MYKOLAS ROMERIS UNIVERSITY
FACULTY OF LAW
INSTITUTE OF INTERNATIONAL AND EUROPEAN LAW

GRETA UŽKURAITĖ
(INTERNATIONAL LAW)

THE INFLUENCE OF THE UNITED KINGDOM'S WITHDRAWAL FROM THE EUROPEAN UNION ON THE APPLICATION OF THE EUROPEAN UNION'S PRIVATE INTERNATIONAL LAW

Master thesis

Supervisor –
Doc. dr. Katažyna Mikša

Vilnius, 2018

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

CJEU – Court of Justice of the European Union

EEA – European Economic Area

EFTA - EU and European Free Trade Association

ECJ – European Court of Justice

EU – European Union

PIL – Private International Law

TFEU – Treaty on the Functioning of the European Union

UK – United Kingdom

INTRODUCTION

Relevance of the final thesis. When we hear a word "Brexit", most people remember 23rd of June 2016 – when the majority of the United Kingdom ("UK") citizens voted for the UK withdrawal from the European Union ("EU"). It was probably a common sense that let everyone imagine that it was going to be a complex and historical divorce between the UK and the EU. However, it is very important to understand the deep meaning of this event and its impact to the EU's private international law. The EU Private international law is there to find answers to questions that are arising when there is a civil case between private parties with a foreign element.[1] Meaning that various EU legal instruments ensure the successful accomplishment in civil judicial cooperation between all the EU Member States. The current EU legal framework consist of three main aspects: the determination of jurisdiction, the mutual recognition and enforcement of judgements between the EU Member States and the choice of applicable law.[2] However, other issues concerning civil, commercial matter and family law are also taken into account and being regulated by EU legal documents.[3] Different kind of private international law regulations were created by the EU for a reason: to simplify and harmonize legal questions that may arise domestically and apply them across nearly all of the EU Member States.[4] At the moment, the EU law has several EU Regulations that help to regulate choice of law, jurisdiction within the EU Member States and other important aspects in civil and commercial matters as well as family related subjects and many others that are relevant for civil judicial cooperation.. These regulations do help to determine such legal framework that is not only clear and predictable but also its enforcement is done under the same conditions across the EU.[5] As a result, the EU private international law becomes, at least partly, unified across all Member States that contributes to simplified legal regulation despite of the fact that each EU Member State has its own unique national legal system.

During the withdrawal negotiation phase, the entire current EU legal framework will continue to apply as it did before. It is planned to maintain contemporary civil judicial cooperation between the UK and the EU unaltered during the transition period, after the official withdrawal is

[1]Jonathan Fitchen, "Brexit and EU Private International Law: Cross-border Judgement- Unintended Consequences", 2016.
https://aberdeenunilaw.wordpress.com/2016/07/07/brexit-and-eu-private-international-law-cross-border-judgments-unintended-consequences/
[2]Denis Philippe, "The Judicial Impact of the Brexit", 2016.
http://www.philippelaw.eu/Front/c2760/NewsDetails.aspx?News=438
[3]Jonathan Hill, "Brexit and Private International Law", 2016 https://legalresearch.blogs.bris.ac.uk/2016/07/brexit-and-private-international-law/
[4]Jonathan Fitchen, op. cit., 1.
[5]HM Government, *Providing a Cross-border Civil Judicial Cooperation Framework - a Future Partnership Paper*, 22 August 2017, Department for Exiting the European Union, p. 6

finalised and becomes in force. However, the temporary application of the EU legal instruments do not change the fact that not only the EU Regulations will cease to apply to the UK in the near future but the Court of Justice of the European Union ("CJEU) findings will no longer be binding on it either.[6] The historic situation in the EU history leaves many unanswered legal questions that perhaps were not explained well enough to British people before voting.[7] Therefore it is only natural to assume that the EU's decision on how to act in regards to the UK's withdrawal has as much importance as for the UK itself since private international law will definitely face some amendments and it is just a question how liberal and indulgent the EU is going to be towards them. Therefore, in this master thesis, it will be carefully discussed the pre-Brexit legal framework between the UK and the EU, currently ongoing withdrawal negotiation, to what extent the EU private international law is considered in the whole process and lastly, what will happen to the EU private international law in case of unsuccessful negations.

Problem of research. The starting point of this research is to discuss the eventual consequences that the UK's decision has brought to private international law. Majority of the EU Regulations require reciprocal agreement in order to come in force. Meaning that majority of EU legal instruments cannot be adopted by states unilaterally without the EU consent. Thus, in case the UK will decide to preserve the EU law after the withdrawal, it may not be possible anymore. As a result, the UK will need to find suitable alternatives, such as 2007 Lugano Convention, 2005 Hague Convention or 1968 Brussels Convention for determination of jurisdiction and enforcement of judgement in civil and commercial matters as Brussels Ibis and Brussels IIbis will no longer be applicable. The alternative solution is required for family matters as well. However, the mentioned conventions may provide a temporary solution but may have a negative influence on current EU legal framework by enabling parallel proceedings, anti-suit injunctions and other incompatibilities with existing private international law.

Scientific novelty and overview of the research on the selected topic. The Brexit has produced an exceptional outcome that has no previous precedence. The significance of the whole procedure has already raised many questions regarding broad scope of concerns. Due to the fact, that no such withdrawal from the EU has ever happened before, the expectations and debate can only be acknowledged in the speculative manner. However, it brings an important purpose that requires careful analysis in order to make plausible assumptions regarding future civil judicial cooperation

[6] Marta Requejo, "Brexit and Private International Law, Over and Over", 2017. https://lawofnationsblog.com/2017/03/27/brexit-private-international-law/
[7] Steven Erlanger, "Brexit? For Now, EU Leaves Fights to the UK", 2017. https://www.nytimes.com/2017/09/06/world/europe/brexit-eu-negotiations.html

between the UK and the EU, protection of EU and UK nationals, procedure for enforcement of judgements, application of law and jurisdiction clauses. All the mentioned matters are the essential components that create well-functioning EU legal system. For example, M. Danov focused mainly on Brexit and its impact on the UK[8], J. Fitchen[9] put great focus on the history in order to understand the legal gaps in current civil judicial cooperation that might have influenced the result of the UK's referendum, even J. S. Caird[10] addressed the importance to maintain the EU's private international law in the UK's national system. However, the main aspect that is reflected in current academic works is the legal impact to the UK. However, this master concentrates mainly on the EU's private international law instead by evaluating the possible impact to its application as it is only understandable that the withdrawal will have a significant impact on the EU private international law that has not been inspected before.

Significance of research. The significance of this master thesis is embodied in the careful legal analysis of the current legal framework of the EU private international law that may allow to make plausible notion on the future legal framework within the EU. This research criticises the fact that the UK has always been given more opt-outs from the EU legislation due to its exceptional nature of preserving its national laws. By understanding the pre-Brexit fundamental legal structure of the EU, it will lay out the objective assumptions for the future. The EU private international law that will be affected by the withdrawal covers extensive scope of legal aspects that include private citizens across the EU as well. Therefore, the analysis of the thesis will contribute in the predicting the future of the EU legal framework that will allow to set precise actions for the successful and transformed perspective of the EU private international law. In addition to this, it will contribute in setting the simplified way to handle the UK related disputes on a national level too.

The aim of research. The main goal of this thesis is to analyse the areas of the EU private international law that will be affected by the Brexit the most in order to have an objective overview and legal advice on how these complex situations could be solved not only in theory but also in practice.

The objectives of research. The following objectives were raised to fulfil the main aim of this research:

---

[8] Mihail Danov, *Cross-Border Litigation in England and Wales: Pre-Brexit Data and Post-Brexit Implications,* 2017, Exeter Centre for International Law.
[9] Jonathan Fitchen,"The PIL Consequences of Brexit", 2017. http://www.nipr-online.eu/upload/documents/20171006T120337-NIPR%202017-3_Fitchen.pdf
[10] Jack Simson Caird, *Legislating for Brexit: The Great Repeal Bill*. 2017, House of Commons Library, Briefing Paper.

1. to analyse exceptional civil judicial cooperation between the UK and the EU in accordance to current framework of the EU private international law;
2. to determine what part does the EU private international law take during the negotiation process and what kind of potential outcome it may bring in case the negotiation of the UK's withdrawal does not end successfully;
3. to analyse possible application of other international legal documents in the UK's legal framework that could possibly replace currently existing EU legal instruments that are applicable in the UK at the moment.

Research methodology. The research was done by embracing the following methods: 1) document analysis method was used in order to examine how different EU legal documents work separately by creating harmonized legal system within the EU Member States, 2) analytical method was taken for application in careful analysis of the EU legal documents, especially the ones with exceptional provisions and prospective legal outcome of the UK's withdrawal that could be foreseen by understanding the EU Regulations and other legal instruments, 3) the comparative analysis method was used in the analysis of the views of the UK and the EU that expressed different expectations regarding the withdrawal and future civil judicial cooperation as well as by comparing future alternatives for the UK and what incompatibilities they would bring in relations to EU private international law.

Structure of research. This master thesis is consisted of introduction, three main chapters, conclusions, abstract and summary written in both English and Lithuanian language. The first chapter analyses the contemporary legal framework of the EU that is applied in the UK and other EU Member States. It also covers the exceptional nature of the UK in relations to the EU. The second chapter analyses the process of Great Repeal Bill of the UK's withdrawal and the relevance of the EU private international law during this negotiation. The third chapter consists of evaluation of future legal framework between the UK and the EU in case the whole process of withdrawal negotiation is unsuccessful, and the UK will adopt other international legal documents rather than EU Regulations.

Defence statements. 1. The private international law is ongoing a unique phase which unfortunately minimized its certainty and predictability. 2. Other international legal documents such as 2007 Lugano Convention, 2005 Hague Convention and 1968 Brussels Convention will not be able to fill the gaps and successfully replace EU Regulations in jurisdiction, enforcement

of judgement and family matters. 3. For affective future civil judicial cooperation, the UK needs to seek for bilateral agreement with the EU in order to prevent itself from negative impact as well as protect current EU legal system.

1. HOW EU PRIVATE INTERNATIONAL LAW IS APPLIED IN THE UK WHILE IT IS STILL A MEMBER OF EU

In order to have the effective international legal communication, civil judicial cooperation within the EU Member States is inevitable. It operates in a way to assure that successful legal interaction is accomplished between different legal systems with disputes that have a foreign element. The civil judicial cooperation has three fundamental areas that put the focus on: determination of which Member State's court will be given the right to analyse the case; which country's law will be applied to that particular case and to ensure that the decision obtained in one EU Member State will be recognised and enforced in another EU Member State. The UK has an active participation in the EU's civil judicial cooperation by having a range of EU legal instruments adopted and implemented into its domestic legal system, participating in creation of new legal documents as well as suggesting the improvements for current ones. The international cooperation puts a lot of weight to ensure the predictability and certainty to both the EU and the UK nationals and businesses. The legal certainty drives the whole legal development towards and lays down the fundamental ground for future legal development and improvement. Hence, it is highly essential to understand the current civil judicial cooperation framework between the UK and the EU in order to predict the new potential one, which may be adopted after official withdrawal of the UK.

1.1. Exceptional judicial cooperation between the UK and the EU

A close cooperative relationship between the EU Member States is a very essential aspect in regard to legal stability and unification of numerous different national laws. The civil judicial cooperation would be inevitable without contribution of all of the EU Member States as much as without the EU's contribution to EU Member States by providing certainty, flexibility and understanding. Therefore, this chapter will cover exceptional civil judicial cooperation between the EU and the UK; the reasons for exceptional opt-out to appear in the first place; the objective legal reasons and what is hidden behind them. It is important to address these subjects in order to make an objective observation whether certain exception have brought any benefit to the UK and were they necessary in order to have prosperous relationship between the EU and the UK in regard to to civil judicial cooperation.

The importance of private international law and international civil judicial cooperation between states could be already detected in the 20th century, especially after the World War II. It

was essential for Europe to promote negotiations between the EU Member States in order to gain stability and cooperation with each other.[11] Having the shared legislation and the common interest to harmonize variety of national laws should not be too overrated. Even thought, every EU Member State has its own set of rules that govern its national legal system, the private international law should be assumed as a part of its national law as well.[12] However, due to numerous legal documents and revisions, it is understandable why certain EU Member States would seek to opt-out on key parts of EU legislation and the UK is one of them. The possibility to choose when to opt-in and when to stay aside should be recognized as an essential safeguard for protecting existing legal system.[13] Regardless of the fact the UK is not the only Member State with certain exceptions and selective application of EU legislation, it is essential to confirm that it is indeed the one with the most opt-outs. From the political aspect, the UK has not adopted European currency and does not belong to border-free Schengen area. From the legal aspect the UK has secured itself from various parts of EU legislation, gained personalized provisions and technically has never become a signatory of the Fundamental Charter of Human Rights.[14] In collaboration with Ireland, the UK has negotiated special exception too when the 1997 Amsterdam Treaty was agreed on. The exception was a Protocol that clearly stated that EU legislative measures in certain aspects would not apply to the UK and Ireland if 'opted in' was not specifically expressed by either of them within three months of publication of the EU legislative proposal.[15] The practise shows that opt-in possibility is still available, however it is essential to go over these specific exceptions in order to explore the exceptional aspects of civil judicial cooperation between the UK and the EU prior Brexit.

First of all, it would be necessary to understand the exceptional aspects of political relations between the UK and the EU in order to understand the reasons for legal opt-outs. In 1997, former Prime Minister Tony Blair had interest for the UK to become a part the European Economic and Monetary Union. Unfortunately, the five national tests that were conducted to test this option did not validate this notion to be in the national interest. [16] On one hand, the UK's rights to vote in the European Council regarding issues and concerns to Eurozon matters is suspended, on the other hand, the UK is not bounded by decisions that are made by the European Central Bank or the

[11] Treaty Establishing the European Community, 1957, Art 220.
[12] Xandra Kramer et al, "A European Framework for PIL: Current Gaps and Future Perspective", 2012 p. 15
[13] HM Government, *Review of the Balance of Competences Between the United Kingdom and the European Union: Civil Judicial Cooperation*, 2014, p. 59.
[14] Mark Briggs, "Europe 'à la carte': The Whats and Whys Behind UK opt-outs", 2015. https://www.euractiv.com/section/uk-europe/linksdossier/europe-a-la-carte-the-whats-and-whys-behind-uk-opt-outs/
[15] HM Government, op. cit. 13:51.
[16] Mark Briggs, "Europe 'à la carte': The Whats and Whys Behind UK opt-outs", 2015. https://www.euractiv.com/section/uk-europe/linksdossier/europe-a-la-carte-the-whats-and-whys-behind-uk-opt-outs/

European System of Central Banks on monetary matters.[17] As a result, the UK has never had the EU national currency adopted up to today.

Additionally, the UK is one of the six EU Member States that decided to be excluded from Schengen zone. Since one of the main aims for Schengen border was to improve and simplify border checks between Member States that participated in the agreement, it was assumed that it could also simplify the procedure of crossing the border for criminals as well. [18] Due to the fact that EU has strict rules regarding free movement of people within Member States, the UK is not excluded of the right to let all EU citizens and their family members to enter the UK if no violation is detected.[19] Nevertheless, the opt-out from Schengen agreement does allow the UK to verify the EU citizens whether they could be entitled to enter the UK or not. For majority of non-EU citizens, the UK keeps the control in order to regulate their entry by applying the UK's national law. [20] However, under Protocol 19 of the Lisbon Treaty[21], the UK is still required to interact to EU proposals that were submitted under the Schengen agreement and inform the Council regarding its opt-out from participating within three months of the publication of the proposal, otherwise, the UK becomes bound by these proposals automatically.[22] In addition to border controls, the Treaty of Amsterdam provided EU right to legislate important aspects related to asylum, immigration and border controls. The UK was enabled to opt-in and maintain its border control as well in order to be able to protect its legal system.[23] The territorial limitation was therefore seen as a better option for the UK to maintain its existing requirements for entering the State rather than adopting the simplified procedure that was introduced by the EU.

