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EUROPEAN CONTRACT LAW: COMMON FRAME OF REFERENCE (CFR)¹

Introduction

1. UNICE supports the European Commission's objective of increasing the overall coherence of European contract law as a contribution to a fully operational internal market and in the spirit of the better regulation agenda.
2. In principle, UNICE does not object to the idea of creating a Common Frame of Reference (CFR) for European Contract Law setting out principles, definitions and model rules of contract law. It is intended to be an optional handbook or toolbox providing elements that could be of assistance when legislation containing contract law provisions is being revised or elaborated.
3. Since the beginning of the consultation process on elaboration of the CFR, UNICE has welcomed the fact that stakeholders are involved in an open, inclusive and transparent process from an early stage.
4. UNICE participates actively in the Common Frame of Reference network of stakeholder experts providing technical input in different thematic workshops as well as expressing more political and strategic views on the European Contract Law project and the content and structure of the CFR.
5. However, UNICE has serious concerns about the way in which the work on the CFR is organised, particularly the interaction between the input from representative stakeholders and the group of researchers. Since the outset UNICE has expressed various criticisms both on the substance and on procedure namely on the consultation process as such as well as on the content of the drafts prepared by the researchers. UNICE's participation in this project has to be considered taking account of these criticisms.
6. The European Commission should improve the information and the management of the project, set out its priorities clearly and define the policy objectives. The latter would facilitate more fruitful participation of interested parties.

¹ More information is available at DG Health and Consumer Protection:
http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/index_en.htm

Criticisms expressed by UNICE during the initial consultation process

7. First of all, the limited time (one month) the stakeholder experts had to study the background documents, consult their members and prepare relevant comments was much too short.
8. The subjects that were proposed by the researchers concerned a series of specific Business-to-Business (B2B) contracts, that are currently not regulated at all. UNICE insisted on the importance of respecting the fundamental principle of freedom to conclude a contract, especially for B2B contracts.
9. UNICE also criticised the illogical order of the workshops, pointing out that it seems difficult to discuss the details for specific contracts that are based on general principles of contract law, without having discussed these principles before and knowing that they are being revised at the same time.
10. UNICE also strongly contested the content of the draft background documents prepared by the researchers. Instead of common fundamental principles of contract law, definitions, key concepts and model rules, as was initially announced, most of the drafts discussed in the workshops until now have consisted of detailed rules that suggested the idea of a European civil code. UNICE is firmly opposed to the idea of developing a harmonised European civil code.
11. The above remarks are shared by a large majority of stakeholders and have been already expressed to the European Commission and other relevant circles.

The reviewed consultation process – Future challenges after the European Commission’s First Annual Progress Report²

12. UNICE welcomes the Commission’s proposal to focus the CFR on matters relating to the consumer *acquis* as well as the way the consultation process will be reorganised in a more pragmatic fashion.
13. UNICE continues to insist on the importance of respecting the principle of freedom of contract and stresses that business is against any form of model rules for B2B contracts.
14. As to the review of the existing consumer *acquis* and the link with the EU Contract Law work, UNICE supports the idea that the development of the CFR can be used

² “First Annual Progress Report on European Contract Law and the Acquis Review”, published on 23 September 2005. Full text is available at : http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/progress05_en.pdf

to attain a more level playing field between the different member states. The main challenge will consist in finding the adequate level of protection that is acceptable to all. It must not be the case that the CFR will mainly be used to strengthen consumer protection artificially or to the highest level.

15. UNICE is clearly opposed to an indirect broadening of the scope of the CFR by examining not only issues relevant to the consumer law *acquis* but also to other contract-law-related *acquis*. To introduce provisions of general contract law into the CFR will necessarily have an impact on B2B contracts and may also limit the existing freedom of contract. Furthermore rules discussed only from a B2C perspective are not necessarily suitable for B2B even if they are not mandatory.
16. Finally UNICE considers of paramount importance that prior to adoption of any proposal in this field, the European Commission should carry out a legal and economic assessment of the consequences on the internal market, especially on competitiveness of companies.

Conclusion

17. UNICE welcomes the pragmatic and more measured approach of the CFR project to focus on matters relating with the review of the *acquis communautaire* on consumer protection.
18. However, UNICE recalls that the objectives of this project are to provide more coherence on contract law in order to facilitate well-functioning of the internal market and to contribute to the EU better regulation agenda.
19. In the light of the above, UNICE considers it indispensable that content of the CFR is strictly limited to common fundamental principles of contract law, definitions, key concepts and model rules which are generally shared by the various legal orders. Also, full respect of the freedom to conclude a contract must be ensured.
20. Finally, if this initiative is to bring added value to the internal market, it is necessary that the needs and expectations from market operators are given due consideration rather than placing the focus on theoretical or academic considerations. Likewise, an impact assessment should be carried out prior to adoption of any proposal.
21. The European Commission should improve the information and the management of the project, set out its priorities clearly and define the policy objectives. The latter would facilitate more fruitful participation of interested parties.
22. UNICE will continue to actively participate in the different technical workshops envisaged in the future and at the same time continue to express its views on the status and structure of the CFR.