Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, EU OJ C 27, 26 January 1998.

[14] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, EU OJ L 338, 23 December 2003.

[15] Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, EU OJ C 027, 26 January 1998 (consolidation).

[16] Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

[17] Each Member State may choose whether or not to participate in an 'enhanced cooperation' measure, in accordance with rules set out in Title III of the Treaty on the Functioning of the European Union.

[18] Regulation (EC) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, EU OJ L 201/107, 27 July 2012.

[19] Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, COM(2011) 126 final, 2011/0059 (CNS), 16 March 2011.

[20] Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, COM(2011) 127 final, 2011/0060 (CNS), 16 March 2011.

private international law rules are viewed principally as serving a *systemic* or *public ordering* function, allocating regulatory authority between Member States in the service of "the proper functioning of the internal market". To some extent, these ideas are new, particularly in their focus on the internal market. They are, however, also a renewal of private international law's traditional 'public' and 'systemic' perspectives. This is perhaps particularly notable with respect to the revival in significance and stature of the traditional objective of avoiding conflicts between legal orders. For example, strict rules of *lis pendens* (deferring to the court first seised of a dispute) and judgment recognition in the *Brussels I Regulation* (2001) strive to avoid conflicting decisions by reducing instances of overlapping jurisdiction between Member States, based on the argument that "In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States."[21] The harmonisation of choice of law similarly aims to ensure decisional consistency, based on the argument that "The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought."[22] These are traditional objectives of private international law, but reconceived as means to a 'greater' end – the principal objective of improving the efficient functioning of the European internal market.

10. It is not difficult to understand the perspective of the instigators of European private international law reforms. Viewed from the point of view of the interests of the internal market, the range of inconsistent private international law regulations which were present in the various Member States prior to European reforms clearly appears as an obstacle or obstruction to the smooth functioning of the market. Parties living or doing business in different Member States would find that their relationships were regulated in inconsistent and fragmented ways – that it was difficult for them to know where they might be subject to civil proceedings, and what law or laws might be applied to their legal relations. One solution to these problems would be to adopt uniform EU rules of private law – an EU code of contract law, or tort law – but such a project remains politically contentious, practically uncertain, and legally questionable. EU private international law thus has a unique and critical role to play in the European legal order. By ordering the diversity of private law systems of the different Member States, private international law supports and affirms that diversity – it achieves greater certainty for those living or doing business across borders in the EU, without the need for adopting substantive European rules. Private international law is thus also intimately connected with the principle of *subsidiarity* in EU law, as it relates to private law – through coordinating the diversity of national private law systems,

[21] *Brussels I Regulation* (2001), *supra* n 4, Recital 15.

[22] *Rome I Regulation* (2008), *supra* n 5, Recital 6; and (identically) *Rome II Regulation* (2007), *supra* n 6, Recital 6.

private international law helps preserve that diversity, by striving to achieve equal treatment of equivalent cases without imposing substantive legal uniformity.[23] This is a point which it is critical to emphasise. The adoption of harmonised European rules of private international law can be viewed as a measure which *balances* the interests of the internal market with the interests of Member States in maintaining their distinct legal traditions and identities. The European harmonisation of private international law should thus not be considered in isolation, but in terms of the broader support it gives to national sovereignty within the context of the European internal market.

11. While such harmonisation projects always present difficulties in terms of the potential for inconsistent national interpretations of the rules, the European Court of Justice has gradually been, and will continue to be, able to offer definitive guidance on disputed provisions. As further practical harmonisation is achieved, rules of private international law will increasingly effect an ordering of private law regulatory authority between the various Member States, aiming to minimise the potential for jurisdictional conflicts by ensuring that only one Member State takes jurisdiction over a dispute (through harmonised rules on jurisdiction and *lis pendens*), that wherever a dispute is litigated the same law will be applied (through harmonised choice of law rules), and that the resolution of a dispute in one Member State will almost always preclude the re-litigation of that dispute in another Member State (through rules on the recognition and enforcement of judgments). While this means a loss of independent UK regulation in relation to at least some private international law matters, it creates benefits for UK businesses and individuals through enhancing the efficient functioning of the internal market, in particular through allowing UK businesses to understand more easily the litigation risks involved in conducting business across borders.