Furthermore, the UK has opted-out from Charter of Fundamental Rights of the European Union too. The Charter was not adopted to implement new rights that would be recognized under EU law. To the contrary, the aim was to impose such framework and effective interpretation of existing EU rights that would ensure common recognition in all of the EU Member States.[24] Back in 2007, then Prime Minister Tony Blair informed that "Europe needs to work more effectively"[25]

---

[17] Mark Briggs, *supra* note 16.
[18] Steve Peers, "The UK and the Schengen System", 2015. King's College London http://ukandeu.ac.uk/the-uk-and-the-schengen-system/
[19] Ibid.
[20] Ibid.
[21] Protocol No 19 on the Schengen Acquis Integrated into the Framework of the European Union 2012/C 326/1.
[22] Gov.uk, "The JHA opt-in Protocol and Schengen opt-out Protocol" https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/588184/jha-opt-in-background.pdf
[23] HM Government, *supra* note, 13:18.
[24] Bryn Harris, "The Charter of Fundamental Rights in UK Law After Brexit: Why the Charter Should Not Be Transposed", 2017, p 5.
[25] Matthew Tempest, "Blair Sets Out Red Lines on EU Constitution", 2007. The Guardian. https://www.theguardian.com/world/2007/jun/18/eu.politics

and also that "First we will not accept a treaty that allows the charter of fundamental rights to change UK law in any ways".[26] One of the main cause why the UK was extremely against the Charter – to avoid enforcing Charter rights in the UK. In other words, the concern was that Charter would increase the risk for UK national law and labour law on the grounds to be incompatible with the Charter.[27] The additional Protocol 30 of the Charter was obtained by the UK which in Article 1 clarified that the Charter "does not extend the ability of Court of Justice of the European Union" to find UK existing law incompatible with the Charter.[28] Even though, the Protocol 30 ensured "comfort clause" rather than complete opt-out from the Charter, the Charter applies to the UK under the same conditions as it does in all of the EU Member States. For instance, the European Court of Justice ("ECJ") explained that article 1(1) of Protocol 30 cannot be classified as intention to exempt the UK from arisen obligations to meet and comply with the provisions of the Charter.[29] Therefore it could be argued that in a sense, the UK became involuntarily bound by the Charter even though the first intention was to remain opted-out from it.

Pursuing this further, the UK has had additional exceptions from legal aspect as well. The UK has opted-out from several important EU Regulations. These include Succession Regulation that is known as Brussels IV, Rome III Regulation and partly Maintenance Regulation.

To begin with Brussels IV Regulation, it was developed in order to unify succession laws within EU Member States. In England and Wales, people are given the right to determine whom they are leaving their assets to. Certain legal provisions that were mentioned in the Regulation exposed some concern that it would negatively affect the UK's legal system for estate matters. For instance, adopting this Regulation would have resulted in having 'clawback' applied in the UK's legal system which also applied in many other EU Member States.[30] The 'clawback' would imply that gifts received during certain individual's life may be recouped to their estate after death.[31] Therefore, according to the Regulation, for those EU Member States where Brussels IV applies, the succession of assets will be determined according to the country where the individual was residing at the time of their death unless deceased individual specified differently in their will.[32]

[26] Matthew Tempest, *supra* note 25.
[27] Bryn Harris, *supra* note, 23:5.
[28] Protocol No 30 on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom 2008/ C 115/1
[29] Joint case: N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform, 2011.
[30] HM Government, *supra* note 13:34.
[31] Ibid.
[32] Anna Metadjer, "The EU Succession Regulation now in force – how will it affect you?", 2015. Kingsley Napley https://www.kingsleynapley.co.uk/insights/blogs/private-client-law-blog/the-eu-succession-regulation-now-in-force-how-will-it-affect-you

In other words, it has been recognized that having common succession law within the EU definitely benefits EU citizens due to the fact that it makes the whole process less complicated for people to handle legal cases regarding international succession.[33] The main factors in the joint EU law on succession include[34]:

- Coherent application of one single law – Succession Regulation in one single court;
- EU citizens are given the right to choose whether the applicable law should be determined according to the country they have last lived or according to the one of their nationality;
- Easy enforcement of judgments as court decision on succession made in one EU Member State is easily recognized and enforced in the other.

In order to avoid any changes in existing national law, the UK has used an important legal safeguard – an opt-out - to protect its existing legal system regrading inheritance of property. On one hand, the succession law is not the same in other EU Member States either and Brussels IV Regulations is used only in succession cases with cross-border element. However, the question could be opened for discussion whether the UK is benefiting from exclusion of Brussels IV Regulation since there could be uncertainty for individuals that are linked to both the UK and the other EU Member States. On the other hand, the Brussels IV Regulation excludes number of essential problems, such as status and legal capacity of natural persons, the questions remain unanswered in case of disappearance, absence, unconfirmed death of the natural person; territorial validity, matrimonial aspects are also left without clarity. [35] Hence, it could be assumed, that the choice for the UK to remain opted-out from this Regulation was merely influenced by the notion to avoid even more legal complexity that may come from Succession Regulation.

Secondly, the UK has chosen to opt-out from the Maintenance Regulation at first as well. Since the EU decided to implement the Hague Protocol on the Law Applicable to Maintenance Obligations 2007 in relations to EU Maintenance Regulation, applicable law to maintenance needs in Chapter II of the Regulation, has to be identified by applying the Hague Protocol 2007.[36] Even though the UK is opted-into this Regulation later, it was done on exceptional conditions once again– without adoption of Chapter II as the UK is not a party to the provision of the 2007 Hague Protocol. Regardless of the fact, that not the whole Regulation is applied in the UK in relations to

[33] European Commission, "Successions and Wills", https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/civil-justice/family-law/successions-and-wills_en
[34] Ibid.
[35] Xandra Kramer et al, *supra* note 12:38.
[36] Ibid, p. 32

family, parentage and marriage cases, the English courts are assumed to be very generous and using broader scope of Maintenance Regulation for purpose of enforcement than it is actually stated in English law.[37] Ordinarily, when declaration of enforceability is finalised, the order could be enforced on common grounds. Thus, applicable law will belong to the enforcing EU Member State and in case of substantive issues, the applicable law will be determined in accordance with the place of habitual residence of the party against whom enforcement is sought. [38] Therefore, when an EU Member State is enforcing maintenance order in the UK, will usually apply English law. [39] As a result, there was indeed a great compromise reached between the EU and the UK regarding the adoption of Maintenance Regulation, however it did require to have some adjustments made to suit the requirements of the UK.

Yet another reason for opt-out, was establishment of the Rome III Regulation. Due to the result of increasing number of law cases in cross-border divorces, the Rome III Regulation was passed by the EU Council back in 2010. The UK excluded itself and opted-out from this Regulation as England never applies English law in cases before the English Courts.[40] Due to the fact that Rome III Regulation does not apply in the UK, legal matters regarding divorce and legal separation would be based mainly on national or/and international sources of private international law.[41] Even though, the EU has made some input into pressuring the UK in becoming signatory of this Regulation as well, this refusal once again reveals the independent position of the UK in relations to the EU. On one hand, the Rome III Regulation may not be considered as a very successful Regulation due to several reasons. Firstly, there only 16 signatories out of 27 EU Member States. Furthermore, the UK has adopted *lex fori* under English law. *Lex Fori* proposes different procedure in regard to determining applicable law. If we take divorce case as an example: when jurisdiction of this particular case is determined, the English courts would apply domestic rules to decide if the divorce should be granted.[42] The implementation of the Rome III Regulation was not considered to be a bright idea due to the fact as it would have required the significant change in the UK's domestic law that would have ended up financially hurting law practitioners.[43] In other words, the proposal to take part in adopting the Rome III Regulation was questionable

[37] Justine Osmotherley, "How Do You Enforce a UK Maintenance Order Abroad Using the EU Maintenance Regulation", 2014. Clarion. https://www.clarionsolicitors.com/blog/how-do-you-enforce-a-uk-maintenance
[38] Maintenance Regulation, Art. 27.2.
[39] Justine Osmotherley, op. cit. 37.
[40] Lucy Loizou, "Greece Joins EU Law of Applicable Law on Divorce", 2015. https://www.familylaw.co.uk/news_and_comment/greece-joins-eu-law-of-applicable-law-on-divorce#.WrK5SGaB0nU
[41] Inga Kačevska et al. "Effective Adoption, Transposition, Implementation and Application of European Union Legislation in the Area of Civil Justice", 2015, p. 31.
[42] House of Lords, European Union Committee. *Rome III – choice of Law in Divorce*. 2005 p.7. https://publications.parliament.uk/pa/ld200506/ldselect/ldeucom/272/272.pdf
[43] Ibid.

and the UK's decision for opt-out was merely based on the fact that it would evoke practical and financial difficulty of applying foreign law in the UK domestic courts.[44] However, the question would be whether additional cost would have made such an impact to the UK in making important legal decisions. It may be hidden behind the fact, that the UK has always enjoyed having more exceptions than any other EU Member State.

In addition to the discussed opt-outs, there were more occasions when the UK did not agree with the legal documents proposed by the EU. For instance, the UK did not initially opt-in to the Rome I Regulation proposal and continued being signatory state to the Rome Convention. The UK did not want to take the risk to be a part of this Regulation as there were some concerns regarding legal outcome and possible negative effects that may have been brought to the UK.[45] There were some legal uncertain parts in complexed international multi-party contracts. However, after further negotiations and resolved concerns, the UK opted-in to Rome I Regulation about a year later.[46] Hence, it indicates that the UK has always had a strong opinion combined with careful consideration process for adopting new legal documents in order to protect its national interest and its national legal system. Some of the proposed Regulations may have been rejected too quickly with a lack of objectiveness. Fortunately, the EU and its flexible standpoint allowed the UK to implement rejected documents later.

To sum up, the EU aims to unify Member States by integrating them at different levels and speeds. It is well understood and acknowledged that Member States differ significantly and not all of the EU Regulations and other legal acts would meet interest of every one of them.[47] The strategy to have ability to opt-in or opt-out for the UK could be considered as standard form for additional safeguard that would protect civil areas by preserving them as they currently are. Therefore, the UK has been given such flexibility to opt-in to certain areas of civil judicial cooperation: either within three months of the proposal or later when Commission's proposal has already been adopted. Hence, the UK still has a well-structured civil judicial cooperation with the EU even though Regulations such as: Succession, Rome III and part of Maintenance Regulation, are not implemented into the UK's national legal system. The exceptional cooperation with the EU was nevertheless perceived as a successful one prior Brexit. However, despite of the fact that such opt-outs are allowed and considered to be legal and well negotiated, it might be perceived as damaging as well. The relations between Member States may become damaged or not as harmonized as

[44] HM Government, *supra* note 13:34.
[45] Ibid.
[46] Ibid, p. 27.
[47] Mark Briggs, *supra* note 16.

intended. Moreover, "to pick and choose" strategy does not correspond with rights and responsibilities that should come from being the united Europe.

1.2. UK: civil judicial cooperation pre-Brexit

In order to evaluate the impact of Brexit that could be seen already, there is a need to address the importance of civil judicial cooperation. Civil judicial cooperation is the legal framework that governs the interaction between different legal systems in cross-border situations.[48] As a result, it provides some clear judgement and prevents unnecessary litigation in the courts of more than one country on the same dispute.[49] In other words, civil judicial cooperation sets out some essential rules that provide more clarity of international disputes.

To begin with, the EU regulations were created in order to simplify complex litigation between EU Member States in civil cases, family disputes, even in divorce and insolvency matters (Annex No. 1, Box 1, Box 2 and Box 3). After Brexit, the UK may be left alone with its domestic legal system without the EU Regulations in force. Even though at first it could have been argued that the UK did not have an interest to find out the beneficial way for the UK and the EU to cooperate in Civil and Commercial matters,[50] during the negotiation process the UK's position became more liberal that presents the aim for new agreements that could maintain confidence and certainty in cross-border interactions. The EU has already emphasised about the importance of having the easier, cheaper and more efficient dispute settling instrument for all involved. This notion is recognized by the UK as well.[51] Hence, as long as both parties start seeing the common goal and the importance of comprise, the chances for having a much smoother negotiation regarding withdrawal of the UK become more realistic.

The EU law has different types of documents that have different requirements for implementation. The importance of making powerful mechanism such as the whole EU legal system to work in all Member States is to ensure and guarantee that the EU rules are followed in all Member States or in other words – to prevent any conflicting laws of Member States.[52] The main reason behind having many different PIL Regulations introduced by EU is to find the easiest way to solve the most complex cases. Since these Regulations are applied across almost all Member States it helps to find harmonized answers and simplifies many legal issues that may arise

[48] HM Government, *supra* note*,5* paragraph 6
[49] Catherine Fairbairn, "Brexit: Civil Judicial Cooperation", 2017, p. 3.
[50] Ibid.
[51] Ibid.
[52] Albertina Albors-Llorens, "How the EU Works: EU law and the UK", 2016 https://fullfact.org/europe/eu-law-and-uk/

from various national laws.[53] The ECJ has established two main constitutional principles of the EU law that were 'supremacy'[54] and 'direct effect'.[55] Even though these principles were recognized by the CJEU a while ago it already introduced these two main ideas that the EU law had the higher status to national laws and it could be confined in court.[56] For example, the EU directives must be incorporated by the EU Member States within certain deadline and inform the Commission. The EU Regulations on the other hand, have an automatic affect as they become binding on the day they enter into force.[57] Thus, the EU legal instruments contribute in effective civil judicial cooperation between the EU Member States.

The nature of direct applicability of the EU Regulations is specified in Treaty on the Functioning of the European Union ("TFEU") as well, therefore it will always have direct effect.[58] The article 288 of TFEU states that "shall be binding in its entirely and directly applicable in all Member States"[59]. This principle has been established by CJEU a while ago and it clearly states that the EU Regulations must not be implemented in the national law and should have general application:[60] "Owing to their very nature and their place in the system of sources of Union law, regulations operate to confer rights on individuals which the national courts have a duty to protect".[61] As a result, there is no need for the EU Member States to issue any kind of amendments in response to legislative activity on the EU level in the area of civil justice as the EU Regulations have directly applicable nature.[62] If we analyse the mechanism regarding adoption of the EU legal instruments in the UK, it would be essential to mention that Ministry of Justice is responsible of doing that. The responsibility includes not only adoption but transposition and implementation as well.[63] All Regulations regarding civil procedures get incorporated into the Civil Procedure Rules with references to the EU private international law.[64] The interesting fact about these procedures in the UK is that even though the standard rule of the EU Regulations is that they apply automatically without unnecessary implementation, the Ministry aims to remove contradictions between the EU Regulations and the national law. In other words, the Ministry is responsible of

[53] Jonathan Fitchen, *supra* note, 1.
[54] Flaminio Costa v E.N.E.L. case 6/64.
[55] NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration case, p.12: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61962CJ0026&from=EN#page=12
[56] Albertina Albors-Llorens, *supra* note 52.
[57] European Commision "Applying EU Law". https://ec.europa.eu/info/law/law-making-process/applying-eu-law_en
[58] TFEU, article 288.
[59] Ibid.
[60] 7 February 1977 CJEU judgment in case: No. 50/76 Amsterdam Bulb
[61] Antonio Munoz y Cia SA and Superior Fruiticola SA v Frumar Ltd Judgement 17th of September 2002: C.J.E.U. para 27.
[62] Inga Kačevska et al. supra note 41:81.
[63] Ibid.
[64] Ibid.

making certain changes to existing national provisions in order to make national legal system and the EU legal system compatible.[65] The remarkable distinction of legal procedures between the UK and other EU Member States may suggest that the UK has always had a different operating legal model. Therefore, it is highly essential to analyse current civil judicial cooperation between the UK and the EU in order to identify what legal outcome to the EU private international law will be after Brexit.

When there is a case with a cross-border element, the first thing that needs to be determined is jurisdiction. Regarding the position of the UK, it has been known that English law is more complex and controversial due to these factors: rule of law and constitutional principles of sovereignty of Parliament.[66] In theory – Parliament is a powerful institution and therefore its legislative power cannot be legally limited. In other words, the UK's courts do not have authority to overrule Acts of Parliament while at the same time, Parliament can revoke prior legislation.[67] However, if there is a case with a foreign element, one of the Regulations that could be applied is Brussels Ibis. The UK has opted-into this Regulation and therefore it has a direct affect to the UK as well.[68] This Regulation is in fact applied in all Member States with an exception of Denmark.[69] For instance, in case the material scope of the case falls into civil or commercial case category, Brussels Ibis Regulation is the key instrument to determine the jurisdiction.[70] As Brussels Ibis Regulation is applied in nearly all Member States with the inclusion of the UK, the application of this Regulation could be done in a reasonable time and enforced at the lower cost. Due to these reasons, the creation of unified law system within the EU is perceived to be very beneficial.

