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Opening speech for European contract law conference

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My Lord Mayor, Aldermen, Commissioner, ladies and gentlemen - on behalf of the UK Government, in its capacity as President of the Council of Ministers, and, on behalf of the European Commission, it is my pleasure to welcome you here today, to this important European Contract Law conference.

I am delighted to see such a wide range of people here, from all over Europe – particularly as we meet at the second time of asking following the tragic events in London in July. I am very grateful to you all for making the effort to return to London on this occasion. I am grateful for all the support you have shown us since 7/7.

Let me extend a particular welcome to Commissioner Kyprianou and his colleagues from the European Commission who are jointly hosting this event. And would also pass on my profound gratitude to the Lord Mayor and to the Corporation of London for providing the use of this wonderful venue for our conference.

Introduction

I want to talk today about the importance of civil justice and contract law in particular. This is an area of great importance to the UK Presidency – and one where we have made real progress already. Progress based on respect for our different legal traditions and circumstances – an important principle which I want to talk about in the context of the Common Frame of Reference.

Civil justice: key part of EU and the UK's Presidency

Civil justice has for too long been the forgotten relation – too often ignored, undervalued or overlooked. In the UK, the balance in terms of debate and public focus has long-favoured criminal justice. And in the EU too, civil justice has been too far down the agenda, for too long.

I don't want to reduce the importance of criminal justice. But I do want to push civil law high up the priority list.

Civil law is of critical importance – to the EU as an entity, but more fundamentally, to the citizens of each and everyone of our countries.

Civil law provides the framework in which everyday life for citizens and businesses is conducted. Civil law, quite fundamentally, helps shape the kind of Europe we all want to see. A Europe of freedom, security and justice - where EU citizens can live, work, study, buy and sell, and do business across EU borders. And do so with the confidence that the civil justice system is there to help them if things go wrong.

And this is an increasingly important issue, both for our citizens and businesses.

Mobility, amongst consumers and businesses, is greater than ever. Cross-border trade, by businesses of all sizes continues to grow. And the internet, along with cheap flights and fast trains, mean consumers are now more likely than ever to shop for goods abroad.

The increase in size of the European Union, with the accession of the new member states last year - and with negotiations with applicant countries ongoing makes it all the more important that the systems in place to resolve cross-border disputes are efficient and effective.

Co-operation between Member States on these issues can, and does, have a very real, tangible, positive impact on the day-to-day lives of Europe's citizens. Whatever else we can learn from the referendums in France and the Netherlands, we must learn that that the EU is there to serve its citizens.

This is why civil justice forms a central part of the UK's Presidency. Yes, we want to see action on counter-terrorism. Yes, we want to do more to crack down on organised crime, people traffickers and drug smugglers. And, yes, we will strengthen our borders and work together on asylum and immigration.

Alongside these important issues, we have also made clear and significant progress on civil justice issues. I am determined that we continue to do so: this is a key part of the UK's Presidency.

What we've achieved

At the Justice and Home Affairs Informal Council in Newcastle/Gateshead earlier this month, Member States and the European Commission demonstrated that they want to come together and deliver for Europe's citizens, and make progress on issues that have been stifled for so long.

Together, the Commission and Member States resolved the Article 65 issue which had held back progress in civil law in the EU for so long. We are now agreed that EU co-operation in civil justice is for cross-border cases only, though Member States may, of course, adopt similar measures in their own states, if they so wish.

Agreement on the European Order for Payment – enabling the speedy resolution of uncontested debts across the EU – is now within reach.

We have also made significant progress on agreeing the principles behind the European Small Claims proposal. Justice ministers from across the EU agree that any scheme should provide for quick and affordable resolution of small claims across borders.

Such progress would not have been possible without the pragmatic approach of Commissioner Frattiani, and the leadership he has shown, has demonstrated his commitment to civil law – not just in words, but in delivering real, tangible outcomes. It is thanks to him that progress has been made.

There is of course more still to do. For example, on Rome II – which aims to provide a set of rules for the resolution of non-contractual disputes – we may need to think constructively and imaginatively about how we can work towards consensus.

And perhaps we should also look more widely at EU co-operation in civil justice and look beyond the Hague programme to identify issues which will really help our citizens in their day-to-day lives?

This is a debate which as President we are keen to start with all our European partners: in the Council, in the Commission, and in the European Parliament. This is an objective we take very seriously as part of our Presidency. It is vital that as part of our Presidency we continue to make progress – we have done so in the areas of small claims and order for payment. And we must look too at the Common Frame of Reference.

Key principles: mutual recognition and judicial co-operation

We have made progress in these areas because we have started from an important principle. It is a principle that I believe unites many member states and unites the professions, business and consumers in many of our countries.

It is simply this: blanket harmonisation across the EU of contract law, or any other sphere of law, will not work. A single law imposed across the whole of the EU, whether by regulation or directive, is not an efficient and effective way to resolve problems in civil law and justice.

There are, of course, sectors – or parts of sectors – in the consumer field for example, where harmonisation of a part of the legal framework is a proportionate solution. In these cases, there is clear evidence that the proposal meets a specific and justified need.

We are in the business of building mutual recognition and judicial co-operation across member states. Indeed, this was recognised as the cornerstone of judicial co-operation at Tampere in 1999. It was restated last year in the Hague programme, which sets out our agreed priorities in Justice and Home Affairs over the next 5 years.

Look at the two issues I have highlighted: order for payment and small claims. Both will provide procedures that our citizens and our businesses will be able to use. Both will benefit individual member states and the EU as a whole. And both were progressed on the basis of co-operation, not harmonisation – on the basis of recognition of our separate, individual and distinct legal systems.

