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Conflict of laws issues in damage caused by artificial intelligence systems: problems of determining the applicable law

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Аннотация. Ushbu maqolada sun’iy intellekt (SI) tizimlarining ishlashi natijasida yetkazilgan zarar bo‘yicha xalqaro xususiy huquq (kollizion huquq) doirasida yuzaga keladigan muammolar tahlil qilinadi. Maqola uchta asosiy yo‘nalishga qaratilgan: birinchisi, SI tomonidan yetkazilgan zarar uchun qo‘llaniladigan delikt huquqini aniqlash muammosi; ikkinchisi, ko‘p subyektli (ishlab chiqaruvchi, distributor, foydalanuvchi) javobgarlik zanjirida qonun tanlash masalalari; uchinchisi esa raqamli muhitda “zarar yetkazilgan joy” tushunchasining noaniqligidir. Tahlil Rim II Reglamenti (EC No 864/2007), Yevropa Ittifoqining yangi Mahsulot uchun javobgarlik to‘g‘risidagi (EU) 2024/2853 sonli Direktivasi hamda 2022-yilda taklif etilgan va 2025-yilda rasman bekor qilingan Sun’iy intellekt bo‘yicha javobgarlik to‘g‘risidagi Direktiva (AILD) asosida amalga oshiriladi. Yevropa Ittifoqi huquqi bilan bir qatorda, maqolada O‘zbekiston Respublikasining kollizion huquq normalari (Fuqarolik kodeksining 1158, 1194 va 1195 moddalari) qiyosiy tarzda o‘rganiladi, buning maqsadi maqolaning de lege ferenda takliflarini xorijiy emas, balki milliy huquqiy tizimga asoslashdir. Muallif ushbu mavzu bo‘yicha amaliyotda deyarli sud amaliyoti mavjud emasligini, faqat doktrinal takliflar borligini alohida ta’kidlaydi.

Калит сўзлар. xalqaro xususiy huquq, kollizion huquq, sun’iy intellekt, delikt majburiyatlari, Rim II Reglamenti, mahsulot uchun javobgarlik, O‘zbekiston Respublikasi Fuqarolik kodeksi, lex loci damni, da’vo asosi.

Аннотация. В настоящей статье анализируются проблемы, возникающие в рамках международного частного права (коллизионного права) в связи с вредом, причинённым в результате функционирования систем искусственного интеллекта (ИИ). Статья сосредоточена на трёх основных направлениях: во-первых, проблема определения применимого деликтного права к вреду, причинённому ИИ; во-вторых, вопросы выбора права в многосубъектной цепочке ответственности (производитель, дистрибьютор, пользователь); в-третьих, неопределённость понятия «место причинения вреда» в цифровой среде. Анализ основан на Регламенте Рим II (EC No 864/2007), новой Директиве ЕС об ответственности за продукцию (EU) 2024/2853, а также Директиве об

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ответственности за ИИ (AILD), которая была предложена в 2022 году и официально отозвана в 2025 году. Наряду с правом ЕС в статье также сравнительно рассматриваются коллизионные нормы Республики Узбекистан (статьи 1158, 1194 и 1195 Гражданского кодекса), с целью обосновать предложения de lege ferenda на национальной, а не на зарубежной правовой системе. Автор особо подчёркивает, что по данной теме практически отсутствует устоявшаяся судебная практика; существуют лишь доктринальные предложения.

Ключевые слова. международное частное право, коллизионное право, искусственный интеллект, деликтные обязательства, Регламент Рим II, ответственность за продукцию, Гражданский кодекс Республики Узбекистан, lex loci damni, основание иска.

Annotation. This article analyzes the problems arising within the framework of private international law (conflict of laws) concerning damage caused by the operation of artificial intelligence (AI) systems. The article focuses on three main areas: first, the problem of determining the applicable tort law for damage caused by AI; second, issues of choice of law in a multi-subject (manufacturer, distributor, user) liability chain; and third, the ambiguity of the "place where the damage occurred" concept in the digital environment. The analysis is based on the Rome II Regulation (EC No 864/2007), the new EU Product Liability Directive (EU) 2024/2853, and the AI Liability Directive (AILD), which was proposed in 2022 and officially withdrawn in 2025. Alongside the EU framework, the article also examines, comparatively, the conflict-of-laws rules of the Republic of Uzbekistan (Articles 1158, 1194 and 1195 of the Civil Code), in order to ground the article's de lege ferenda proposals in the national legal system rather than in a foreign one. The author specifically emphasizes that there is almost no established case law on this topic; instead, only doctrinal proposals exist.