On a general note, there have been a lot discussion regarding whether implementation of the Brussels Ibis Regulation would actually benefit the UK. Especially regarding the role of the UK for being as a leading centre for dispute resolution.[71] Even though, there have been a controversial perception and ongoing debate on both sides regarding the Brussels Ibis Regulation and its positive impact, it has been agreed that the Regulation was in fact one of the factors that influenced both people and businesses to use the UK's legal system.[72] On one hand, the UK has

[65] Inga Kačevska et al. supra note 41:81.
[66] Jay J. Arangone's "Regina v. Secretary of States for Transport Ex parte Factortame Ltd: The Limits of Parliamentary sovereignty and the Rule of Community Law", 1990.
http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1285&context=ilj
[67] Ibid.
[68] Brussels Ibis Regulation, Art. 40.
[69] Ibid, Art. 9.
[70] Inga Kačevska et al. Op. cit. 65:81.
[71] HM Government, *supra* note 13:39.
[72] Ibid.

always shown great concern and interest in having the EU legislations monitored closely due to ability to maintain attractiveness of the UK as the chosen jurisdiction to resolve international disputes.[73] On the other hand, it has been agreed that recognition and enforcement section was well developed and as a result, it contributes to the UK's legal system by creating trust and certainty and providing protection for business and consumers.[74] For example, without harmonized civil judicial cooperation, there could be delays and inconsistency in cross-border judgements. Thus, it could be argued that having Brussels Ibis Regulation implemented in the UK is beneficial for both parties – for the EU Member States and for the UK as well.

For instance, if there was an argument between British Company and German Company as the latter had not paid the owned amount by the due date, the decision could be found quickly as, British company does not have to go to Germany in order to ask permission to enforce the judgment as it could be enforced in British court.[75] In other words, the EU's Brussels Ibis Regulation would be applied to indicate that the UK judgement would have to be processed as if it were an enforceable German one. As a result, time consuming legal process could be replaced by a quick and effective one that would also minimize the cost for both parties. This whole procedure is a key principle and aim of legal harmonization within the EU Member States.

Pursuing this further, there is a separate Regulation in order to determine jurisdiction for legal matters regarding divorce, legal separation and marriage annulments - Brussels IIbis Regulation. However, these types of cases do not lose their civil matter status but for sensitive situation where custody, guardianship children related matters are involved, it is essential to have specific Regulation that could provide clear guidance on how to solve these issues.[76] Similarly to Brussels Ibis Regulation, Brussels IIbis has some exceptions as well for having limited application of the Regulation to certain cases. For instance, this Regulation will not be applied for spouses that are not habitually resident in the EU unless the they are habitually resident in a Third State and hold nationality of a Member State. On the other hand, Brussels IIbis does not provide a reason for jurisdiction if spouses have mixed EU nationalities; both are residents of a certain Third State and wish to terminate their marriage. [77] Exclusive nature of jurisdiction of Brussels IIbis could be found in Article 6[78] where it is stated that a spouse who is domiciled in the territory of a Member State, has nationality of a Member State, or is domiciled in the UK or Ireland, could be sued in

[73] Ibid, p. 41.
[74] Ibid, p. 40.
[75] Jonathan Fitchen, *supra* note, 1.
[76] Xandra Kramer et al, *supra* note 12:25.
[77] Ibid.
[78] Brussels IIbis Regulation, Art. 6.

another Member State if Article 3.4 and 5 are not breached. For example, in Kerstin Sunderlind Lopez[79] case, there could be found some interpretations that help to clarify application of Article 6 and 7. It was stated that habitual resident or national of one of the EU Member State could be call out before the court of another EU Member State if the jurisdictional rules constituted in Article 3 are followed. In addition to this, it was mentioned that 'where, in divorce proceedings, a respondent is not habitually resident in a Member State and is not a national of a Member State, the courts of a Member State cannot base their jurisdiction to hear the petition on their national law, if the courts of another Member State have jurisdiction under Article 3 of that regulation'.[80] In other words, the application of such nationals laws are very limited for those respondents who are not nationals of a Member State nor are habitual residents in a Member State either.

On the other hand, the Brussels IIbis Regulation has been acknowledged as a beneficial legal document regarding divorces and parental responsibility of children. One of the most significant factors is that instead of having a hierarchy of jurisdiction, this Regulation has clear alternative grounds to determine that.[81] In relations to Brussels Ibis Regulation, the Brussels IIbis has also harmonized sector in private international law and simplified procedures regarding jurisdiction and enforcement of judgements. Meaning that court decisions given in one EU Member State were also recognized and enforced in the other EU Member State. This functioning of the EU legislation is extremely important when disputes concern children. The children matters are greatly sensitive and any disputes concerning children are considered to be vulnerable that require careful and detailed attention. Therefore, in order to ensure an easier and less complicated civil judicial cooperation in matters concerning family disputes and children, the Brussels IIbis contains special provision for more flexibility: it is allowed to transfer the right of jurisdiction from one EU Member State to another if 'particular connection' between the State and the child is declared.[82] Hence, it creates an exceptional treatment for resolution of such legal disputes with the main goal to ensure less damage and more effectiveness during the judicial process.

Furthermore, the Brussels IIbis Regulation provides such system that helps to create a co-operation between central authorities and simplify communication between the parties. In addition to this, judgements that were given in the court of one Member State must be recognised and enforced in another Member State unless it contradicts previously mentioned article 22. Moreover, if a child is abducted to another Member State, according to article 11, the parent or person that

[79] Kerstin Sundelind Lopez v Miguel Enrique Lopez Lizazo, Judgement 29th of November 2007
[80] Xandra Kramer et al, *supra* note 12:26.
[81] HM Government, *supra* note 13:44.
[82] Ibid, p. 45.

has custody of the child has a right to apply to the state to which the child has been abducted to for the immediate return.[83] According to article 41, access rights "granted in an enforceable judgement given in Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgement has been certified in the Member State of origin".[84] Sir Mathew Thorpe praised the Brussels IIbis Regulation by mentioning that there are many things that favour this EU achievement such as ongoing development in order to provide European citizens with justice in regards to cross-border disputes.[85] Moreover, the child welfare and Regulation's contribution to it was recognised and appreciated by David Williams QC as he argued that the Regulation provides protection to children and focuses on the fact that link between children and country is more essential than link between the adults and the country. In this way, the best interest meets the needs of the children.[86]

Yet another reason why the civil judicial cooperation takes an important part in the legal framework is due to the fact that it intervenes and builds positive interaction between different legal systems. The cases with a cross-border element become complex and raise many questions. Hence, positive and well-functioning judicial cooperation at least partially eliminates unclear factors and makes coherent legal cooperation between many different legal systems. In addition to this, it ensures and provides citizens' some clarity regarding their rights in certain situations. For instance, the Brussels IIbis Regulation in collaboration with Maintenance regulation protects citizens' rights in the family law field.[87] Considering the fact, that right to free-movement is one of the benefits that comes from being a part of EU national[88], it also relates to the fact, that family disputes may become more complicated when they involve a foreign element. The Brussels IIbis Regulation and Maintenance Regulation were created in order to simplify civil judicial cooperation within the EU and serve the best interest for the EU nationals.[89] Moreover, in the area of civil cases, the Brussels Ibis Regulation would be considered as the protection for EU citizens not only in case of determining the jurisdiction but ensuring that judgements given by the court in one EU Member State would be successfully recognised and enforced in the other EU Member

[83] House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.25.
[84] Brussels IIbis Regulation, Art. 41.
[85] Sir Mathew Thorpe in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.25.
[86] David Williams QC in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.25.
[87] Catherine Fairbairn, *supra* note 49:3.
[87] Ibid, p. 5.
[88] Directive (EC) No 38/2004
[89] Catherine Fairbairn, op. cit. 87:5.

State as well. Thus, all these different EU Regulations create a well-functioning and harmonized legal framework that would be inevitable in order to guarantee successful civil judicial cooperation between the EU Member States.

One more important aspect that should be determined in cross-border cases when jurisdiction is established is the applicable law. The UK has adopted two Regulations that set certain rules on how to determine it:[90] The Rome I and the Rome II Regulations. The main and essential difference between these two Regulations is that the applicable scope of the Rome I is regarding contractual obligations in civil and commercial matters[91] and the Rome II should be applied to cases with a conflict of laws, related to non-contractual obligations in civil and commercial matters.[92] In Article 28 of the Rome I Regulation it is noted that it could only be applied for contracts concluded after 17th of December. It is especially crucial to mention that the Article 24 emphasizes on the fact that this Regulation will directly replace the Rome Convention. In other words, determination of applicable law could be determined by the Rome I Regulation only in case the Rome Convention is not applied. However, it has been recognized that some of the EU Member State courts have tried to apply both the Rome I Regulation and the Rome Convention simultaneously even though this way is not correct.[93] As a result, the Rome I substitutes the Rome Convention with an exception to territories where it is not applicable. For example, the UK is taking part in the adoption of this Regulation and therefore it is bound by it or subject to its application.[94] Therefore, this provision implements that English courts would be bound by the Rome I Regulation as well as courts in other Member States. As a result, the Rome I Regulation would be applied to specific contract that are connected to the UK.[95] The territorial aspect of the Rome II Regulation would be the same as in the Rome II Regulation.

Furthermore, by exploring the impact of Rome I and Rome II Regulations to the UK's legal system regarding contractual and non-contractual matters, it has been discussed that first of all, they provide legal certainty for both individuals and businesses on how their disputes will be dealt with.[96] To begin with, one of the beneficial factors is reduced cost in legal services as determination of applicable law becomes unified. For instance, the Law society of England and Wales stated that before the Rome II Regulation was introduced, there was a need for in depth

[90] Inga Kačevska et al. supra note 41:30.
[91] Rome I Regulation, Art. 1.
[92] Rome II Regulation, Art. 1.
[93] Inga Kačevska et al. op. cit. 90:30.
[94] Rome I Regulation, paragraph 45.
[95] Inga Kačevska et al. op. cit. 90:30.
[96] HM Government, *supra* note 13:42.

analysis regarding the position of the governing law in the different EU Member States in order to become familiar with matters arising from non-contractual obligations.[97] As a result, the time-consuming process used to be pricy and complicated. It addition to Rome I Regulation, it had a positive impact on reducing "forum shopping" procedure in the UK which prevented legal practitioners bringing their case in the court that most likely would provide favourable ruling.[98] With simplified procedures and possibility to choose the applicable law, the Rome I and Rome II Regulations did bring certainty and simplicity in civil judicial cooperation.

To sum up, the current civil judicial cooperation framework proves to be beneficial between the UK and the EU as it covers the most relevant aspects in civil and commercial matters as well as matrimonial and family disputes. Present documents such as Regulations, Conventions etc, have a remarkable input in creating the whole EU legal system which seems to be benefiting not only the EU but the UK either. The Brussels Ibis and the Brussels IIbis Regulations have provided clear framework in relations to determining the jurisdiction and enforcing one court's judgement in another country regarding both contractual family matters. Moreover, the Rome I and II Regulations has simplified the process in establishing which country's law will be applied in certain dispute. In addition to this, the family matters are considered to fall into vulnerable field that requires additional attention to detail and therefore have certain exceptions that are implemented into the EU legal instruments in order to finalise disputes that concern children in more instant matter by providing additional care and protection. When the UK will be officially withdrawn from the EU and become a Third State in the EU context, the current civil judicial cooperation will suffer a dramatic change and the whole EU private international law will be affected by it.

[97] HM Government, *supra* note 13:43.
[98] Ibid.

2. THE GREAT REPEAL BILL

The current situation between the EU and the UK has noticeably affected the whole EU as it raises many questions in connection with future civil judicial cooperation. Even though the official UK's withdrawal agreement is not finalised yet, the impact of possible changes to the existing EU legal and even economic systems have already been acknowledged. The loss of clarity in future judicial process regarding determination of jurisdiction and enforcement of judgement suggest the possibility for parallel proceedings and more complicated resolution of international matrimonial disputes. Even though the Rome I and Rome II Regulations are considered to be affected the least, the whole legal harmonization is in question. This chapter will address how Brexit has impacted the current framework of the EU private international law.

2.1. Brexit and its impact to current framework of the EU private international law

The importance of analysing civil judicial cooperation factors between EU and the UK is very crucial as it gives a better understanding regarding the possible outcome that will be reflected on private international law after official withdrawal. For instance, there could be some controversial ideas regarding actions that the UK is considering of taking after Brexit. One of them is to implement current EU instruments such as Rome I and II Regulations into the UK's domestic law.[99] It is actually possible even though the UK will no longer be a part of EU since latter Regulations do not require reciprocity. Meaning that the UK could implement them into its national legal system unilaterally. Once again, the reason that the UK seeks to maintain civil judicial cooperation after Brexit and implement latter regulations to its domestic legislative system may only suggest that the UK prefers to be considered as a Third State while being strongly related to the EU's legal system. It may prove that the EU's private international law is inevitable in order to maintain strong and beneficial relationships with other EU Member States, investors and the rest of the world.

Even though some of the EU Regulations will maintain as a part of the UK legal system and government is interested in re-joining certain Conventions after Brexit is fully finalised, it is essential to look over the potential damages that may arise from this UK withdrawal from EU. The potential issues that may have a direct effect on the whole EU private international law system.

[99] Catherine Fairbairn, *supra* note 49:20.

For example, regarding Brussels Ibis Regulation, it could be argued that problems will occur in the following fields[100]:

- loss of certainty;
- business;
- inability to enforce judgements;
- loss of control over future iterations of Regulations.[101]

To begin with, Farbairn[102] is suggesting that these damages may directly have an impact on the UK, however it is wise to assume that these damages will be done for the EU as well. First of all, certainty and confidence are the key factors for any cooperation, especially for civil judicial cooperation. It could be politics, economic interest or in this case – legal matter such as cross-border disputes. Brussels Ibis Regulation was created to ensure that cooperation between the EU Member States is easier, more effective and clear in regard to civil and commercial matters.[103] At the moment, this certainty is in question and raises various speculations until the negotiation process of the withdrawal is finalised.

Furthermore, Brussels Ibis Regulation deals with civil and commercial matters regarding jurisdiction and enforcement of judgement. It goes through numerous situations when this Regulation could be applied:[104] jurisdictions in matters relating to insurance, consumer contracts, individual contracts of employment etc. All these cases are related and have the one thing in common - to provide certainty to consumers, employees and even to the victims of car accidents.[105] As discussed before, the EU legal system is emphasized to solve various disputes in effective, efficient manner. It also provides people certainty as one of the main goals is to protect EU nationals. [106] Since Brussels Ibis Regulations is applied in majority of the EU Member States it simplifies dispute resolution and makes the whole dispute process more appealing to affected group of people which gives them needed assurance.

[100] Catherine Fairbairn, *supra* note 49:12.
[101] Gov.uk: "Status of EU Citizens in the UK: What You Need to Know". https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know
[102] Catherine Fairbairn, op. cit. 100.
[103] Brussels Ibis Regulation, Art. 1
[104] Ibid.
[105] Hugh Mercer in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p 13.
[106] Oliver Jones in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.13

Moreover, certainty and predictability is essential not only for individuals but for business as well. Richard Lord argues that without clear jurisdiction there may be all sorts of problems and questions such as, which court would have jurisdiction over various disputes.[107] In order to attract business and investors from EU countries and have business relations with the EU, there needs to be as much certainty as possible as otherwise the potential investors and business owners would end up moving their premises to other EU Member State. Some companies are already moving away from the UK as they cannot afford to wait until the UK is finished finalising this "divorce" and starts providing some certainty. For instance, the UK insurer Hiscox has already announced regarding setting up a new European subsidiary in Luxembourg; Insurer Lloyd's of London has decided that Brussels will be their new continental base; JP Morgan is planning on moving hundreds of banking jobs from London to other EU Member States as many others investments and company owners.[108] One of the reasons for this uncertainty that is threatening current companies and investors is the fact that the UK's decision to leave EU will most likely end up losing so-called *passporting rights*. Passporting right is very essential to business as it allows financial services companies to operate in other EU Member States and regulate it while having the main authority in one Member State.[109] In other words, "Passporting" is the exercise of the right for a firm registered in the European Economic Area ("EEA") to do business in any other EEA state without needing further authorization in each country."[110] Even though more businesses are considering moving their premises to the EU, there are many EU based companied that have subsidiary in the UK as well. All this moving around without certainty is costly for companies in regard to both financial and time-consuming aspect.