C. Problems in the EU regulation of private international law

12. There are, however, a number of problems which have arisen in practice with the development of European private international law regulation.[24] One is a consequence of the fact that this regulation is focused on achieving European rather than international objectives. The *Brussels I Regulation* (2001) has faced particular difficulties concerning its scope of application. The terms of the Regulation determine its applicability principally on the basis of the 'domicile'[25] of the defendant in any

[23] See further generally Mills (2010), *supra* n 10.

[24] Some of these problems are being addressed under the recently agreed reforms to the *Brussels I Regulation* (2001) (as noted in the Call for Evidence), which are due to come into effect in 2015, but these reforms are limited and partial. See Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20 December 2012; see further http://conflictoflaws.net/2012/brussels-i-recast-set-in-stone/.

[25] As defined in Articles 59 and 60 of the *Brussels I Regulation* (2001).

civil or commercial litigation – potentially encompassing claims against EU domiciled defendants which are otherwise entirely unconnected with the internal market. However, the rules of the Regulation are drafted only with internal market problems in mind – giving no consideration, for example, to the effect of jurisdiction agreements in favour of non-Member State courts, subject matter connections with non-Member States, or prior proceedings in non-Member States.[26] The practical impact of this limitation is that the allocation of regulatory competence to Member States may not sufficiently take into consideration the connections between a dispute and non-Member States. The Regulation may thus end up allocating regulatory authority inappropriately, and actually facilitate *more* conflicts between Member State and non-Member State legal orders. The general problem with the *Brussels I Regulation* (2001) is a failure for its rules to match up to its scope (both as interpreted by the European Court of Justice) – its scope encompasses a variety of non-internal market questions, but its rules are motivated only by internal market considerations, with limited recognition of their 'externalities'.

13. Further related problems also arise from the influence of the internal market on the *design* of European rules of private international law. One impact is that European rules have tended to be more rigid, aimed at achieving certainty and predictability for market participants, rather than necessarily at achieving appropriate outcomes.[27] From a common law perspective, this change has at times appeared regressive.[28] In some cases, the selection of rule has also itself been problematic. In the *Rome Convention* (1980) and now *Rome I Regulation* (2008), for instance, the law applicable to a contract in the absence of party choice is (rebuttably) presumed to be the law of the location (variously defined) of the characteristic performer of the contract.[29] In many cases it is difficult to see the logic of this choice – why one party's home law ought to govern a relationship which is centred elsewhere, around the place of performance of the contract. This is a concern which has arguably led English courts to a greater willingness to overcome the presumption compared with the courts of other Member States – diminishing the effectiveness of the rules in achieving decisional harmony.[30] The presumption has the benefit of at least appearing more certain and predictable, particularly where contractual performance crosses borders, but this 'internal market'

[26] This well-known problem is highlighted by the ECJ decision in *Owusu v Jackson* [2005] ECR I-553; see further eg Richard Fentiman, 'Civil Jurisdiction and Third States: *Owusu* and After' (2006) 43 Common Market Law Review 705.

[27] This is of course a question of balancing rather than absolutes – for example, Recital 16 to the Rome I Regulation (2008), *supra* n 5, provides that "To contribute to the general objective of this Regulation, legal certainty in the European judicial area, the conflict-of law rules should be highly foreseeable", but immediately acknowledges that "The courts should, however, retain a degree of discretion to determine the law that is most closely connected to the situation."

[28] See further eg Trevor C. Hartley, 'The European Union and the Systematic Dismantling of the Common Law of Conflict of Laws' (2005) 54 International and Comparative Law Quarterly 813.

[29] Rome I Regulation (2008), *supra* n 5, Article 4(1) and 4(2), in conjunction with Article 19.

[30] See eg Jonathan Hill, 'Choice of Law in Contract under the Rome Convention: The Approach of the UK Courts' (2004) 53 International and Comparative Law Quarterly 325.

objective is not a value traditionally prioritised in common law private international law rules which have historically been more focused on ensuring the *appropriate* allocation of regulatory authority.