Keywords. private international law, conflict of laws, artificial intelligence, tort obligations, Rome II Regulation, product liability, Civil Code of the Republic of Uzbekistan, lex loci damni, cause of action.

Introduction

As artificial intelligence (AI) systems increasingly permeate daily life, commerce, and public administration, the issue of legal redress for the harm they cause is becoming more pressing. However, this issue must be examined from two perspectives: first, at the level of substantive law, that is, who is liable and under what conditions; and second, at the level of private international law, that is, which state's law should apply in cross-border cases. Much of the academic literature focuses on the first aspect, namely substantive liability regimes, while the conflict-of-laws aspect has been comparatively under-researched. This article aims to fill precisely this gap.

The author is not aware of any established judicial practice, that is, a judicial decision resolving a conflict-of-laws dispute concerning

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harm caused by AI, on this specific subject. The analysis below is based on the text of existing normative instruments and academic doctrine; where no clear source exists, this is stated openly, meaning that tentative conclusions are not marked with words such as "perhaps" or “probably,” but with the explicit statement that no known judicial practice exists on the point.

Determining the Applicable Tort Law for Damage Caused by AI Decision. In traditional tort law, there are two primary models for determining the applicable law: "lex loci delicti commissi" (the law of the place where the act was committed) and "lex loci damni" (the law of the place where the damage occurred). Article 4(1) of the Rome II Regulation (EC No 864/2007), which is in force in the European Union, establishes the lex loci damni principle as the general rule: the law of the country where the damage occurred shall apply, regardless of the country in which the event giving rise to the damage occurred or the country in which the indirect consequences of that event occurred [1]. Paragraph 2 of the same article stipulates that if the parties have their habitual residence in the same country, the law of that country shall prevail. Paragraph 3 serves as an "escape clause" for cases where there is a manifestly closer connection [1].

In the context of AI, these principles give rise to a number of practical difficulties. The first is the geographical separation between the act and the resulting harm. In simple torts, the place where the act is committed and the place where the harm is inflicted are often close to each other or within the same territory. In AI systems, however, the algorithm's decision, for example calculating a credit rating, making a recommendation, or choosing an autonomous action, is made on one server, possibly in another jurisdiction, while its result affects a user in a completely different country. Therefore, while the lex loci damni principle may be formally clear, it may have almost no substantive connection to the action of the AI system itself.

The second difficulty is that the concept of "action" itself becomes ambiguous. In machine learning models, a decision is not a pre-programmed rule but a statistical inference formed on the basis of training data. This conceptually complicates the notion of the place where the action occurred: is it the location where the model was trained, the place where it was deployed, or the server where each individual inference is made?

The Rome II Regulation is a technically neutral instrument intended for general tort law and contains no specific rule on AI. Accordingly, it could theoretically apply to harm caused by AI, just as it applies to any other technogenic harm [1]. In practice, however, several limitations exist.

First, Article 5 of Rome II establishes a specific, cascading rule for product liability: the law of the injured party's habitual residence applies if the product was marketed there; failing that, the law of the country where the product was acquired, if marketed there;

failing that, the law of the country where the damage occurred, subject throughout to a foreseeability proviso [1]. Whether an AI system is a "product" or a "service" remains debatable [8, C.214-216; 9], and the classification determines whether Article 4 or Article 5 applies, with potentially very different outcomes.

Second, Article 4(1) of Rome II excludes indirect consequences: only the place of direct damage is relevant [1]. In distributed systems, such as an AI service running on cloud infrastructure, the very concept of "direct damage" becomes technically multi-layered.

Third, Rome II does not solve the "black box" problem inherent in AI. Some researchers, such as Çami and Skënderi [6], argue that the lack of transparency in AI systems makes the practical application of Rome II, in particular determining which country has the closest connection, difficult, since a judge may be unable to determine which factor most influenced the algorithm's output, for example which country's training data had the greater influence. This, however, is a doctrinal observation, not a conclusion confirmed by case law.

