



The City of London Law Society

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Response by the City of London Law Society's Financial Law Committee to the consultation paper by the Ministry of Justice entitled "Rome I – should the UK opt in?"

The City of London Law Society ("CLLS") represents approximately 12,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to Government consultations on issues of importance to its members through its 17 specialist Committees. A working party of the CLLS Financial Law Committee, made up of solicitors who are experts in their field, have prepared the comments below in response to the proposals contained in the consultation paper by the Ministry of Justice entitled "Rome I – should the UK opt in?".

The members of the working party comprise:

Dorothy Livingston – Herbert Smith LLP
Tolek Petch – Slaughter & May
Andrew Dickinson – Clifford Chance
Adam Johnson – Herbert Smith

We consider that it is possible to give our responses briefly.

Question 1: Is it in the national interest for the Government, in accordance with Article 4 of the UK's Protocol on Title IV measures, to seek to opt in to the Regulation? If not, please explain why.

We believe that the concerns that led to the decision by the United Kingdom not to participate have been addressed in the final regulation. Accordingly, we consider that opting in is in the national interest of the UK.

Question 2: Should the Rome 1 rules apply throughout the UK if the UK opts in to the Regulation? If not, please explain why.

The same rules should apply throughout the UK. Any other result could undermine legal certainty and would not serve the legitimate interests of the devolved administrations.

Question 3: Do you agree with the Partial Impact Assessment at Annex A of the consultation paper? If not, please explain why.

We do not intend to comment on the Impact Assessment. We have the following additional observations.

First, the outcome of the negotiations has vindicated the decision of the Government not to opt in to the Regulation when it was originally proposed. The UK was, as a result, better able to influence the outcome of the negotiations and secure an acceptable result. This should be borne in mind in relation to future European legislation in this area.

Second, the Regulation will not apply to Denmark, Iceland, Liechtenstein or Norway. The choice of law provisions in the insurance directives do, however, apply to these countries. We hope that steps will be taken to amend the directives to ensure that the same rules apply across the EEA to insurance.

This response is not confidential and we have no objection to its public disclosure.