14. Similarly, in the context of jurisdiction the *Brussels I Regulation* (2001) has been interpreted by the ECJ to mean that considerations of *lis pendens* – motivated by avoiding potentially conflicting parallel proceedings in different Member States – outweigh the need to give practical effect to jurisdiction[31] or arbitration[32] agreements. Thus, a court of an EU Member State second seised of a dispute, even if it believes there is an exclusive jurisdiction agreement in its favour, is obliged to stay its proceedings in favour of the Member State court first seised, clearing the way for 'strategic' (potentially even bad faith) litigation tactics – the infamous 'Italian torpedo'.[33] The fact that the rules accommodate such tactics is likely to have a significant negative impact on the legal certainty which the rules aim to achieve.

15. In summary, the various criticisms levelled at European regulation of private international law tend to circle around the idea that it has favoured certainty and predictability over appropriateness – both in terms of applying relatively rigid rules which preclude fact-sensitive decisions, and in terms of the questionable appropriateness of some of the rules chosen. In general, it seems that at least to some extent a traditional policy objective of private international law – the *appropriate* allocation or division of regulatory authority – has been partially sidelined by other policy objectives, in particular promoting the efficiency of the internal market. This is, of course, a question of degree – EU private international law has not adopted arbitrary rules, and in some cases specialised rules have been designed with other regulatory goals in mind, particularly when it comes to the protection of weaker parties like consumers[34] and employees,[35] and the protection of the environment.[36] But in general the critics of EU private international law rules have highlighted what is perceived as an excessive focus on the interests of the internal market over other policy objectives which ought to be taken into consideration, including the traditional interests of private international law in regulating the allocation of competence between states, not limited to EU Member States.

[31] *Gasser v MISAT* [2003] ECR 14.

[32] *Allianz SpA v West Tankers* [2009] ECR I-663.

[33] Mario Franzosi, 'Worldwide Patent Litigation and the Italian Torpedo' (1997) 7 European Intellectual Property Review 382; see further Hartley (2005), *supra* n 28.

[34] Rome I Regulation (2008), *supra* n 5, Article 6.

[35] Rome I Regulation (2008), *supra* n 5, Article 8.

[36] Rome II Regulation (2007), *supra* n 6, Article 7.

D. Analysis and conclusions

16. Based on the material set out above, the following five conclusions may be highlighted.

17. ***First***, EU regulation in matters of private international law requires a distinct analysis from other areas of law. Some of the goals of private international law – particularly, achieving 'decisional harmony' – are best achieved where the subject is harmonised at a supra-national level. EU harmonisation has achieved a great deal in a relatively short period of time, where other international harmonisation measures have had more limited success. The adoption of private international law rules at the EU level has the potential to achieve benefits for the internal market. Whether this has actually been the case in practice would be a rather difficult question of empirical research, although the principles are well understood – if individuals and businesses are able to understand more readily what rules of jurisdiction and substantive law will apply to their cross-border activities, they will be more prepared to conduct business across traditional national boundaries. UK businesses and natural persons benefit from the increased certainty of EU regulations in relation to their cross-border activities.

18. ***Second***, it is a particular characteristic of private international law that it operates as a 'secondary' level of law, which determines the applicability of 'primary' rules such as rules of contract or tort law. As such, private international law rules offer a technique through which to increase decisional harmony, which has a relatively minimal impact on national competence. Decisional harmony in civil claims across the EU might be achieved through harmonisation of national private law (including contract, tort and property law). The Europeanisation of private international law achieves much of the benefit of such harmonisation, but at a much lower 'cost' in terms of its impact on national sovereignty and legal traditions and identities. The harmonisation of rules of private international law at the EU level is thus consistent with the fundamentally important EU principle of subsidiarity, and may be understood as a measure which orders and thus preserves national private law competence.

