



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

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CONSOM 39**

PUBLIC

NOTE

from: Coreper II
to: Council
Subject: Draft report to the Council on the setting up of a Common Frame of Reference for European contract law

I. INTRODUCTION

1. In April 2007 the JHA Council decided to mandate the Committee on Civil Law Matters with defining a Council position on the fundamental aspects of a possible future common frame of reference¹. On the basis of this mandate and against the background of the presentation of the Commission's Second Progress Report on the Common Frame of Reference transmitted to the Council on 25 July 2007² the Committee discussed the issue at two dedicated meetings in 2007 and another two in 2008.

¹ 8548/07 JUSTCIV 90.

² 12269/07 CONSOM 98 JUSTCIV 220.

2. In the light of these discussions the Slovenian Presidency is now of the opinion that the time has come for the Council to define its position on four fundamental aspects of the Common Frame of Reference in order to guide the Commission in its future work in this area. Furthermore, the network of researchers which was created in 2003 to work out a common frame of reference for European contract law has recently presented a first result of its work in the form of a Draft Common Frame of Reference.
3. The Presidency has prepared this draft report to the Council on the basis of the discussions in the Committee on Civil Law Matters (General Questions) in 2007 and 2008 and taking into account the Commission's Second Progress Report and the presentation of the abovementioned academic Draft Common Frame of Reference. However, as this academic Draft was presented very recently no detailed analysis has been made of it.

II. THE DISCUSSIONS IN THE COMMITTEE ON CIVIL LAW MATTERS

4. The discussions in the Committee on Civil Law Matters have focussed on four fundamental aspects: (a) purpose, (b) content, (c) scope, and (d) legal effect.

(a) Purpose

5. The Committee considered a number of options as to the purpose of the Common Frame of Reference. It rejected from the outset the option of using the Common Frame of Reference to harmonise the contract law of the Member States by creating a European Civil Code. It equally rejected the option of a Common Frame of Reference consisting of a complete set of standard terms and conditions of contract law which could be chosen by companies and trade associations as the law applicable to a specific contract.
6. The Committee favoured the option of shaping the Common Frame of Reference as one tool amongst others for better lawmaking targeted at Community lawmakers. This would mean that the Common Frame of Reference could be used by lawmakers at Community level when they draw up new legislation or review existing legislation. It would serve to ensure greater coherence in Community legislation and thereby to improve the quality of that legislation.

7. The Committee rejected the idea of targeting the Common Frame of Reference also at lawmakers at Member State level, but acknowledges that it may nevertheless serve as a source of inspiration or reference for national lawmakers and may help ensure a more consistent implementation of Community legislation in the Member States.

(b) Content

8. The Committee discussed various options as to the content of the Common Frame of Reference. Having opted in favour of a Common Frame of Reference as a better lawmaking tool the Committee rejected the option of letting the Common Frame of Reference be a mere systematic collection and compilation of national legal principles and equally rejected the option of making it a mere consolidation and systematisation of the contract law developed so far at Community level.

9. The Committee instead favoured the option of a Common Frame of Reference which could contain a set of definitions, general principles and model rules in the area of contract law. Without prejudging the exact content of such definitions, general principles and model rules the Committee agreed that they should be derived from the existing Community legislation in the area of contract law, from national legislation and legal traditions, from the extensive material which has been produced by the research network and the stakeholders as well as from other existing research in this area.

(c) Scope

10. The Committee considered three options as to the scope of the Common Frame of Reference: consumer contract law only, general contract law excluding consumer contract law and general contract law including consumer contract law. After weighing carefully the various arguments for and against each option the Committee decided to opt for a comprehensive Common Frame of Reference covering general contract law including consumer contract law for the simple reason that it would be difficult to treat consumer contract law in isolation and also difficult to carve out consumer contract law from general contract law.

11. In the light of the content of the Common Frame of Reference determined by the Committee the Common Frame of Reference could potentially cover all relevant aspects of contractual relations from the pre-contractual phase to performance or default in performance. Such a comprehensive Common Frame of Reference could constitute an effective tool for better lawmaking in the field of contract law. It should take into account the result of the current review of the consumer acquis.

(d) Legal effect

12. The Committee discussed a number of options as to the legal effect of a future Common Frame of Reference. It rejected the option of creating a binding legal instrument in the area of contract law to be implemented by the Member States and equally rejected the option of giving the Common Frame of Reference a form which would make it binding for the Community lawmakers in the sense that they would be unable to deviate from it.

13. The Committee instead favoured the option of a Common Frame of Reference shaped as a set of guidelines to be used by the lawmakers at Community level on a voluntary basis as a common source of inspiration or reference in the lawmaking process. If the Common Frame of Reference is to achieve greater quality and coherence in Community legislation it would be appropriate for the Community lawmakers to look to the definitions, general principles and model rules contained in it when they draw up new legislation or review existing legislation.

III. COUNCIL POSITION

14. The Committee would therefore recommend that, at this stage, the Council position on fundamental aspects of a possible future Common Frame of Reference called for by the JHA Council in April 2007 be defined as outlined in this report and summarised as follows:

- (a) **Purpose of the Common Frame of Reference:** a tool for better lawmaking targeted at Community lawmakers
- (b) **Content of the Common Frame of Reference:** a set of definitions, general principles and model rules in the area of contract law to be derived from a variety of sources
- (c) **Scope of the Common Frame of Reference:** general contract law including consumer contract law
- (d) **Legal effect of the Common Frame of Reference:** a set of non-binding guidelines to be used by the lawmakers at Community level on a voluntary basis as a common source of inspiration or reference in the lawmaking process.

15. This Council position does not in any way prejudge the future work on the Common Frame of Reference within the Council or the discussions on all relevant aspects which will take place at a later stage. Nor does it in any way prejudge a discussion on the need or the possibility of a legal basis for the Common Frame of Reference.

IV. CONCLUSION

16. Coreper recommends to the Council that it:

- (a) takes note of this report and endorses it as the Council position on fundamental aspects of the future Common Frame of Reference,
- (b) communicates the report setting out the Council position to the Commission inviting it to take due account thereof in its future work on the Common Frame of Reference,
- (c) agrees to submit this report to the European Council for information and to send it equally for information to the European Parliament, and
- (d) takes note that the Committee on Civil Law Matters will follow on a regular basis the Commission's work on the Common Frame of Reference.