In sum, while Rome II can formally be applied to an AI-related tort, its connecting factors were not designed for the multi-layered, decentralised systems characteristic of AI, which can lead to uncertainty and unpredictable outcomes.

A frequently discussed scenario, in which an algorithm is developed in one jurisdiction, trained in another, deployed in a third, and causes harm in a fourth, is in practice a typical representation of the AI production chain. No dedicated, comprehensive study addressing this specific four-stage jurisdictional chain is known to the author; for a general analysis of AI-harm scenarios under Rome II, see [10, C.66-69]. Existing conflict-of-laws doctrine lacks a single rule that directly addresses this. Theoretically, several approaches are possible.

The harm-based approach, under Article 4(1) Rome II, treats the place where the harm occurred as the prevailing factor. It is simple and predictable, but it creates a "surprise law" risk for the manufacturer, who may not fully control which countries its product reaches, for example through openly accessible SaaS services.

The deployment-based approach treats the country where the system is actually put into operation, such as the location of deployment servers or the operator, as the prevailing factor. This is closer to the "placing on the market" concept of product-liability doctrine and aligns with the foreseeability criterion of Article 5 Rome II.

The training-based approach is theoretically appealing, since a model's behaviour is shaped by its training data, but it is rarely usable in practice, since training data is typically drawn from numerous countries, making a single "training country" difficult to identify [17; 10, C.81, 83]. A comparable difficulty in localising the place of the harmful act arises in the copyright-infringement

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context.

The author considers that existing legal systems, including Rome II, are not specifically adapted to resolve this four-stage jurisdictional chain. This is a genuinely new problem specific to AI, not one that existing principles resolve satisfactorily. It is revisited below in the de lege ferenda section.

It should be noted that the distinction between autonomous and semi-autonomous systems, while significant at the level of substantive law, for example in the choice between fault-based and strict liability, has no direct, formal effect on the conflict-of-laws analysis: neither Rome II nor other existing instruments contain a connecting factor keyed to the degree of autonomy. An indirect effect is nonetheless conceivable: where a human operator's decision is treated as the cause of the harm, the operator's state may become an important factor in the closest connection analysis under Article 4(3) Rome II; in fully autonomous systems this human connecting point disappears, and the analysis shifts to the product or system itself. As this is a doctrinal consideration rather than a settled rule, it is presented here as an open possibility rather than a conclusion.

Comparative Note: The General Tort Rule Under the Law of the Republic of Uzbekistan. The private international law of Uzbekistan is codified in the Civil Code, Section VI ("Application of Private International Law Rules to Civil-Law Relations"), Chapter 71 ("Conflict-of-Laws Rules"). The general tort rule, Article 1194, follows a different model from Rome II. It applies the law of the country where the act or other circumstance giving rise to the claim took place, that is, lex loci delicti commissi (the place of the act), rather than Rome II's default of lex loci damni (the place of the damage): "The rights and obligations arising from an obligation caused by the infliction of harm shall be determined by the law of the country where the act or other circumstance that gave rise to the claim for compensation took place. The rights and obligations arising from an obligation caused by the infliction of harm abroad, where the parties are citizens or legal entities of the same state, shall be determined by the law of that state. Foreign law shall not apply if the act or other circumstance giving rise to the claim for compensation is not unlawful under the legislation of the Republic of Uzbekistan" [20]. Article 1194 also contains a common-nationality/common-domicile exception and a public-policy-type proviso excluding foreign law where the underlying act is not unlawful under Uzbek law.

This is a significant point of comparison, not merely a formal one. Because Article 1194 is tied to the place of the act rather than the place of the damage, it is, if anything, more exposed than Rome II to the localisation difficulties described above for AI systems: establishing where the "act" took place, whether training, deployment, or inference, is precisely the problem that a place-of-damage rule, such as Rome II's default, is designed to avoid. Uzbek law, having retained a place-of-act rule, does not

benefit from that avoidance.

Article 1158, part two, of the Civil Code provides a residual "closest connection" rule. On the wording available to the author, however, it applies only where the applicable law cannot otherwise be determined under the specific rules of Chapter 71, rather than as a corrective clause capable of overriding an otherwise-applicable rule, as Article 4(3) of Rome II does [20]. If this reading is correct, Uzbek courts have less flexibility than EU courts to depart from the general rule even in cases where its outcome is clearly arbitrary for AI-related harm, though the author has not been able to verify how this provision is actually applied in practice, and this remains an open question rather than a settled conclusion.