In addition to this, if business is about to expand to another EU Member State, there is a convenient way for such companies to create the European Company.[111] These specific companies are being regulated under the EU law. However, there are also few requirements that need to be fulfilled, such as:

1. Head office and registered office needs to be registered in the same EU country;
2. Subsidiaries, branched, the company and other companied needs to be regulated by the laws of at least two EU countries;

[107] Richard Lord QC in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for Families, Individuals and Businesses?", p.16
[108] Zlata Rodionova, "Brexit: UK Insurer Hiscox to Set up New European Unit in Luxembourg", 2017. Independent. http://www.independent.co.uk/news/business/news/brexit-latest-news-hiscox-uk-insurance-brokers-luxembourg-european-unit-office-a7725681.html
[109] Ibid.
[110] Investopedia.com "Passporting", https://www.investopedia.com/terms/p/passporting.asp
[111] Europa.eu "European Company", https://europa.eu/youreurope/business/start-grow/european-company-legal-form/index_en.htm#abbr-ID0E1

3. Minimum subscribed capital needs to be 120 000 EUR or more;
4. There needs to be an agreement on employees' participation in the company's bodies and the way how they will get consultation and information. [112]

Nevertheless, the requirements may change in regard to different countries, however, the important aspects that needs to be empathised here is that due to uncertainty and the impact of Brexit, this possibility may be lost for some existing companies or they will be faced with a need to relocate. It is only logical, and many companies have already started on relocating or are in process in doing so in the near future.

Furthermore, the Brussels Ibis Regulation is applied not only for determination of the jurisdiction but also for enforcement and recognition of judgement. This raise many question for the UK as if the country does not have this Regulation implemented to its legal system, it would need to count on the local rules being in force in certain country that could enforce that judgement.[113] In other words, the essence of Brussels Ibis is "that judgements will be recognized and enforced across Europe".[114] The result of using this Regulation will most likely have negative influence not only on the UK but on EU as well: the advantage of having enforcement of judgments in any Member State will not be available for the UK and those individuals that are resided in the UK. Professor Fentiman[115] is more optimistic regarding this aspect and does not see potential negative outcome to the UK and to EU law system as he claimed to be supporting the idea of common law. However, he does agree with the fact that common law would only provide certainty and answers for the UK courts and would not leave reciprocal solution between the UK and the EU Member States. Thus, there will be a disadvantage for European jurisdiction as their judgements will not be automatically enforced in the UK as it is was before and still is.[116] As a result, it would still leave many legal gaps for prosperous civil judicial cooperation.

Additionally, it is a fact that Brussels Ibis Regulation is a legal European Regulation, however it could be argued that British input was quite significant when this Regulation was being formed. Rt Hon Sir Richard Aikens emphasises on the fact that there was a noticeable input from

[112] Ibid.
[113] Professor Fentiman in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.14
[114] Sir Richard Aikens in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.18
[115] Proffesor Fentiman, op. cit. 113:18.
[116] Lousie Merrett in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.19

British lawyers and judges into this Regulation and in all sorts of changes that have been done.[117] Moreover, even law societies in the UK were a part of Brussels office, the Bar Council's Brussels Office and British Parliamentarians and MEPs.[118] Considering these facts and the fact that English legal system is very influential and did make an impact in creation of Brussels Ibis Regulation, it needs to be acknowledged that British influence will no longer be noticed in future developments of the EU legal system. At the moment, it could only be imagined that there may not be any negative outcomes because of that, however it would be fear to assume that the loss of British inputs into future development of Brussels Ibis Regulation and other EU instruments will be noticed in the longer perspective.

In regard to disputes related to contractual obligations and non-contractual obligations between different countries, it is crucial to determine what law would need to be applied in order to solve the case. First of all, one of the essential things to do for the parties that are based in different EU Member States is to establish applicable law before entering into any binding agreement.[119] Since not all the parties do that in advance when entering into contracts, the process of determination of applicable law may become more complicated. Thus, the EU has set out certain guideline that helps to identify which national law should be applied in regard to civil and commercial matters that involve more than one country. The Rome I Regulation for contractual obligations works alongside with Rome II for non-contractual obligations.[120] Due to the fact that neither of these Regulations rely on bilateral arrangement, it would be fear to presume that it will be possible to implement them in the UK legal system without any complications. As a result, this possibility is realistic, and the UK may implement both of these Regulations into its domestic law. This action will be able to provide some certainty regarding applicable law as this question will most likely be operated on the same basis as it was before Brexit.

Pursuing this further, every EU Member State has different domestic legal system and own rules regarding separation, divorce, guardianship, maintenance of both spouses and children. As a result, it is understandable that the EU law does not take the main role in family related law matters. However, one of the main goals for the EU is to be effective in different areas – to ensure that legal decisions that were made in one Member State could be accomplished in another. In addition to this, the EU legal system works well on determining jurisdiction in order to establish which

[117] Rt Hon Sir Richard Aikens, *supra* note 114:10.
[118] Hugh Mercer QS in House of Lords, *supra* note 105:10.
[119] Out-law.com "Governing Law and Jurisdiction: Rome I", 2011 https://www.out-law.com/topics/dispute-resolution-and-litigation/arbitration-and-international-arbitration/governing-law-and-jurisdiction-rome-i/
[120] Rome I Regulation.

country has a right to hear a particular case. As a result, various situations become problematic when parties are not resided in the same country or parties do not share same nationality. If all parties of the dispute live in the same country and share the same nationality, the whole legal process becomes more straightforward as generally that particular dispute would be heard by the the same country where a made decision would be implemented and enforced there as well. In other words, the EU does not have the power to set specific rules that would determine which party should be entitled to custody or access of the child, but it rather focuses on the fact that these aspects and orders that were made in one Member State could be put into effect in the other. Additionally, the Brussels IIbis Regulation aims to address potential solutions to arisen issues from divorce, legal separation, marriage annulment and even parental responsibilities such as rights of custody, access to children and guardianship. It is considered to be an effective and good system for arrangements for children and matrimonial matters. Loss of this Regulation will have potential problems that will be recognized not only in the UK but also in other Member States since there are many EU citizens that are residing in other EU Member States than their home country. Therefore, regarding Brussels IIbis Regulation, it could be argued that problems occur the following fields:

- Loss of Certainty;
- Parallel Proceedings;
- Recognition of divorces concluded in other EU Member States;
- Parental Responsibility.

First of all, it is crucial to look at the statistics once again. Since there are nearly 1 million British citizens that are living in other the EU Member States[121] and approximately 5% of the whole population in the UK are from the EU which is nearly 3 million EU citizens that reside in the UK,[122] a certain proportion of these citizens will be directly affected by loss of Brussels IIbis Regulation. The consequences are most likely to be related to disputes that arise from family breakdown where certainty and predictability will not be there anymore as Brussels IIbis Regulation will not be in force in the UK after the official withdrawal. Moreover, according to Brussels IIbis Regulation, Article 3(a), individual have possibility to take matrimonial actions in the court of the Member State if:

[121] Alan Travis, "Fewer Britons living in EU than previously thought, study finds", 2017. https://www.theguardian.com/politics/2017/jan/27/fewer-britons-in-rest-of-europe-than-previously-thought-ons-research

[122] BBC News, "Reality Check: How many EU nationals live in the UK?", 2016 http://www.bbc.com/news/uk-politics-uk-leaves-the-eu-36745584

- "the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the member State in question or, in the case of the United Kingdom and Ireland, has his or her 'domicile' there; "[123]

As a result, the legal actions in case of the matrimonial dispute could be taken in several EU Member States. It is essential to acknowledge that since the flexibility of EU Regulations could be seen in various EU Regulations once again for the purpose to simplify the complex nature of international disputes. In addition to this, if the proceeding has already started in one Member State and is proposed in the other Member State, the latter is required to refuse the jurisdiction. *Lis Pendens* rule is embedded in Article 19: in case divorce, legal separation or marriage annulment or parental responsibility, "the court second seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established."[124] This rule can sometimes be referred to "first-in-time-rule".[125] The potential problem of parallel proceedings can create several negative consequence when the UK is no longer have Brussels IIbis Regulation applicable in its national legal system. The matrimonial disputes will be negatively affected by this loss in the future as well as it is already affected at the moment due to the fact the dispute resolution is lacking clarity that provides protection for the citizens. Thus. the simplified way of dealing complicated cases related to matrimonial matters and parental responsibility might become more complex and without clear certainty.

Overall, the current situation during the negotiation process between the EU and the UK in regard to withdrawal does not answer many important questions in connection with future civil judicial cooperation. There is a lot uncertainty concerning the current EU legal framework and the possible outcome that will be produced after Brexit. The procedure of determining jurisdiction and enforcing judgements for international disputes has well-structured and successful legal system at the moment that was established by the EU Commission. The Brussels Ibis Regulation has

[123] Brussels IIbis Regulation, Art. 3a.
[124] Ibid, Art. 19.
[125] House of Lords, European Union Committee, *supra* note 83:24.

contributed into having less complexity in already complicated cases with the foreign element. The matrimonial matters have legal instrument such as Brussels IIbis Regulation that provides clear structure in determining jurisdiction and enforcing judgements regarding family disputes. Current civil judicial cooperation benefits both the EU and the UK at the moment. In addition to this, fully functioning legal framework positively influences cooperation between the EU Member States in legal aspects and more: by providing clarity for businesses and economic development. As a result, the Brexit has brought many questions concerning how the future status of the UK. It has also brought many questions in connection with future impact on the EU private international law.

2.2. Importance of private international law during the first phase of the negotiations of Withdrawal Agreement between the EU and the UK

During the withdrawal process individuals can nevertheless depend on EU law on the domestic level.[126] Since the UK withdrawal from EU is still in progress the biggest change that could be felt is perception of what is going to happen to the UK in relations to the EU private international law. Once the UK's withdrawal from the EU becomes official, the UK will be treated as a Third State by all of the EU Member States. [127] Thus, it is essential to overview to what extent does the EU private international law is considered during the whole process.

On one hand, the UK claimed to be willing to have a smooth transition from EU and then start forming another friendly and same-minded cooperation with the EU again. On the other hand, the UK has showed very ambiguous actions towards future cooperation. For example, it was understood that permanent residency is relevant for both the UK and the EU. However, it has been said that the UK's Prime Minister Theresa May was using people as "bargaining chip" since she was refusing to guarantee the residency rights to EU nationals that are living in Britain unilaterally.[128] The reason for this was that she expected the EU to do the same in regard to those British nationals that are currently living in other EU Member States. Fortunately, there has been a successful negotiation between the UK and EU as both of them have come to an agreement on citizens' rights. [129] At the moment, people that became affected by the UK withdrawal from EU

[126] BREXIT Seminar, 2015, "Week 7: Post-BREXIT Effects of Pre-BREXIT Measures, and Implications of BREXIT Otherwise than Pursuant to Article 50 of the Treaty of the European Union", p. 1.
[127] Jonathan Fitchen, *supra* note, 9.
[128] Alan Travis, *supra* note 121.
[129] Gov.uk: "Status of EU Citizens in the UK: What You Need to Know". https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know

are at least provided with some certainty regarding their future.[130] However, the UK's perspective towards the whole withdrawal process may suggest that there is going to be more ambitious actions imposed by the UK rather than the EU.

On 8th of December 2017, the European Commission and the UK has managed to negotiate the first phase on certain rules that would positively respond to the withdrawal of the UK under article 50 of the Treaty on European Union. As the whole withdrawal process has to be enforced in objectively slow manner, this first joint report from the negotiation does provide some answers in connection with whether the EU PIL legislation is even considered in the whole withdrawal process. The "specified date" which means the official withdrawal is planning to be 29th of March 2019.[131] Thus, it is very important to carefully analyse the phase one of the negotiations in order to evaluate to what extent is the EU private international law considered in the whole process. It would be important to mention, that even though the agreement is discussed in great detail in the Joint Report, it is not legally binding.[132] In addition to that, it is mentioned that the agreement will be honoured regardless the future outcome. Under provision that "nothing is agreed until everything is agreed"[133] it is suggested that agreed terms may change or may be finalized differently. The matter of creating binding obligations may be interpreted differently either. For example, the Joint Report is only a phase one of the UK withdrawal negotiations and is not considered to be legally binding under Article 50 of the Treaty on European Union.[134] Nevertheless, it could be argued that despite of not being legally binding, the Joint Report does have certain political responsibility. First of all, the principle of *pacta sunt servanda*[135] which is not only considered to be one of the fundamental law principles recognized in the international law, it is recognized in EU law as well.[136] Thus, it could declare that the UK is responsible to follow agreed terms in good faith. Moreover, it could also be argued that due to unusual circumstances that were created by Brexit, it may create political tension in international arena. As a result, neither the UK nor the EU would have an interest to change the terms without mutual agreement in future negotiations.[137] On the other hand, the Draft Withdrawal agreement was issued

---

[130] Gov.uk, *supra* note 129.
[131] Parliament.uk. "Legislating for Brexit: the Great Repeal Bill", 2017. http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7793
[132] BBC News, "Brexit: David Davis Wants 'Canada Plus Plus Plus' Trade Deal", 2017. http://www.bbc.com/news/uk-politics-42298971
[133] European Commission, *Joint Report from the Negotiators of the European Union and the United Kingdom Government on Progress During the Phase 1of Negotiations Under Article 50 TEU on the United Kingdom's Orderly Withdrawal from the European Union*, 2017. p. 1
[134] John Curtis et al, *Brexit: 'Sufficient Progress' to Move to Phase 2*, House of Commons Library, 2017, p. 13.
[135] Vienna Convention on the Law of Treaties 1969, Art. 26.
[136] Sylvia de Mars et al, "Constitutional Conundrums: Northern Ireland, the EU and Human Rights" in John Curtis et al, *Brexit: 'Sufficient Progress' to Move to Phase 2*, House of Commons Library, 2017, p. 13.
[137] Ibid.

by the European Commission and not by the UK itself. It raises many questions, whether the UK did not take initiative to gather the information that was agreed in the Joint Report and propose the draft to the EU instead of having the opposite.

In the first place, both parties: the EU and the UK had reached understanding and agreement on the main three areas:

- "protecting the rights of Union citizens in the UK and UK citizens in the Union;
- the framework for addressing the unique circumstances in Northern Ireland and
- the financial settlement." [138]

To begin with, the whole idea of the Great Repeal Bill and joint negotiations for the UK is to finally terminate the supremacy of the EU law in the UK.[139] In addition to this, it is extremely essential to provide some stability and clarity during withdrawal process as the whole Brexit process makes a significant impact not only for relationship between the UK and the EU but for many EU citizens.

First of all, the citizens' rights have been discussed in great depth in the Joint Report. It would be important to mention that it still does not eliminate uncertainty for the EU nationals currently living in the UK and for the UK nationals living in other EU Member States. The final agreement between the EU and the UK will finalise concrete set of rules and protections. However, by analysing the agreed terms from the phase one, certain relevant aspects concerning citizens' rights could be discussed. The Joint Report emphasises on citizens' position before and after the specified date. The official Withdrawal Agreement and the part of citizens' right in particular will be applied to frontier workers and "to those UK an EU citizens who have exercised their free movement rights in the EU27/UK respectively on the specified date, and their family members (as defined by Directive 2004/38/EC, the 'Free Movement' or 'Citizens' Directive)."[140] As a result, both parties have started a positive compromise on citizens' rights.

