

REACTIONS TO THE COMMUNICATION ON EUROPEAN CONTRACT LAW

1. INTRODUCTION

Following the publication of the Communication on European Contract Law, the Council and the European Parliament reacted to the Communication in November 2001. Moreover, the Commission has received contributions from – at present – 160 stakeholders (see annexes). This interest of the Community Institutions and stakeholders shows the importance of the debate launched by the Communication.

As regards the geographical origin of the contributions it is noticeable that the highest number of contributions have come from Germany and the UK. No or few contributions have been received from some Member States. A considerable number of international stakeholders have also contributed to the consultation. The academic and business communities have sent the largest number of contributions, but legal practitioners have also contributed to a considerable extent.

The Commission received by far the overwhelming majority of contributions after the date originally envisaged for the end of the consultation period. All contributions received up to 31 January 2002 have been included in this document and the Commission will also take account of further contributions in the future.

The analysis of the contributions received thus far is divided into three parts. In Part 2 of this paper there is an analysis of the reactions of the European Institutions. In Parts 3 and 4 of this paper there is an analysis of the reactions of all other contributors, divided into their views on existing problems (Part 3) and possible solutions (Part 4). Part 5 summarises the Commission's next steps.

This synthesis aims to present the Commission services' understanding of the contributions received during the consultations. It may not reflect everything that has been said in these contributions. In the interests of transparency, the responses sent by electronic mail have been published on the Internet site of the Commission in so far as the contributors have given their consent to publication. However, the list of contributors in Annex I excludes those contributors who have specifically requested confidentiality.

2. REACTIONS OF THE EUROPEAN INSTITUTIONS

The Commission Communication was presented to the Internal Market/Consumer Affairs Council on 27 September 2001. The Justice and Home Affairs Council took the opportunity of the "Council report on the need to approximate Member States' legislation in civil matters", adopted on 16 November 2001, to react to the Commission's Communication. On the previous day the European Parliament adopted a resolution on the Commission Communication.

2.1 The Council Report

The Council report is fairly balanced. Its introduction clarifies how the Council interprets the mandate given by the European Council of Tampere. While referring to

the EP resolutions, the Commission communication and academic work, the Council emphasises the central role of contract law. The Council also mentions – with careful formulation – family law as a possible subject for a discussion on the approximation of national private laws.

In the following chapter the Council briefly mentions – similarly to the Commission Communication – the other instruments, i.e. harmonised private international law rules and international instruments on harmonised substantive law. It is worth mentioning that the Council emphasises – again like the Commission communication – the limits of these approaches. Another interesting point in this context is that Member States that have not yet ratified relevant agreements are encouraged to do so. This is particularly important for the Vienna Convention on the International Sale of Goods (CISG), which has not yet been ratified by the United Kingdom, Ireland or Portugal.

This chapter also refers to the programme of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters adopted by the Council. Moreover and for the first time the Council indicates that the necessary degree of confidence could be attained in the future if the convergence of substantive laws is enhanced.

The following part of the Council report constitutes, together with the conclusions, the central part of the report. This part emphasises repeatedly the need for greater coherence and improvement of the existing *acquis communautaire*. In this context it is also briefly mentioned that the results of harmonisation achieved through directives are sometimes regarded as insufficient, in particular because of the significant variations between national implementing measures. The Council also mentions – like the Commission communication – the problem of the lack of uniform definitions for general terms and concepts in Community law, which can cause different results in commercial and legal practice.

The Council mentions a number of the most important Community instruments in the area of private law and recognises that these instruments have created a “*ius commune*” in the relevant areas of national law.

Besides the demand for increased coherence in Community law, the Council report would seem to favour a more horizontal approach to harmonisation, aiming at the creation of a European common core of private law if a need for harmonisation is revealed. Finally, the Council expresses the wish to examine whether the differences in the areas of non-contractual liability and property law constitute barriers to the proper functioning of the internal market. This is the second area of law where the Council report goes beyond the scope of the Commission’s Communication.

The fourth part of the Council report deals with family law and does not need to be summarised in detail here as family law is outside of the scope of the Commission’s Communication.

The conclusions of the Council report are addressed to the Commission and include what the Commission, according to the Council, should do in the follow-up to its Communication.

The most important conclusion is the request to the Commission to communicate the results of the consultation launched by its Communication and its recommendations, if necessary in the form of a Green or White Paper, to the Community institutions and the public by the end of the year 2002. As far as the contents of this future Green or White Paper are concerned, the Council invites the Commission to examine at least some specific points. It should identify the Community acts to be reviewed and the reasons for such a review. Furthermore it should point to the areas of law where the diversity of national legislation undermines the proper functioning of the internal market and the uniform application of Community law. The Commission recommendations should also cover the possibility of adopting a more horizontal approach for new legislative initiatives and their impact on the consistency of private law. Another suggestion from the Council concerns regular co-ordination between Member States in the area of private law during the transposition of directives, an approach which is already partially practised. The last point refers to the working methods to be implemented to achieve greater approximation of national laws and to prevent inconsistencies.

In addition to the Green or White Paper, the Council would also like the Commission to launch a study in the areas of non-contractual liability and property law in order to find out whether the differences in Member States' legislation constitute obstacles to the functioning of the internal market.

2.2 The European Parliament Resolution

The EP specifically mentions two groups for which the internal market has, to a large extent, not yet brought desirable advantages: small and medium-sized enterprises and consumers. The resolution also emphasises the aim of equitably balancing the interests of undertakings and consumers as well as the burden placed on consumers and legal representatives. The EP resolution – in agreement with the Council report and Commission Communication – stresses the limits of private international law such as the Rome Convention and internationally harmonised substantive law such as the CISG.

The EP criticises the restriction of the scope of the Commission Communication to contract law. It also mentions – similarly to the request of the Council for a study - the areas of non-contractual liability and property law as relevant.

After having listed the main EC instruments in the area of private law the EP states that the relevant directives are not well co-ordinated and their implementation poses problems in relation to national private laws. It therefore emphasises that the different rules should be applied more consistently.

The EP underlines explicitly the need to pursue the harmonisation of contract law with the aim of facilitating cross-border transactions in the internal market.

The core of the EP resolution is the request, addressed to the Commission, for a detailed action plan. The steps of this action plan can be regrouped in three phases: short, medium and long-term measures.

By the end of 2004 a database should be created in all Community languages which contains national legislation and case law in the area of contract law. On this basis, comparative law research and co-operation are to be promoted with the aim of working towards common legal concepts and solutions and a common terminology for all national legal systems, i.e. Option II of the Commission communication. The EP wants to be regularly informed about the progress of the work and will provide its opinion on it. Parallel to this work on Option II, Option III is also to be pursued and the Commission is requested to put forward legislative proposals aimed at the consolidation of existing EC law. At the end of the first phase the Commission is to consider whether further provisions relevant to the internal market are essential, paying particular attention to the growing area of electronic commerce. In relation to these provisions, the EP suggests the instrument of a regulation, while for specific areas of consumer protection law it still prefers the instrument of a directive.

From 2005 on, a comparative analysis of common legal concepts and solutions should be published. At the same time the Commission is to promote the dissemination of Community law and the results of Option II in academic training and among legal practitioners. All EC institutions should apply the common legal concepts, solutions and terminology consistently when involved in the legislative process.

Thirdly, EC legislation implementing the common legal principles and terminology for cross-border and purely national contracts should leave intact the possibility of a different governing law. The practical effects of this legislation are to be evaluated from 2008 on. The results of this evaluation could possibly lead to the establishment and adoption of a body of rules on contract law from 2010 on. The EP would prefer a regulation available for use on an optional basis under private international law. The EP stresses the use of Article 95 as a legal basis.

3. RESPONSES WITHIN THE COMMISSION CONSULTATION PROCESS – NEED FOR FURTHER-REACHING EC ACTION IN THE AREA OF CONTRACT LAW

3.1 Implications for the Internal Market

3.1.1 Responses from Governments

The governmental bodies dealing in their responses with the implications for the internal market of diversities of contract law affirm that there are problems, or at least that there may be. However, only a minority of contributions mention specific problems; this is obviously in some cases due to the fact that national governments have summarised the results of their national consultations.

