



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 7 November 2008 (11.11)
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LIMITE

**JUSTCIV 236
CONSOM 167**

NOTE

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

I. INTRODUCTION

1. At its meeting on 18 April 2008 the Council endorsed a position on four fundamental aspects of the future Common Frame of Reference for European contract law (hereinafter "CFR")¹. In particular it considered it appropriate that the Committee on Civil Law Matters should follow the Commission's work on the CFR on a regular basis.
2. On 28 July 2008 the Presidency submitted a working document² which the Committee on Civil Law Matters discussed on 5 September 2008. Delegations were asked to submit written comments on that document.

¹ 8286/08 JUSTCIV 68 CONSOM 39.

² 11880/08 JUSTCIV 146 CONSOM 91.

3. In the light of the meetings held on 5 September and 3 November 2008 and of Member States' comments, the Presidency suggests that the Council endorse the basic guidelines which, at this stage, should guide the Commission's work on the subject.

II. POINTS EXAMINED

4. Discussions in the Committee on Civil Law Matters (Contract Law) have specifically dealt with four aspects of the Common Frame of Reference in contractual matters: (a) its structure, (b) its scope, (c) respect for diversity and (d) the involvement of the Council, the European Parliament and the Commission in the setting up and the use of it.

(a) Structure

5. In line with the Commission's Communication entitled "The way forward"³ and the report by the Committee on Civil Law Matters of 4 April 2008, the Committee has confirmed that the CFR should consist of three parts:
- (i) one part containing definitions of key concepts in contract law;
 - (ii) a second part setting out common fundamental principles of contract law, possibly including guidance when exceptions to such fundamental principles could be required;
 - (iii) finally, a third part containing "model rules" inspired by those principles and using those definitions.
6. The aim of introducing definitions into the CFR is, in particular, to clarify key concepts of contract law which may vary in significance and scope within Community legislation.

³ European Contract Law and the revision of the *acquis*: the way forward (13802/04 JUSTCIV 158).

7. The identification of fundamental principles would reveal the fundamental values underlying European contract law and help to make the CFR a consistent whole.
8. The aim of the "model rules", which follow the philosophy of the fundamental principles, is to provide model provisions governing the main contractual situations which arise.
9. It must be said that all three parts are intimately linked and should always be seen as an indissoluble whole, since no part can be fully understood except in relation to the others. In any event, the CFR should be clear, concise and easy to understand.

(b) Scope

10. In line with the discussions outlined in the previous report submitted to the Council in April 2008, the Committee on Civil Law Matters decided it was preferable for the CFR to deal with the general law of contracts, i.e. rules common to all contracts.
11. The Committee agreed that the CFR should also include consumer contracts because of their specific nature, as evidenced by the Commission's recent submission of a proposal for a Framework Directive on the subject⁴. In that connection, particular attention should be paid to the consistency of the CFR and the Directive.
12. On a more general level, the Committee discussed whether special contracts should be dealt with separately in the CFR. It concluded that, outside the area of consumer contracts, special contracts should not be treated with priority in the CFR. However, it felt that the possibility of including special contracts falling within the Community *acquis* in the CFR at a later stage should not be ruled out.

⁴ Proposal for a Directive of the European Parliament and of the Council on consumer rights (14183/08 JUSTCIV 220)

13. The Committee also wondered whether the CFR should cover only the current and future Community *acquis* or go further. A realistic approach would be for the drafters of the CFR to focus first and foremost on the existing *acquis* and on matters likely to form part of it in the near future.
14. In this respect, it seems appropriate to envisage the CFR as an evolving tool at the service of Community lawmakers and to provide for it to be revised regularly so as to adapt it, in particular, to the changing scope of the Community *acquis*.

(c) Respect for diversity

15. The Committee on Civil Law Matters found it important to recall that all legal traditions of the Member States should be respected fully in the setting up of the CFR. In this regard, it seems important, in the reflections before the Commission's submission of the constituent elements of the CFR, to take into consideration all relevant work on the subject, whether academic or practical, as well as an analysis of the comparative law of the Member States and of the Community *acquis* as regards the main questions studied. Taking account of those elements, the draft CFR could present alternative solutions on certain subjects.

(d) Involvement of the Council, the European Parliament and the Commission in the setting up and the use of the CFR

16. When endorsing its position in April 2008, the Council decided that the CFR would be a non-binding legal instrument 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.

17. To ensure optimum conditions for the use of the CFR, it would seem necessary to involve the Council, the European Parliament and the Commission fully in the process of setting it up. If the CFR were adopted by only one of the institutions, its significance would be reduced. However, the details of the involvement of the various institutions will have to be examined when the Commission submits to the Council and the European Parliament all the elements which it proposes to include in the CFR.

III. CONCLUSION

18. The Committee on Civil Law Matters invites Coreper to recommend that the Council:
- (a) approve this report as the Council's position on the basic guidelines of the future Common Frame of Reference;
 - (b) forward this report to the Commission, asking it to take due account thereof in its future work on the Common Frame of Reference;
 - (c) forward this report to the European Parliament for information; and
 - (d) take note that the Committee on Civil Law Matters will continue to follow the Commission's work on the Common Frame of Reference on a regular basis.