The positive agreement has been reached regarding family reunion rights as well. For instance, irrespective of their nationality, certain family members will have a right to join Union citizen or UK national right holder for the lifetime under same terms as it is stated in the current EU law.[141] The interesting factor that is mentioned in the Joint Report, is that these family members

[138] European Commission, *supra* note 133:1.
[139] Parliament.uk. *supra* note 131.
[140] John Curtis et al, *supra* note 134:15.
[141] European Commission, *supra* note 133:2.

will be entitled to do so even at a later date. Article 9 in the Draft Withdrawal Agreement[142] describes who would be considered as family members. To be exact, it has to be consistent with article 2 of the Directive:[143]

- "the spouse;
- the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
- the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);
- the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b)."

To be more specific, descendants or in other words children, will be considered as family members regardless whether they were born or adopted after the specified date. The main clause that needs to be fulfilled would be[144]:

- both parents need to fall under conditions provided by the Withdrawal Agreement;
- in case only one parent falls under these conditions and the other parent is a national of the host State;
- a parent who falls under these conditions has sole or joint custody of the child.

Moreover, the Directive[145] will take part in determining eligibility for post-Brexit national status and it will be mainly used on the grounds for eligibility for rights of residence.[146] However, not all the EU nationals currently residing in the UK will be eligible for temporary or settled status in the UK. The criteria for determination of eligibility would have to meet current provisions under Directive which is also planning on being implemented in the final Withdrawal Agreement.[147] The Draft Withdrawal Agreement claims that persons who have already gained permanent residence rights would not lose them, unless they are absent from the host State for more than five years.[148] On one hand, this provision refers to more generous approach than what is provided in the

[142] European Commission Draft Withdrawal Agreement, 2018, Art. 9, p.8.
[143] Directive 2004/38/EC, Art. 2.
[144] John Curtis et al, *supra* note 134:15.
[145] Directive op. cit. 143.
[146] John Curtis et al, op. cit. 144.
[147] Ibid.
[148] European Commission, *supra* note 133:4.

Directive[149]. One the other hand, in case of loss of permanent residency rights, an EU national would have a possibility to re-enter the host State and start exercising their free movement rights once again. Unfortunately, the possibility to re-enter the host State after official UK's withdrawal is finalized will depend on its national immigration law.[150] In addition to this, individuals who do not have any status in the UK may encounter more difficulties as they would be forced to unlawfully reside in the UK.[151] Having no official status may become an obstacle regarding permission to work, accessing welfare benefits, free medical services, tenancy rights. But most importantly, they may be removed from the UK by UK authorities.[152] Moreover, it could be assumed that the UK nationals that are residing in EU Member States may encounter same difficulties and would need to apply for national status when their free movement rights will no longer be applicable under EU law.[153] To that extent, both parties putting their great focus on citizens' rights as number one priority. The current civil judicial cooperation will be used between the UK and the EU as it provides more certainty and protection. However, this is only a phase one of negations, therefore it would be reasonable to assume that some of the provisions may change or be completely different after the transition period is ended which is supposed to happen by the 2020.

Furthermore, another important aspect that requires attention is that currently the UK is not planning on transferring Charter of Fundamental Rights into its domestic law. It may be related to the fact that UK had never had intention to adopt the Charter previously as well. The Great Repeal Bill even stated that "Charter of Fundamental Rights is not part of domestic law on or after exit day".[154] Even though the European Convention on Human Rights is already implemented and is a part of the UK's domestic legal system through the Human Right Act 1998[155], it is not as broad as the Charter that contains many of the fundamental rights, such as right to private life, freedom of speech, equality and many other.[156] Ministers of the UK government argue that these fundamental rights that are stated in the Charter already exists in the UK law and provisions that do not, will be automatically implemented through other EU legal documents.[157] However, this

[149]John Curtis et al, *supra* note 134*:*18.
[150]Ibid.
[151] Migration Observatory, "The Burden of Proof: How Will the Application Process Work for EU Citizens After Brexit", 2017, Oxford University. http://www.migrationobservatory.ox.ac.uk/resources/reports/burden-of-proof-eu-citizens-after-brexit/
[152] Ibid.
[153] John Curtis et al, *supra* note 134*:*19.
[154] Benjamin Kentish, "Tory Government Votes Not to Retain European Human Rights Charter in the UK Law After Brexit"., 2018. Independent.co.uk https://www.independent.co.uk/news/uk/politics/brexit-mps-vote-against-including-european-fundamental-rights-charter-in-uk-law-a8162981.html
[155] Ibid.
[156] Charter of Fundamental Human Rights of the European Union, 2012.
[157] Benjamin Kentish, *supra* note 154.

decision rise many questions regarding protection of citizens' rights. Although the Draft Withdrawal Agreement resembled to have a very strong interest in citizen's rights, refusing to keep the Charter may prove the opposite. There are several legal issues that may arise due to the loss of the Charter:

First of all, regardless of the fact, that Human Right Act 1998 will remain as a part of the UK's legal system, it does not have the power to override decisions made by Westminster parliament. As a result, it would not be completely correct to say that protection of human rights will be done in full extent. The protection of the Charter is much more transparent and strong. For example, if there were to be a conflict between fundamental rights mentioned in the Charter of Human Rights and the Human Right Act 1998, the Charter would override it.[158] Hence, it evidences the fact that the Human Right Act 1998 would not be able to fulfil the gaps on its own.

Second of all, the EU law is directly connected to the Charter. Therefore, it allows to eliminate any provisions in the EU law that may do not correspond with the basic rights of the Charter.[159] Therefore, by transferring most of the EU law into UK law may end up leaving a lot of gaps and citizens' rights will not be completely protected. It may even cause loss of rights regarding non-discrimination, protection of child's interest and even human dignity as these rights will not have exact replacement in the UK law.[160] Another reason why this decision creates uncertainty is that by having the EU law incorporated into UK domestic legal system and leaving the Charter behind may cause complexity in numerous of future legal cases.[161] There might be many unanswered questions and the courts in the UK may have difficulty to pursue to find a line how far the interpretation of the rights in the Charter could be applied after the official withdrawal. It could be claimed that the uncertainty and confusion would be escaped by simply having the Charter transferred to the UK law altogether with many other EU law instruments at the same time if they do get transferred as well.

Pursuing this further, it would be important to analyse the future relationship between the UK and the CJEU after Brexit is finalised. Due to the fact that CJEU has jurisdiction to rule the cases and advise domestic courts regarding breaches of the EU Treaties and EU Law[162], it is natural to assume that CJEU and the UK will not have a clear and strict end in their collaboration. The

[158] Jamie. Doward, "Brexit leaves a hole in UK human rights", 2018, The Gaurdian. https://www.theguardian.com/law/2018/jan/13/brexit-eu-human-rights-act-european-charter
[159] Equality and Human Rights Commission, "Brexit and the EU Charter of Fundamental Rights: our concerns", 2018 https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected/what-charter-fundamental-rights-european-union-0
[160] Jamie. Doward, op. cit. 158.
[161] Ibid.
[162] Jack Simson Caird, *supra* note 10:87.

draft Withdrawal Agreement puts a significant emphasis to citizens' right. Thus, the UK and the EU concentrated greatly regarding affected citizens. Several related issues were addresses during the first phase of negotiations. Firstly, the Withdrawal Agreement addresses the fact the EU law regarding citizens' rights would require to be interpreted in accordance to pre-Brexit CJEU case law.[163] In addition to this, the UK's domestic courts will be able to seek interpretation of certain questions to the CJEU if necessary which would allow the CJEU to make a ruling on that particular case.[164] To that extent, both the UK courts and CJEU will be given responsibility to participate in exchanging judicial dialogue with one another.

However, there are still some uncertainty that will most likely be discussed during the second phase of the negotiations. At the moment, there is a general consensus between the UK and the EU regarding rules on conflict of law. They should be kept and continue to apply to contracts that were concluded before the withdrawal date. The same should be applied for non-contractual obligations as well, only that importance would be to focus on where the event that caused damaged occurred before the withdrawal date.[165] In addition to this, both parties did not reach joint agreement regarding free movement for UK citizens in other EU Member States. It is planned to be negotiated again in greater depth during the second phase as well.[166] During the first phase negotiation, both parties agreed on providing certainty in legal aspects concerning jurisdiction, recognition and enforcement of judgements. The current EU Legal documents will continue to apply. However, the matter of judicial cooperation should be finalised during the phase two.[167]

[163] John Curtis et al, *supra* note 134:21.
[164] Ibid.
[165] European Commission, *supra* note 133:14.
[166] House of Commons: Exiting the European Union Committee. *The Progress of the UK's Negotiations on EU Withdrawal: December 2017 to March 2018*, 2018, Third Report of Session 2017-19, p. 59.
[167] European Commission, op. cit. 165.

3. POTENTIAL OUTCOME AFTER THE OFFICIAL WITHDRAWAL

During the process of countless negotiations and debates, the uncertainty remains in the field of future civil judicial cooperation between the UK and the EU. At the moment, both parties have shown their interest in reaching successful compromise and minimize the damage for those who need certainty and protection the most – the EU and the UK citizens. The Citizens' rights were a great focus in the Joint Report as well as remains the centre of attention in the Draft Withdrawal Agreement. However, the important aspect is that both Joint Report and Draft Withdrawal Agreement emphasises on current EU legislation in the UK's legal system during the transition period. On one hand, it could be argued that both documents cannot promise any legal provisions after official withdrawal due to the fact that the EU has no legal right to conclude any agreements with the UK as an external partner while it still remains as a part of the EU system – one of the Member States.[168] As a result, the UK will be able to sign an agreement with the EU as an external partner, only after official withdrawal - when it becomes a third state in the EU context. On the other hand, many legal provisions were already discussed during the first phase of Joint Report and in the Draft Withdrawal Agreement and there will be even more after the second phase of negotiations. Although, the European Commission has mentioned that transition period should not last longer than until 31st of December, 2020,[169] the UK claims it to be around 2 years which should be enough considering the need to prepare future processes and implementations for successful partnership between the EU and the UK in the future.[170] The whole process of the official withdrawal may not be so simple and easy as intended. Thus, it raises many questions, regarding existing and future EU litigation: will the UK make a unilateral agreement with the EU to adopt EU legal instruments? Will the UK be treated as a third country or will it have special treatment to ensure successful future partnership with the EU? In case the UK will not transfer EU law to its domestic legal system, what will be the future judicial cooperation between the EU and the UK? Therefore, it is essential to explore possible options in order to have a better understanding regarding implementation/development of future EU private international law after the official withdrawal.

To sum up, it has been acknowledged that during the transition/implementation period, the UK will have to integrate new EU laws as well as maintaining current EU legal instruments. Most of new EU Regulations will come into force automatically.[171] One of the aims of the whole

[168] House of Commons: Exiting the European Union Committee *supra* note 166:35.
[169] European Commission *supra* note 142:68
[170] HM Government, "Draft Text for Discussion: Implementation Period", Department for Exiting the European Union, 2018, p. 2. https://www.gov.uk/government/publications/draft-text-for-discussion-implementation-period
[171] House of Commons: Exiting the European Union Committee *supra* note 166:42.

withdrawal process is to end the supremacy of the EU law in the UK. It has been agreed that the official Withdrawal Agreement should also include certain specifications on providing the UK ability to have a say on new EU laws as well.[172] However, this information will be either confirmed or rejected only after the official Withdrawal Agreement is published. Therefore, it is crucial to foresee the legal possibilities for the UK in case of unsuccessful negotiation for implementation of existing EU Regulations after the transition period.

3.1. Determination of Jurisdiction and enforcement of judgements without EU legal documents

To start with, in consideration of determining jurisdiction and enforcement of judgement in civil and commercial matters after Brexit, one of the alternatives may seem the ratification of the 2007 Lugano Convention. The UK government has already proposed its supporting side in regard to participation of the 2007 Lugano Convention.[173] On one hand, it might be a clever option for the UK due to the several reasons. First of all, it is in fact a functioning mechanism that extended judicial cooperation in civil and commercial matters between the EU and European Free Trade Association ("EFTA") states. In addition to this, the Protocol No 2 to the 2007 Lugano Convention only stresses the need for non-EU Member States to "pay due account" to the case-law of the ECJ rulings which might be as an acceptable alternative for the UK since it clearly showed its negative position on being bound by ECJ decisions.[174] Lastly, it would maintain civil judicial cooperation with the EU. Hence, it may be decent alternative for the UK in order to regulate international disputes in civil and commercial matters.

Moreover, there might be many other theories that suggest quite the opposite – 2007 Lugano Convention may not be the best alternative for the UK. Hence, it requires a more careful consideration. First of all, the ECJ interpretations may not be accepted by the UK as it was already shown in the past by non-EU States (especially Switzerland).[175] Even though there was a compromise by the Protocol No 2 that states to have an obligation for all courts to "pay due account" to the case law of the courts of other contracting parties, the aim is to minimize this influence and promote the independence of the courts is nevertheless visible [176] as "pay due account" is not an obligation. It could be easily interpreted as merely an option that requires to

[172] Ibid.
[173] HM Government, *supra* note 5:6.
[174] Burkhard Hess, *The Unsuitability of the Lugano Convention (2007) to Serve as a Bridge Between the UK and the EU After Brexit,* 2018, MPILux Research Paper 2018 (2) p. 4.
[175] Burkhard Hess, *supra* note 174:5.
[176] Ibid, p. 5.

have a valid reason in order to justify the divergence in the legal approach for specific case.[177] Moreover, there is a high risk that the UK legal system will go back to issuing anti-suit injunctions after Brexit as it used to be common practise before. At this point, the 2007 Lugano Convention may not have a power to prevent English courts from using this approach and as a consequence, these actions may end up affecting operation of European procedural law.[178]

Lastly, negotiations regarding participation in the Lugano Convention remain unclear. If the UK proposed full participation in the Convention, some great improvements made in the Brussels Ibis Regulation will be lost, however it would still provide a model for judicial cooperation with the EU for determining jurisdiction and enforcing judgements between EU Member States. From one point of view, some may argue that bilateral agreement between the UK and the EU would be a better alternative as it would have a possibility to address all of the important aspects of cross-border litigation that may end up missing in the Lugano Convention.[179] The EU Regulations provide coherent system that ensure legal certainty and predictability in case of legal disputes within EU Member States. Therefore, there is definitely a need to minimise the future gap between the UK and the EU. If the UK will not be willing to integrate current EU legal framework, the bilateral agreement may be a better alternative in order to focus on a broader picture: for example, to include the regulation of service of process, rules on taking of evidence and most importantly – to include family matters and set clear rules regarding maintenance.[180] However, in order to incorporate the Brussels Ibis and Brussels IIbis Regulations, the UK needs to get reciprocal agreement with the EU.[181] As a result, even though the UK would decide to continue to enforce court judgements from EU Member States, there is no guarantee that EU Member States would continue to do the same as they would not be obliged by it. Either way, the process of civil judicial cooperation between the UK and the EU may be changed significantly and will have an impact on the whole EU litigation system.

Another option for determining jurisdiction and enforcement of judgements could be the 2005 Hague Convention. It might be considered as a reasonable possibility as it was created in order to ensure high level of certainty for businesses that conclude international trade and investment agreements by supporting and promoting international litigation. Therefore, the 2005 Hague Convention could provide the UK legal framework in relations to jurisdiction agreements

[177] Ibid, p. 5.
[178] Ibid, p. 8.
[179] Ibid, p. 8.
[180] Ibid, p. 8.
[181] Eva Lein and Herbert Smith, *FAQ: Litigation Post Brexit*, 2017, British Institute of International and Comparative Law, p. 2 https://www.biicl.org/documents/1532_faq_-_litigation_post_brexit.pdf?showdocument=1

in civil and commercial matters.[182] On one hand, it would be important to mention few essential aspects that show certain limitations of the Convention. First of all, the 2005 Hague Convention has a limited regime to determine jurisdiction and enforcement due to the fact that it only covers the clause of exclusive jurisdiction that has been agreed by contracting parties.[183] In other words, the decisions made by the chosen court shall be recognized and enforced in other contracting states whereas the decisions made by a non-chosen court would not be bound to recognize and enforce decisions under the 2005 Hague Convention. This would not support and provide clarity as Brussels Ibis Regulation does. This clause may also evoke the anti-suit injunctions.[184] On the other hand, the set of rules from the 2005 Hague Convention is already implemented in the UK's national legal system and would simplify the joining process. In addition to this, the UK would be able to negotiate on new terms regardless of what has been agreed with the EU since the UK would join the Convention individually.[185] This factor may beneficial for contributing in filling the gap in uncertain areas that at the moment are being covered by the Brussels Ibis Regulation as the UK would be able to enter into this Convention on its own terms than it is already negotiated by the EU.

