

**Workshop of the network of Member State Experts on European Contract Law
Brussels, 3 December 2004**

Summary

I.

On 3 December 2004 the Commission held the first workshop of the network of Member State Experts on European Contract Law.

This workshop provided a forum for experts from the Member States and observers from Romania, Bulgaria and the EEA, to express their views on the follow-up to the Action Plan on a more coherent contract law, and in particular on the preparation of a Common Frame of Reference in European contract law (CFR).

II.

The workshop began with an opening address 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/speaking_note_madelin_en.pdf), who situated the debate on the CFR in the broader context of the Lisbon agenda and the goal of making the EU the most competitive and dynamic knowledge-based economy in the world. It was suggested that such an economic environment must be underpinned by legal certainty and that legal obstacles which may currently prevent businesses and consumers from maximising the full potential of the market need to be dealt with.

Director-General Madelin further outlined that the CFR, which will include fundamental principles of European contract law, definitions, and model rules, will be used by the Commission as a toolbox to ensure greater consistency and coherence, in the current and future contract law *acquis*, in line with the goals of better regulation which were set out by the European Council in the Declaration of Laeken.

The opening remarks were followed by a speech of Mr. **Dirk Staudenmayer** (Head of Unit, DG Health and Consumer Protection, Unit B 4, Protection of legal, economic and other consumer interests), who gave a comprehensive overview on the development of the European contract law project, the current state of affairs and the next steps envisaged by the Commission for the preparation of the CFR as laid down in the Commission Communication of 2004 on European contract law and the revision of the *acquis*

(http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/communication2004_en.htm). The next steps mapped out therein are in particular: research work for preparation of the CFR; elaboration of the CFR by the Commission, followed by a testing and consultation stage, adoption of the CFR most likely in 2009.

Ms. **Rossella Delfino** (Desk Officer, DG Health and Consumer Protection, Unit B 4, Protection of legal, economic and other consumer interests) outlined the three structures which will take part in the preparation of the CFR (i.e. the researchers, the network of Member State experts, and the network of stakeholder experts which is known as “CFR-net”), their respective roles and interaction.

Following a session on questions and answers on the presentations made by the Commission, the delegate from the United Kingdom announced that in July 2005 the UK Presidency of the Council plans to host jointly with the Commission a conference on European Contract Law in the context of better regulation.

III.

The **questions** asked by Member State experts following the presentations made by the Commission provided the opportunity to clarify the following issues.

a) CFR, private international law and model laws:

The CFR will draw on the national contract laws of the Member States, the EU *acquis*, international conventions such as the UN Convention on Contracts for the International Sale of Goods of 1980 and finally on non-binding legal texts like the Lando and the Unidroit principles, the UNCITRAL model laws, etc. Coherence with the Rome Convention on contractual obligations will be ensured.

b) Possible use of the CFR at EU and at national level:

The CFR is mainly intended as a toolbox that will facilitate the Commission in reviewing the contract-law related EC *acquis* and in drafting proposals for legislation. The CFR will however not be binding on the Commission, which will be able to deviate from it when necessary and justified. On a voluntary basis only, Member States will also be able to benefit from the pool of best solutions drawn from the contract laws of all Member States, which will be contained in the CFR. Member States could for example refer to the CFR when transposing EU directives. National judges and arbitrators, as well as the European Courts could also make reference to the CFR when interpreting legislation. Several questions asked by Member State experts also allowed to underline that, at present, the CFR as a lawmaking tool at European level, its preparation and elaboration is at the focus of the Commission's activities. The optional instrument which could possibly provide a set of rules that can be chosen by the parties of an individual contract will be reflected upon in parallel, but presently is not at all the main target.

c) CFR and in particular consumer contract law *acquis* review:

The preparation of the CFR will also be closely linked to the intended review of the consumer contract law and both will be linked very closely, although each has its own scope and its own mechanisms for development. While the CFR aims at developing general contract law principles and rules, the *acquis* review is targeted at identifying problems in the area of existing consumer law and in this respect also concerns contract law.

With regard to the necessary studies on the *acquis* review, the Commission published a call for tender and has concluded a contract for a first study. The researchers engaged in said study will examine the problems in the transposition and in the application of EU Directives in the Member States. The Commission will thoroughly analyse the *acquis* before proposing any new contract law legislation in the area of consumer protection. The "practicability" test of the CFR will concern a consumer contract law Directive identified by the studies as most in need of review; this practicability test could, if successful, lead to a proposal for an amendment of the Directive concerned. No new

other proposals in the area of consumer contract law are envisaged until the end of the practicability test.

d) The CFR “players”:

Researchers: In order to develop the CFR the Commission published a call for proposals aimed at financing the researchers who would carry out the project under the Sixth Framework Programme for research and technological development (Decision No 1513/2002/EC (OJ L 232, 29.8.2002, p.1) and publicised it extensively (http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/2003_workshop_en.htm). The evaluation, that was carried out by an independent committee of experts on the proposals that were received, led to the selection of an EU-wide composed network of researchers with which the Commission, in particular the Directorate General responsible for Research, is in the process of concluding a grant agreement. The Commission announced the names of the universities involved.