The Portuguese Government states that information costs resulting from different national contract laws are an obstacle to cross-border transactions. These differences also make it difficult to pursue cross-border litigation. For reasons of legal certainty, namely in order to avoid doubts and legal gaps in the area of e-commerce, it also identifies a need for harmonisation in the field of consumer contract law. In this context the Austrian government reports from its national consultations that it was not so much consumers as business which pleaded for full harmonisation of consumer contract law, as opposed to minimum harmonisation, thereby avoiding divergent national implementation. Concerns relating to minimum harmonisation in consumer

law are also reported by the Belgian Ministry of Economic Affairs and by the Finnish Government from its consultations. The latter also suggests that there are concrete problems in the area of insurance law and that differences between mandatory rules reduce the willingness of individual companies to participate in cross-border activities. While it considers the latter to be minor in comparison with other problems, it emphasises the more serious nature of problems in the areas of, for example, damages and property law. The Belgian Ministry of Finance suggests that contract law harmonisation would allow the uniform classification of contracts for tax purposes and thereby avoid distortions of competition in the internal market caused by the application of different tax regimes. A concern of the Belgian Banking and Finance Commission is lack of harmonisation of rules affecting the contractual relationship between financial intermediaries and their clients, which constitutes an obstacle to the internal market. The German Länder suggest that the complexity of the current legal situation and the problem of the applicable law cause substantial obstacles.

The UK Government accepts that the internal market may not be functioning perfectly because of the type of barriers identified in the Commission communication, but considers that the extent of any such problems will vary from sector to sector. Pointing to the different legal regimes in Scotland and in England and Wales, it does not consider that the co-existence of different national contract laws is in itself necessarily inimical to the functioning of an internal market. The UK Financial Services Authority could not identify any specific problems. However, it accepts that the co-existence of national contract laws may, at least in theory, constitute a potential obstacle to the functioning of the internal market, especially if other barriers are broken down by, for example, the introduction of the euro. The Danish Government reports from its national consultations that the preponderant proportion of consultation responses from industrial organisations states that there is no immediate basis for establishing the existence of any noticeable difficulties to the development of the internal market. A large number of areas have developed standard customs, international or common European standard contracts. These industries see no urgent need to promote the development of new standard contracts. However, the results of the Danish consultations also show that SMEs may encounter particular difficulties in the internal market as a consequence of differences in the contract laws of the Member States, mostly because of the risk of ignorance of the foreign rules or the costs of clarifying the uncertainties. Moreover, SMEs often have to accept their co-contractor's standard terms and the law of the latter as the applicable law due to their weaker negotiating power. Danish consumer associations are reported not to be aware of particular problems having the effect of preventing consumer cross-border commerce. However, they have pointed out that European contract law should be kept abreast of developments, for example concerning problems in connection with the formation and execution of consumer agreements in the internal market. Some of the Danish consultation responses point to the need for harmonisation within a more limited area such as the formation and validity of contracts because of major differences between national legal systems concerning formal requirements for the formation of contracts, including the assistance of a public notary. Finally a few responses state that – not least as a consequence of IT developments - some contractual harmonisation may be needed in particular industries, such as the field of financial services. On the basis of this, the Danish Government has not been able to

confirm that the different national contract law rules hinder the satisfactory development of the internal market.

The Polish Government states that the existence of different systems of civil law in the EU does not constitute a substantial obstacle to the functioning of the internal market. However, it also emphasises that unification of contract law would lower the transaction costs of business. Furthermore it mentions that cross-border transactions are severely obstructed by diversities in the procedures to be followed in concluding a contract as well as in the assessment of its validity.

The EEA-EFTA states report that national contract laws may directly or indirectly obstruct the proper functioning of the internal market as they result in increased transaction costs, especially given the influence of new technologies in facilitating the conclusion of cross-border contracts, the introduction of the euro and other factors. More particularly they raise the issue of differences in mandatory rules, which may have a negative impact.

3.1.2. Responses from Business

According to some contributors from **the manufacturing industry**, differences in national legislation do not represent a significant obstacle to cross-border transactions because in most cases private international law, the Convention on the International Sale of Goods (CISG) and existing Community law provide satisfactory solutions. Some business associations emphasise that diversities in national law lead to distortions of competition, e.g. through higher information costs, and a lack of legal certainty, especially with regard to different liability regimes. Liability for latent defects under French law has been named as one problem. Problems have been observed for SMEs in the services sector because of the great diversities in national legislation on services. Sometimes difficulties persist after the harmonisation of the law, for instance on commercial agents. That makes recourse to legal advice occasionally necessary. Particular problems are associated with the diversity of laws on the limitation of liability and laws on security interests. In cross-border transactions business perceives significant problems with liability for and the enforceability of standard terms and the requirements for the incorporation of standard terms in contracts under foreign law, in particular Italian law. Ignorance of the fact that the law of the contract does not necessarily govern the proprietary aspects of transactions in some Member States causes additional problems. Furthermore, diversity in rules applicable to the transfer of title to and security in goods adversely affects the possibility of entering into cross-border leasing agreements. Pre-contractual differences cause great difficulties for EU business

While contributors from the **retail trade** name the uneven transposition of the Doorstep Selling Directive 85/577/EEC as an obstacle to cross-border direct selling, almost all associations concerned with **financial services** indicate problems concerning cross-border trade due to different contractual requirements and the different approaches in the Member States. Variations in the implementation and application of directives and differing national contractual requirements are mentioned many times as a deterrent to cross-border trade. It is sometimes impossible to know when a contract has been concluded, how certain clauses will be implemented or which clauses will be disapplied as a result of statutory provisions or

implied terms. Businesses are discouraged from cross-border transactions more by differences in the details of different consumer protection regimes than by diversity in the overall level of protection afforded. Assessment of different levels of protection involves high legal costs. Different time periods under different directives and the implementation of the directive on commercial agents pose problems as does, for instance, the implementation of the Directive on Cross-border Payments. For the insurance sector in particular the diversity of national regulations is perceived as an obstacle to cross-border activities.

Among **other business organisations**, some associations have observed barriers to cross-border trade due to uncertainty about mandatory rules and divergences in rules on agency and the formation of contract, necessitating different procedures in different Member States. The effect of differences between the various laws in deterring parties from transactions is felt in particular in SME-to-consumer relations. The different rules for the formation of contracts and the impossibility of applying uniform standard contracts is a problem that produces huge transaction costs to which in particular SMEs are vulnerable.

3.1.3 Responses from Consumer Organisations

According to consumers' organisations, disparities in national contract law create great uncertainties for consumers because they do not have enough information on the applicable law, e.g. the increases in interest rates charged on loans in Germany, which do not occur in France. This leads to increased transaction costs or even deterrence from cross-border transactions. One contributor adds that the differing contract laws are just one factor and that the practical means of obtaining advice and mechanisms for resolving disputes involve more important difficulties.

3.1.4 Responses from Legal Practitioners

Some contributors from the UK do not see the lack of harmonisation of contract laws as an obstacle to the development of an integrated financial market.

Concerns that the functioning of the internal market may be hampered by the existence of different national systems of contract law are seen as less substantial than assumed, as different systems often produced similar results.

Some contributors refer to the United States, where no unified system exists but where the Uniform Commercial Code serves merely as a model for certain aspects of the law of obligations, and the UK, where Scottish Civil Law co-exists with English common law.

Language barriers, cultural differences, distance, habits and judicial attitudes are seen as more significant than the diversity of laws. It is suggested that divergences in civil procedure should be addressed as a priority.

However, some practitioners accept that consumers and SMEs, not being appropriately advised by in-house lawyers, unlike larger market operators, may encounter difficulties. On the one hand parties always have the choice of the governing law of the contract, but very often the more powerful party will impose the

law of its domicile. Larger market operators will always find ways to cope with any problem by sophisticated contractual arrangements, even if lawyers need to know not only the relevant EC law but also how the directive in question has been implemented in the Member State concerned.