Pursuing this further, the 2005 Hague Convention would leave many gaps for the UK in solving civil and commercial matters either. Although it would be a more convenient choice for the UK rather than having nothing, but it would still make the civil judicial cooperation with the EU complicated due to several reasons. First of all, the EU set of rules do not recognize all jurisdiction agreements, such as agreements entered into employment, consumer or insurance contracts.[186] Second of all, the rules in the 2005 Hague Convention are also limited to those agreements that were concluded on or after the Convention came into force.[187] Moreover, the Convention does not have that many signatories and not all of the signatories have ratified it which minimises the scope of application. For instance, considering the EU Member States, the Convention could be applied only if one of the parties to the choice of court agreement is residing

[182] Thomson Reuters, "Hague Convention on Choice of Court Agreement", Practical Law, 2018. https://uk.practicallaw.thomsonreuters.com/05072280?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1
[183] The 2005 Hague Convention, Art. 1(1).
[184] Mukarrum Ahmed and Paul Beaumont "I Thought We Were Exclusive? Some Issues With the Hague Convention on Choice of Court, Brussels IA and Brexit", 2017.https://aberdeenunilaw.wordpress.com/2017/09/21/i-thought-we-were-exclusive-some-issues-with-the-hague-convention-on-choice-of-court-brussels-ia-and-brexit/
[185] Osborneclarke.com "Post- Brexit Mutual Recognition and Enforcement of UK and EU Judgements", 2017. Sector Insight. http://www.osborneclarke.com/insights/post-brexit-mutual-recognition-and-enforcement-of-uk-and-eu-judgments/
[186] Ivan Shiu, Julianne Hughes – Jennett and Giles Hutt, "2005 Hague Convention on Choice of Court Agreements (the "2005 Hague Convention"), 2018. Hogan Lovells. https://www.lexology.com/library/detail.aspx?g=8cab472f-2e29-4797-ba0c-9b62b4388875
[187] Ibid.

in Mexico or Singapore, and the other in one of the EU Member States. Therefore, there would not be a lot of convenient options for the UK - but the hope that the application scope would increase when more states join this Convention. Moreover, in Article 3(c) of the Convention is stated that the choice of court agreement must be documented in writing or other electronic communication form.[188] The Brussels Ibis Regulation has a broader application scope and accepts that provide more options for valid agreements that are not covered by the Convention. Lastly, the Convention is lacking coverage on non-contractual matters such as family law, succession, insolvency; as well as on special contracts that cover agreements for carriage of passengers and goods. Hence, the adoption of the 2005 Hague Convention would not fully replace the current legal framework that is guaranteed by the Brussels Ibis Regulation.

In regard to anti-suit injunctions, it would be essential to analyse the dynamics of the relationship between the Brussels Ibis Regulation and the 2005 Hague Convention. The Convention would be applied instead of Regulation in case one of the contracting parties is resident in a non-EU State to the Convention.[189] The litigation process under the Convention may result in higher cost and possibilities for delays regarding cross-border enforcement proceedings because of the potential risk of rejected enforcements of judgements that were made by a court.[190] It evokes another risk that may allow another court than the chosen court to demand to have jurisdiction to hear the case regardless of the agreement due to these factors: it can consider that it is the court first seized; it considers the agreement to be permissive rather than exclusive; the agreement is verified as invalid under its own law.[191] As a result, the adoption of the 2005 Hague Convention would leave many gaps that may contribute in creating risky yet not well functioning civil judicial cooperation with the EU.

Yet, there is an interesting observation regarding the EU Regulations – Brussels Ibis in particular. There was a clause in former Brussels Regulation which was stated for choice of court agreement, that one the parties had to be based in one of the EU Member States.[192] However, this clause was removed under the influence of the 2005 Hague Convention. As a result, the Brussels Ibis Regulation provides more flexibility in regard to jurisdiction as according to Article 25, if the parties, regardless of their domicile, have agreed that the court of one Member State has

[188] The 2005 Hague Convention, Art. 3(c).
[189] Ibid, Art. 26(6)(a).
[190] Damian Taylor and Robert Brittain, "Brexit". Slaughterandmay. https://www.slaughterandmay.com/media/2536354/the-dispute-resolution-review-brexit-chapter.pdf
[191] Hans van Loon, "The 2005 Hague Convention on choice OF court Agreements – an Introduction" *in 12th Regional PIL Conference: "Private International Law on Stage – National, European and International Perspectives", 23 and 24 October* 2015, p. 20.
[192] Ibid, p. 17.

jurisdiction[193], that court will have jurisdiction and no *forum non conveniens* and no *lis pendens* will have an impact to change it.[194] In this respect, the jurisdiction clause in the Brussels Ibis Regulation has some similarities to the 2005 Hague Convention.[195] Hence, this only proves that different legal instruments create such coherent system that influences one another by erasing the existing flaws.

Overall, the adoption of the 2005 Hague Convention is definitely an option for the UK after the official withdrawal. It will allow the UK to enforce judgements in other EU Member States as well as provide some clarity in contracts that have exclusive jurisdiction. However, the Convention is more limited than EU legal instrument - the Brussels Ibis Regulation in particular and therefore it may create a risk for more complex and less effective judicial cooperation with the EU. The Brussels Ibis Regulation has more alternatives and accepts different types of agreements whereas the Convention is merely concentrated on exclusive jurisdiction and does not cover other essential matters that other EU legal documents do.

There is a considerable option for the UK to continue to apply the 1968 Brussels Convention for jurisdiction and enforcement of judgements in civil and commercial matters as well. The UK still remains as a party of the Convention regardless of the fact that the Brussels Ibis Regulations has substituted it. An interesting factor, that the Convention was never eliminated nor formally denunciated by any of its Contracting States, including the UK as well. The Convention could not be interpreted as the EU legal instrument as Member States do not automatically join it when becoming a part of the EU, therefore the UK as currently one of the EU Member State could leave the EU and remain a party to this Convention.[196] The 1968 Brussels Convention is outdated and does not include numerous relevant matters that the Brussels Ibis Regulation does and it may trigger deeper issues while solving civil and commercial matters. In addition to this, not all of the EU Member States are parties to the Convention. Hence, it would still leave many gaps and uncertainty in civil judicial cooperation between the UK and the EU. The Convention could still be a considerable option as it nevertheless at least guarantees some of the functions that are outlined in the Brussels Ibis Regulation. However, it may also cause some legal issues due to several reasons.

[193] Brussels Ibis Regulation, Art. 25.
[194] Hans van Loon, *supra* note 191:17.
[195] Ibid, p. 17.
[196] Stibbe.com "Jurisdiction and Enforcement of Judgements Post-Brexit: State of Play", 2017. https://www.stibbe.com/en/news/2017/march/jurisdiction-and-enforcement-of-judgments-post-brexit-state-of-play

First of all, the 1968 Brussels Convention has set requirements for general jurisdiction which would be determined according to the defendant's domicile. Under the Convention, the seat of a company or other legally recognized entity would be determined by the court seized according to the national rules of private international law. It may provide uncertainty and legal incompatibility as it contradicts the information in the Brussels Ibis Regulation which has an autonomous definition of the legal person's domicile.[197] Moreover, the Convention does not have a clear interpretation regarding the notion of "contractual matters", "obligation in question" and how the place of performance of such an obligation should be determined.[198] The lack of clarity in these aspects may cause more legal issues in solving the disputes. Even though the interpretation problem is not completely resolved in the Brussels Ibis Regulation either, the Article 7 of the Regulation clarifies what needs to be understood in regard to contracts of sale of goods and provision of services.[199] In addition to this, the legal procedure for plaintiff to sue is more complicated in matters relating to tort. These matters fall into special jurisdiction category. Although in both the 1968 Convention and the Brussels Ibis Regulation is stated the court that will have jurisdiction to rule on a tortious claim will be the one where the harmful event occurred, the preventative action for the plaintiff to sue at the place where the harmful event may occur is not possible under the Convention.

Moreover, the application of the 1968 Brussels Convention would lead to further issues regarding civil judicial cooperation with the EU as the UK would apply the Convention whereas the remaining of the EU Member States would apply the rules from the Brussels Ibis Regulation. The particularly affected areas would be regarding[200]:

- rules on consumers that are covered in Article 18 of the Brussels Ibis Regulation;
- rules on employees - Article 21 of the Brussels Ibis Regulation;
- exclusive jurisdiction laid out in Article 25 of the Brussels Ibis Regulation;
- choice of court agreements set out in Article 25 of the Brussels Ibis Regulation.

In regard to choice of courts agreements, it may raise some interesting yet important risk. For instance, if the English courts will have jurisdiction under Article 25 of the Regulation, it will cause some issues as the UK would not be qualified as one of the EU Member States. Hence, the requirement set out in Article 25 of the Regulation that courts of the EU Member States shall

[197] Stibbe.com, *supra* note 196.
[198] Ibid.
[199] Brussels Ibis Regulation, Art. 7(1).
[200] Stibbe.com, op. cit. 197-198.

suspend the proceedings in case there is an exclusive jurisdiction clause in favour of the court of another EU Member State until the chosen court has ruled on its jurisdiction would not apply to clauses conferring jurisdiction on the UK's courts.[201] These circumstances may provide with a possibility for one of the parties to delay the judgement in the chosen forum by starting proceedings in a non-chosen court. As a result, under the Convention, the chosen court would have an obligation to stop any further proceedings until the decisions has been made by the court first seized. In this situation, the court first seized would be a non-chosen court.[202] These possible circumstances may lead to such model of dispute resolution which is restricted by the contemporary EU private international law.

It would be important to mention that under the 1968 Brussels Convention; the priority is always given to the exclusive jurisdiction to the court of conferred by the clause. Under Brussels Ibis Regulation, the parties are given the possibility to agree otherwise. In addition to this, the Regulation notes that jurisdiction clause is valid and given to the courts of a Member States regardless of the domicile of the contracting parties. Whereas under the Convention, the requirement is different – at least one of the parties has to be domiciled in a Contracting State.[203] Another important aspect that would be affected between these two legal documents is enforcement of judgement. Under the 1968 Brussels Convention, if the ruling was made in one contracting State and needs to be enforced in the other, the enforcing State is subject to issuing an order for enforcement and the scope of limitation for rejecting another court's ruling is only described in articles 27 and 28.[204] On one hand, it could be argued that the enforcement procedure that is set out in the Convention does have its advantages and may even be considered as a more simplified way for enforcing a certain judgement as the enforcing courts are not warranted to review the merits of the foreign judgement. On the other hand, the Regulation is more relevant as it does not require any transitional proceedings in order to enforce the judgment in the enforcing State.[205] Hence, there would be too many differences between these two legal instruments and as a result, the effective civil judicial cooperation between the UK and the EU would not be completely fulfilled without having too many gaps and incompatibilities.

Overall, the 1968 Brussels Convention would be an option that the UK may consider of keeping in order to have a functioning legal instrument in civil and commercial matters that would

[201] Stibbe.com, *supra* note 196.
[202] Ibid.
[203] Ibid.
[204] Ibid.
[205] Stibbe.com, *supra* note 196.

be in use regarding jurisdiction and enforcement of judgements. Therefore, it is clear that this would nevertheless provide certain civil judicial cooperation between the UK and the EU even if the Brussels Ibis Regulation will cease to apply in the UK. However, it is essential to acknowledge that it would still leave a lot of gaps in civil judicial cooperation as the Convention is outdated and there are quite many limitations – the limited geographical scope of application in particular that come from the 1968 Brussels Convention. Therefore, it would be reasonable enough to assume that the UK and the EU should find a better solution for matters regarding jurisdiction and enforcement of judgements as it would definitely raise many legal issues in the future for private international law.

To sum up, there might be a discussion raised whether the UK could seek a familiar approach that Denmark has managed to settle with the EU. Similarity with Denmark implies the fact that under the Amsterdam Treaty, Denmark has also opted-out from civil justice measures. The special agreement was reached with the EU as Denmark was a party to Brussels I Regulation's predecessor – 1968 Brussels Convention.[206] Moreover, Denmark is obliged to accept revisions that are being made in regard to this Regulation (for instance – Brussels Ibis Regulation).[207] From one point of view, it may suggest that the UK would be able to reach similar agreement with the EU as it showed more corporative approach in adopting EU Regulations than Denmark did. However, the UK will be left as a third country whereas Denmark is one of the EU Member States.[208] In spite of these odds, the best alternative may seem indeed to seek a special agreement with the EU in order to gain ability to implement Brussels Ibis and Brussels IIbis Regulations into its domestic legal system post Brexit with assurance that judgements given in one Member State would be easily enforced in the other, including the UK. Since this option would still demand the UK to accept interpretations on rules by the CJEU, there is potentially one more alternative: to anticipate a special agreement with the EU regarding combination of Brussels Ibis and Brussels IIbis and even Maintenance Regulations in combination with a Lugano Protocol 2.[209] However, this agreement would require a great compromise from both parties and therefore may be perceived as an even more complex option.

[206] Eva Lein and Herbert Smith, *supra* note 181:3.
[207] Ibid.
[208] Ibid.
[209] Eva Lein and Herbert Smith, *supra* note 206.

3.2. Potential issues regarding handling the family matters without EU legal documents

The EU legal documents for family matters are recognised as a beneficial and successfully functioning system. However, since the UK will not be able to adopt these Regulations without reciprocal agreement with the EU, it raises many questions regarding how the family matters with a foreign element will be regulated after the official withdrawal and what kind of impact will be noticed in the whole EU legal system.

First of all, it will create a confusing legal environment which may allow *Lis Pendens* rule be abused by competing litigants that may disrupt proceedings that were issued in competing jurisdiction.[210] Second of all, it may promote different parties to enrol in competition to be the first to issue proceedings in that jurisdiction that would the most beneficial.[211] Another important factor would be enforcement of judgement. For instance, if we take divorces as an example that were concluded in other Member States, typically there would be an automatic recognition in other Member state that would not require any more special procedures. [212] Without this recognition and automatic enforcement, interested parties may act in a way to prevent the decision from being recognized. One of the fastest way to do that would be by supporting any of the following arguments that are implemented in the Brussels IIbis Regulation:

- "if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;
- where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;
- if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or
- if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought. "[213]

[210] House of Lords, *supra* note 83:24.
[211] Ibid.
[212] Bruseels IIbis Regulation, Art 21.
[213] Brussels IIbis, Regulation, Art 22.

As a result, enforcement of judgements might be compromised easier due to possible gaps that may occur if the UK is no longer a part of EU private international law. In addition to this, the Brussels IIbis Regulation has a broader scope and covers related aspects to the protection of the child. It can be applied not only to matrimonial proceedings but also aspects of parental responsibility. In other words, parents do not necessarily need to be married or be biological parents of the child as greater scope of this Regulation allows agreements between parties (in this case – parents) be applied in the country where they were made.[214] In addition to parental responsibility, the Regulation sets general rule for determination of jurisdiction: the courts of a Member State should have it according to where the child is habitually resident at the time the court is seized.[215] Even though the Regulation does not specifically define habitual residence factor, it sets certain guidelines that clarify a fact that a person cannot be habitually resident in more than one Member State at once.[216] Since cases related to children and parental responsibility are considered sensitive and are being dealt with in a way to avoid any harm to a child, habitual resident factor is usually straightforward to ascertain as well.

Additionally, the Maintenance Regulation is a comprehensive instrument that covers cross-border maintenance applications arising from family relationships.[217] This EU instrument establishes comparable rules on jurisdiction, recognition and enforcement of judgement in regard to maintenance obligations.[218] The Maintenance Regulation was brought in order to design a system that would enable for a Maintenance Creditor to automatically enforce in one Member State a decision made in another Member State without going through any further formalities.[219] It has been claimed that this Regulation has such a significant impact on the UK's domestic law that it spread into every area of it.[220] Due to its exclusive nature and difference in comparison with Brussels Ibis and Brussels IIbis Regulation, the Maintenance Regulation also sets certain rules on the applicable law and its application according to a particular dispute.

