

# **REACTION TO THE ACTION PLAN – A MORE COHERENT EUROPEAN CONTRACT LAW**

## **1. INTRODUCTION**

Since the publication of the Action Plan on a more coherent European Contract Law, the Council and the European Parliament have both passed resolutions on it, in September 2003, and the Commission has received contributions from 122 stakeholders (see appendices). This continued interest of the Community Institutions and stakeholders, following the first consultation launched by the Communication on European contract law in July 2001, shows the importance of the process launched by the Commission. Many contributors stressed their satisfaction with the continuation of the consultation and discussion process.

All contributions received up to the 31 March 2004 have been included in this document and the Commission will also take account of further contributions received later.

Section 2 of this paper contains a summary of the reactions of the European Institutions. Section 3 contains an analysis of the reactions of all other contributors in relation to each of the three measures consulted on.

This synthesis presents the Commission services' understanding of the main points in the contributions received. It may not reflect everything that has been said in the responses. However, the Commission has published in full on its web site all responses sent electronically, except where the respondents have withheld their agreement to do so. The list of contributors in Annex I also excludes those contributors who have specifically requested confidentiality.

The Commission's Internet site on European contract law is at the following address:

[http://europa.eu.int/comm/consumers/cons\\_int/safe\\_shop/fair\\_bus\\_pract/cont\\_law/index\\_en.htm](http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/index_en.htm)

## **2. REACTIONS OF THE EUROPEAN INSTITUTIONS AND BODIES**

The Commission's Action Plan was presented to the Competitiveness Council on 19 May 2003. The European Parliament adopted a resolution on it on 2 September 2003, while the Council adopted its resolution on 22 September 2003. The European Central Bank responded to the Commission Action Plan on 21 July 2003.

### **2.1. The Council resolution**

The Council welcomes the Action Plan and the Commission's intention to pursue the proposals included in the Action Plan in the context of the objective of developing an area of freedom, security and justice. In general, the Council stresses the importance of ensuring a smooth and efficient functioning of cross-border transactions in the internal market. It states that it would be useful to take appropriate and proportionate measures to facilitate the conclusion of cross-border contracts, to decrease transaction costs, and to allow all economic operators and consumers to make full use of the advantages offered by the internal market.

Concerning the particular measures suggested in the Action Plan, the Council welcomes the Commission's intention to elaborate a Common Frame of Reference (CFR). The Council confirms that the CFR suggested by the Commission could contribute to improving the quality and consistency of both existing and future Community legislation in this area. Concerning the methods to be used in developing the CFR the Council states as a matter of principle that the CFR should correspond to the realities of the internal market and, therefore, to the practical needs of economic operators and consumers. Member States should be actively involved in the preparation and elaboration of the CFR. Therefore the Council calls upon the Commission to establish appropriate mechanisms both at political and expert level in order to allow all Member States, the Council and the European Parliament, as well as researchers, legal practitioners and other stakeholders, to actively participate in the elaboration of the CFR. These mechanisms should ensure, through adequate consultation, that the CFR takes due account of the principle of subsidiarity, the practical needs of economic operators and consumers and the established structures and legal cultures in Member States. Furthermore, the research project envisaged under the Sixth Framework Programme for research and technological development should be carried out in a way which reflects the different legal traditions of Member States.

Concerning follow-up to the CFR, the Council states that in order to achieve greater transparency, coherence and simplification of contract law, it appears particularly useful to further improve, consolidate and codify, the existing EC legislation in the area of contract law.

Concerning the promotion of the elaboration of EU-wide standard contract terms, the Council underlines that they can be useful. It emphasises, however, that the contractual parties should develop such general terms themselves and respect mandatory Community law and national provisions, including provisions regarding the protection and information of consumers. The Council considers it particularly useful to gather information on existing and future initiatives through the web-site envisaged by the Commission, provided that publication on this web-site is not interpreted as a form of approval of such initiatives.

Given that further reflection is necessary on the need for non-sector specific measures in the area of European contract law, such as an optional instrument, the Council underlines that the Commission should pursue this reflection in close collaboration with Member States and taking due account of the principle of contractual freedom.

The Council stresses the need for coherence between the follow-up to the Action Plan and to the Green Paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument and its modernisation as well as with the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

The Commission is invited to inform the Council regularly and to report to it at least every 12 months on the results of the ongoing discussion process and on the progress made. Conversely, the Council encourages Member States to participate actively in the work of the Commission on the proposed follow-up measures and to encourage contributions from national stakeholders to the ongoing discussions at Community level.

## **2.2. The European Parliament resolution**

The European Parliament welcomes the fact that, through its proposal for a CFR, the Action Plan envisages a common terminology for particular fundamental concepts and the solution of typical problems. It notes, however, that the Commission has not submitted concrete measures with a detailed timetable for the next few years. It therefore calls on the Commission to encourage the development of the CFR as a priority, to complete the CFR by the end of 2006 and then to introduce it speedily. It calls on the Commission to have the CFR published as soon as possible in all Community languages.

The European Parliament reiterates its call to be kept regularly informed by the Commission about progress on the CFR. In addition it calls for a dialogue between Council, EP and Commission to take place under each successive Council Presidency, while continuing the political consultation process. It also calls for legal practitioners to be involved in the process of elaborating the CFR.

Furthermore it suggests that the CFR could be developed into a body of standard contract terms to be made available to legal practitioners and calls for the practical application of the CFR in arbitration. It also welcomes the fact that the Commission has announced its wish to increase the coherence of EU consumer law.

Concerning the optional instrument, the European Parliament regrets the lack of early action to produce such instruments in certain sectors, such as consumer transactions and insurance, where substantial benefits could accrue both to the effective functioning of the Internal Market and in terms of increased intra-Community transactions and trade. It believes that early work in these areas would help to inform and develop the whole Action Plan process. Therefore it considers that it should be an early priority to proceed with the establishment of an optional instrument in certain sectors, particularly those of consumer contracts and insurance contract. It therefore calls on the European Commission as a matter of priority, whilst having regard to a high level of consumer protection and the integration of the appropriate mandatory provisions, to produce an opt-in instrument in the areas of consumer contracts and contracts of insurance.

More generally, the European Parliament calls for the elaboration of a body of rules based on the CFR to be offered to the contracting parties initially on an 'opt in' basis, with the parties having the option of using it voluntarily, and suggests that it could later become binding.

## **2.3. European Central Bank**

The European Central Bank (ECB) welcomes the Action Plan and encourages the Commission to pursue its initiative further. It states that one central element of the legal framework of the Eurosystem is constituted by the arrangements for the implementation and execution of the single monetary policy (e.g. collateralisation of Eurosystem credit operations). In general, the Community and the players in the Single Market could benefit considerably from the proposed measures.

Concerning the Commission's intention to elaborate a CFR the ECB underlines that this measure would be an important step towards the completion of the internal market and could enhance the uniform application of Community law and facilitate the smooth functioning of cross-border transactions. It is interesting to note that in

this context the ECB stresses that the CFR would also be a source of inspiration for the legal framework of the Eurosystem. The Eurosystem could thus refer to an established set of recognised terms, which would result in a consistent interpretation and application of Community and Eurosystem acts.

On the content and structure of the CFR the ECB suggests, among others, including definitions of terms like contract, damage, force majeure or legal tender or general rules on default interest rates in case of late payments.

The ECB considers the promotion of the elaboration of EU-wide standard contract terms to be an interesting approach in the absence of full legal harmonisation but argues that it must not compromise the principle of freedom of contract.