19. ***Third***, there remain significant areas of controversy and difficulty concerning the extension of EU powers in the field of private international law beyond matters directly affecting the internal market, particularly in the context of the *Brussels I Regulation* (2001). This issue was previously a matter of legal controversy, because under previous versions of the EU treaties the EU could only regulate 'insofar as necessary for the proper functioning of the internal market' (as noted in the Call for Evidence, p.21). It is now more a question of subsidiarity or policy, because EU power is, under the Treaty of Lisbon, no longer limited to internal market questions (as noted above and in the Call for Evidence, p.23). One particular issue at present is that the rules adopted in the *Brussels I Regulation* (2001) do not adequately match the scope of application of the Regulation – the Regulation has been interpreted to apply to situations which are only partially connected to the internal market, but the

Regulation does not fully take into account the range of interests which should be taken into consideration in such cases. Aside from present practical problems with the operation of these rules, there is a risk that this disconnect will lead to 'competence creep' – that the *Brussels I Regulation* (2001) rules will be expanded to cover all issues of jurisdiction in civil and commercial claims which arise before the English courts, regardless of whether they have an internal market connection. This is in fact what was proposed by the European Commission in the recent Regulation reform negotiations[37], although rejected in the course of those negotiations. There could be advantages to such an extension – the increased certainty this might give to non-EU parties could promote inward investment and trading activities – but this would come at a cost in the elimination of national traditions of jurisdictional rules, which might be of particular concern to London as a leading international centre of dispute resolution.

20. ***Fourth***, there are arguably some quality concerns in the way in which the EU has exercised its competences in this area. To some extent such issues are inevitable – no legislation is perfect, particularly where it is innovative, and EU practice has shown a willingness and capability to adopt remedial reforms in some contexts. These issues do, however, highlight the importance of the UK fully participating in EU law-making processes, in this as in other fields, particularly through high quality representation of the common law perspective in the influential Legal Affairs Committee of the European Parliament. Three further aspects of EU law-making might be emphasised in this context.

(i) The UK's 'opt-in' power in this field, derived from the Treaty of Amsterdam, is not merely a safety mechanism through which the UK might choose to exclude EU legislative instruments which are considered unsatisfactory. Used judiciously and alongside a policy of constructive engagement, it also has the potential to increase UK influence in EU legislative processes. The *Rome I Regulation* (2008) negotiations are an apparent success story of this possibility, as noted in the Call for Evidence. Unsparing use of the power not to opt in to legislative instruments in this field is, however, likely to diminish UK influence over time.

(ii) The European Court of Justice has played a highly important role in the development of this area of law, through its interpretation of EU rules, particularly the *Brussels I Regulation* (2001). It is essential that the UK participate in EU judicial processes wherever possible, to ensure that the ECJ has input of the highest quality and from a common law perspective, so that the Court fully appreciates the particular implications or impacts of its decisions on the UK, minimising the risk that the decisions of judges from

[37] COM(2010) 748 final, 2010/0383 (COD), 14 December 2010.

civil law systems may have unintended consequences for common law states including the UK.

(iii) To the extent that further expansion of EU legislation is proposed in this field, the UK should carefully consider the costs and benefits of such reforms. The UK Parliament may wish to consider conducting its own subsidiarity review (as permitted under Article 6 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality[38]) so that arguments as to the necessity and benefit of EU regulation are fully considered.

21. ***Fifth***, it is important to note that in this field the EU has gained external competence where it has exercised internal competence, in accordance with accepted principles of EU law and as noted in the Call for Evidence.[39] EU regulation of matters of private international law does not appear likely to operate as a barrier to efforts to achieve wider international harmonisation, including through the Hague Conference on Private International Law (which has in fact accepted the EU as a special non-state Member). The UK would indeed appear to be in a much stronger position negotiating as part of an influential trading block with harmonised private international law rules than it would be if it were to seek separate bilateral arrangements with other non-EU states. If the UK were operating independently from the EU in this field, there would also be a risk that international negotiations between the EU and other major trading partners or blocks would achieve a compromise without significant UK input, at which point the incentives for the UK to adopt such harmonised rules might outweigh any unsatisfactory aspects they may have. Remaining part of EU private international law regulation is thus not only likely to be beneficial for UK persons and businesses in relation to their internal market activities, but also to offer the greatest prospect of achieving wider benefits (in terms of legal certainty and decisional harmony) for their activities outside the EU.

Dr Alex Mills
Faculty of Laws
University College London

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[38] EU OJ C 83/206, 30 March 2010.

[39] *Opinion 1/03 (Lugano)* [2006] ECR I-1145.