Yet another important EU legal instrument that will be affected is the Maintenance Regulation. Due to importance of this Regulation and its unique complexion the outcome was certainty and

[214] House of Lords, *supra* note 83:24.
[215] Brussels IIbis, art. 8.
[216] House of Lords op. cit. 214:25.
[217] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0004
[218] House of Lords, op. cit. 214:26.
[219] Blanchards Law, 2012. http://www.blanchardslaw.co.uk/blog/the-eu-maintenance-regulation-a-simplification/
[220] David Williams QC in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.26.

effectiveness for many different individuals: children, parents and even adult partners.[221] One of the reasons for it was that it managed to make Europe very global. The Brussels IIbis and the Maintenance Regulation function in a different form in relations to Brussels Ibis Regulation. However, despite of the fact that all three Regulations may appear complex and different in procedure aspect, all three of them provided clarity and certainty that was very much-needed in regard to cross-border family relations and disputes that were emerging within these family matters. As a result, it could be argued that there would be many potential problems that may occur if UK leaves the Brussels IIbis and the Maintenance Regulation without any alternatives.

The uniformity of these EU Regulations is one of the key aspects that contributed in making different complex domestic laws into one simplified system which could be called a global Europe. The whole EU legal system was built on legal foundation – CJEU. As a result, Member States are interpreting and practicing EU Regulations with support of the CJEU.[222] Without Brussels IIbis and Maintenance Regulation, the UK would be dealing with parental responsibility and protection of children by applying 1996 Hague Convention.

Furthermore, all of the EU Member States are party to the 1996 Hague Convention which sets out number of rules to improve and ensure protection for children in situations when there might be a conflict between different national legal systems. The main purpose of this Convention is to simplify already complex international disputes when dealing with non-Member States that are also taken their part to the Convention. The main aim is again protection of children and it covers jurisdiction, recognition and enforcement of judgement in matrimonial matters and matters of parental responsibility.[223] However, the 1996 Hague Convention would not cover all of the essential aspects as the EU private international law does.

In addition to this. David Williams QC claims that if the UK was left to apply only the 1996 Hague Convention it may result in having a destructive impact on children as the consequence might be "like having Windows operating system and an Apple operating system: they just do not talk to each other".[224] Loss of certainty and predictability would be noticed not only in the UK and would have direct effect on citizens form other Member States that currently reside in the UK. One of the main factor regarding these two Regulations is the loss of uniformity in the whole EU legal system but most importantly – there would be a loss of clarity and predictability when it

[221] Professor Rebecca Bailey-Harris in in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.26.
[222] David Williams QC in House of Lords, *supra* note 86:28.
[223] 1996 Hague Convention
[224] David Williams QC in House of Lords, *supra* note 86:28.

comes to protection of children if these Regulations cease to apply. Even though all of the EU Member States have taken part to ratify the 1996 Hague Convention, within EU legal system, the Brussels IIbis Regulation is prioritised. It could be noticed in Article 61 that states relation with the 1996 Hague Convention:

"As concerns the relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, this Regulation shall apply:

a) where the child concerned has his or her habitual residence on the territory of a Member State;
b) as concerns the recognition and enforcement of a judgement given in a court of a Member State on the territory of another Member State, even if the child concerned has his or her habitual residence on the territory of a third State which is contracting Party to the said Convention."[225]

Regardless of the fact that the 1996 Hague Convention would become the only alternative for the UK to deal with international disputes related to protection of children. The same would apply to the rest of the EU Member States while dealing with the UK as the third country. This unfortunate circumstance would start questioning the certainty and predictability as there might be a real danger to be trapped into lack of uniformity in the EU legal system.

Another crucial matter that needs to be addressed in case the Maintenance and Brussels IIbis Regulations would not be a part of the UK national legal system anymore – loss of ready enforcement. Since the whole process of enforcement of judgements in the EU legal system is made in order to make complicated and difficult procedure simplified it would again bring this matter back to the beginning which does not provide any uncertainty nor simplified alternatives. Therefore, the enforcement of judgement matter is very essential. It would not be functioning properly if, for example, the judgement regarding the concerned child is obtained in the UK, that particular child lives in one of the EU Member States and obtained judgement cannot be enforced in the country of habitual residence.[226] The negative side is the affected subject of these Regulations – children, that require more certainty in order to avoid any legal incompatibilities.

[225] Brussels IIbis Regulation, Art. 61.
[226] Mathew Thorpe in in House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?", p.28.

Moreover, there might be some doubts and concerns that maintenance cases are focused mainly on high-wealth individuals. However, the important fact is that the Maintenance Regulation was created in order to be focused mainly on children that are in need of maintenance from a parent.[227] People are able to move freely in the whole European Union, therefore there is always a possibility that one of the parents would leave and move to a different Member State. As a result, it would become extremely complicated and difficult reciprocally to enforce maintenance without proper arrangements. [228] Thus, negotiations become highly crucial in order to ensure children's financial rights.

Another great issue would be the loss of provision on child abduction that is covered by Brussels IIbis Regulation. Child abduction is a very serious matter that requires more sophisticated security and clarity in EU legislation. The abduction may even be inflicted by people who are related to a child such as parents or other family members and also those who are not related but happened to know a child: neighbours, friends, acquaintances and even strangers.[229] Therefore, the loss of this provision would be a real scarcity for the UK as well as for the EU. First of all, the protected object is child that requires the whole legal system to take significant care of them. Children who suffered this life threating event, may result in serious mental and health issues. On one hand, it would be essential to address that in case Brussels IIbis Regulation becomes inactive in the UK, the 1980 Hague Convention will be a direct replacement on civil aspects of international child abduction.[230] On the other hand, there are more concrete provision regarding child abduction in Brussels IIbis Regulation and as a result, it is prioritized over the Convention amongst Member State. For instance, Brussels IIbis has broadened the concept of child abduction and adapted more liberal approach towards return of the child. Meaning that non-return order in case of abduction of a child would be reviewed and considered by both Member States: by country where the child was wrongfully brought to and by country where the child was habitually resident immediately before the wrongful removal.[231] While the Convention does not have such provision which would result in having the country of origin to accept non-return order regardless if the circumstance, Hence, without Brussels IIbis Regulation in the UK there is most likely going to be uncertainty regarding this vulnerable topic and will have a direct effect to EU legal system as well since EU citizens, including British population, not necessarily are resided in their country of nationality.

[227] Professor Rebecca Bailey-Harris in House of Lords *supra* note 221:28.
[228] Ibid.
[229] Child Abduction Organization http://www.childabduction.org.uk/index.php/child-abduction
[230] 1980 Hague Convention
[231] Brussels IIbis Regulation, Art. 11.

Overall, the international legal documents for determination of jurisdiction and enforcement of judgements such as the 2007 Lugano Convention, 2005 Hague Convention or 1968 Brussels Convention are not as precise and broad as the EU Brussels Ibis and IIbis Regulations. It is logical to assume that it will cause legal issues in handling international disputes with other EU Member States. Therefore, by carefully analysing the potential outcome after the official UK's withdrawal from the EU, it would be correct to suggest that the best alternative at the moment seems to be a bilateral agreement between the UK and the EU in order to maintain similar form of civil judicial cooperation.

CONCLUSIONS

1. The UK has always been a Member State with the most opt-outs due to the fact that it emphasized on safeguarding its national laws by choosing which EU Regulations shall be implemented and which of them shall not for their unsuitable nature. Those Regulations that the UK has not implemented into its national system are the Succession Regulation, the Rome III Regulation and partly the Maintenance Regulation.

2. The national law in the UK has too much influence from the EU in order to have all of it eliminated and altered after the official withdrawal. Therefore, the potential influence on EU private international law may not be as significant as some authors predict.

3. The Great Repeal Bill is in progress of first phase of negotiations with the EU at the moment. The private international law is reflected in ongoing negotiations. However, it only covered the part regarding maintaining the citizens' rights to avoid any complications and negative impact of them. Due to the fact that Draft Withdrawal Agreement has been issued by the European Commission, the final one may have a different structure which is only predictable at this stage.

4. Implementation of EU Regulations after the official withdrawal will be complex as majority of EU legal instruments require reciprocal agreement. First of all, it is still uncertain whether the UK will even consider in adopting them and second of all, the EU may not be interested in having the UK as a third country with the benefits that are given only to the EU Member States.

5. If negotiation regarding the terms of withdrawal does not meet needs for both parties, the UK will be left out with the possibility to adopt international legal documents such as: the 2007 Lugano Convention, 2005 Hague Convention, the 1968 Brussels Convention for determination of jurisdiction and enforcement of judgement. However, that may cause many legal issues in regard to deal with matters with other EU Member States. There is a potential possibility for the emergence of parallel proceedings, anti-suit injunctions and other legal incompatibilities as Conventions do not cover areas in a great depth as the Brussels Ibis and Brussels IIbis Regulation does.

6. Regarding the applicable law, the UK has better conditions for implementing the Rome I and the Rome II Regulations into its national legal system as the they do not require reciprocal agreement for adoption.

7. The definite impact of the UK's withdrawal from the application of the EU's private international law is still in question until the official withdrawal is finalised and comes in force. Due to the fact that current EU legal framework will continue to apply during the transition process as well, the clear answers may not be given in the near future.

8. The careful in-depth analysis on the influence of withdrawal, shows strong odds for arising issues in family matters as well as in determination of jurisdiction and enforcement of judgement. Therefore, the best alternative for more affective and less damaging withdrawal would be a bilateral agreement between the UK and the EU in order to maintain current civil judicial cooperation model and avoid further legal issues.

LIST OF THE BIBLIOGRAPHY

Miscellaneous

Ahmed, M and Beaumont, P. 2017. "I Thought We Were Exclusive? Some Issues With the Hague Convention on Choice of Court, Brussels IA and Brexit". Aberdeenunilaw. [Accessed 20-10-2017]
https://aberdeenunilaw.wordpress.com/2017/09/21/i-thought-we-were-exclusive-some-issues-with-the-hague-convention-on-choice-of-court-brussels-ia-and-brexit/

Albors-Llorens, A. 2016. "How the EU works: EU law and the UK". FullFact. [Accessed 19-10-2017]
https://fullfact.org/europe/eu-law-and-uk/

Arangone's, J., J. 1990 "Regina v. Secretary of States for Transport Ex parte Factortame Ltd: The Limits of Parliamentary Sovereignty and the Rule of Community Law". *Fordham International Law Journal,* 14(3): 778-818.

BBC News, 2016. "Reality Check: How Many EU Nationals Live in the UK?". [Accessed 15-01-2018]
http://www.bbc.com/news/uk-politics-uk-leaves-the-eu-36745584

BBC News, "Brexit: David Davis Wants 'Canada Plus Plus Plus' Trade Deal", 2017. [Accessed 18-02-2018]
http://www.bbc.com/news/uk-politics-42298971

Blanchards Law, 2012. "The EU Maintenance Regulation – A Simplification". [Accessed 21-02-2018]
http://www.blanchardslaw.co.uk/blog/the-eu-maintenance-regulation-a-simplification/

BREXIT Seminar, 2015, "Week 7: Post-BREXIT Effects of Pre-BREXIT Measures, and Implications of BREXIT Otherwise than Pursuant to Article 50 of the Treaty of the European Union". [Accessed 20-10-2017]
https://www.law.ox.ac.uk/sites/files/oxlaw/brexit7-27nov15-full-report.pdf

Briggs,M. 2015. “Europe ‘à la carte’: The Whats and Whys Behind UK opt-outs”. Euractiv. [Accessed 23-03-2018]
https://www.euractiv.com/section/uk-europe/linksdossier/europe-a-la-carte-the-whats-and-whys-behind-uk-opt-outs/

Caird, J., S., 2017. *Legislating for Brexit: The Great Repeal Bill*. House of Commons Library, Briefing Paper.

Child Abduction Organization “Child Abduction”. [Accessed 18-03-2018].
http://www.childabduction.org.uk/index.php/child-abduction

Curtis, J. et al. 2017. *Brexit: ‘Sufficient Progress’ to Move to Phase 2*. House of Commons Library. Briefing Paper: Number 8183, 18 December 2017.

Danov, M. 2017. *Cross-Border Litigation in England and Wales: Pre-Brexit Data and Post-Brexit Implications.* Exeter Centre for International Law.

De Mars, S. et al. 2017. “Constitutional Conundrums: Northern Ireland, the EU and Human Rights” in J. Curtis et al, *Brexit: ‘Sufficient Progress’ to Move to Phase 2*, House of Commons Library. Briefing Paper: Number 8183, 18 December 2017.

Doward, J. 2018. “Brexit Leaves a Hole in UK Human Rights”. The Gaurdian. [Accessed 18-03-2018]
https://www.theguardian.com/law/2018/jan/13/brexit-eu-human-rights-act-european-charter

Erlanger, S. 2017. “Brexit? For Now, EU leaves fights to the UK”. NY Times. [Accessed 23-03-2018]
https://www.nytimes.com/2017/09/06/world/europe/brexit-eu-negotiations.html

European Commission. *Applying EU Law. EU Law and Its Application*. [Accessed 24-03-2018]
https://ec.europa.eu/info/law/law-making-process/applying-eu-law_en

European Commission. 2017. *Joint Report from the Negotiators of the European Union and the United Kingdom Government on Progress During the Phase 1of Negotiations Under Article 50 TEU on the United Kingdom’s Orderly Withdrawal from the European Union*.

European Commission. *Successions and Other Willis. EU Rules International Succession.* [Accessed 24-03-2018] https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/civil-justice/family-law/successions-and-wills_en

European Commission Draft Withdrawal Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. 28 February 2018. TF50 (2018) 33 – Commission to EU 27.

Europa.eu. *Your Europe. European Company*. [Accessed 30-03-2018] https://europa.eu/youreurope/business/start-grow/european-company-legal-form/index_en.htm#abbr-ID0E1

Equality and Human Rights Commission. 2018. "Brexit and the EU Charter of Fundamental Rights: our concerns". [Accessed 18-03-2018] https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected/what-charter-fundamental-rights-european-union-0

Fairbairn, C. 2017. *Brexit: Civil Judicial Cooperation*. House of Commons Library.

Fitchen, J. 2016 "Brexit and EU private international law: cross-border judgement- unintended consequences". Aberdeenunilaw. [Accessed 20-10-2017] https://aberdeenunilaw.wordpress.com/2016/07/07/brexit-and-eu-private-international-law-cross-border-judgments-unintended-consequences/

Fitchen, J. 2017. *The PIL Consequences of Brexit*. NIPR. http://www.nipr-online.eu/upload/documents/20171006T120337-NIPR%202017-3_Fitchen.pdf

Gov.uk. "Status of EU Citizens in the UK: What You Need to Know". [Accessed 20-03-2018]. https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know

Gov.uk. "The JHA opt-in Protocol and Schengen opt-out Protocol". [Accessed 21-03-2018]. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/588184/jha-opt-in-background.pdf

Harris, B. 2017. *The Charter of Fundamental Rights in UK law after Brexit: Why the Charter should not be transposed*. Lawyers For Britain.

Hess, B. 2018. *The Unsuitability of the Lugano Convention (2007) to Serve as a Bridge Between the UK and the EU After Brexit.* MPILux Research Paper 2018 (2).

Hill, J. "Brexit and private international law", University of Bristol Law School. [Accessed 20-03-2018]
https://legalresearch.blogs.bris.ac.uk/2016/07/brexit-and-private-international-law/

HM Government. 2014. *Review of the Balance of the Competences Between the United Kingdom and the European Union: Civil Judicial Cooperation.* Crown Copyright.

HM Government. 2017. *Providing a Cross-border Civil Judicial Cooperation Framework. A Future Partnership Paper.* Department for Exiting the European Union.

HM Government.2018. *Draft Text for Discussion: Implementation Period*. Department for Existing the European Union. [Accessed 02-04-2018]
https://www.gov.uk/government/publications/draft-text-for-discussion-implementation-period

House of Commons: Exiting the European Union Committee. 2018. *The Progress of the UK's Negotiations on EU Withdrawal: December 2017 to March 2018*. Third Report of Session 2017-19.

House of Lords, European Union Committee. 52nd Report of Session 2005-06 *Rome III – choice of Law in Divorce*.
https://publications.parliament.uk/pa/ld200506/ldselect/ldeucom/272/272.pdf

House of Lords, European Union Committee, 17th Report of Session 2016-17, "Brexit: Justice for families, individuals and businesses?"