Product Liability Conflicts: Manufacturer, Distributor, User. In the multi-layered chain of AI-related liability, there are typically at least three entities involved, and the law applicable to each can theoretically differ.

The developer or manufacturer is assessed, under Article 5 Rome II, according to whether an AI system is classified as a "product": if so, the law of the injured party's habitual residence or of the country of purchase may apply, subject to the foreseeability proviso [1]. For AI services distributed via API, this proviso creates a difficult-to-assess problem: where a model is offered globally with unrestricted access, foreseeability may be satisfied for almost any country, increasing legal uncertainty for the developer.

The distributor or deployer is typically liable separately from the manufacturer, according to its own state of operation. Where a distributor localises or materially modifies an AI system, it may itself acquire manufacturer status through "substantial modification," a concept explicitly recognised in the new EU Product Liability Directive, which, from a conflict-of-laws perspective, adds “place of modification’ as a further potential connecting factor [2].

The end-user or operator is generally the final link in the chain, assessed primarily under traditional fault-based tort law, by reference to its own or the victim's place of residence. Where the user is engaged in commercial activity, for example a company integrating AI into its own service, its status approaches that of a distributor, and the analysis above may apply to it, as observed in the broader literature on multi-actor liability chains [12].

The new EU Product Liability Directive (EU) 2024/2853, adopted on 23 October 2024 and in force from 8 to 9 December 2024, repealing the 1985 Directive 85/374/EEC, addresses this problem at the level of substantive law [2]. Its main features are as follows: the definition of “product” is extended to cover software, including standalone software and AI systems; AI Act providers are treated as manufacturers under Recital 13 [2; 3]; the chain of potentially liable persons is broadened to include component manufacturers, importers, authorised representatives, fulfilment-service providers, and, in certain circumstances, distributors and online platforms; for complex “black box” systems the burden of proving defect and

causation is eased through a rebuttable presumption; and Member States must transpose the Directive by 9 December 2026, after which it applies to products placed on the market.

It should be stressed that this Directive harmonises substantive law but is not itself a conflict-of-laws instrument: it unifies substantive rules within the EU, but where manufacturers or distributors from third countries, such as the United States or Asian jurisdictions, are involved, the question of which state's law applies is still resolved through Rome II or the relevant national conflict-of-laws rules [1]. In other words, as substantive harmonisation within the EU deepens, the significance of the EU or third-country choice-of-law question does not diminish. If anything, the practical stakes of that choice increase, because the substantive gap between the EU regime and other regimes widens, since the presumptive easing of the burden of proof, for instance, does not exist in many other jurisdictions.

The AI Liability Directive (AILD), proposed on 28 September 2022, was itself not a conflict-of-laws instrument but a substantive one, providing for a rebuttable presumption of causal link and an obligation to disclose evidence, intended to more fully harmonise AI liability within the EU [4]. However, the European Commission announced the withdrawal of this proposal in its 2025 work programme on 11 to 12 February 2025, citing the absence of a foreseeable agreement, and the proposal was formally withdrawn upon publication in the Official Journal on 6 October 2025 [4]. Notably, before the AILD proposal, the European Parliament's resolution of 20 October 2020, together with its annexed draft regulation, itself contained specific conflict-of-laws provisions, including a unilateral scope rule and a lex loci damni-type approach [5]. These provisions were later criticised for their inflexibility and were not carried over into the AILD text [11; 8, C.211-213]. This means there is no harmonised EU-level substantive regime specific to AI liability; damage caused by AI outside the scope of product defects, for example fault-based liability for AI services, continues to be governed differently by national laws, which in turn increases the practical stakes of the choice-of-law question.

Where different states' laws apply to the manufacturer, distributor, and user, several practical problems can arise: inconsistent outcomes, where a presumptive “black box” liability regime applies to one entity while a stricter, traditional burden of proof applies to another, turning the choice of defendant into a strategic decision; a chain of successive conflicts-of-laws questions in recourse claims between the entities; and disproportionate litigation costs and procedural complexity for claimants forced to sue in several states in parallel.

