Weighing European Private International Law in the Balance

The United Kingdom Government is currently undertaking a review of the competences of the European Union, asking what the European Union does, and how it affects government and the general public in the United Kingdom.

As part of that review, the Ministry of Justice has published a Call for Evidence on the impact of European civil justice instruments and has organised two consultation events, in collaboration with Eva Lein, Research Fellow in Private International Law at the British Institute of International and Comparative Law. The first, on the instruments dealing with civil and commercial matters, was held on Monday 3 June. The second, examining the instruments in the area of family and succession law, is due to be held on Thursday 20 June. Chaired by John Hall of the Ministry, the list of speakers is as follows:

- Carolina Marín Pedreño, Dawson Cornwell
- Mark Harper, Withersworldwide
- Richard Frimston, Russell Cooke
- Professor Paul Matthews, King's College London

The event is free, but places are limited. If you would like to attend, please book online at the Institute's website. The Ministry has also invited written responses to the Call for Evidence (e-mail to balanceofcompetences@justice.gsi.gov.uk or in hard copy to Ministry of Justice, 102 Petty France, SW1H 9AJ). You can also, if this is your thing, share your thoughts about #BOCreview on Twitter @MojGovUK.

The current malaise among many in the UK with the European Union, its institutions and laws is well known. This, however, is an area in which the *acquis*,

although not problem free, seems to be working relatively well and to have been favourably received by commercial organisations, including in the financial sector. The Brussels I and Rome I Regulations are generally well-regarded, and (although it is too early to pass judgment) the Rome II Regulation seems to be bedding down without undue difficulty. Moreover, the UK's opt-out in the civil justice field has given it the flexibility to participate in those instruments that it considers likely to be in the overall interest of businesses and citizens, while exercising caution in other areas. Greater disparities between the common law and the civil law in the areas of family law, wills and succession have resulted in the more frequent exercise of the opt-out, but the UK has remained engaged during negotiations to see if a better fit, satisfactory to other Member States, can be achieved (as in the case of the Maintenance Regulation). Overall, therefore, the balance of EU competence in this area appears satisfactory from the UK's perspective.

It should follow that the UK's policy goal in this area should not be one of retrenchment, but of continued engagement with its partners in the EU to enhance co-operation in the civil justice field, to the benefit of all. That does not, it must be emphasised, require a raft of new measures, or consistent tinkering with the old ones. Instead, it is submitted, the following activities should provide the focus of co-operation in the coming years:

- Strenghtening the EU's institutional framework in the civil justice field, notably by establishing a specialist chamber or court (with specialist judges) dealing only with private law matters. This step, above all, is essential if the EU's legislative activity is to be effective and to maintain the confidence of the Member States and the citizens.
- Ensuring better integration of the private international law instruments with other legislative instruments (particularly Directives) adopting substantive private law rules for the internal market, including for the protection of consumers and employees. The Commission should, as a matter of course, assess the inter-action of proposed, private law measures with the private international law instruments at an early stage.
- Monitoring the application and judicial development across the EU of the civil justice *acquis* as a whole over a longer period, allowing a period of reflection to assess its impact and encourage discussion of possible refinements and incremental developments to ensure better co-ordination

of the instruments. The practice of routinely including “5-year review” clauses in civil justice instruments, resulting in a merry-go round of legislative reviews and proposals, should be abolished. It’s time to take stock of what we have – after all, it doesn’t look too bad.