As regards additional information costs and the cost of additional legal advice, these are not seen as substantially higher in cases with a foreign connection than in other cases. However, the cost for expert opinions may exceed the sum at stake in consumer contracts. On the other hand, the implementation of a new law may give rise to greater costs incurred for legal advice than the present diversity of laws.

Those contributors who state that they have encountered difficulties report that these have arisen in particular from

- lack of knowledge of the other legal system in general, including rules on dispute settlement;
- confusion about who had authority to sign a given document;
- diversity in mandatory laws;
- requirements of authentication by a notary;
- provisions on form;
- reservation of title clauses;
- provisions on assignment of debt;
- indemnities and warranties.

3.1.5 Responses from Academic Lawyers

Those academics who address the question of implications for the internal market generally assert that the multiplicity of national laws does give rise to problems. Generally private international law is seen as an inadequate, inappropriate or incomplete solution, though there are differences of emphasis.

Specific examples of problematic areas include motor insurance and cabotage transport insurance, retention of title clauses and other security interests, factoring, standard terms, doorstep selling and funds transfers between banks. The failure of the Community to harmonise substantive insurance law has meant that insurance companies are unable to offer “small risks” coverage in all Member States on the basis of one and the same policy. One company, after much research, found it impossible to formulate a single insurance contract capable of being sold with cars throughout the European Union because of irreconcilable mandatory rules. Security interests in movable property created in one jurisdiction may not be recognised in a second jurisdiction, for instance if the property is moved across the border between the two jurisdictions. Very different liability regimes with regard to transport operations result in unnecessarily high insurance premiums. It is practically impossible to use land in another EU state as security for a loan. Uniform standard terms and economies of scale may be hindered, which for instance affects the costs of international bank transfers. Factoring companies cannot use one and the same type of contract throughout the Community.

It has been noted that in electronic contracting any participant’s ability to use a product depends on whether others use it. Such “networked” markets may get locked

into old technical standards, which may not keep pace with the law. Technological advances may permit the automated search for contract opportunities, using standard form contracts. If contract terms are not standardised when the technical standards are developed, it may be difficult or impossible to incorporate new terms at a later date.

Problems relating to more general rules of contract law, such as those governing the formation of contracts and assignment, have also been noted, and particular concern has been expressed about remedies for breach.

Academics indicate problems deterring or preventing transactions, increasing transaction costs, distorting competition and reducing legal certainty. Problems can affect all phases of business activity: planning, negotiating and concluding contracts, performing obligations and litigating. SMEs and consumers are particularly affected. One contributor suggests that problems arise from the formal multiplicity of laws rather than from substantive differences in law, because of the need to investigate the foreign law.

Some academics draw a distinction between rules that constrain the parties, including in effect rules on the formation of contracts, and those which do not. However, it is said that information costs and risks arise both from differences in mandatory law and from differences in non-mandatory law. It is said that the United States experience indicates that legal diversity cannot be a decisive barrier, but even so legal diversity is the overriding obstacle to trade. Another argument is that the United States system has led to a *per capita* ratio of lawyers eight times higher than in Europe.

3.2 Uniformity of Application of Community Law

3.2.1 Responses from Governments

The Portuguese Government notes that the fact that Community rules are often dispersed among different instruments makes it more difficult to interpret and apply them. It also confirms that EC instruments and concepts are ambiguous. The contributions of the Belgian Banking and Finance Commission and the French Government also state that there are inconsistencies within the *acquis*. The former mentions as an example the directives on investment services and e-commerce. The Finnish Government mentions varying interpretations and disparities in Community law and in national implementation measures. Referring to the latter the Finnish Government specifically mentions that the discretion in implementing directives makes operators doubt whether there has been correct implementation. The German Länder also criticise the consistency of the *acquis*, quoting as an example the modalities of the information obligations and rights of withdrawal in the consumer contract law directives.

The UK government is not aware of any contradictions in Community law and states that any problems of that nature should continue to be addressed on a case-by-case basis.

3.2.2 Responses from Business

According to some contributors from the **financial services** sector, problems arise from diversities in the implementation of directives and the different applicable laws and jurisdictions can prove to be a very real hindrance to cross-border trade. Two associations from the **media**, representing among others persons who create copyrighted materials, mention a specific example of problems regarding the definition of terms: “equitable remuneration” is, they say, a meaningless term in the UK legislation implementing the directive on rental, lending and other rights relating to copyright. In **other business** sectors it is said that divergent implementation of directives in the Member States generally causes distortions of competition, e.g. in the context of consumer protection, especially if the implementing measure exceed the fixed minimum level of protection. Some associations said they had not encountered any problems in buying goods or services from other countries of the European Union.

3.2.3 Responses from Consumer Organisations

The well-known problems relating to inconsistencies among directives are exacerbated by implementing measures adopted by Member States, variations in the application of Community law, including its application to new technologies, and interpretation, especially because of the overlap between European law and existing domestic legislation.

3.2.4 Responses from Legal Practitioners

Legal practitioners commenting on the issue of the application of Community law agree that the current approach in EC legislation of regulating only particular aspects of contract law gives rise to a lack of transparency and consistency. Inconsistencies among directives include inconsistencies as to the recognition of general principles such as the principle of good faith. Examples of problems include the general lack of a definition of the term ‘contract’ and the different time periods in provisions on withdrawal from contracts. Moreover, there is the problem of uneven implementation and interpretation of directives by Member States.

3.2.5 Responses from Academic Lawyers

The quality of Community legislation was criticised. Existing directives include inconsistencies as to whether particular terms are defined, as to the contents of the definitions of the subjects affected (including “consumer” and “seller”) and as to the cooling-off periods allowed. The scope of the directive on guarantees for consumer goods is, in particular, said to be unclear. One explanation for such difficulties is the lack of a common private law vocabulary.

A number of commentators mention problems relating to the implementation of directives in national law. Particular examples related to database protection, doorstep selling, package holidays, distance selling and the directive on unfair terms. Furthermore, the directives on unfair terms, product liability, consumer guarantees, late payment of money debts and e-commerce raise the difficult problem of whether their scope should be extended at national level.

It is suggested that the vertical approach of subject-specific Community legislation has led to distortions in national legal systems and a lack of co-ordination among directives. It is said that directives threaten the coherence of national legal systems by introducing new concepts, because of the lack of consistency among directives themselves and because the ECJ cannot maintain the internal coherence of all the national legal systems of the EU simultaneously.

4. RESPONSES WITHIN THE COMMISSION CONSULTATION PROCESS – OPTIONS

4.1 Option I

4.1.1 Responses from Governments

In so far as governmental contributors have given their views on Option I, the large majority are opposed to it.

Of the contributors who reject Option I, France considers it to be incompatible with the smooth functioning of the internal market. The Italian Government raises the danger of the further fragmentation of contract law and the German Länder cite the need for clarity and transparency for economic operators. The United Kingdom's Financial Services Authority states that it cannot be sure that Option I will adequately address the issues raised, which will depend on the scale of the problem.

The UK Government, however, sees considerable scope for the market to develop solutions to potential problems. The Belgian Banking and Finance Commission mentions one successful example of self-regulation (pre-contractual information on home-loans). It is in favour of support from the Commission for self-regulation as its first choice and intervention by the EC legislator as its second choice if self-regulation fails.

4.1.2 Responses from Business

Of contributors from **the manufacturing industry** one association rejects Option I while two others state that the market should be left to regulate itself as far as possible where industry has achieved a high degree of self-regulation by developing fair conditions of trade. Some contributors from the **financial services** sector consider Option I to be an unrealistic one while one contributor states that market forces will provide a powerful incentive for countries to ensure that their national law is appropriate to international commercial needs and Community intervention in the area of contract law would involve unjustifiable adjustment costs. Broad support was expressed from the **media** sector, essentially on the part of those whose business depends on copyrighted material created by others, for pure self-regulation. For some contributors from **other business** sectors, fully or partly market-based solutions, including codes of conduct combined with effective self-regulation, seem to be the strategy most likely to be successful.

4.1.3 Responses from Consumer Organisations

Except for one organisation, which prefers Option I, the contributors agree that contract law cannot be left to the markets because statutory invention is needed to protect the weaker party.

