



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 28 July 2008 (01.08)
(OR. fr)**

11880/08

LIMITE

**JUSTCIV 146
CONSOM 91**

NOTE

from : Presidency
to : Committee on Civil Law Matters (Contract Law)
Subject : Common Frame of Reference for European contract law
 – Points to be examined

I. INTRODUCTION

1. On the basis of the mandate given to the Committee on Civil Law Matters (Contract Law)¹ by the JHA Council in April 2007, the Presidency proposes that the Committee state its position regarding certain aspects of the structure and the content of the future Common Frame of Reference (CFR) in the light of the various bodies of academic work available. The Presidency would draw the Committee's attention to the following four points.

¹ 8286/08 JUSTCIV 68 CONSOM 39.

II. POINTS TO BE EXAMINED

(a) The structure of the CFR

2. In its communication entitled "The way forward"¹ the Commission said that the CFR ought to:
 - (i) set out common fundamental principles of contract law, including guidance on when exceptions to such fundamental principles could be required;
 - (ii) include definitions of key concepts which would support those fundamental principles;
 - (iii) include model rules completing those principles and definitions.
3. In its report dated 4 April 2008 the Committee on Civil Law Matters (Contract Law) confirmed that the content of the future CFR ought to correspond to that three-part structure and pointed out that the CFR would be an instrument for the use of the Community legislator for the purpose of improving the consistency and quality of the *acquis*. It ought therefore to provide the Community legislator with references for his guidance in the process of drafting rules of law.
4. The Presidency takes the view that while model rules may have an important rôle to play, the first two parts of the CFR (general principles and definitions) are particularly important because by their very nature they perform the function of guide. The three parts form a whole, being inextricably linked to each other, and they should always be regarded as a whole. All proposals concerning the CFR must therefore comply with that overall consistency.
5. The Presidency therefore suggests that it be expressly stated that proceedings on the future CFR must comply with that overall consistency and take account, right from the start, of the definitions, general principles and model rules of contract law without attributing priority to any one of those three components.

¹ European Contract Law and the revision of the *acquis*: The way forward (13802/04 JUSTCIV 158).

(b) The scope of the CFR

6. As defined in the report adopted by the Council in April 2008, the CFR "could ... cover all relevant aspects of contractual relations" in the field of "general contract law including consumer contract law".
7. The CFR must therefore be centred on the general rules common to all contracts as well as those specific to consumer contracts. Its scope must also be restricted to fields in which there is an *acquis communautaire* and to those in which an *acquis* is a possibility. It should not, for example, include fields such as business management, tortious liability, unjustified enrichment, property law, security interests and trusts (Books 5 to 10 of the *Draft Common Frame of Reference (DCFR)*).
8. In the case of special contracts (Book 4 of the *DCFR*), some of which are the subject of important *acquis communautaires* in consumer law (such as the sale of goods and credit), the Presidency would like to know what the Member States' positions are on the advisability of including them in the scope of the CFR, on the understanding that they might be limited to specific provisions concerning consumer contracts.
9. The Presidency invites the Committee to state its views on the question of whether the CFR ought to include not only general rules common to all contracts and to contracts concluded by consumers but also matters concerning specific contracts (such as the sale of goods and credit).

(c) The structure of the CFR

10. While the *DCFR* is structured around the general law of obligations, the future CFR should refocus on the law of contracts. In order to improve the consistency and the quality of the *acquis communautaire*, the CFR ought to have a structure that is simple and consistent enough for it to be easy to use in practice. If it focused on the law of contracts, the readability of the CFR would be greatly improved if it had a chronological structure, a method that has proved its effectiveness (PLEC, UNIDROIT Principles): formation, validity, contents, performance, non-performance and remedies for non-performance.
11. Other matters, which are less central but come into the life of a contract, could be included if they turned out to be within the scope of the *acquis communautaire* and were understood sufficiently homogeneously by the Member States (such as representation, interpretation and the transfer of contracts).
12. The Presidency would like to know the Committee's view on the advisability of drawing the CFR up on a chronological basis, setting out its components in order from the formation of contracts to their performance or non-performance.

(d) Respect for diversity

13. The richness of the Common Frame of Reference would lie in its being a synthesis of comparative law and the *acquis communautaire*. This method would make it possible to ensure respect for the diversity of the Member States' legal traditions once comparative research had identified common points and national legal systems' best solutions.
14. As indicated in the report adopted by the Council in April 2008, the work to be done on the preparation of a common frame of reference should be based on the vast amount of material produced by research and the stakeholders, and on other research available in this area.

15. In this connection, the Presidency notes that the *DCFR* is an important basis for work but that in its proceedings the Commission should also take into account other important academic work, in particular that based on the analysis of the Member States' laws and legal traditions.
16. The Presidency would like to know the Committee's view on the need to take into account all the relevant academic work available in this field in the preparation of the future CFR.

III. CONCLUSIONS

17. The Presidency invites delegations to state their views on each of the four points under II. at the next meeting of the Committee on Civil Law Matters (Contract Law), which is to be held on 5 September 2008.
18. In the light of those discussions the Presidency plans to draw up draft conclusions which would be submitted at the Committee's next meeting after that. Those conclusions would then be submitted to the Permanent Representatives Committee and to the JHA Council meeting at the end of November 2008.

