



**COUNCIL OF  
THE EUROPEAN UNION**



## **Guidelines on the setting up of a common frame of reference for European contract law**

*2946th JUSTICE and HOME AFFAIRS Council meeting  
Luxembourg, 5 June 2009*

The Council approved the following guidelines:

### **"I. INTRODUCTION**

1. In April 2007, the JHA Council decided to mandate the Committee on Civil Law Matters to define a Council position on fundamental aspects of a future common frame of reference<sup>1</sup>.
2. In accordance with that mandate, the JHA Council on 18 April 2008 approved a position on four fundamental aspects of the common frame of reference (i.e. purpose, scope, content and legal effect)<sup>2</sup>.
3. Further to this position, the JHA Council on 28 November 2008 adopted a set of conclusions setting out some major guidelines for future work (covering structure, scope, respect for diversity and the involvement of the Council, the European Parliament and the Commission in the setting up of the Common Frame of Reference)<sup>3</sup>. Both the position and the conclusions provide that the Committee on Civil Law Matters will follow the work of the Commission on the Common Frame of Reference (hereinafter "CFR") on a regular basis.

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<sup>1</sup> 8548/07

<sup>2</sup> 8286/08

<sup>3</sup> 15306/08 For a consolidated version of the various Council conclusions, see 5784/09.

# **P R E S S**

4. To ensure regular follow-up to the discussions and to enlarge on and clarify the guidelines previously adopted, the Presidency submitted a questionnaire to delegations on 8 January 2009<sup>4</sup> and invited them to reply in writing.
5. In the light of the comments made and the discussions held, the Committee on Civil Law Matters invites Coreper to recommend to the Council that it approve the guidelines set out below and suggest that the Commission take them into account in its future work.

## II. POINTS CONSIDERED

6. The Council indicated that it wished the CFR to have a three-part structure: one containing definitions of key concepts in contract law, one setting out common fundamental principles of contract law and one containing model rules.
7. The replies to the questionnaire and the subsequent discussions held within the Committee on Civil Law Matters consequently focused specifically on (a) the fundamental principles to be adopted, (b) the definitions which should be included and (c) the model rules to be provided for. The Committee also considered (d) the relationship that the CFR should have with the proposed Directive on consumer rights<sup>5</sup> and (e) the form that the instrument establishing the CFR might take.

### (a) Fundamental principles

8. The Council confirmed that one part of the CFR would set out common fundamental principles of contract law, possibly accompanied by guidelines to cover cases where exceptions to those principles were required.
9. In this framework, the Committee on Civil Law Matters considers it advisable to lay down as of now certain fundamental principles which would definitely have to appear in this part of the CFR without, however, excluding that it could contain others. Such principles should reflect the values underpinning the CFR. They should apply to all stages of the contractual relationship, including the pre-contractual stage.
10. Of the principles that might apply throughout the contractual relationship, the following few should be mentioned by way of examples:
  - the principle of freedom of contract (party autonomy),
  - the principle of legal certainty in contractual matters which includes, *inter alia*, the binding force of the contract (*pacta sunt servanda*),
  - the principle of fair dealing which includes, *inter alia*, the principles of good faith and of reasonable behaviour.

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<sup>4</sup> 5116/09

<sup>5</sup> Proposal for a Directive of the European Parliament and of the Council on consumer rights (COM(2008) 614 final) (14183/08).

11. These principles would have to be delineated and described in greater detail in the CFR.

**(b) Definitions**

12. The Council took the view that one part of the CFR should be dedicated to definitions of key concepts in contract law.

13. In this connection, the Committee on Civil Law Matters feels that it is still too early to determine precisely what definitions the CFR should include.

14. However, the Committee takes the view that in any event the definitions should relate directly to general contract law and to the scope and the priorities of the CFR as described in previous Council conclusions. Hence, certain definitions relating to contracts or concepts which do not come within the ambit of the CFR should be omitted. On the other hand, other definitions relating to certain types of contract covered by the CFR should be included. Due attention should be given to the definitions in the area of consumer contracts as this area constitutes an important part of the Community *acquis* in the area of contract law. In this context it would be useful to clarify some key concepts specific to consumer contract law.

**(c) Model rules**

15. The Council has specified that one part of the CFR should contain "model rules" drawing on the fundamental principles and using the definitions chosen.

16. The Committee on Civil Law Matters has agreed that the model rules should be general in nature so that they can apply to all contracts and should be drafted in sufficiently broad terms to be easily adaptable to all contractual situations. However, it is recalled that the Council has not ruled out that special contracts falling within the Community *acquis* could be included in the CFR at a later stage<sup>6</sup>. The CFR could therefore, if such were to be the case, include some more specific model rules applicable to certain special contracts, above all in the area of consumer contract law.

17. The Committee considers that the number of model rules should be commensurate with what is necessary in the light of the scope and objectives of the CFR. Furthermore, the CFR could, under certain conditions, offer alternative solutions for situations where a substitute model rule may prove useful.

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<sup>6</sup> See paragraph 12 of doc. 15306/08.

**(d) Relationship with the proposed Directive on consumer rights**

18. In its previous conclusions, the Council has specifically included consumer contracts within the scope of the CFR. The Committee on Civil Law Matters has accordingly launched a discussion on how the provisions of the proposed Directive on consumer rights should be reflected in the CFR.
19. The Committee considered that in order to achieve the appropriate consistency between the two projects it would be desirable during the setting up of the CFR to follow and to take into account the development in the negotiation of the proposed Directive. It acknowledged, however, that the two projects are separate and are intended to pursue objectives which may not always coincide.

**(e) Form of the CFR**

20. The Committee on Civil Law Matters considers that it is too early at this stage to decide on the form in which the CFR should be presented. However, the form must be such as to allow a non-binding instrument to be drawn up comprising a set of guidelines which the Community legislators would use at the level of the Council, the European Parliament and the Commission as a common source of inspiration or reference in the legislative process.

**III. CONCLUSION**

21. The Committee on Civil Law Matters invites Coreper to recommend to the Council that it:
    - (a) approve this report as the Council's position on certain aspects of the CFR;
    - (b) forward this report to the Commission, asking it to take due account thereof in its future work on the CFR;
    - (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 CFR on a regular basis."
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