4.1.4 Responses from Legal Practitioners

The large majority of legal practitioners think that the harmonisation of European contract law will not be achieved simply by reliance on the markets. There is the danger that the legal system of the home country of the contracting party with the most extensive economic resources will be applied. The Law Society of England and Wales indicates that it would prefer there to be no action in respect of certain particular types of transactions.

4.1.5 Responses from Academic Lawyers

The vast majority of academic opinion is opposed to Option I, with contributors pointing to “practical experience” as showing the inadequacy of such an approach. The Pavia Group states that commercial customs have too fragmented a character to fulfil the requirements of the internal market.

Generally private international law is seen as an inadequate, inappropriate or incomplete solution, though there are differences of emphasis. The Study Group on a European Civil Code and the Lando Commission point out that private international law is, in particular, no solution in the event of the unwitting conclusion of contracts. Contributors argue that practitioners’ conflicts of interests with their clients and the lack of accurate, complete and freely available information prevent the market from solving existing problems.

However, it is suggested that dynamic competitive processes could produce voluntary harmonisation, and that this is more likely for facilitative than for interventionist law. The only strong support for Option I among academics came from the Society of Public Teachers of Law of the United Kingdom and Ireland, which advocated Option I in the context of commercial contracts.

4.2 Option II

4.2.1 Responses from Governments

There is substantial support among governmental contributors for Option II, although many see it as not sufficient on its own or as complementary to either Option III or Option IV.

The EU is seen as having a potential role in co-ordinating academic work or sponsoring and supporting the private initiatives of the markets and of legal practitioners. Italy supports Option II, but only as a guideline for EC legislation. The UK Government says that the Commission could even lead initiatives itself in sectors where there is a clear need but no market solution under development. The Danish Government supports work developing existing standard contracts further and any initiative to encourage the industrial and professional bodies involved to draw-up well balanced standard contracts that take greater account of the interests of the weaker

contractual party or to take other initiatives capable of motivating particularly SMEs to take more part in cross-border transactions. It also supports the development of non-binding common contract law principles for use in standard contracts. Finally - in order to prevent the disincentive resulting from a lack of knowledge of national contract law regimes keeping in particular consumers and SMEs from taking part in cross-border transactions – it suggests promoting the possibilities for undertakings to retrieve information on the national legal systems.

The Austrian Government expresses its opposition to the “institutionalisation” of research in the form of a “European Law Institute”.

4.2.2 Responses from Business

Some contributors from **the manufacturing industry** are in favour of the promotion of uniform European principles of contract law in order to strengthen European integration. Some suggest that priority should be given to the simplification of national and Community legislation and removing unnecessary layers of regulation. General principles and guidelines may serve as models for business contracts. Voluntary application would lead to greater acceptance, as has already happened in the case of the Vienna Convention on Contracts for the International Sales of Goods (CISG).

Support is given by contributors from the **retail trade** sector to the development of soft law and the improvement of the quality of existing EC legislation, provided that the new legislation includes maximum standards and does away with the minimum clauses which currently allow Member States to go further than required by EC legislation.

Support is given by some undertakings from the **financial services** sector to further investigation in relation to the development of common principles. The creation of a provisional code of principles has been suggested. Generally contributors from the **media** oppose Option II. Many contributors from **other business** sectors are in favour of promoting research in order to elaborate common principles as a first step towards harmonisation. It is also said that the development of guidelines, codes of conduct or standard contracts by the European institutions is not the best approach, especially if such instruments are likely to become binding and represent a limitation on freedom of contract. It is said that such instruments should be promoted only by economic operators.

4.2.3 Responses from Consumer Organisations

Consumer organisations take the view that voluntary guidelines are not sufficient and might not be appropriate to deal with consumer concerns because consumer law is regulatory law. Therefore the practical usefulness of voluntary guidelines is questionable. Two contributors propose the elaboration of a set of common principles of consumer law, which could later, within the framework of Option IV, be transformed into binding EU law.

4.2.4 Responses from Legal Practitioners

Some contributors consider comparative studies on contract law a prerequisite for any initiative and feel that the functioning of the internal market could be further improved by pursuing Option II. The approach of ‘soft’ harmonisation by the promotion of the development of common principles as guidelines for legislators and the courts, whilst respecting the different traditions of existing legal systems, could over time eventually lead to a ‘model law’. It is suggested that such principles should include property law and tort law.

Other contributors are concerned that non-binding instruments such as common principles and standardised contracts would only be of academic interest and in all probability would not receive wide acceptance in the market and would not be consistently implemented. Furthermore, harmonisation leading to similar but not identical laws would not provide a good solution.

4.2.5 Responses from Academic Lawyers

Contributors express broad support for Option II, and the vast majority of opinion, where expressed, is in favour of further research, the elaboration of common principles or a Restatement and the promotion of such work by the Commission. One contributor suggests that there should be institutional arrangements for the revision of restatements from time to time. A number of contributors stress the importance of the elaboration of common principles, and of Option II generally, as preparatory work for the pursuit of Option IV. A small number of contributors express concerns. These include the concern that merely relying on Option II would compromise transparency. Moreover, the practical usefulness of common principles was questioned, especially on the basis that common principles require a common denominator and therefore contain too many gaps.

Sources to be used for future work on common principles include economic analysis, the *acquis communautaire*, national rules, international rules and the existing work of academic groups, especially the Lando Commission and the Pavia Group.

Support is expressed for the idea that common principles, once adopted, could be used as a resource for the approximation of national laws both by legislators and by the courts and as a resource to give structure to European legislation. Some contributors suggest that model laws should be promulgated, following United States practice, but some reservations have been expressed. It is noted that common principles could be incorporated into contracts by the parties, including in a public procurement context, although again reservations have been expressed. It is also noted that comparative legal work could be a useful source of information for market operators.

Comparative law is said to facilitate the improvement of national laws by means of the competition of legal systems and by freeing legal thought from dogmatism. There are calls for the promotion of a common legal culture, a common law curriculum, a common legal literature, a common legal terminology and a common legal dialogue, including by way of the creation of specific institutions such as a European Law Institute and a European Law Academy. Some support is also given to promoting the development of standard contracts, whose acceptance would depend on their substantive quality.

4.3 Option III

4.3.1 Responses from Governments

Governmental responses are generally in favour of Option III. The Italian, Portuguese and Polish Governments see Option III as a potential step towards Option IV.

The French Government calls for greater precision in the drafting of EC law, avoidance of overlapping legislative instruments (this point is also made by the Austrian Government) and effective review mechanisms in EC instruments. The Austrian Government advocates using the same model in different instruments if possible and cites the right of withdrawal in consumer contract law directives as an example of where this could be done. It also advocates the simplification of drafting and exceptions to general rules. Finally it raises the possibility of a transition from minimum to full harmonisation and states that the country of origin principle does not constitute a solution. The Finnish Government specifically states that in the consumer contract law area the Community should fill legislative gaps, make the rules easier to understand and reduce the variety in interpretation by supplementing and consolidating the existing legislation. It emphasises that the aim should be a high level of consumer protection. The Portuguese Government mentions as a problem concepts that are difficult to transpose into national law or have different meanings in different Member States. The UK Government sees considerable value in Option III, advocating simplifying existing and improving future legislation as well as addressing inconsistencies between existing Directives and differences in national implementation. It explicitly does not rule out further harmonisation of consumer contract law directives that provide only minimum harmonisation. The Danish Government suggests concentrating on laying down some overall principles rather than very detailed rules in the individual fields in order to reduce inconsistencies at national and EC level. According to the EEA-EFTA States, existing directives should be updated and adjusted when necessary. However, in general they prefer minimum harmonisation directives.

4.3.2 Responses from Business

Most contributors from **the manufacturing industry** express support for Option III, while one contributor states that industry is reluctant to have to deal with new mandatory rules reducing freedom of contract, which would not be justified from a business point of view. Generally contributors from the **financial services** sector state that the improvement of the quality of legislation already in place will support the drive towards an internal market. There is a diversity of opinion in the **media** sector on Option III. Some contributors support comprehensive legislative improvement consisting in the removal of inconsistencies while others think that analysis of existing directives must be conducted on a case-by-case basis and improvement should be achieved by legislation targeting discrete areas of law rather than complete harmonisation. Generally contributors from **other business** sectors are in favour of the improvement, the co-ordination and the synchronisation of legislation already in place.