Concerning the optional instrument the ECB also encourages the Commission to pursue this initiative further and offers its support. It considers the potential benefits both for the Community and the players in the single market as considerable and sees the optional instrument as a way to harmonise contract law which is compatible with the principle of contractual freedom. Moreover, it seems to be well suited to provide the flexibility necessary to an effective functioning of the market. It would help reduce transaction costs for the participants in the internal market and could also improve the competitiveness of the EU market itself in the international context.

The ECB raises the possibility of an optional instrument covering contractual rights pertaining to securities in order to allow issuers to issue securities under this instrument. The instrument would then include rules on conditions of issuance, duties of issuers vis-à-vis investors and third parties, rules about issuers' notices and communication with investors, rules on time-limits etc.

### **3. RESPONSES WITHIN THE COMMISSION CONSULTATION PROCESS**

Many contributors underline or repeat barriers which prevent the uniform application of Community law or the smooth functioning of the internal market. However, this section will only deal with reactions concerning the three measures submitted in the Action Plan.

#### **3.1. To improve the quality of the Community *acquis* in the area of contract law**

##### *3.1.1. Responses from governments*

All governmental responses from Member States (with reservations in the case of the UK and France), Acceding and Candidate countries as well as EEA-EFTA states are in favour of Measure I. In general, they consider that it would enhance the uniform application of Community law and facilitate the smooth functioning of the internal market.

It is equally clear that all Governments from Member States that have responded request or offer to be involved as Member States or within the Council. The Hungarian Government, however, suggests that the role of governments should be restricted to consultation rather than intervention. Other Member States (UK, Germany and Denmark) stress very strongly the need for them to be involved and their willingness to contribute actively. They see Member States' involvement in the establishment of the CFR as key to ensuring that the CFR will be integrated into

subsequent EC measures. Some governmental contributions (Austria, Germany, France) also highlight the need to include stakeholders in the establishment of the CFR.

In this context it is important to note that several contributions raise the question of the possible legally or politically binding nature of the CFR. The Hungarian Government seeks clarification about the nature of the future CFR. The Austrian Ministry of Justice could only support a binding CFR if Council, European Parliament (EP) and legal practitioners are involved in its establishment. The German Federal Ministry of Justice and the Ministry of Justice of Bavaria point out that it would not be sufficient merely for the Commission to take into account the CFR in bringing forward its proposals. They suggest that the other European institutions involved in the legislative process should also apply the CFR. While the German Federal Ministry of Justice leaves the procedural way to achieve this open, it points out the Council and EP should make a political commitment to this. The Ministry of Justice of Bavaria suggests an adoption of the CFR by Council and EP, but goes further and considers the establishment of a binding CFR by EP and Council.

On the content and structure of the CFR a number of suggestions are made. The German Federal Ministry of Justice agrees with the broad areas of conclusion of contracts, validity, interpretation, performance, and rules on specific contract types (in particular contracts of sale, service contracts and insurance contracts), credit securities and unjust enrichment. More detailed points include form requirements, conclusion of contract as a reference point for other obligations such as form, content and scope of information duties and sanctions in case of violations of these duties; rights of withdrawal and their conditions, modalities and consequences and the broad area of non-performance. As to its structure, a division into general principles, basic terms and concrete rules is viewed as plausible. The Portuguese government stresses particularly the need for common terminology. It also stresses the importance of taking into account from the very beginning that the CFR could be a first step for a European Civil Code. The Bulgarian Government suggests including common principles as a basis for elaboration of legislative acts and their interpretation, uniform terminology and rules on the conclusion of contracts, their validity and force, their performance and consequences of non-performance and the possibility to declare them null and void. The Danish Ministry of Justice calls upon the Commission to take into account the rules of private international law and international initiatives including the CISG.

The Austrian Ministry of Justice stresses that this process must not lead to a dilution of consumer protection.

Some governmental contributions (UK, Germany, France) argue that the Commission should not wait until the finalisation of the CFR before proposing changes to areas of EC *acquis* in particular need of reform.

### 3.1.2. *Responses from business*

Business respondents generally support the need to improve the coherence and quality of the *acquis*. Some see this as a rather limited exercise of eliminating obvious inconsistencies staying within the exact parameters of the existing *acquis* and with no potential for addressing gaps. Others stress the need for simplification of

the *acquis* and see this as a real opportunity to facilitate cross-border business. Some respondents are concerned that the work involved in developing the CFR might divert attention from what they consider to be the priority task of simplifying the existing *acquis*. However, only one respondent is against the development of the CFR in principle, proposing instead exchange of information about different national rules.

Many business respondents support the development of a CFR to provide an agreed set of principles to be used in this review. Of these, some emphasise the need for the CFR to be based on thorough, wide-ranging research, while others raise practical questions about the form and scope of the CFR and identify areas that it should address. One respondent suggests that the CFR should contain general definitions of abstract legal terms, but that sector-specific definitions in community law should take precedence over these general definitions. In another respondent's view the CFR should initially cover sales law and the law of services, conclusion and termination of contracts, while form requirements should be diminished as should information requirements and the necessity to get advice. Another respondent emphasises that in addition to the core elements of contract law, such as conclusion of a contract, form, cancellation, performance and remedies, pre-contractual obligations and specific contract types, areas related closely to contract law should be included (the law of legal persons, representation, credit securities, extra-contractual liability). Concerning the legal form of the CFR one respondent wants the Commission to clarify whether a statutory instrument or a simple reference document is planned. Only two respondents comment explicitly on whether a CFR should relate to business-to-business as well as business-to-consumer transactions. Both feel that to include business-to-consumer transactions only would be a very artificial distinction but that appropriate distinctions might need to be made between the treatments of the two types of transaction.

A few respondents stress that the elaboration of a common frame of reference has to be based on a proper cost/benefit analysis. Others highlight the need to ensure that the work undertaken involves market participants to ensure that it addresses the real internal market barriers they face.

### 3.1.3. *Responses from consumer organisations*

Few consumer associations responded. However, those who did, including the *Bureau Européen des Unions de Consommateurs* (BEUC), agree on the need to enhance the coherence of the existing *acquis*, both in terms of its content and the consistency with which it is applied. One identifies a particular case for action in the area of insurance and other financial services, arguing that despite being well-suited to cross-border provision, consumers have not yet seen benefits from increased competition in these sectors.

All highlight the special characteristic of contractual relations between businesses and consumers, namely the imbalance of power and the resultant inability of consumers to negotiate contract terms with businesses in practice. This needs to be taken into account in any review.

In their view, the lack of general principles and definitions in the field of consumer law at EU level makes it difficult to use appropriate, common terminology. The result, they argue, is that legislation is too often vague and confusing. They call for

legislation to be drafted in clear language understandable by all. One also highlights the need to inform consumers about the rights they have to ensure that the legislation actually does translate into increased consumer confidence in the internal market.

Two respondents identify a role for the CFR in helping to tackle this problem and in ensuring a consistent approach. They recommend that in drawing up the CFR the principles underpinning the existing directives on consumer protection should be incorporated, and argue that these include a common definition of ‘consumer’; an obligation to give adequate pre-contractual information; obligations regarding the form of the contract; right of withdrawal; removal of unfair terms; reversal of the burden of proof in favour of the consumer; principle of joint liability of all those responsible. Another respondent emphasises the problems that come from divergent transposition of directives between Member States, and sometimes even within Member States with regional systems. They call for a more prescriptive approach to be taken in reviewing the *acquis* to reduce these differences. Others express caution about taking an approach based on full harmonisation in all cases and restate the need for some continued use of sectoral instruments.

In addition to the contract law principles and rules, consumer organisations highlight the importance of ensuring that the review ensures access to inexpensive, accessible ways of getting specific disputes resolved, and considers ways of ensuring that compliance with legislation is enforced more broadly.