This is the territory where I believe we can bring Member States together and make progress that will benefit our citizens.

There is, of course, a reason why this approach works. It is quite a simple one, but is no less powerful for that. We all know our own legal systems. We all hold them in the highest regard. They are deeply embedded in our respective societies.

In short, our Presidency has tried to work with the grain, not against it, and the results speak for themselves.

English Common Law

This principle is not new. It is really only an application of the doctrine of subsidiarity. It seems to me that the principle is particularly relevant to contract law.

There are at least five great legal traditions within the EU: the German, the Dutch, the Scandinavian, the common law and that of the Romance countries. There are many more jurisdictions. Indeed, in the United Kingdom we have three – of which one, Scotland, is primarily civilian. All have their own contract law.

But let me take the example of the English common law.

The United Kingdom, as a seafaring and trading state, has historically engaged in commercial activities across Europe, and across the world.

The English common law system, which has evolved over centuries, has given us the legal framework to do those trading activities. This framework has evolved to meet the changing needs of finance and commerce, primarily through the interaction of the courts, lawyers and business.

As a result, the English law of contract is the international law of choice over a wide range of areas, particularly in finance, shipping, and insurance. It contributes significantly to the earnings of the UK and thereby promotes the prosperity of the EU. It has contributed to the UK's status as a major centre for international trade and commerce.

London - one of Europe's most important and successful commercial centres - is, in many ways, built on the foundations of a sound law of contract.

You could say, that the English common law of contract is now a world-wide commodity. It has become so because it is a system that people like. It provides predictability of outcome, legal certainty, and fairness. It is clear and built upon well-founded principles, such as the ability to require exact performance and the absence of any general duty of good faith.

These principles were formed in the crucible of experience and are given effect by an expert cadre of judges and lawyers.

This has made the common law without rival as the law of choice in commercial transactions. It is important for the UK, and important for the EU that it remains so.

It would be a huge error for the UK and the EU to lose this distinctiveness in the name of harmonisation. An error not just for the UK, but for the EU as a whole. Make no mistake, any weakening of the suitability and attractiveness of the common law of England as the most popular law for the conduct of commercial business throughout the world would be disastrous and would be seized upon by rival jurisdictions such as New York and Geneva. The EU would be the poorer as a result.

Common Frame of Reference

That is the view that I have just explained from England. It is also the view of the European Commission which has made clear it has no plans for mandatory harmonisation of contract law. I welcome this. And it is a view that is widely held across Europe: mandatory harmonisation of national contract law is neither necessary nor desirable.

The challenge of retaining numerous different laws of contract is to find efficient and effective mechanisms to deal with cross-border cases.

From my position, I see no reason for a code of contract law, voluntary or otherwise, and hear no demand for one. Indeed, in my view, to create such a code would be a huge waste of resources.

The form and content of the Common Frame of Reference is still something of a mystery to many. Some have suggested that it will be useful as something akin to a compendium of comparative information, a European Contract law thesaurus or lexicon. Or as a precedent book for the busy lawmaker seeking words with which to populate the blank page of a putative instrument. Though the extent to which this is truly work for the EU institutions as opposed to an academic institution is questionable.

There is some advantage in a product of this kind. Promoting mutual understanding of our respective systems can only be a good thing.

Obviously, we must work to improve the quality of the existing consumer acquis.

This review of the consumer acquis sits well with the Better Regulation programme and is to be welcomed.

Development of the draft CFR is well-underway. Today, we have the chance to influence its the future direction – and through it the wider civil law and justice reform agenda.

My message today is that the direction in which the CFR needs to travel is firmly towards cross-border co-operation and mutual recognition. This inevitably involves a fundamental change of direction in the work. It must not - and indeed I detect no appetite for - harmonisation of any of our national traditions of contract law by the back door.

Where can we make progress

On that basis, let work on the consumer acquis continue. Let it be brought to a speedy and successful conclusion.

In relation to contract law more generally, I think we need to approach today in a spirit of openness, examining critically, the concept of the CFR, its purpose and the process by which it is being formulated.

I would urge that future efforts to improve the cross-border functioning of the European civil justice system focus on improved mutual recognition, mutual enforcement and judicial co-operation.

We should help the Commission in its forthcoming work to improve the judicial network. As we have shown in the last few months, with the effective and pragmatic assistance of the commission, there is a will to move forward on the civil law issue, not on the basis of harmonisation but on the basis of practical steps which help our citizens through mutual recognition and judicial co-operation.

I would also urge member states to work to raise the standards of their own legal systems – and I include my own. We all need to have confidence that cross-border cases will be dealt with efficiently and effectively. We all have an obligation to make our own systems – including our own laws of contract – as simple and modern as we can. Anything less would be an unnecessary burden on our citizens and businesses, diluting European competitiveness.

Conclusion

It is important we do this work – vital we make progress. The law in this area impacts very directly on the lives of people in Europe – whether they are doing business across borders, working, travelling, or buying goods.

The UK – as part of its Presidency and beyond – is committed to making progress in these areas. Committed to raising standards. Improving regulation. Fostering co-operation. And working more effectively across borders.

Our track record is good. The small claims and order for payment changes will make a tangible difference.

But there is more we can do.

Let us move forward. Let us recognise common ground. Let us begin from the starting point of mutual recognition and co-operation – and not work back from the end point of harmonisation. If we do this, a Europe of freedom, security and justice for all our citizens, is well within our reach.

Thank you very much – I hope you enjoy the rest of the conference.