4.3.3 Responses from Consumer Organisations

Existing EU consumer protection legislation should be improved. Improvements should include clarifying its scope of application by giving, for example, a uniform definition of “consumer” and by harmonising information duties, remedies and the right to withdraw from a contract across the different Community instruments. The level of harmonisation should also be increased. One contributor notes that, consistency and coherence aside, there should always be room for new consumer protection rules dealing with specific problems.

4.3.4 Responses from Legal Practitioners

Almost all contributors express their support for Option III, although a few consider that a mere review would, for instance, not be sufficient to render the application of diverse rules of mandatory national law unnecessary. The review of existing legislation should build on experiences with the SLIM and BEST initiatives.

4.3.5 Responses from Academic Lawyers

There is overwhelming support among academics for the improvement of existing Community legislation, some contributors ascribing it priority.

Reasons suggested in favour of the improvement of existing Community legislation include the excessive vagueness and confusion of existing terminology and the possibility of greater coherence, transparency and simplicity in EC law. Another reason is the possibility of progress towards the systematic arrangement of EC contract law, the improvement of its consistency and the filling of gaps. The mandatory contract law rules of the EU could also be updated.

The majority of academic opinion, where expressed, is however to the effect that improving Community legislation will not address the core problems of European contract law or will be at best a short-term solution. Even so, the development of a concept for the improvement of future Community law-making is suggested as a long-term strategy.

Particular suggestions include the revision of definitions and the harmonisation of the contents of the various directives, including cancellation periods for contracts and the legal consequences of cancellation. Further suggestions include the transformation of directives into regulations and the development of a European Consumer Code, covering all existing directives, and possibly other codes for public procurement law and intellectual property licensing law. Suggestions also include the filling of gaps relating to the passing of property and risk in consumer goods, producing a blacklist of prohibited contract terms and the extension of rules on unfair terms to non-standard terms and of rules on consumer goods to consumer services. Further suggestions include stricter sanctions for breach of informational duties and greater consumer protection in the event of supplier insolvency.

4.4 Option IV

4.4.1 Responses from Governments

Governmental opinion on Option IV is not as homogeneous as governmental opinion on the other options.

The Italian government is of the opinion that horizontal harmonisation should be pursued in particular areas and mentions as an example consumer contract law. It states that the legislation should combine mandatory rules and non-mandatory rules and should allow for the possibility of the choice of a different governing law. The Portuguese Government does not consider Option IV to be a realistic short-term objective, but thinks that it is an objective that could be pursued once Option II has been effected. It suggests continuing and intensifying academic studies in this area. Option IV should be constituted by rules which are applicable if the parties do not otherwise agree. Mandatory rules should only exist in special cases. The Portuguese Government does not consider either a directive or a recommendation to be a suitable instrument as both lead to differences in national law. The Belgian Ministries of Finance and Economic Affairs are favourably disposed towards Option IV. The Austrian Government explicitly does not oppose Option IV, but emphasises that it would be a long-term and difficult exercise. It stresses that the EC institutions should not be against such an option. It suggests the use of instruments that apply if the parties agree on their application. Similarly, the German Länder consider Option IV to be the appropriate instrument for the medium or long term, provided that a need for it is demonstrated. They stress that the present *acquis communautaire* would have to be fully integrated and a high level of consumer protection would need to be guaranteed. However, they do not consider that the EC has, at present, a legal basis for this, but state that in the framework of the preparation for the next IGC, in 2004, the question of such competence would need to be examined. The point on Community competence is also stressed by the Polish government, which could however consider Option IV as an idea for the prospective development of European law. The Austrian Government emphasises the need to examine the question of competence.

The EEA-EFTA States are sceptical towards the development of a new set of binding comprehensive principles of contract law, but consider the development of a set of non-binding model principles to be most welcome. The Finnish Government, while not in favour of comprehensive legislation across the broad spectrum of contract law, sees some scope for possible minimum harmonisation in insurance law. The idea that insurance law might be a potential candidate for harmonisation is also emphasised by the Austrian government. The French Government opposes, at the present stage, a true European contract law replacing internal laws, but has not expressed an opinion on a set of provisions that leave national rules intact (whether opt-in or opt-out). The UK Financial Services Authority considers Option IV to be premature. They see it as extremely difficult to pursue Option IV in the face of the principles of subsidiarity and proportionality. This would especially concern the automatic application of rules which could not be excluded. They consider that the adoption even of purely optional and fallback models would require further analysis of the weaknesses of the current system. However, they accept that a case may be made out for this in due course. The Danish Government considers general harmonisation to be a very large and difficult project which should in the light of the subsidiarity and proportionality principles only

be considered if there is clear evidence that divergent national rules hinder the satisfactory development of the internal market, that such problems cannot be solved by other means and that the advantages of such harmonisation clearly outweigh the disadvantages. If such evidence can be given, the Danish Government would favour a recommendation setting up non-binding contract law principles which the Member States are encouraged to observe in their legislation as well as a recommendation or regulation containing contract rules by which the parties can agree to let their contract be governed.

The UK Government is opposed to Option IV in any of its forms and considers it to be disproportionate and likely to cut across the principle of subsidiarity. In its opinion, EC legislation should focus on specifically identified problems on a case-by-case basis.

4.4.2 Responses from Business

Generally Option IV is rejected by **the manufacturing industry**. One association points out that the creation of a civil code can only be a long term aim and would have to be developed step-by-step by means of the voluntary approximation of national laws so that business is not suddenly confronted with massive adjustment costs. Furthermore, it is said that all EU action should be justified and that EU legislation should be tested on the basis of impact assessment, cost-benefit analysis, proportionality and its potential for the creation of employment or unemployment. Most of the contributors from the **media** do not see any need for intervention by the Commission by way of a new instrument. Some associations are opposed to any fixed contract conditions for business contracts because at the present time there is no need for the creation of a European civil code.

To many contributors from the **financial services** sector Option IV seems to be suitable as a long-term objective and there are various suggestions as to the appropriate approach: a general legislative framework, a directive or a civil code consisting of mainly non-mandatory and partly mandatory rules. An opt-in system has been suggested. Some support is expressed for new comprehensive legislation from **other business** sectors, but only where concrete problems have been identified and as an opt-out solution like the CISG or the UCC (United States Uniform Commercial Code).

4.4.3 Responses from Consumer Organisations

The contributors differ on the necessity and justifiability of Option IV. Opponents allege a lack of evidence of detriment sufficient to justify EU action – in any case, distortions of competition cannot be suggested. Supporters want Option IV to be pursued, but have different ideas as to the best variation on Option IV. According to one contributor, European contract law should not be introduced by a regulation, since the Member States should be given space to manoeuvre. Another wants Option IV to be restricted to certain essential aspects. One organisation states that European consumer law should be limited to minimum harmonisation because European consumer law is only intended to bolster consumer confidence, whereas national consumer law is intended to protect the weaker party. Similarly another contributor suggests that European contract law should include more stringent European

consumer protection rules. Finally it is said that European consumer law could facilitate the proper functioning of the internal market by encouraging consumers to make increased volumes of cross-border purchases.

4.4.4 Responses from Legal Practitioners

Only 6 of 27 contributors totally reject the suggestion of a European civil code. In particular, English legal practitioners fear that the global significance of English common law would suffer. To them it would be disproportionate, in the very least, to impose a mandatory European contract law on Member States. One contributor claims that a mandatory scheme would risk undermining the existing ‘export’ of English common law, which provides contracting parties world-wide with greater legal certainty than do legal systems in the Civil Law tradition. For instance, there are standard terms prepared by the International Swaps Derivatives Association using English Law. The Law Society of Scotland, however, while describing Option III as its “preferred option,” states that Option III should not be pursued to the exclusion of Options II and IV.