#### 3.1.4. *Responses from legal practitioners*

All legal practitioners welcome the Commission proposal for an in depth review of the existing *acquis*. Most of them are in favour of using the CFR as a basis for the review but some practitioners question the need for a CFR. In particular they argue that the CFR would not be able to solve the main obstacles which currently exist, such as different languages and cultural traditions or differing interpretation in the various Member States. Virtually all British practitioners suggest identifying the more problematic areas and resolving the discrepancies in these areas with specific measures. Some legal practitioners argue that the examination and improvement of the *acquis* should not be held up by the creation of the CFR. One considers it as an indispensable pre-requisite to the establishment of an optional instrument.

The majority of the responses argue that there is a need to focus on the different legal traditions of the Member States in realising the CFR. Some call for a comparative study on the different countries’ legislation. Another maintains that it is better to consider previous studies in these fields in order to avoid the elaboration of the CFR taking an impractical amount of time.

Concerning the content and structure of the CFR a number of suggestions are made. Some contributions argue that the central element of the CFR should be a catalogue of common terminology and definitions. One suggests that concepts defined in the existing *acquis* should be included. Another contribution mentions that the CFR could help establish parity between the contracting parties and should include preventive measures such as information duties, requirements of form, or the obligation to consult an independent and neutral adviser. Some responses stress that there must be no diminution of the level of protection either of consumers or of SMEs. One legal practitioner argues that consumer protection should be improved, but that contractual freedom must not be limited by mandatory requirements. A few

legal practitioners emphasise that the Commission should not only deal with general contract law, but should also consider the effects of contract law on neighbouring areas such as property law, law of torts, family law, the law of inheritance and company law.

Some practitioners also underline the need for a sector specific approach, in order to make the CFR more effective. On the contrary others consider that existing discrepancies in contract law have their origin in this approach and so call for a general approach.

One practitioner stresses that the principles of subsidiarity and proportionality have to be considered in devising the CFR, while another argues that it is questionable whether the EU institutions have competence in that field. One highlights the necessity to consider the results of a cost-benefit analysis when establishing the CFR.

A few practitioners call for more clarification from the Commission about the network of researchers who would be charged with preparing the CFR. Suggestions made are the formation of an independent body that balances the involvement of Member States, academics, representatives of legal practitioners, enterprises and consumers, the composition of a high level working group led by practitioners, or the organisation of a permanent forum on European Contract Law. In general almost all the responses note the need for practitioners and businesses to be fully involved in the development of the CFR in order to keep it in contact with the requirements of those who use contract law.

### 3.1.5. *Responses from academic lawyers*

Practically all academics contributing to the discussion welcome the objective of increasing the coherence and thereby the overall quality of European contract law. Almost all express their readiness to contribute to further work.

While a number of contributors identify a need to carry out work on the improvement of the consumer *acquis* without waiting for the CFR to be in place, in general academics welcome the proposed CFR. One, however, says it is unnecessary and the functions of the CFR can be fulfilled by the so-called “Principles of European Contract Law”<sup>1</sup> (PECL) and other existing works and that the Commission could go directly to codification: a code that will be first only an opt-in instrument for cross-border trade, then a binding instrument for cross-border and finally binding also for domestic transactions. Another respondent sees using a CFR to establish common principles and terminology as problematic and suggests concentrating on providing genuine coherence in the *acquis*.

One contributor identifies the sector-specific approach as one source of the fragmentation of European contract law but not all of the contributions see it as a problem as such and some welcome its continuation. However, one asks whether it makes sense to focus on sector-specific measures and push at the same time for a CFR. But even those who see no fundamental problem with the sector-specific approach say that the coherence of sector-specific acts should be improved. Another who is more critical of the sector-specific approach however states that the

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<sup>1</sup> Lando/Beale, PECL Parts I and II, Kluwer Law International, The Hague 2000. Lando/Clive/Prüm/Zimmermann, PECL, Part III, Kluwer Law International, The Hague 2003.

harmonisation through directives leads to a range of similar rules whereas the Community should find common rules. One goes as far as criticising the Commission for not abandoning the sector-specific approach completely. For insurance law it is said to have failed. The absence of a European contract law for the support of sector-specific measures is considered to lead to fragmentary harmonisation. Guidelines should be set for the sectoral rules regarding minimum harmonisation and full harmonisation, mandatory requirements and information duties.

On the link with private international law many stress the need to co-ordinate the measures of the Action Plan with the Green Paper on the Rome Convention; suggestions are made as to how the two initiatives can work together.

Opinions diverge on the form of the CFR and the method to be used in elaborating it. All contributors seem to agree that the CFR should at least aim at collecting common definitions of legal terms relevant for contract law. Some contributions state that the CFR should include a set of definitions, a set of legal rules and explanatory commentaries. One stresses that it should be more than a mere consolidation of existing law or more precisely a set of systematically presented rules similar to existing national civil codes. One contributor simply calls for “superior principles common to Member States”. The CFR should be derived from national private laws, existing Community law and international instruments, such as the CISG. Some emphasise the need to take into account case law as well. Others focus on the role of existing international principles. For example, one contribution asks for the swift adoption of a CFR by using either the UNIDROIT Principles<sup>2</sup>, the PECL or the works of the Pavia group. Another is afraid that a principle-based approach is not useful, because principles use exactly the same abstract terms as are criticised in the Action Plan. According to one respondent the CFR should also include economic analysis of legal rules. According to another contribution a recasting of the EC consumer legislation could also be included in the CFR.

A number of respondents comment on the method for developing the CFR. When elaborating the CFR the needs of SMEs and businesses should be taken into account. One contribution recommends considering the forthcoming enlargement of the EU in the contract law project and the different legal cultures in East and West considering also that many Accession Countries have more modern codifications than most western Member States. One response cautions that the CFR should not be the work of a small group of people but should be developed through international and interdisciplinary dialogue. Academics freely offer their research for the preparation of the CFR but also see a need for the involvement of practitioners, Member States and European institutions. Some see their involvement as a way of ensuring the legitimacy of research. Some call for a pooling of resources of research. A considerable number of contributors point to the necessity of taking advantage of ongoing research activities. Some are sceptical that further research is needed. As to the research methods some suggest a bottom up approach (comparative and cross-disciplinary research) concentrated on case law; another suggests investigating a selection of directives. One contribution is concerned about the administrative management of research and its transparency.

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<sup>2</sup> International Institute for the Unification of Private Law, Principles of international commercial contracts, Rome (1994)

Concerning the content of the CFR a number of academic respondents make suggestions. Proposals include conditions for the formation and validity of the contract, cooling-off periods, civil sanctions and also legal concepts and legal rules. One contribution says it should cover property law too. Another contribution would give first consideration to the contract itself (how an agreement is achieved, the roles of parties' intention, etc), good faith, abuse of rights, fault, damages, contractual liability, invalidity and the binding force of contract. Others stress that freedom of contract is the cornerstone of national systems of law and should have the same role in European private law and in the CFR.

Some argue that the CFR should include tort law and transfer of title to goods as well as contract law including unjustified enrichment and *agency of necessity*. It should not just cover consumer law. The transfer of intangible rights (patent law, copyright, trademarks and beyond) should also be covered because the exploitation of these rights often covers a multitude of countries while the law is governed by the. The scope should cover contracts on continuous engagements such as licensing agreements that are neglected by national legislators following a functional approach. Some of the academics' contributions pay specific attention to or even concentrate on insurance law.