In a multi-entity, multi-jurisdictional chain, each party naturally seeks the forum and connecting factors most favourable to it. Injured parties tend to seek the state with the lighter burden of proof and higher compensation, such as the EU regime;

manufacturers and distributors may seek to apply a more lenient regime, whether through a limited pre-selection of applicable law under Article 14 Rome II, available in restricted circumstances between commercial parties, or by locating servers and legal establishments in favourable jurisdictions [1]. This asymmetry is particularly stark between global AI service providers and individual users or victims, who lack the resources to pursue a comparable multi-jurisdictional strategy.

Comparative Note: Consumer Choice of Law Under Uzbek Law. Article 1195 of the Civil Code of the Republic of Uzbekistan addresses a closely related question, namely the law applicable to a consumer's claim for damage arising in connection with the purchase of goods, performance of work, or provision of a service. Rather than a cascade with a foreseeability proviso, as in Article 5 Rome II, Article 1195 gives the consumer a choice among three connecting factors: "the law of the country of the consumer's place of residence; the law of the country of the place of residence or location of the manufacturer or the person who performed the work or rendered the service; or the law of the country where the consumer purchased the goods, accepted the result of the work, or was rendered the service" [20].

Two consequences follow for AI-related claims. First, because the choice belongs to the consumer and, on the wording available to the author, is not qualified by a foreseeability-type limitation comparable to that in Article 5 Rome II, Article 1195 does not appear to offer an AI developer or provider the protection against "global, unforeseeable liability" that the EU regime at least partially provides through the foreseeability proviso; a globally accessible AI service could in principle be exposed to the law most favourable to the consumer, regardless of whether the provider could reasonably have anticipated marketing in that particular country. Second, Article 1195 raises the same classification difficulty already noted for Rome II Article 5: whether an AI system constitutes “goods,” “work,” or a “service” for the purposes of this provision is, to the author's knowledge, not yet settled in Uzbek doctrine or practice, and this article does not attempt to resolve it here.

Cause of Action Problem: Where Does the Harm Occur? The concept of locus damni is relatively clear in traditional tort law, covering physical injury and property damage. In a digital or algorithmic environment, it becomes ambiguous in several respects: the place of damage does not always coincide with technical infrastructure, since a financial loss may be located where the account was opened, where the bank's servers are located, or at the victim's habitual residence; and an AI system's output can spread across the internet without restriction, extending the “place of damage” to many jurisdictions simultaneously.

Different scenarios illustrate this difficulty. The first is physical harm, for example from an autonomous vehicle. This is the most traditional scenario, where the place of damage is usually clear,

namely the state of the accident, so that Article 4 Rome II applies with relative clarity [1]. However, the relationship between the 1971 Hague Convention on the Law Applicable to Traffic Accidents and Rome II for cross-border traffic accidents remains only partially settled [14; 8, C.6.2; 13], a pre-AI, classic problem that autonomous vehicles further complicate, since "algorithmic error" must now be analysed instead of “driver error,” sharpening the classification question between product liability under Article 5 and ordinary traffic-accident liability under Article 4.

The second is financial loss, for example from algorithmic trading. Determining the place of damage for losses caused by algorithmic or high-frequency trading systems is particularly difficult because the transaction is executed across numerous servers within milliseconds, financial markets are inherently transnational, and the location of the financial instrument, for example the state where the exchange is registered, often does not coincide with the injured investor's habitual residence [18; 8, C.222]. Existing financial-market regulation, such as MiFID II in the EU, performs an administrative-supervisory function but does not resolve the conflict-of-laws question in tort; tort claims remain governed by Rome II [1].

The third and most complex scenario is harm to reputation or information, for example through recommendation systems. Article 1(2)(g) Rome II excludes from its general scope non-contractual obligations arising from violations of privacy and rights relating to personality, including defamation, meaning each Member State applies its own national conflict-of-laws rules to this category of harm [1]. In addition, scattered reputational harm caused by recommendation systems, such as social-network or search algorithms, can occur in many countries simultaneously, potentially requiring a “mosaic” style analysis comparable to that developed for cross-border media defamation [15; 16; 19].

A single AI system, such as a widely used recommendation algorithm or a large language model, can cause the same type of harm to many users across multiple jurisdictions simultaneously. In theory, each victim could bring a separate claim under the law of their own habitual residence, under Article 4(1) or Article 5 Rome II, which in practice means dozens of different legal regimes applying to what is, in substance, a single act by the AI system. In the context of collective redress, this problem intensifies further: a court may need to determine the applicable law separately for each group of claimants from different states, creating substantial procedural complexity.