Others view a uniform and comprehensive European civil code as the best solution to the problems identified. However, there is no common opinion as to whether such an objective could best be achieved by a recommendation, a directive or, as directives are often wrongly implemented, a regulation. However, there is a tendency towards a preference for an opt-in system, a set of transnational rules which, at the discretion of Member States, might also be chosen by parties to purely domestic contracts. It is suggested that the first phase should be the unification of legal terminology. National principles on public law contracts, property law, family law and civil procedure which are linked to contract law should be taken into account.

4.4.5 Responses from Academic Lawyers

The majority view of academics is favourable to Option IV, although it is seen as a long-term strategy or, by some, as something for the distant future and there is also outright opposition. It is also stressed that the success of a European contract law would depend on its substantive quality. Indicators of substantive quality include whether the rules are simple, clear, accessible, practical and comprehensive, take account of modern socio-economic circumstances and are not excessively abstract. It is said that European contract law must not be a pale compromise between different national laws, but that the best and most just rules must be selected. It is even suggested that positivistic legal analysis, without regard for the social and economic impact of legal constructions, is useless. For default rules one crucial indicator is how closely they reflect what the parties would have agreed.

It is variously suggested that there should be progressive or phased implementation, for instance by adopting an opt-in approach before ultimately replacing national laws, and that there is a need for a test period. It is urged that some Member States could adopt European contract law before others, though one academic opposes this. One contributor suggests that the political case for pan-European codification should be tested against the background of a potential legislative text.

Many academics are in favour of ultimately replacing national law with a uniform European contract law or European civil code, although a considerable number prefer an opt-in or opt-out solution, in particular for non-binding or facilitative rules. It was noted that in English law it is possible for parties to opt into the 1964 Uniform Law on the International Sale of Goods, but that there has not been a single case where contracting parties have done so. Reasons for not replacing national law include the idea that European codification would lead to rigidity or stagnation in the law and the idea that the long-term parallel existence of European and national contract laws would combine the advantages of centralised and decentralised rule-making and avoid the disadvantages.

There is a strong preference for using a directly binding instrument such as a regulation or an *ad hoc* treaty, rather than a directive or recommendation. This is because the proper functioning of the internal market requires the harmonisation not merely of general principles but, in fact, of the rules that direct the activities of businesses and the courts. It is noted that if uncertainty is to be removed as to the legal situation in other states then the legal provisions will have to be identical from state to state and that legislating by directive would add a complication and inefficiency in the process of legal advice and drafting.

4.5 Other Options; Scope of the Communication

4.5.1 Responses from Governments

The German Bundesrat, while supporting Options II and III and on a long-term basis Option IV, even so considers that selective harmonisation measures would be useful if necessary.

The German Länder and the Austrian Government oppose the inclusion of family law and the law of succession. The Belgian Ministry of Finance also opposes the inclusion of rules on family law and immovable goods. The German Länder oppose the inclusion of property law. The Austrian Government raises the possibility of the inclusion of the law of tort. The French Government advocates a narrow understanding of contract law, namely excluding tort law and property law.

The Finnish government, while suggesting that the need for new Community rules on insurance law should be investigated (see Option IV), suggests that, at the very least, the rules of private international law applicable to insurance contracts should be reassessed in the near future.

The Danish Government suggests that the Commission should first focus on well-functioning international rules of jurisdiction and applicable law. It is furthermore in favour of a more detailed study as to whether general harmonisation of contract law or parts thereof can advantageously be effected in a wider international framework, such as that of the UN. It quotes the example of the CISG.

The Austrian government and the Danish Government stress that in all future work the principle of freedom of contract should be the general rule and restrictions to it the exception.

4.5.2 Responses from Business

Contributors from **the manufacturing industry** see there as being a special need for harmonisation of limitation periods and rules on limitation of liability. Furthermore, it is not felt justified to limit work on private law to contract law. If the aim is to facilitate cross-border transactions then contract law cannot be looked at in isolation from property law. There are some suggestions related to the inclusion of areas such as information requirements, tax law and company law in the harmonisation process from contributors from the **financial services** sector. As an alternative instrument, one suggestion from the **media** sector is for there to be a system for consumer law similar to that of Incoterms in contract law. The Commission could also provide a platform by setting up a Web-site where information on contract law and a comparison of standard contractual clauses could be set up, in the opinion of contributors from **other business** sectors.

4.5.3 Responses from Consumer Organisations

One contributor states that the Rome Convention on mandatory rules should be clarified by requiring the application of the law of the consumer's state, regardless of the domicile of the business.

4.5.4 Responses from Academic Lawyers

Alternative instruments suggested for the adoption of European contract law are: principles capable of being moulded more freely than ordinary legislation, so as to remain accessible, while still commanding the authority of a binding legal source; an *ad hoc* treaty; model laws as used in the United States. Further techniques include altering private international law to allow the adoption of common principles as an "autonomous partial legal order". It is noted that a legal system for cross-border contracts could be copied unilaterally in domestic law.

There are suggestions for the inclusion of mandatory and non-mandatory rules and for the codification of consumer law and its combination with European contract law in one instrument. It is suggested that there should be a distinction between consumer and commercial contracts, SMEs perhaps receiving special treatment, or between mandatory and non-mandatory rules, some contributors suggesting a further distinction between mandatory informational duties and mandatory outcome-related rules. It is suggested that as a political compromise there might be a range of permissible levels of protection by mandatory rules, or strictly defined options for the national legislator, combined with an opt-in system for non-mandatory rules. One contributor suggests that only mandatory rules should be harmonised.

Some suggestions are to the effect that rules should be formulated in particularly problematic areas first, such as the formation of contracts and security rights in movables. Other academics suggest that there should ultimately be a European Civil Code or the unification of "patrimonial law", one commentator noting that subject-specific codes could lead to problems of co-ordination in national law. Contributors suggest including rules on the entire law of obligations, including not just contract and tort (delict) but also restitution (unjust enrichment), and rules on property, including assignment, intellectual property and intangible property generally as well as security

interests, the latter as a priority, and trusts. In addition to these areas and consumer law, family law, labour law, company law, public procurement and insolvency have also been mentioned. One contributor suggested that the Community should not take action in areas where international conventions on substantive private law, such as the CMR and the COTIF, have been ratified by all Member States.

Calls for greater international co-ordination include the suggestion that the Commission should liaise with UN agencies such as UNCITRAL and UNIDROIT and that those Member States not having ratified the Convention on the International Sale of Goods should do so. However, the Pavia Group criticises that Convention for failing to take account of related transactions and for leaving many gaps.

Other suggestions relate to the harmonisation of the law of civil procedure and the improvement of private international law.

5. NEXT STEPS

The Commission has not yet drawn its conclusions. It intends to present its observations and recommendations, if appropriate in the form of a Green or White Paper, by the end of 2002. In this document the Commission intends:

- to identify areas in which the diversity of national legislation in the field of contract law may undermine the proper functioning of the internal market and the uniform application of Community law;
- to describe in more detail the option(s) for action in the area of contract law which have the Commission's preference in the light of the results of the consultation. In this context, the improvement of existing EC legislation will be pursued and the Commission intends to honour the requests to put forward legislative proposals to consolidate existing EC law in a number of areas;
- to develop an action plan for the chronological implementation of the Commission's policy conclusions.

ANNEX I: LIST OF ALL CONTRIBUTING STAKEHOLDERS

The following list of contributors does not give the names of those contributors who have specifically requested confidentiality. The contributors are listed by category according to the classification system used by the Commission services in analysing the contributions. The order in which the names of the contributors appear does not bear any relation to the order in which the contributions have been received, nor does it bear any relation to any supposed judgement as to the relative importance of the contributions.

1. Governments

1.1. Bayerisches Staatsministerium der Justiz, Wilfried Krames, Regierungsdirektor, München

1.2. EFTA, European Free Trade Association, Einar Tamimi, Brussels

1.3 Finnish Ministry of Justice

1.4. Polish Government

1.5. Bundesrat (resolution)

1.6. UK Government

1.7. Italian Government, Ministero Affari Esteri

1.8 Portuguese Government

1.9 Belgian Ministry of Finance*

1.10 Belgian Ministry of Economic Affairs*

1.11 Belgian Banking and Finance Commission*

1.12 UK Financial Services Authority

1.13 Swedish Consumer Agency and Consumer Ombudsman

1.14 Austrian Government

1.15 French Government

1.16 Finnish Consumer Ombudsman and Consumer Agency

1.17 Danish Government

* summarised in the submission from the Belgian Ministry of Justice, which is a synthesis of the various contributions received and not a position of the Belgian government as such.