As to the nature of the CFR one contributor proposes a recommendation, or in any case a legal act in the meaning of Article 3 of the Rome Convention, while some suggest not making it a binding instrument in the form of a fixed set of common rules, but rather a "*ius commune*" substratum upon which other initiatives (perhaps in the form of a binding instrument) could be built. Another suggests an inter-institutional agreement, which would be binding for the Community institutions, except for the ECJ which would consider it only as an aid to interpretation.

A number of contributors stress the fact that the CFR could serve as a basis for the development of the optional, non-sectoral instrument envisaged by Measure III. Some go as far as suggesting waiting for the completion of the CFR before starting anything substantial on the optional instrument.

## **3.2. To promote the elaboration of EU-wide standard contract terms**

### *3.2.1. Responses from governments*

This initiative received a mixed reaction; while it received support from some governments, others were more sceptical. The Danish Government, the Hungarian Ministry of Justice and the EEA-EFTA States support the suggested promotion of the elaboration of EU-wide standard contract terms.

Others could support this suggestion only under certain conditions. The Portuguese Government underlines that the interests of consumers and enterprises need to be safeguarded. The Austrian government considers that the standard terms should be limited to transactions between businesses and not include consumer transactions. In addition standard clauses should only be disseminated if their quality has been checked. The UK government only sees a role for the Commission in the setting up and running of the web-site itself. It is prepared to play an active part in encouraging private parties to make constructive use of the facility, but thinks that parties would be reluctant to participate. The Danish government emphasises that well-functioning

standard contracts seem to exist already in several areas, and that the Commission should be aware of such contracts during its further work.

The German Federal Ministry of Justice and the Bavarian Ministry of Justice have reservations about this initiative. While the German Federal Ministry of Justice considers the approach to be basically feasible, both emphasise the need to ensure that the web-site does not give the impression of an official approval of standard terms. The German Federal Ministry of Justice wonders how the access to the web-site should be regulated and how to avoid supporting initiatives which use unfair contract terms. More generally it wonders if there is sufficient justification for such an initiative by the Commission; in any case an evaluation after a test-phase should be carried out. The Bavarian Ministry of Justice points out that it is very difficult to realise Europe-wide standard contract terms independently of the applicable law. Even in commercial transactions there are limits because of binding provisions, for example in property law. Terms would need to be adjusted to 15, soon to be 25, jurisdictions. In addition, it could not be determined in advance whether these clauses comply with fairness standards in all countries, which would raise the question of the Commission's liability for the web-site. It stresses that before the implementation of Measure II the practical need for it should be checked. In commercial relations, standard contract terms are often biased towards the interests of the party using it; therefore the other party will check them anyway and require legal advice for this. Even greater reservations are expressed concerning business-to-consumer relationships, as detailed standard terms are not transparent to the consumer. It considers mere exchanges of information between private initiatives harmless when the Commission only plays the role of an intermediary.

Sweden stresses that the proposed guidelines on using standard terms should not be so restrictive that they hinder rather than encourage the elaboration of common contractual terms. However, the guidelines should not encroach either on existing contractual freedom. The French government is concerned about contractual freedom as well and insists that any standard terms and contracts elaborated must remain optional. Germany has doubts as to the added value of guidelines as the legal assessment is a matter of individual cases and cannot be clarified. In any case the guidelines would not be effective against standard contract terms infringing the law.

### 3.2.2. *Responses from business*

Business responses on this measure are much more cautious and more mixed than on the first measure.

Some respondents argue that there are already market mechanisms for developing and using standard contract terms, in some cases internationally, and question whether there is really a role for the Commission or community processes in this area. According to one respondent, this role should be limited to that of a 'clearing house' for information relating to retail, as opposed to wholesale, contract terms. Other respondents who comment on the distinction between business-to-business and business-to-consumer in relation to this measure agree that the two should be considered separately and there is felt to be a greater potential benefit from work in the business-to-consumer area than for business-to-business.

Some respondents question the effectiveness of standard contract terms in addressing internal market barriers. Some financial services respondents are concerned that the

use of the terms might lead to what they see as unhealthy product standardisation, though another welcomes research on whether this might bring benefits to retail customers. Some question whether the development of such terms would be feasible or would reduce costs given the different substantive law requirements in Member States and argue that a more useful approach would be to standardise private law form requirements.

One respondent argues that the development of standard terms specifically designed for cross-border contracts could be useful. Others emphasise that if work is carried out in this area it must respect the principle of contractual freedom, include appropriate stakeholder consultation and develop standard terms which are entirely optional.

### *3.2.3. Responses from consumer organisations*

Two respondents are sceptical about the potential for standard contract terms to provide adequate protection for consumers. They see this as a measure which would reinforce the power of businesses to dictate the terms of the contract and take advantage of consumers' lack of bargaining power.

However BEUC and the Belgian Conseil de la Consommation argue that it could be of benefit to consumers and provide useful clarity for consumers if certain safeguarding conditions were respected:

- the highest possible level of consumer protection should be taken as a point of departure when elaborating those standard terms;
- consumer organisations ought to be an active part in the negotiations towards the creation of standard contract terms, for instance drafting recommended standard contracts;
- contractual terms should comply with the provisions of the Directive on unfair terms in consumer contracts, that is to say they must be fair;
- consumers should always be left the freedom of negotiating (contractual freedom);
- once developed, the standard contract terms should be reviewed after a certain period of time, for instance in order to incorporate new legal developments;
- access to justice must be untouched, i.e. if a consumer feels to be disadvantaged by a given standard term, he/she should have the possibility to bring it to court for the terms to be checked in respect of its validity.

### *3.2.4. Responses from legal practitioners*

The responses concerning Measure II are quite mixed. A few practitioners keenly support defining standard terms because, in their opinion, it would reduce the cost of the transactions and thereby facilitate cross-border business. Many practitioners stress that it is essential that such terms are not mandatory. They firmly believe that standard contract terms could be useful only if they are not imposed and do not limit the parties' contractual freedom.

However, some respondents doubt whether there is a need for this measure. In particular some argue that it is questionable whether the institutions of the EU would have the competence to draft standard terms. Others doubt whether a website is useful particularly when considering the resources required. Others call for more clarification from the Commission about what is envisaged.

One contribution argues that Measure II could be useful for concluding cross-border contracts but that it would be better to concentrate on a more intensive harmonisation of fundamental terms of contract law first.

#### *3.2.5. Responses from academic lawyers*

The academic community does not show much interest in the promotion of standard terms and conditions. Those contributors who actually refer to it express doubts as to its benefits, in particular for the removal of barriers to trade, and with regard to the need to protect consumers. One contribution argues that eliminating minimum harmonisation or establishing an optional instrument at Community level would be more efficient. Another holds that the importance of standard terms may easily be over-estimated and that self-regulation is more effective than government promoted terms. However, a further contribution argues that standard clauses and conditions could be very useful and welcomes the creation of a website as intended by the Commission.

By contrast, one respondent argues that international standard contracts are not necessarily better, more balanced or fair. A database presented on a web-site would probably remain incomplete and it is uncertain whether it would be used, because economically important stakeholders would agree on standard terms without intervention. Furthermore, others argue, the establishment of a website or the publication of guidelines cannot overcome the differences of national mandatory contract law. For business-to-consumer contracts the Unfair Terms Directive 93/13/EEC applies anyway and legal advisers are aware of it as well as they are aware of the rules of competition law. However, the need to remind companies that standard terms have to take into account applicable Community rules on competition and unfair term control is identified by another respondent. For that reason the Commission might encourage trade associations to draft standard terms which should use the common language of a contract law code. In any event, the Community authorities should apply a hands-off approach and not engage in drawing up contract terms itself.

For the area of insurance law one contribution says that general contract terms would be impracticable without sector-specific harmonisation or unification of insurance contract law.

One voice who supports the objective of Measure II wonders whether such clauses should remain optional or whether they will in time become compulsory.

