

**First Conference of the Network of Stakeholder Experts on the Common Frame of Reference in the area of European Contract Law  
Brussels, 15 December 2004**

**Summary**

I.

A first conference of the network of stakeholder experts on the Common Frame of Reference in the area of European Contract Law (CFR-net) took place in Brussels on 15 December 2004.

The aim of the conference was to inform stakeholder experts on the developments of the European contract law project and on the process of preparation of the Common Frame of Reference (CFR) and also to discuss the possible content of the CFR with stakeholders who participate in the CFR-net, in the light of the Commission Communication of 11 October 2004 on European contract law and the revision of the *acquis*. As a basis for the substantive discussions, a non-paper (available at:

[http://europa.eu.int/comm/consumers/cons\\_int/safe\\_shop/fair\\_bus\\_pract/cont\\_law/non\\_paper\\_15122004\\_en.pdf](http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/non_paper_15122004_en.pdf)) was circulated beforehand among CFR-net members.

II.

The meeting was opened by a keynote speech from Mr. **Robert Madelin, European Commission Director General for Health and Consumer protection** (available at: [http://europa.eu.int/comm/consumers/cons\\_int/safe\\_shop/fair\\_bus\\_pract/cont\\_law/madelin\\_speech15122004\\_en.pdf](http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/madelin_speech15122004_en.pdf)). In his speech, Madelin explained the underlying political goals to the European Contract Law project which have been set by several European Councils: Lisbon (“increasing competitiveness”), Tampere and the Hague Programme (“a common sense of justice throughout the union”) and Laeken (“better regulation”). Further, Madelin stressed the relevance of the project both for businesses and consumers.

In the course of the session, Mr. **Dirk Staudenmayer** (Head of Unit, DG Health and Consumer Protection, Unit B 4, Protection of legal, economic and other consumer interests) gave an overview on the future perspectives of the European Contract Law initiative, in particular in view of the 2004 Communication. In a further presentation, Ms. **Rossella Delfino** (Desk officer, DG Health and Consumer Protection, Unit B 4, Protection of legal, economic and other consumer interests) focused on the organisation of stakeholder participation in the project and on the interaction between stakeholders and researchers.

III.

In a first discussion round, stakeholder experts discussed the process and the proceedings of the work of the CFR-net. On **substance**, several questions asked by stakeholder experts provided the opportunity to clarify the distinction between CFR and optional instrument. At this stage, the Commission’s activities focus on the CFR as a lawmaking tool at European level, its preparation and elaboration. The reflection on the opportuneness of an optional instrument which could possibly provide a set of rules that can be chosen by the parties of an

individual contract is pursued in parallel, but will only be a second step in the European Contract Law project.

Further main discussion elements that concern, in particular, aspects of **practical organisation** of the CFR-net, may be summarised as follows:

When **organising workshops** on themes of research, as laid down in the 2004 Communication, this should be done in a way to ensure as much qualified and coordinated input from CFR-net members as possible. For instance, drafts from the researchers should be provided to the participants of the relevant workshops as soon as possible, ideally more than one month in advance to the workshop. This will also enable CFR-net members to gather input from supporting national or professional networks, if any, or within organisations they represent. In any case, provision of documents will be effectuated via the restricted access website.

According to needs that may arise during the discussion in the workshops, it may prove necessary to hold more than one workshop on a particular research theme. Additionally, it could appear appropriate to isolate, within the research topics, particular questions that might be relevant only for B2B or only for B2C contracts. Further, if issues arise within discussions in a workshop that may be of relevance for several research themes, those could be discussed at the annual meetings of the European discussion forum that will bring together both participation strands foreseen in the Communication, i. e. the input from the CFR-net and the political consideration and review. The first meeting is going to take place under UK Presidency, probably on 8 July 2005. Furthermore, overlap between workshops should be avoided to ensure best assignment of resources.

As success of the CFR-net work would depend to a great extent on focussed and efficient discussions in the workshops, this will mean for **stakeholders** that they need to prepare for the workshops by studying preparatory documentation in order to be able to react to any research draft posted on the website. For stakeholders, it could appear appropriate also to acquaint themselves with the major existing research results in the field of contract law, i. e. the European Principles of Contract Law and the UNIDROIT principles. The **Commission**, for its part, will be backing the CFR-net by organisational and secretarial assistance. For instance, lists of stakeholders involved in a particular research topic will be circulated in time to allow exchange of views. E-mail alerts will be issued when a research document is posted on the **restricted access website**. Access rights concerning the website will be granted to an extent that ensures both transparency of the research process and workability and effectiveness of the CFR-net input. At least, those CFR-net members working on a particular topic need to be provided with reading and editing access concerning that topic, but the Commission will endeavour to give all stakeholder experts the possibility to comment on all research drafts via the restricted-access website. In this context, regular monitoring as to exercise of access rights and if necessary, adjustment may be appropriate.

Concerning the question on **how effectiveness of stakeholder input** within the research work could be **maximized**, it was explained by the Commission that the structures to guarantee technical input are to form part of the agreement between the Commission and the researchers. Thus, it has so far been foreseen that researchers will give feedback to CFR-net members on the impact their contributions have on the research work. In case researchers do not consider it appropriate to take on board the CFR-net input, they will explain the underlying reasoning. It was pointed out that, should researchers not agree with the CFR-net

suggestions, it abides of course with the CFR-net members to continue with proposing an alternative drafting. Once the CFR-net work will have come to an end, it should also be desirable to publicise the stakeholder contributions in an appropriate manner.

As to the then following work phase that would consist in the **elaboration of the CFR by the Commission**, the need was expressed that stronger stakeholder participation than foreseen in the 2004 Communication would appear necessary. To this end, the CFR-net should be involved in the consultation on the Commission's draft CFR once it has been developed and before it will be submitted to the public in form of a white paper.

As to **substantive research topics**, it was discussed whether it could prove useful to add the topic "Security rights in immovables" ("Euro-mortgage") to the themes to be treated. In this context, the Commission pointed out, though, that, while it is still possible to enlarge the research workload, a decision on this particular topic should require further examination in the light of the work of the Forum group on mortgages.

#### IV.

In a **second discussion round**, the problems to be addressed by the CFR and the possible content were discussed on the basis of a **non-paper**.

On the **problems that should be addressed by the CFR** (part I of the non-paper) there was a rather broad agreement that the problems as addressed in the 2004 Communication (from which the non-paper quotes) quite appropriately mirror contract law reality. However, views differed as to the importance to be attached to the various problems and as to possible remedies. From some contributors, a strong need was expressed to improve the use of abstract legal terms in directives; in this context, it was underlined that primarily European, not national terminology should be targeted. Some contributions, referring to the overview as to research topics expressed the view that those topics were too broad. Others pointed to the need to enlarge the field covered in order to deal also with topics only adjacent to contract law but of considerable influence (e. g. trust law, IP law). It was clarified by the Commission that international private law will not be dealt with by the CFR.

On the **possible content of the CFR** (part II of the non-paper) ideas varied on the order of importance in which the parts envisaged by the Commission in its Communication should be seen and on how much room they should take. It was clear, however, that these parts would necessarily have to be co-ordinated as they might mutually influence one another and therefore need to be compatible.

#### V.

Participants were asked to submit **further written contributions** after the session for any of the points which had not been discussed (in particular regarding part II, 2-4 of the non paper).

When planning the **further organisation** of the CFR-net, the Commission will take into account the issues raised at the conference. It was agreed that, shortly after the conference, instructions for registering at the restricted-access website and a list of research topics will be distributed to CFR-net members for indication of preferences in order to enable the Commission to advance on workshop planning.