2. Business

2.1. Manufacturing Industry

2.1.1. Bundesverband der Deutschen Industrie, Abteilung Recht, Wettbewerbspolitik und Versicherung, Berlin

2.1.2. Chambre de Métiers, Paris

2.1.3. Deutscher Industrie und Handelskammertag, Brussels

2.1.4. VDMA Verband Deutscher Maschinen- und Anlagenbau, Holger Kunze, Brussels

2.1.5. Zentralverband Deutsches Baugewerbe, Rechtsanwalt Elmar Esser, Berlin

2.1.6 Orgalime

2.2. Retail

2.2.1. [confidentiality requested]

2.2.2. FEDSA, Federation of European Direct Selling Associations, Brussels

2.3. Financial Services

2.3.1. Barclays PLC, Bill Eldridge, EU Adviser's Office, London

2.3.2. Bundesverband Deutscher Banken, e.V., Wulf Hartmann, Berlin

2.3.3. Bundesverband der Deutschen Volks- und Raiffeisenbanken, Bundesverband der Öffentlichen Banken Deutschlands, Deutscher Sparkassen- und Giroverband e.V Dr. Danco, Berlin

2.3.4. Comité Européenne des Assurances, Bruxelles

2.3.5. London Investment Banking Association, Timothy Baker, Director, London

2.3.6. Servizi Interbancari S.p.A., Sandro Molinari, Dr. hon. c. Cav., Presidente

2.3.7. Zurich Financial Services (UKISA), Adrian Baskerville, Director, Legal Services, London

2.3.8 Eurofinas (European Federation of Finance House Associations)

2.3.9 Euronext S.A.*

2.3.10 Nasdaq Europe S.A.*

2.3.11 Association of European Co-operative and Mutual Insurers

2.3.12 European Mortgage Federation

* included in the position of the Belgian Ministry of Justice, which is a synthesis of the various contributions received and not a position of the Belgian government as such.

2.4. Media

2.4.1. Advertising Association, Phil Murphy, London

2.4.2. European Publishers Council, Angela Mills, Executive Director, Oxford

2.4.3. Federation of European Publishers, Anne Bergmann-Tahon, Deputy Director, Brussels

2.4.4. Motion Picture Association, Laurence Djolakian, European Office, Brussels

2.4.5. Neuromedia International, Lyon

2.4.6. Pyramide Europe, Gwen Thomas, General Manager, London

2.4.7. UK Publishers Association

2.4.8 [confidentiality requested]

2.4.9 British Copyright Council, London

2.4.10 British Music Rights

2.5. Other

2.5.1. Business Software Alliance, Brussels

2.5.2. Electricity Association, Jeff Woodhams, Head of Procurement Group, London

2.5.3. EuroCommerce, Brussels

2.5.4. International Chamber of Commerce, Ayesha Hassan, Senior Policy Manager, Electronic Commerce, Telecommunication and IT, Paris

2.5.5. MEDEF, Mouvement des Entreprises de France, Jacques Creyssel, Paris

2.5.6. NECP, New Engineering Contract Panel of the Institution of Civil Engineers, Nigel Shaw, London

2.5.7. UEAPME, European Association for Craft, Trades and Small and Medium-Sized Enterprises, Brussels

2.5.8. Wirtschaftskammer Österreich, Abteilungsleiter Univ. Doz. Dr. Hanspeter Hanreich, Wien

2.5.9 Bundesverband der Freien Berufe (BFB), Berlin

2.5.10 Stockholm Chamber of Commerce

2.5.11 International Chamber of Shipping and EC Shipowners' Associations

2.5.12 Confederation of British Industry

2.5.13 Union of Industrial and Employers' Confederations of Europe

2.5.14 European Federation of Leasing Company Associations

2.5.15 Swedish IT Law Observatory**

2.5.16 [confidentiality requested]

** The response from the Swedish IT Law Observatory has been treated as a business response because most of the members of the observatory are representatives of the IT business.

3. CONSUMER ASSOCIATIONS

3.1. BEUC, The European Consumers' Organisation, Legal Department, Brussels

3.2. Consumers' Association, Alison Lindley, Principal Lawyer, London

3.3. European Consumer Law Group, Brussels

3.4. Union Fédérale des Consommateurs

3.5 Belgian Consumers' Council*

* summarised in the submission from the Belgian Ministry of Justice, which is a synthesis of the various contributions received and not a position of the Belgian government as such.

4. LEGAL PRACTITIONERS

4.1. Bar Council of England and Wales, Evanna Fruithof, Director, Brussels

4.2. Paolo Bernardini, Dr. Giudice presso il Tribunale civile di Lucca

4.3. Heiko Büsing, Rechtsreferendar, Göttingen

- 4.4. Bundesnotarkammer Deutschland, Dr. Jens Fleischhauer, Geschäftsführer, Köln
- 4.5. BRAK, Bundesrechtsanwaltskammer Deutschland, Büro Brüssel
- 4.6. CentreBar, Prof. Arnold Vahrenwald, Munich
- 4.7. CMS Cameron McKenna and CMS Bureau Francis Lefebvre, Nathalie Biesel-Wood, Bruxelles
- 4.8. Nicolas Charbit, Lawyer
- 4.9. COMBAR, Commercial Bar Association, William Blair, London
- 4.10. Conférence des Notariats de l' Union Européenne, Bruxelles
- 4.11. Deutscher Anwaltverein, Ausschuss für internationalen Rechtsverkehr, Prof. Dr. Hans-Jürgen Hellwig, Frankfurt am Main
- 4.12. Deutscher Notarverein, Berlin
- 4.13. Herbert Gassner, Dr., Landesgericht Eisenstadt
- 4.14. Harvey McGregor Q.C., barrister, England
- 4.15. Eric Gummers, Amhurst Brown Colombotti, solicitors, London
- 4.16. Adrian Jack, barrister, Enterprise Chambers, London
- 4.17. Achim Kampf, Leiter Euro Info Centre, Mannheim & Joachim Förster, Bereichsstellenleiter Recht, Euro Info Centre, Mannheim
- 4.18. Landesnotarkammer Bayern, Dr.Bracker, Praesident, Muenchen
- 4.19. Lovells Boesebeck Droste, London
- 4.20. Österreichischer Rechtsanwaltskammertag, Dr. Klaus Hoffmann, Präsident, Wien
- 4.21 Observatorio Juridico Transfronterio Iuris Muga, Colegio de Abogados de Gipuzkoa, San Sebastian
- 4.22, 4.22a. The Law Society of England and Wales, Hilary Siddle, Chair, Law Reform Board, London
- 4.23 Österreichische Notariatskammer
- 4.24 Sveriges Advokatsamfund
- 4.25 Consiglio dell'Ordine degli Avvocati di Torino

4.26 Consiglio dell'Ordine degli Avvocati di Milano

4.27 The Law Society of Scotland

5. ACADEMICS

5.1. Academia dei Giusprivatisti Europei, Prof. Giuseppe Gandolfi, Prof. José Luis de los Mozos, Pavia

5.2. Rainer Bakker, Professor Dr.iur., Fachhochschule Konstanz

5.3, 5.3a. Christian von Bar, Prof. Dr. iur., Direktor des Instituts für Internationales Privatrecht und Rechtsvergleichung, Universität Osnabrück

5.4, 5.4a. Prof. Dr. Basedow, Direktor des Max-Planck-Institutes für Ausländisches und Internationales Privatrecht, Hamburg

5.5. Sergio Cámara Lapuente, Prof. Dr., Departamento de Derecho, University of La Rioja

5.6. Georges Th. Daskarolis, Professeur, Demokritos University, Thrace, Greece

5.7. Christina Duevang Tvarnø, Ass. Prof. Ph.d., MSc in Business Administration and Commercial Law, Copenhagen Business School