### **3.3. Further reflection on the opportuneness of non-sector specific measures such as an optional instrument in the area of European contract law**

#### *3.3.1. Responses from governments*

Overall, the large majority of reactions from governments on the opportuneness of an optional instrument are cautious. Within this spectrum, there are differences in detail.

The Portuguese government sees the optional instrument as an innovative solution in order to avoid legal conflicts, but given the complexity and preparatory work required, considers it premature to create such an instrument in the short-term. It points out that such an instrument could represent a step forward in the direction of a higher level of consumer protection. More generally, it could be an efficient measure to reduce the difference in negotiating powers. The Swedish government has doubts whether such an instrument could be devised and considers the need for it as questionable. The German Federal Government considers the reflections on an optional instrument to be very interesting. There may very well be a need for a “neutral” alternative that is not the own law of the parties and that represents both balanced and practical solutions. The aim to facilitate legal transactions in the internal market could be realised to the extent it will succeed in creating a practicable set of rules acceptable for contractual parties. The Danish government stresses that any measures taken should be subject to the principles of subsidiarity and proportionality.

A clearly supportive reaction comes from the Hungarian Government. It supports the preparation and adoption of an optional instrument, provided that it is done on the basis of research work, in a transparent manner and with regular consultation of governments.

A clearly negative response comes from the UK government, which is not attracted to the former option IV of the July 2001 Communication in any of its forms. It will however later in the year submit a paper to the Commission raising a number of detailed issues, concerns and questions for discussion. The French government which also has reservations about the optional instrument calls upon the EU to abstain from setting a new independent set of rules on cross-border transactions.

Governments have also commented on the more specific aspects of this measure raised in the Action Plan.

Concerning the scope, the Portuguese government suggests that the optional instrument should cover the entire scope of the CFR, including general provisions and specific contracts. The Hungarian Ministry of Justice considers also that a successful optional instrument has to be comprehensive, i.e. with general rules for all types of contract and specific rules for the transactions most important for cross-border transactions. Moreover, the optional instrument should contain rules on security on property, unjust enrichment and other areas adjacent to contract law. The Bulgarian Ministry of Economy suggests dealing with legal transactions which have not yet been subject to regulation but hold a pivotal position in economic life, such as contracts for sale, exchange, donation, lease etc. It also mentions that the necessity to include form requirements related to the format of certain types of contracts might lead to the necessity to reform the activities of public notaries in Europe. The Austrian Ministry of Justice, while emphasising that preparations will need time and can only be done on the basis of a thorough discussion, suggests that works should include cross-border financial transactions and securities. The French government is of the opinion that the scope of the optional instrument should be limited and designates harmonisation in the field of security law as desirable.

Concerning the question of coverage of business-to-business and business-to-consumers contracts, the Hungarian government emphasises that the rules on business-to-consumer relations should be included. They would support an optional

instrument with differentiated rules for the different types of transactions, i.e. business-to-business, business-to-consumers and transactions between private persons, in the form of rules applying to commercial transactions with *leges speciales* for business-to-consumer contracts and transactions between private persons. The Portuguese government also emphasises that it is important to take into account the interests of the weaker party in the optional instrument. Concerning the possible mandatory or supplementary nature, the German Federal government states that as a matter of principle, individual provisions of the optional instrument should be supplementary. However, it considers it indispensable to maintain the existing level of protection if consumer contracts are included and suggests doing this by including mandatory provisions in an optional instrument which would provide such a level of protection. EEA-EFTA States welcome the Commission's emphasis on the principle of contractual freedom as the basis of an optional instrument. They suggest that the contractual parties should have the freedom to adapt the provisions of an optional instrument to their specific needs, but also underline that consumer protection rules should be of a mandatory nature. The Bavarian Ministry of Justice considers that a possible optional instrument should contain mandatory rules guaranteeing a level of protection similar to the present level if it covers also consumer contracts. However, it considers it preferable not to include consumer contracts because consumers typically do not have an overview of the implications of legal choices.

On the nature of the legal act involved, the legal base and the opt-in/opt-out character, the Hungarian government suggests that the optional instrument could take the form of a regulation, based on Article 308, as an opt-in instrument for both cross-border and domestic transactions. After a transitional period the opt-in instrument could be converted into an opt-out instrument in cross-border relations adopted as a regulation on the basis of article 95. The German Federal government prefers *prima facie* a regulation because of its binding character. Emphasising the importance of the principle of contractual freedom, it would also prefer the opt-in model, leaving it to the parties to use the optional instrument for purely domestic contracts if they wish to do so. EEA-EFTA States suggest that a potential future instrument should be subject to the discretion of the parties through a choice of law clause, i.e. an opt-in instrument. The Bavarian Ministry of Justice would also prefer an opt-in model. The French government is in favour of the opt-in solution and suggests that the character of the optional instrument is non-binding.

It is interesting to note that the German Federal Ministry of Justice, the French government and the Ministry of Justice of Bavaria raise the question of the creation of a European instrument concerning securities in movable properties. The Bavarian Ministry considers such a regulation as desirable while the Federal Ministry wants such an instrument to be discussed. The French government would consider harmonisation in the field of security law as desirable within the scope of a limited optional instrument.

A number of governmental contributions (Germany, Portugal, Sweden and Denmark) highlight the need for coherence with the Green Paper on the communitarisation and modernisation of the Rome Convention. While the German Federal government also highlights this need, it expects that the optional instrument would be created via international uniform law, which will regulate its own scope of application and consequently avoid the application of the rules on conflict of laws within its scope. The Bavarian Ministry of Justice also suggests using international uniform law and

emphasises that its effect should not be hampered by the additional applicability of national contract law rules. The Hungarian Ministry of Justice suggests a modification of article 3 of the Rome Convention in order to allow the choice of the optional instrument as applicable law. The French government emphasises that, if binding national rules can be excluded (which the French government does not wish), the instrument has to include mandatory rules which are accepted in all Member States.

As to the relationship of the possible optional instrument with the CISG, the German Federal government states the need to avoid creating law which deviates from the CISG and that the optional instrument should only provide for complementary rules. The Bavarian Ministry of Justice also thinks that a possible optional instrument should not provide for rules different from the CISG; the CISG provisions should if necessary become part of the optional instrument. The Danish government also emphasises the need to take the CISG into account.

### 3.3.2. *Responses from business*

Most respondents reserve their position on whether an optional instrument would be useful until work on the first measure is further advanced. For example, one respondent is unsure whether such an optional instrument could add much to the CFR, while another questions whether it could be effective if products still needed to be adapted because of differences in substantive national rules.

At this stage, there are a range of views. Some respondents see this as an important step which would be particularly helpful where the alternative would be a choice of national laws alien to one or other party and which could be a promising way of encouraging voluntary legal convergence by Member States. Others question whether there is really a need for such an instrument. For one respondent, the existence of the CISG shows that an EU optional instrument is unnecessary; for another the CISG is a valuable precedent showing that such an approach could work in practice, while a third simply wants to ensure coherence between existing instruments such as the CISG and any new one.

The issue of coherence with other instruments is also raised firstly in relation to the incorporation of the Rome Convention into the *acquis* and secondly with regard to regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters into the *acquis* with, for example, one respondent calling for the incorporation of the Rome Convention to include a provision allowing for the choice of a future EU optional instrument.

Some respondents are quite comfortable with the idea of an optional instrument provided it is an entirely voluntary instrument to which parties could 'opt-in'. Most respondents who express a view say that the instrument should operate on this 'opt-in' basis and not be made binding.

One respondent argues that the instrument could provide a way to take into account the different economic power of the contracting parties. Others again stress the importance of the general principle of contractual freedom.