Investopedia.com "Passporting". [Accessed 20-01-2018]
https://www.investopedia.com/terms/p/passporting.asp

Kačevska, I. Et al. 2015. *Effective Adoption, Transposition, Implementation and Application of European Union Legislation in the Area of Civil Justice.* Riga.

Kentish. B. 2018. "Tory Government Votes Not to Retain European Human Rights Charter in the UK Law After Brexit". Independent.co.uk. [Accessed 18-03-2018]. https://www.independent.co.uk/news/uk/politics/brexit-mps-vote-against-including-european-fundamental-rights-charter-in-uk-law-a8162981.html

Kramer, X. et al. 2012. *A European Framework for PIL: Current Gaps and Future Perspective*. European Parliament.

Lein, E. and Smith, H. 2017. *FAQ: Litigation Post Brexit*. British Institute of International and Comparative Law. https://www.biicl.org/documents/1532_faq_-_litigation_post_brexit.pdf?showdocument=1

Loizou, L. 2015. "Greece Joins EU Law of Applicable Law on Divorce". Solicitor and Partners: International Law Group. [Accessed 19-03-2018]. https://www.familylaw.co.uk/news_and_comment/greece-joins-eu-law-of-applicable-law-on-divorce#.WrK5SGaB0nU

Metadjer, A. 2015. "The EU Succession Regulation now in force – how will it affect you?" Kingsley Napley. [Accessed 18-02-2018]. https://www.kingsleynapley.co.uk/insights/blogs/private-client-law-blog/the-eu-succession-regulation-now-in-force-how-will-it-affect-you

Migration Observatory. 2017. "The Burden of Proof: How Will the Application Process Work for EU Citizens After Brexit", Oxford University. [Accessed 24-03-2018]. http://www.migrationobservatory.ox.ac.uk/resources/reports/burden-of-proof-eu-citizens-after-brexit/

Osborneclarke.com. 2017. "Post- Brexit Mutual Recognition and Enforcement of UK and EU Judgements". Sector Insight. [Accessed 28-01-2018]. http://www.osborneclarke.com/insights/post-brexit-mutual-recognition-and-enforcement-of-uk-and-eu-judgments/

Osmotherley, J. 2014. “How Do You Enforce a UK Maintenance Order Abroad Using the EU Maintenance Regulation”. Clarion. [Accessed 18-03-2018]. https://www.clarionsolicitors.com/blog/how-do-you-enforce-a-uk-maintenance

Out-law.com, 2011. “Governing Law and Jurisdiction: Rome I”. [Accessed 18-03-2018]. https://www.out-law.com/topics/dispute-resolution-and-litigation/arbitration-and-international-arbitration/governing-law-and-jurisdiction-rome-i/

Parliament.uk, 2017. “Legislating for Brexit: The Great Repeal Bill”. http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7793

Peers, S. 2015. “The UK and the Schengen system”. King’s College London. [Accessed 15-02-2018]. http://ukandeu.ac.uk/the-uk-and-the-schengen-system/

Philippe D. 2016. “The Judicial Impact of the Brexit”. [Accessed 18-01-2018]. http://www.philippelaw.eu/Front/c2760/NewsDetails.aspx?News=438

Requejo, M. 2017. “Brexit and Private International Law, Over and Over”. The Law of Nations. [Accessed 18-03-2018]. https://lawofnationsblog.com/2017/03/27/brexit-private-international-law/

Rodionova, Z. 2017 “Brexit: UK Insurer Hiscox to Set Up New European Unit in Luxembourg”. Independent. [Accessed 19-03-2018]. http://www.independent.co.uk/news/business/news/brexit-latest-news-hiscox-uk-insurance-brokers-luxembourg-european-unit-office-a7725681.html

Shiu, I., Jennet, J. H, Hutt G. 2018. “2005 Hague Convention on Choice of Court Agreements (the “2005 Hague Convention”), Hogan Lovells. [Accessed 18-03-2018]. https://www.lexology.com/library/detail.aspx?g=8cab472f-2e29-4797-ba0c-9b62b4388875

Stibbe.com. 2017. “Jurisdiction and Enforcement of Judgements Post-Brexit: State of Play”. [Accessed 16-02-2018]. https://www.stibbe.com/en/news/2017/march/jurisdiction-and-enforcement-of-judgments-post-brexit-state-of-play

Taylor, D., Brittain, R. “Brexit”. Slaughterandmay. https://www.slaughterandmay.com/media/2536354/the-dispute-resolution-review-brexit-chapter.pdf

Tempest, M. 2007. “Blair Sets Out Red Lines on EU Constitution”. The Guardian. [Accessed 18-02-2018]. https://www.theguardian.com/world/2007/jun/18/eu.politics

Thomson Reuters. 2018 “Hague Convention on Choice of Court Agreement”. Practical Law. [Accessed 13-01-2018]. https://uk.practicallaw.thomsonreuters.com/05072280?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1

Travis, A. 2017. “Fewer Britons Living in EU Than Previously Thought, Study Finds”. The Guardian. [Accessed 18-03-2018]. https://www.theguardian.com/politics/2017/jan/27/fewer-britons-in-rest-of-europe-than-previously-thought-ons-research

Loon, H. V. 2015. “The 2005 Hague Convention on choice OF court Agreements – an Introduction”. *12th Regional PIL Conference: “Private International Law on Stage – National, European and International Perspectives”*, *23 and 24 October* 2015: 11-31.

EU Directives and Regulations

Directive (EC) No 38/2004 of the European Parliament and of the Council of 29 April 2004 on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely Within the Territory of the Member States

Regulation (EC) No 2201/2003 - Jurisdiction, Recognition and Enforcement of Matrimonial and Parental Judgments (Brussels IIbis).

Regulation (EC) No 864/2007 — the Law Applicable to Non-Contractual Obligations (Rome II).

Regulation (EC) No 593/2008 - the Law Applicable to Contractual Obligations (Rome I).

Regulation (EC) No 4/2009 of 18 December 2008 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Cooperation in Matters Relating to Maintenance Obligations.

Regulation (EU) No 1215/2012 - Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels Ibis).

International Cases

Amsterdam Bulb BV v Produktschap voor Siergewassen, Judgement of 2nd of February 1977: C.J.E.U Reports: 1977.

Flaminio Costa v E.N.E.L., Judgement of 15th of July 1964: C.J.E.U. Reports: 1964.

Kerstin Sundelind Lopez v Miguel Enrique Lopez Lizazo, Judgement 29th of November 2007: C.J.E.U. Reports: 2007.
http://curia.europa.eu/juris/liste.jsf?language=en&num=C-68/07

N. S. v Secretary of State for the Home Department and M. E. and Others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform Judgement 21st of December 2011: Grand Chambers.

NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration., Judgement of 5th of February 1963: C.J.E.U. Reports: 1963.

Antonio Munoz y Cia SA and Superior Fruiticola SA v Frumar Ltd Judgement 17th of September 2002: C.J.E.U.
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62000CJ0253

Conventions and Treaties

Charter of Fundamental Human Rights of the European Union, 2012/C 326/02.

Convention on the Choice of Court Agreement, 30th of June 2005 (2005 Hague Convention).

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Recepct of Parental Responsibility and Measures for the Protection of Children, 19th of October 1996. (1996 Hague Convention).

Convention of the Civil Aspects of International Child Abduction, 25th of October 1980. (1980 Hague Convention).

Protocol No 19 on the Schengen Acquis Integrated into the Framework of the European Union 2012/C 326/1. Consolidated Version of the Treaty on the Functioning of the European Union.

Protocol No 30 on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom 2008/ C 115/1. Consolidated Version of the Treaty on the Functioning of the European Union.

Treaty Establishing the European Community. 1957/C 224/74

Treaty on the Functioning of the European Union, 2012/C 326/01

Vienna Convention on the Law of Treaties. 1969. United Nations Treaty Collection.

ABSTRACT

Užkuraitė G. The Influence of the United Kingdom‘s Withdrawal from the European Union on the Application of the European Union‘s Private International Law. Supervisor: doc. Dr. Katažyna Mikša, - Vilnius: Faculty of Law, Institute of International and European Union Law, Mykolas Romeris University, 2018. – 69 p.

The main purpose of the thesis is to analyse what kind of legal impact was done due to Brexit and how did it overall affect the European Union Private International Law. The Chapter one presents the exceptional civil judicial cooperation between the United Kingdom and the European Union pre-Brexit. The Chapter two analyses the Great Repeal Bill and to what extent is private international law considered during the withdrawal negation process. The Chapter three provides future possibilities for the United Kingdom to maintain civil judicial cooperation with the European Union and discusses the conceivable outcome in case the United Kingdom will consider adapting other international legal documents when the European Union legislative system cease to apply.

Keywords: Brexit, Private International Law, Civil Judicial Cooperation, United Kingdom, European Union.

SUMMARY

Užkuraitė G. The Influence of the United Kingdom‘s Withdrawal from the European Union on the Application of the European Union‘s Private International Law/International Law Master Thesis. Supervisor: doc. Dr. Katažyna Mikša, - Vilnius: Faculty of Law, Institute of International and European Union Law, Mykolas Romeris University, 2018.

In 2005, the UK had a referendum regarding withdrawal of the EU which ended with the result that now draws attention to this unique event in EU history. The transition progress takes a long time in order to finalise the withdrawal progress. At the moment, both parties are discussing the terms and conditions during the first phase of the negotiations of the withdrawal. The UK has always been an exceptional EU Member having the most opt-outs from EU legal documents in order to protect its national law. Today, the UK became once again an exceptional Member State by deciding to leave the EU which has started raising many questions for future civil judicial cooperation between the UK and the EU as well as what kind of consequences will be done to the application of the EU’s private international law.

The main object of the thesis is to analyse the current and future civil judicial cooperation between the EU and the UK. The main goal of this thesis is to examine the nature of the EU’s private international law pre-Brexit, understand what part does it take during the negotiation process and what kind of influence will it have for future application of the EU’s legal instruments in case of unsuccessful withdrawal.

The author concludes that despite of the fact that the UK may have several legal alternatives for determining jurisdiction and enforcement of judgement in civil and commercial, they are not fully compatible with current EU legal documents. In addition to this, the legal issues will arise in family related matters as well. Due to the fact that the UK will not be able to adopt current EU legal documents without the EU’s consent, the most appealing option in order to minimise the negative effect on both of the UK’s and the EU’s legal system would be to seek the bilateral agreement that would once again allow the UK to have an exceptional future civil judicial cooperation with the EU.

SANTRAUKA

Užkuraitė G. Jungtinės Karalystės Išstojimo iš Europos Sąjungos Įtaka Europos Sąjungos Tarptautinės Privatinės Teisės Taikymui. /Tarptautinės teisės magistro baigiamasis darbas. Vadovė: doc.dr. Katažyna Mikša – Vilnius: Mykolo Romerio universitetas, Tarptautinės ir Europos Sąjungos institutas, 2018.

2005 m. Jungtinėje Karalystėje surengtas referendumas dėl išstojimo iš Europos Sąjungos nulėmė unikalų, precedento neturinį reiškinį. Pereinamasis laikotarpis tęsis pakankamai ilgai, kadangi išstojimo procesas ir iš jo kylančių sąlygų įforminimas reikalauja daug atidumo. Šiuo metu, yra vedamas pirmas derybų etapas. Jungtinė Karalystė visuomet išsiskyrė iš kitų Europos Sąjungos Valstybių Narių, kaip narė, turinti daugiausiai išimčių dėl Europos Sąjungos priimtų teisinių dokumentų. Taigi, Jungtinė Karalystė vėl tapo išskirtine, nusprendusi išstoti iš Europos Sąjungos. Dėl šių aplinkybių, išstojimo procesas kelia daug klausimų dėl tolimesnio teisinio bendradarbiavimo tarp Jungtinės Karalystės ir Europos Sąjungos ateities perspektyvoje bei kokie teisiniai padariniai laukia Europos Sąjungos tarptautinės privatinės teisės taikymui.

Pagrindinis šio magistro baigiamojo darbo tikslas – išnagrinėti dabartinį Jungtinės Karalystės ir Europos Sąjungos teisinį bendradarbiavimą, tam, kad būtų galima numatyti kokie pasikeitimai gali laukti ateityje. Darbo tikslui pasiekti buvo iškelti šie uždaviniai: aptartos išskirtinio teisinio bendradarbiavimo aplinkybės tarp Jungtinės Karalystės ir Europos Sąjungos prieš įvykusį referendumą, išanalizuotos dabartinės Europos Sąjungos tarptautinės privatinės teisės taikymo ypatybės, kokią vietą tarptautinė privatinė teisė užimą šiuo metu vykstančių derybų metu ir kokie teisiniai padariniai laukia, galimai nesėkmingų derybų atveju.

Išanalizavus uždavinius ir atlikus tyrimą, galima daryti išvadą, jog Jungtinė Karalystė turi keletą teisinių alternatyvų, tačiau tai neužtikrintų sklandaus ir suderinamo teisinio bendradarbiavimo su Europos Sąjunga dėl jurisdikcijos ir teismo sprendimų civilinėse ir komercinėse bylose pripažinimo ir vykdymo. Taip pat, paliktų daug nesureguliuotų teisinių klausimų šeimos santykių bylose. Atsižvelgiant į tai, jog Jungtinė Karalystė negalės įgyvendinti daugumos dabartinių Europos Sąjungos teisinių dokumentų be Europos Sąjungos sutikimo, naudingiausias sprendimas abiejų šalių atžvilgiu būtų priimti dvišalį susitarimą, kuris galėtų užtikrinti išskirtinį teisinį Jungtinės Karalystės ir Europos Sąjungos bendradarbiavimą trečių šalių atžvilgiu.

ANNEXES

Annex 1 - Current judicial cooperation between the UK and the EU:[232]

Box 1 - Civil and commercial instruments

1.	The Brussels Recast Regulation – **Brussels la** (1215/2012) covers jurisdiction and recognition and enforcement of judgments and applies between EU Member States.
2.	**Rome I Regulation** (593/2008) covers applicable law in contracts
3.	**Rome II Regulation** (864/2007) covers applicable law in non-contractual obligations.
4.	**Insolvency Regulation** (1346/2000 and 2015/848) covers jurisdictional rules and applicable law and recognition of insolvency proceedings in cross-border insolvencies.
5.	The **small claims** (861/2007 revised by 2015/2421), **enforcement order** (805/2004) and **order for payment** (1896/2006) **Regulations** facilitate means for obtaining decisions on claims that can be enforced throughout the EU

Box 2 - Family instruments

1.	The **Brussels IIa Regulation** (2201/2003) covers jurisdictional rules n matrimonial and parental responsibility matters and the recognition and enforcement of judgments.
2.	The **Maintenance Regulation** (4/2009) covers rules for determining which court has jurisdiction for, and the recognition and enforcement of, maintenance decisions.
3.	**Regulation on protection measures in civil matters** (606/2013) covers recognition and enforcement of protection measures, including for victims of domestic violence.

[232] HM Government, "Providing a cross-border civil judicial cooperation framework", 2017, p. 4.

Box 3 - EU instruments covering both civil and family matters

1.	**EU Service Regulation** (2007/1393/EC) covers rules for serving documents in other EU countries.
2.	**Taking of Evidence Regulation** (2001/1206) covers cross-border processing of requests to take evidence.
3.	**Legal Aid Directive** (2002/8) covers rules for the grant of legal aid in cross-border disputes.
4.	**Mediation Directive** (2008/52) covers access to alternative dispute resolution and settlement of disputes through the use of mediation in cross-border disputes.
5.	**European Judicial Network in Civil and Commercial Matters** (2001/470/EC) facilitates cross-border cooperation for judges and practitioners and access to justice for those involved in disputes.

Form approved on 20 November 2012 by the decision No. 1SN-10
of the Senate of Mykolas Romeris University

HONESTY DECLARATION

04/05/2018
Vilnius

I, _____, student of
(name, surname)

Mykolas Romeris University (hereinafter referred to University),

_____
(Faculty /Institute, Programme title)

confirm that the Bachelor / Master thesis titled

_____
_____:

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

_____ _____
(signature) *(name, surname)*