The research network that should ensure the widest representation of European legal traditions and that was selected under the Sixth Framework Programme for research and preparation of the CFR includes three main groups (the Study Group, the Acquis Group and the Insurance Group) and a number of other groups (Information on the project with indication of the team leaders is available at the following internet address: ftp://ftp.cordis.lu/pub/citizens/docs/kickoff_p7_p8_2004.pdf). Despite the wide scope of research of these groups, the Commission emphasised strongly that, as stressed in its Follow-up Communication on contract Law of 2004, the Commission has no intention to establish a European civil code. As to the research network it was clarified that the Commission has no influence on which researchers will participate in the network. Moreover, except for the guidance that researchers could draw from the Commission Communication on European Contract Law and the Call for expression of interest to establish the network of stakeholder experts, the researchers will not be bound by terms of reference as they will not carry out a specific study, but fundamental research under the Sixth Framework Programme.

Stakeholder experts: the network of stakeholder experts (“CFR-net”) was established by the Commission in order to provide practical input into the research, following a public call for expression of interest that was widely publicised in the Member States (http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/callinterest_en.htm). The Commission needs to keep the CFR-net manageable from the point of view of size and resources in order to allow an efficient organisation of the works. The network could however be enlarged in order to ensure adequate geographic representation, specific or new expertise, or representation of economic interests which are not yet adequately represented. The CFR-net will provide input to the researchers at the workshops which will be regularly organised by the Commission and through contributions on a restricted-access website.

Member State experts: Member State experts will be kept regularly informed on the progress of the work through the workshops and the CIRCA website. They will be able to present their input in the process during the workshops or through written submissions to the Commission.

In the afternoon the “**non-paper**” on the CFR prepared by the Commission (available at http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/wshop122004_en.htm) was examined and discussed in detail.

In the course of the discussion on the “non-paper” concerning the problems that the CFR should cover and its possible content, except for the introduction of alien legal concepts into national laws that may lead to late transposition and enforcement, the participants did not mention other significant problems different from those which were outlined in the Commission Communication of 2004.

The CFR should deal with both mandatory and non-mandatory rules. In particular researchers should examine cases where Member States have gone beyond the requirements of the European Directives in the area of consumer contract law. The existing EU level of consumer protection should not be lowered.

Regarding the order in which the **problems** mentioned in the non-paper should be dealt with, it was indicated that priority should be given to the problems arising from the differences between national implementing laws and from inconsistencies in EC contract law legislation. The existence of areas where the application of Directives does not solve the problems in practice and the lack of definitions were also considered important. Amongst others, the issues of coherent and clear definitions of “consumer”, “consumer contract” and “right of withdrawal” were mentioned as issues that need to be covered.

With regard to the **possible content** of the CFR it was generally felt that fundamental principles and the definition of abstract legal terms would represent an important part of the CFR and that the two would be necessarily linked. The principle of freedom of contract, including both the freedom to conclude a contract and the freedom to determine its content (with the exception of mandatory provisions for consumer protection) was considered paramount. Other principles, such as the binding force of a contract for the parties and its effects in respect of third parties, the principles of good faith and reliance were also mentioned. It was indicated that the definitions of abstract terms should not be too constraining so as to impede the development of contract law, for example through the interpretation by the judiciary. Most of the participants who intervened agreed that both business to business and business to consumer contracts should be covered by the CFR.

V.

Following the discussion the Commission **concluded** that the feed-back provided by the Member State experts will be delivered to the researchers to orientate their work. Participants were also encouraged to submit their observations in writing in the future, should more comments on their part arise. In general all Member State experts showed great interest in the CFR, some saw it mainly as an exercise for reviewing the existing legislation, others indicated that the CFR, rather than being a non binding legal instrument, should be adopted through a typical and binding legal EU act which would be subject to interpretation by the ECJ.

The Commission will organise similar workshops to inform Member States and to receive their feedback on the progress of the preparation of the Common Frame of Reference twice a year. In 2005 workshops are planned for May and December (May 27 and December 16, dates to be confirmed). Moreover, Member State experts will be able to follow the progress of the research on the CFR on the restricted-access website.