There are also divergent views about the scope of any instrument. While one respondent calls for a complete codification of general contract law rules, another calls only for a sector-specific measure.

### 3.3.3. *Responses from consumer organisations*

Consumer association respondents express concern that an optional instrument based on the principle of contractual freedom would not incorporate the mandatory requirements needed to protect consumers against an abuse of negotiating power by businesses. One fears that an optional instrument would inevitably generate legal uncertainties regarding its interpretation and application by the courts of the Member States.

There are various calls for clarification about how such an instrument would relate to other measures. BEUC, for example, highlights the connection with the Rome Convention, while another respondent asks how the instrument would work in relation to full harmonisation directives. This respondent attaches greater priority to improving existing EU legislation than to developing an optional instrument, but BEUC emphasises that work on this issue is a step by step process which should proceed in phases.

### 3.3.4. *Responses from legal practitioners*

Legal practitioners' responses on this measure are mixed. Some contributions firmly reject the realisation of an optional instrument because they consider it unnecessary or even useless. A number of other practitioners support this measure because they envisage that it would facilitate cross-border transactions. Some practitioners stress that in addition to an optional horizontal instrument a uniform jurisdiction should exist to ensure a uniform application in the Member States. According to one practitioner the elaboration of the CFR is an indispensable preliminary condition precedent to the setting of an optional instrument.

Some respondents comment on the feasibility of the drafting of an optional instrument. One practitioner calls for further study of the economic impact of this measure. Others question the competence of the European Union to develop an optional instrument and some call for the principles of subsidiarity and proportionality to be respected in realising this measure.

There were divergent views about the scope of an optional instrument. While one legal practitioner stresses that the instrument should be limited to the existing problems of the current *acquis* and that particular attention should be drawn to the performance of contracts, another argues for a code covering the whole of contract law, applied to both cross-border and domestic relations. Another respondent who also suggests using the instrument for domestic contracts argues that it should include consumer contracts if there is truly a need for a uniform legal order but exclude family law, the law of succession and property law. Another respondent emphasises that an optional instrument should be commercially focused in order to gain widespread acceptance. Another argues that it would be better to apply this instrument only to specific fields like insurance. Others argue that the optional instrument should not be able to override any conflicting mandatory requirements in national law and should be in conformity with the public policy requirements of Member States. Another recalls that special contract law provisions, such as security law, reservation of title, are tied in with property law and insolvency law.

Almost all the legal practitioners, even those who are not in favour of this measure, call for an "opt-in" approach if an optional instrument is developed. However, two

contributions suggest making the optional instrument mandatory at least in the context of consumer contracts. On the nature of the legal act involved one respondent suggests that an optional instrument could take the form of a regulation, another suggests using a directive or a regulation.

Some practitioners underline the need for co-ordination of this measure with the Rome Convention and the Vienna Convention.

In general they call for a fuller specification of the instrument's possible content and for this process to involve practitioners, users, Member States and academics.

### 3.3.5. *Responses from academic lawyers*

Contributors broadly welcome the Commission's proposal to pursue the reflection on the need for an optional instrument, though a few state that the time is not yet ripe for the elaboration of such an instrument. By contrast, a number of contributors consider the Commission's approach too timid and suggest a codification of EC contract law (a contract law code). Such a code should certainly not be put in place in one step but could be achieved progressively, e.g. via the codification of individual institutes/principles at a time. Some appear to view the creation of an optional instrument as not only the inevitable consequence of the current developments but as the only possible solution for some problems. Standardising legal instruments in trade in goods and services is a matter of great interest. It offers the chance to comprehensively regulate commercial sales and consumer sales as connected areas or at least to do so for commercial cross-border sales. Once achieved, one contribution stresses the need to publicise the optional instrument. In any case, the possibility of an optional instrument should be examined further and the discussion should be opened up completely regarding all the advantages and disadvantages of a European Code.

One critique though sees the need for analysis of the weaknesses of the current situation before deciding on such a route and lists factors which militate against the introduction of an optional instrument such as language and cultural barriers and the civil law/common law divide. It also sees the need to include an economic assessment (cost-benefit analysis). Another respondent suggests that this would set the benefit of lower transaction costs against a possible loss of higher protective standards of national law.

In contrast to the critique cited above, one respondent sees the availability of an optional instrument in the different languages of the EU as a positive feature. This would ensure that cross-border contracts would no longer be avoided for fear of misunderstandings due to translation problems.

Concerning the scope of the optional instrument one contribution suggests a set of rules that covers both general and special rules and is not confined to specific types of contract. Another advocates an optional instrument containing only general rules. In any case the optional instrument should be drafted like a legal act, both with regard to its language and its content. Because of their economic significance, relational long term contracts and contract networks should be included. Another respondent wants to include securities in property and unjustified enrichment. The optional instrument should only exclude from its scope the right of succession, land law, labour law and family law.

In sales law one respondent argues that an optional instrument should encompass all sorts of parties (business-to-business, business-to-consumers and non-commercial sales) and should be broader in scope than the CISG and include for instance the sale of rights. Another proposes limiting the scope of the optional instrument at first to sales only so as to replace the CISG. Some would differentiate between business-to-business and business-to-consumers at least in the phasing-in of an optional instrument.

For the area of insurance law it is said that it is closely linked to general contract law and the general rules on, for instance, performance, prescription of claims, calculation of time limits, remedies for late payment and joint liability. Any specific measure on insurance contracts should therefore be integrated into a general act on European contract law.

As to the question of whether domestic legal transactions should be covered by an optional instrument some contributions argue that they should. Some criticism is voiced against the focus on cross-border transactions. A truly European contract law, it is said, should cover all contractual transactions, including domestic ones. However, one contribution would limit the scope of application of an optional instrument to cross-border transactions.

According to one respondent it is self-evident that the European instrument must have mandatory rules because the improvement of existing and future *acquis* is said to be the key measure of the Action Plan. Mandatory rules ought to be included so as to protect the vulnerable party to the contract, in particular consumers. In any case the need for such an instrument to provide a high level of consumer protection is recognised.

For business-to-business contracts it is proposed that an optional instrument should constitute a “mandatory minimum”. One contribution says that an optional instrument is well suited to business-to-business relations but is not the best method to ensure consumer protection.

On the legal character of an optional instrument and on the question of whether such an instrument ought to be binding or non-binding, a majority prefers a binding act in the form of a regulation whilst others favour a soft law instrument, eg. a recommendation, a model law, a legal guide or a resolution and say that a regulation is not compatible with the character of an opt-in instrument. One contribution says that directives and regulations should be replaced by a code of Community private law. One of the contributors suggests a non-binding model law in the form of a treaty or convention or two separate instruments, i.e. a binding act such as a regulation for consumer (business-to-consumer) and a non-binding one such as a recommendation for commercial (business-to-business) transactions. However, another contribution does not see the need for a ‘legally operative instrument’. One thinks of the optional instrument as a legal act in the meaning of Article 3 of the Rome Convention.

According to one contribution there are strong reasons for using a “restatement” instrument rather than a legislative instrument, to allow sufficient dynamism in the system, arguing that the complicated legislative machinery of the EU would make it difficult to make changes to a European law code. Other respondents are also concerned with the issue of how any eventual instrument would allow for innovation and be kept up to date. One calls for it to be developed in a way that allows for the

entry of new ideas, discussion and scientific research. Another highlights the risk of ossification by a European civil code and the value of competition of legal doctrine. .

A need is also identified for further reflection on the legal framework (including the legal base) of such an instrument considering that it would directly affect the freedom to contract of EU citizens. One contribution sees problems for establishing a legal base for Measure III and with the principles of subsidiarity and proportionality, whilst another suggests Art 65 TEC as possible base.