It should be noted that, to date, no known decisions of higher courts clarify the conflict-of-laws question specifically for harm caused by AI systems. This problem is discussed only in academic literature, including doctrinal analyses of Rome II's application to AI and earlier articles on Rome II's application to physical harm from cyber-incidents, but no clear precedent resolving it has been

identified. This observation is partly consistent with Henckel's own conclusion that the general rules of Rome II do not, as such, create AI-specific problems, since its connecting factors do not depend on the location of the AI system itself, although this is a doctrinal assessment, not a finding grounded in decided case law [8, C.7]. This gap itself supports two, equally unconfirmed, hypotheses: either such disputes have not yet reached the courts, being settled out of court or with the substantive question resolved first and the conflict-of-laws question left open, or such disputes exist but courts are resolving them under ordinary product- or tort-liability rules without treating them as AI-specific. Both are conjectures, not established facts. This empirical gap itself reinforces the need for de lege ferenda proposals.

Conclusion and De Lege Ferenda Proposals

The analysis above shows that conflict-of-laws issues concerning AI-caused harm comprise two types of problem: first, those that exist but are difficult to resolve within the framework of existing principles, for example the general application of Article 4 Rome II or Article 1194 of the Uzbek Civil Code to autonomous vehicles, where the difficulty lies in applying current rules to technically complex facts rather than in creating a new principle; and second, those that require a genuinely new approach, such as multi-jurisdictional production chains, black-box causation, and distributed harm.

De lege ferenda proposals directed at the legislator of the European Union carry limited originality and practical weight when made by a scholar based in the Republic of Uzbekistan, who has neither standing nor comparative advantage in shaping EU law. The recommendations below are accordingly addressed primarily to the legislation of the Republic of Uzbekistan, using the EU framework as comparative material rather than as the object of reform.

First, it is worth considering whether Article 1194 of the Civil Code should be supplemented with a corrective “closest connection” clause capable of displacing the general lex loci delicti commissi rule in individual cases, similar in function to Article 4(3) Rome II, rather than relying solely on Article 1158, part two, which, on its wording, appears to operate only as a subsidiary rule for cases where the applicable law cannot otherwise be determined. Whether such a corrective clause is in fact needed, and how Uzbek courts currently read Article 1158, part two, in practice, both require further dedicated research that falls outside the scope of this article.

Second, it is worth considering whether Article 1195 should be qualified by a foreseeability-type proviso for the manufacturer or service provider, comparable to that in Article 5 Rome II, in order to limit the exposure of AI developers and providers to the law of any country a consumer happens to choose, regardless of whether marketing in that country was reasonably foreseeable. Absent such

a qualification, providers of globally accessible AI services may face materially greater legal uncertainty under Uzbek law than under the EU regime.

Third, it is worth considering clarifying, whether by legislative amendment, official commentary, or the development of judicial practice, whether and under what conditions an AI system is to be treated as “goods,” “work,” or a “service” for the purposes of Article 1195, a classification question that, to the author's knowledge, remains unresolved in Uzbek doctrine and practice, just as the equivalent product or service classification remains debated under Rome II.

Fourth, as Uzbekistan’s IT and AI-related export sector develops, it is worth considering participating in or monitoring international coordination efforts on AI-related conflict-of-laws questions, for example at the Hague Conference on Private International Law, so that any future domestic reform can be aligned with, rather than developed in isolation from, comparable initiatives elsewhere.

In conclusion, conflict-of-laws issues regarding AI-caused harm remain at an early, formative stage both in the EU and in Uzbekistan. While substantive-law reform has advanced significantly in the EU through Directive 2024/2853 [2], and while Uzbek law already possesses a specific consumer-oriented choice-of-law rule, Article 1195, that Rome II reaches only through its more complex Article 5 cascade, neither system has yet undertaken a conflict-of-laws reform targeted specifically at AI. The withdrawal of the AILD has widened this gap further at EU level [4]. The author accordingly recommends continued academic research in this field, together with, in the interim, the use of available contractual mechanisms, such as advance choice of applicable law where available between commercial parties, to mitigate the existing uncertainty in practice.

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