On the question of whether the optional instrument should be an opt-in or opt-out instrument, a majority seems to prefer an opt-in solution, sometimes supported by reference to the subsidiarity principle. Sometimes even the advocates of an opt-out solution admit that an opt-in instrument would be more suited for the demands of the market. The opt-out model is preferred by some contributions, while one contribution proposes an opt-out for cross-border transactions and an opt-in for domestic transactions. One contribution advocates an opt-out instrument because the predecessor of the CISG, the Hague Conventions of 1964, was made an opt-in instrument in the UK where it consequently had practically no impact whatsoever. One distinguishes between an initial use of an optional instrument on an opt-in basis and a later stage in which it would become a compulsory opt-out instrument for all cross-border contracts. According to the same contribution it should become the compulsory law for contracts between EU-institutions and businesses. Against the opt-out model it is argued that it appears odd that parties should be forced to choose an unfamiliar (EU) law rather than a law which known to them (i.e. their national law). An alternative suggestion is to allow parties to incorporate non-binding contract codes such as PECL in contracts as terms of the contract rather than as applicable law.

According to one respondent, the optional instrument should be named the European Civil Code and eventually become binding in all transactions, having first been applied to intra-Community trade as an opt-out instrument.

Concerning the methodology most contributions suggest that the optional instrument should be based on the CFR. One contribution says that existing work already provides for a choice of instruments and the CFR should rather be used for a European civil code while others emphasise the need that existing material is taken into account.

Some call for the optional instrument to regulate sales law comprehensively while emphasising several reasons not to do so by integrating the CISG: they argue that not all Member States have ratified it, and that it is not made for the European market or suited to it in its scope).

An opposing view argues that the optional instrument should provide general rules on contract law and restrict rules on commercial sales to an incorporation of the CISG (arguing that the CISG is in force in most Member States and is in tune with wider international practice) and only filling gaps. In the case of a conflict between CISG and the optional instrument, the former should take precedence. One contribution, which elaborates in great detail on the CISG and its relationship to an optional instrument, concludes that the CISG should govern future intra-Community transactions and should be taken as the basis for the sales law of European contract law. Member States that have not ratified the Convention so far should be

encouraged to do so. Another contribution suggests that the optional instrument should also refer to what it calls “existing soft law” like the PECL and the UNIDROIT-Principles because the CISG is limited to sales law. One contribution reminds that not only the CISG, but also the Incoterms, UNIDROIT-Principles, PECL and the work of the Study Group on a European Civil Code should be considered when elaborating an optional instrument. Another is afraid that including principles in the optional instrument could lead to different outcomes in interpretation in the Member States.

There are calls for co-ordination between the Green Paper on the Rome Convention and the measures of the Action Plan. In particular some make a link with Article 3 of the Rome Convention making the choice of an opt-in instrument the equivalent of the choice of a national law by the parties concerned under the private international law rules. It is pointed out that the Lando Commission and the Study Group on a European civil code have already made suggestions allowing for the choice of the law of a non-State. The same contribution argues that mandatory rules should be part of the optional instrument and makes suggestions on reform of the Rome Convention.

## **LIST OF ALL CONTRIBUTIONS**

The following list of contributors does not give the names of those contributors who have specifically requested confidentiality. The contributors are listed by category according to the classification system used by the Commission services in analysing the contributions. The order in which the names of the contributors appear does not bear any relation to the order in which the contributions have been received, nor does it bear any relation to any supposed judgement as to the relative importance of the contributions.

### **1. GOVERNMENTS**

- 1.1. Bayerisches Staatsministerium der Justiz – Germany
- 1.2. Bulgarian Government - Bulgaria
- 1.3. Bundesministerium der Justiz - Austria
- 1.4. Bundesministerium der Justiz – Germany
- 1.5. Danish Ministry of Justice - Denmark
- 1.6. European Free Trade Association (EFTA) – Brussels
- 1.7. French Government - France
- 1.8. Hungarian Ministry of Justice – Hungary
- 1.9. Ministerio dos Negocios Estrangeiros - Portugal
- 1.10. Ministry of Justice - Sweden
- 1.11. Romanian Government - Romania
- 1.12. United Kingdom Government - UK

### **2. BUSINESS**

- 2.1. Association des Assureurs Coopératifs et Mutualistes Européens - Brussels
- 2.2. Barclays Plc - UK
- 2.3. Bausparkasse der österreichischen Sparkassen Aktiengesellschaft - Austria
- 2.4. Joint contribution of Bundesverband des Deutschen Gross- und Aussenhandels, Centralvereinigung Deutscher Wirtschaftsverbände für Handelsvermittlung und Vertrieb (CDH) e.V., Hauptverband des Deutschen Einzelhandels - Germany
- 2.5. Bundesverband Deutscher Banken - Germany
- 2.6. Joint contribution of Bundesverband der Deutschen Industrie and Deutscher Industrie- und Handelskammertag - Germany

- 2.7. Bundesverband der Freien Berufe - Germany
- 2.8. CBI (Confederation of British Industry) - UK
- 2.9. Central Chamber of Commerce of Finland - Finland
- 2.10. CEA (Comité Européen des Assurances) - Brussels
- 2.11. Creators' Right Alliance - UK
- 2.12. Joint contribution of Deutscher Sparkassen- und Giroverband e.V., Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e.V., Bundesverband Öffentlicher Banken Deutschlands e.V. - Germany
- 2.13. ENPA (European Newspaper Publishers' Association)
- 2.14. EUROFINAS (European Federation of Finance House Associations) - Brussels
- 2.15. European Association of Co-operative Banks - Brussels
- 2.16. EFBS (European Federation of Building Societies) - Brussels
- 2.17. Fédération Bancaire Française - France
- 2.18. Fédération des Industries Nautiques - France
- 2.19. Joint contribution of ECSA (European Community Shipowners Association) and ICS (International Chamber of Shipping)
- 2.20. Gesamtverband der Deutschen Versicherungswirtschaft - Germany
- 2.21. ISDA (International Swaps and Derivatives Associations, Inc.)
- 2.22. London Investment Banking Association - UK
- 2.23. ORGALIME (Liaison Group of European Mechanical, Electrical and Metalworking Industries) – Belgium
- 2.24. Pyramide Europe – UK
- 2.25. UEAPME (European Association of Craft, Small and Medium-sized Enterprises - Brussels
- 2.26. VDMA (German Engineering Industry Federation) - Brussels
- 2.27. Verband Deutsches Reisemanagement e.V. - Germany
- 2.28. Vorwerk & Co. KG - Germany
- 2.29. VNO-NCW – The Netherlands
- 2.30. Wirtschaftskammer Österreich – Austria

### **3. CONSUMER ASSOCIATIONS**

3.1. BEUC (The European Consumers' Organisation) - Brussels

3.2. CECU – Spain

3.3. Conseil de la Consommation - Brussels

3.4. European Consumer Centre Dublin

#### **4. LEGAL PRACTITIONERS**

4.1. Bar Council of England and Wales - Brussels

4.2. Dr. P. Bernardini, Giudice presso il Tribunale civile di Lucca - Italy

4.3. Bundesnotarkammer - Germany

4.4. City of London Law Society - UK

4.5. Clifford Chance - UK

4.6. Conférence des Notariats de l'Union Européenne - Brussels

4.7. Conseil des Barreaux de l'Union Européenne - Brussels

4.8. Consiglio dell'Ordine degli Avvocati di Milano – Italy

4.9. Cour de Cassation - France

4.10. Deutscher Notarverein-Bundesverband der Notare im Hauptberuf e.V. - Brussels

4.11. Finnish Bar Association - Finland

4.12. Mr. Christian Hertel (Deutsches Notarinstitut Würzburg) - Germany

4.13. Carolin Kühne, Freshfields Bruckhaus Deringer - Germany

4.14. Law Society of England and Wales EU Committee - UK

4.15. Law Society of Scotland - UK

4.16. C. Locher – Staub Hilti & Partner Rechtsanwälte - Switzerland

4.17. Lovells - Germany

4.18. Österreichische Notariatskammer – Brussels

4.19. Österreichischer Rechtsanwaltskammertag – Austria

4.20. Gunther Weiss, Freshfields Bruckhaus Deringer – Germany

#### **5. ACADEMICS**

5.1. Prof. G. Ajani, Torino – Italy, and Prof. Dr. H. Schulte-Nölke, Bielefeld – Germany  
– Acquis Group

- 5.2. Prof. M.T. Alonso Perez, University of Zaragoza - Spain
- 5.3. C. Amato, University of Brescia - Italy
- 5.4. E. Arroyo I Amayuelas, University of Barcelona, and A. Vaquer Aloy, University of Lleida - Spain
- 5.5. Association Henri Capitant des Amis de la Culture Juridique Française et la Société de Législation Comparée - France
- 5.6. Prof. Dr. C. von Bar and Dr. S. Swann, Universitaet Osnabrueck - Germany
- 5.7. Prof. Dr. C. von Bar and Dr. S. Swann, Universitaet Osnabrueck - Germany
- 5.8. Prof. J. Basedow, Max-Planck Institut, Hamburg - Germany
- 5.9. Prof. J. Basedow, Max-Planck Institut, Hamburg - Germany
- 5.10. K. Battersby, Nottingham Law School - UK
- 5.11. Prof. M. Bianca, University “La Sapienza” of Rome - Italy
- 5.12. Prof. Dr. M. Bussani, University of Trieste - Italy
- 5.13. Prof. F. Cafaggi, Prof. C. Joerges, Prof. J. Ziller, Dr. C. Schmid, European University Institute, Florence - Italy
- 5.14. Dr. G-P. Calliess, Johann Wolfgang Goethe-Universität, Frankfurt - Germany
- 5.15. Prof. Dr. W. Devroe, Dr. D. Droshout, Katholieke Universiteit Leuven - Belgium
- 5.16. C.D. Düchs, Johannes Gutenberg University, Mainz - Germany
- 5.17. Prof. B. Fauvarque-Cosson and Prof. D. Mazeaud, Université Panthéon-Assas (Paris II) - France
- 5.18. Dr. A. Fuchs, Academy of European Law, Trier - Germany
- 5.19. Prof. G. Gandolfi and Prof. J.L. de los Mozos, Academy of European Private Lawyers, Pavia - Italy
- 5.20. Prof. G. Gandolfi, Academy of European Private Lawyers, Pavia - Italy
- 5.21. Prof. G. Garcia Cantero, University of Zaragoza - Spain
- 5.22. Prof. L. Gatt, University of Naples - Italy
- 5.23. Sir Roy Goode, Oxford - UK
- 5.24. Prof. M.D. Gramunt Fombuena and Prof. M.R. Llacer Matacas, Universidad de Barcelona - Spain
- 5.25. Prof. Dr. S. Grundmann, University of Erlangen-Nürnberg – Germany
- 5.26. Prof. Martijn W. Hesselink - Amsterdam

- 5.27. Dr. V. Heutger, Universiteit Utrecht – The Netherlands
- 5.28. Prof. Dr. R.M. Hilty, Max Planck-Institut für Geistiges Eigentum und Wettbewerbsrecht, München - Germany
- 5.29. Prof. Dr. P. Huber, Johannes Gutenberg University, Mainz - Germany
- 5.30. Prof. Dr. P. Huber, Johannes Gutenberg University, Mainz - Germany
- 5.31. Prof. C. Lalana del Castillo, University of Zaragoza - Spain
- 5.32. Prof. Dr. O. Lando - Denmark
- 5.33. Prof. Dra. Llombart Bosch, Universidad Politecnica de Valencia - Spain
- 5.34. Prof. P.A. Llombart, Prof. J. Battaler Grau, Prof. N. Latorre Chiner, Prof. G. Palao Moreno, Prof. F. Ramon Fernandez, Universidad Politecnica de Valencia – Spain
- 5.35. Dr. A.M. Lopez-Rodriguez, Aarhus University - Denmark
- 5.36. Prof. U. Magnus, University of Hamburg - Germany
- 5.37. Prof. Dr. J. Meyer, Technische Universität Dresden - Germany
- 5.38. Dr. E. Najork, Köln, Dr. M. Schmidt-Kessel, Freiburg - Germany
- 5.39. Prof. R. Nielsen, Copenhagen Business School - Denmark
- 5.40. Prof. Dr. F.J. Orduna Moreno, Prof. Dr. J. Plaza Penades, Prof. Dr. L.M. Martinez Velencoso, Universidad de Valencia - Spain
- 5.41. Dr. N.M. Pinto Oliveira, Universidade do Minho - Portugal
- 5.42. Prof. C. Prieto, Université d'Aix-Marseille - France
- 5.43. A. Quinones Escamez, University Pompeu Fabra - Spain
- 5.44. Prof. Dr. Ranieri, Universität des Saarlandes, Saarbrücken - Germany
- 5.45. Prof. Dr. Reichert-Facilides, Institut für Zivilrecht, Innsbruck - Austria
- 5.46. Prof. Dr. O. Remien, Bayerische Julius-Maximilians-Universität, Würzburg - Germany
- 5.47. Prof. P. Remy-Corlay and Prof. D. Fenouillet, Université de Paris XI, Prof. P. Remy-Corlay, Faculté de Droit de Poitiers - France
- 5.48. Prof. P. Remy-Corlay, Université de Paris XI - France
- 5.49. Prof. P. Remy-Corlay, Université de Paris XI - France
- 5.50. Prof. M.L. Ruffini, Università degli Studi di Milano - Italy
- 5.51. Prof. Dr. H. Schulte-Nölke, University of Bielefeld - Germany

- 5.52. Prof. Dr. Schulze and Dr. M. Ebers, University of Münster - Germany
- 5.53. Dr. A.L. Serrano, Universidad de Barcelona - Spain
- 5.54. Prof. J. Smits and Mr. R.R.R. Hardy – Universiteit Maastricht – The Netherlands
- 5.55. Prof. M. Tsunoda – Osaka University - Japan
- 5.56. Prof. Walter van Gerven, Katholieke Universiteit Leuven - Belgium
- 5.57. Prof. Walter van Gerven, Katholieke Universiteit Leuven - Belgium
- 5.58. Prof T. Wilhelmsson, University of Helsinki - Finland

**6. OTHER**

- 6.1. Justizfraktion der Sozialdemokratischen Partei Österreichs

	<u>Government</u>	<u>Business</u>	<u>Consumers' Organisation</u>	<u>Legal Practitioners</u>	<u>Academics</u>	<u>Total</u>
Austria	1	2		1	1	5
Belgium		2	1		3	6
Denmark	1				3	4
Finland		1		1	1	3
France	1	2		1	6	10
Germany	2	8		5	19	34
Greece						
Ireland			1			1
Italy				2	8	10
Luxembourg						
Netherlands		1			3	4
Portugal	1				1	2
Spain			1		10	11
Sweden	1					1
UK	1	6		4	2	13
International, including EU	1	8	1	5		14
<b>EU total</b>	7	29	4	18	56	117
Non-EU	3			1	1	5
<b>Total</b>	10	29	4	19	57	122