5.8. Faculty of Law, University of Uppsala, Sweden

5.9. Marcel Fontaine, Professeur, Directeur du Centre de droit des obligations, Université catholique de Louvain

5.10. Andreas Furrer, Prof. Dr., Forschungsstelle für Internationalisiertes und Europäisiertes Privatrecht, Universität Luzern, Luzern

5.11. Gabriel García Cantero, Catedrático de Derecho Civil, Emérito de la Universidad de Zaragoza

5.12. María Paz García Rubio, Dr., Catedrática de Derecho Civil & Javier Lete, Dr., Profesor Titular de Derecho Civil, University of Santiago de Compostela

5.13. Silvia Gaspar Lera, Profesora de Derecho Civil, Universidad de Zaragoza

5.14. Walter van Gerven, Professor em. University of Leuven and University of Maastricht

5.15. Alain Ghazi, Professeur à l' Université Panthéon-Assas, Paris II

5.16. Sir Roy Goode QC, Emeritus Professor of Law, University of Oxford

5.17. Dr. Aristide N. Hatzis, Lecturer, University of Athens

- 5.18. Iannarelli Antonio, Prof. Ordinario di diritto agrario, Università di Bari & Nicola Scannicchio, Prof. Straordinario di diritto privato, Università di Bari
- 5.19. Jane Kaufmann Winn, Professor, Dedman Law School, Southern Methodist University, Dallas
- 5.20. Christoph Krampe, Prof.Dr., Lehrstuhl für Zivilrecht, Antike Rechtsgeschichte und Roemisches Recht, Ruhr-Universität Bochum
- 5.21. Carlos Lalana del Castillo, Universidad de Zaragoza
- 5.22, 5.22a. Stefan Leible, Priv. Doz. Dr., Lehrstuhl für Zivilrecht, Universität Bayreuth
- 5.23. Carlos Martinez de Aguirre, Catedrático de Derecho Civil, Universidad de Zaragoza
- 5.24. Polish academics advising Polish government: Andrzej Calus, Marian Kepiński, Jerzy Rajski and Stanisław Sołtysiński
- 5.25. Project Group: Restatement of European Insurance Contract Law, Chairman Prof. Dr. Fritz Reichert-Facilides LL.M., Universität Innsbruck
- 5.26. Peter G. Stein, Queens' College, Cambridge, Emeritus Professor of Civil Law in the University of Cambridge and Vice-President of the Academy of European Private Lawyers
- 5.27. Anna Quinones Escámez, Pompeu Fabra University, Barcelona
- 5.28. Norbert Reich, Prof. Dr. Dr. h.c., Rector, Riga Graduate School of Law
- 5.29, 5.29a. Oliver Remien, Priv. Doz. Dr., Max-Planck-Institut Hamburg, Universität Würzburg
- 5.30. Pietro Rescigno, prof. ord. f. r. dell' Università 'La Sapienza' di Roma
- 5.31. Christoph U. Schmid, European University Institute, Florence
- 5.32. Martin Schmidt-Kessel, Universität Freiburg
- 5.33. Hans Schulte-Noelke, Professor, Dr.iur., Universität Bielefeld
- 5.34. Reiner Schulze, Professor, Dr. Dr. h.c. Centrum für Europäisches Privatrecht an der Universität Münster & Hans Schulte-Noelke, Professor, Dr., Universität Bielefeld
- 5.35. José Antonio Serrano García, Professor Titular de Derecho Civil en la Universidad de Zaragoza
- 5.36, 5.36a. Jan M. Smits, Professor of European Private Law, Maastricht University

- 5.37. Society of Public Teachers of Law of Great Britain and Northern Ireland, J.R. Bradgate, University of Sheffield
- 5.38. Hans-Jürgen Sonnenberger, Dr. Dr. h.c., Universität München
- 5.39. Ansgar Staudinger, Dr., Universität Münster
- 5.40. Stockholm School of Economics, Prof. Dr. iur. Christina Hultmark Ramberg
- 5.41. Study Group on a European Civil Code, Professor Dr. Dr. h.c. mult. Ole Lando & Christian v. Bar, Professor, Dr., Universität Osnabrück
- 5.42. Issac Tena Piazuelo, Professor de la Facultad de Derecho, Universidad de Zaragoza
- 5.43. Mitsutaka Tsunoda, Prof., University of the Ryukyus, Nishihara Okinawa, Japan
- 5.44, 5.44a. Thomas Wilhelmsson, Professor of Civil and Commercial Law, University of Helsinki, Member of the Lando Commission
- 5.45. Alexander Wittwer, European Institute of Public Administration, Luxembourg & Heinz Barta, Institut für Zivilrecht, Universität Innsbruck
- 5.46. Manfred Wolf, Prof. Dr., Johann Wolfgang Goethe-Universität, Frankfurt am Main
- 5.47. Zboralska Grazyna, LL.M. & Bernard Lukanko, LL.M., Europa-Universität Viadrina, Frankfurt/Oder
- 5.48. Professor Dr. M. W. Hesselink, Faculteit der Rechtsgeleerdheid, Amsterdam
- 5.49. University of Lund, Faculty of Law
- 5.50 Prof. Dr. LL.M. Josef Drexl, University of Munich
- 5.51 Geraint Howells, University of Sheffield
- 5.52 Professor Massimo Bianca
- 5.53 Prof. Ugo Mattei, University of Torino and UC Hastings
- 5.54 Prof. Hans-Peter Schwintowski
- 5.55 Prof. Dr. Roger Van den Bergh, University of Rotterdam
- 5.56 Hugh Collins, London School of Economics
- 5.57 Professors Grundman & Kerber, Universities of Erlangen-Nürnberg and Marburg

- 5.58 U. Drobnig, Hamburg
- 5.59 Tilleman & Du Laing, Leuven
- 5.60 Jean Sace, ULB
- 5.61 University of Stockholm, Faculty of Law
- 5.62 Prof. Jean-Baptiste Racine and DEA students of the University of Nice
- 5.63 Kim Østergaard, Research Fellow, Copenhagen Business School, Law Department
- 5.64 Prof. Dr. iur. Holger Fleischer, Dipl.Kfm., LL.M., Göttingen
- 5.65 Prof. Dr. iur. Peter Mankowski, Lehrstuhl für Bürgerliches Recht, Internationales Privat- und Prozessrecht und Rechtsvergleichung an der Universität Hamburg
- 5.66 Ulrich Magnus, University of Hamburg
- 5.67 Hans-W. Micklitz, Professor an der Universität Bamberg, Inhaber des Lehrstuhls für Privatrecht, insbes. Handels-, Gesellschafts- und Wirtschaftsrechts, Jean Monnet Lehrstuhl für Europäisches Wirtschaftsrecht
- 5.68 Stefano Troiano
- 5.69 Fernando Martínez Sanz
- 5.70 Professor Dr. Wulf-Henning Roth, LL.M. (Harvard), Direktor des Instituts für Internationales Privatrecht und Rechtsvergleichung und des Zentrums für Europäisches Wirtschaftsrecht der Universität Bonn

ANNEX II: STATISTICAL ANALYSIS OF CONTRIBUTIONS

| | Government | Business**** | Consumers' Organisations | Legal Practitioners | Academics** | Total |
|-----------------------------|------------|--------------|--------------------------|---------------------|-------------|------------|
| Austria | 1 | 1 | 0 | 3 | 0 | 5 |
| Belgium | 1* | 0 | 0 | 0 | 2 | 3* |
| Denmark | 1 | 0 | 0 | 0 | 2 | 3 |
| Finland | 2 | 0 | 0 | 0 | 1 | 3 |
| France | 1 | 2 | 1 | 1 | 2 | 7 |
| Germany | 2 | 8 | 0 | 7 | 22 | 39 |
| Greece | 0 | 0 | 0 | 0 | 2 | 2 |
| Ireland | 0 | 0 | 0 | 0 | 0 | 0 |
| Italy | 1 | 1 | 0 | 3 | 6 | 11 |
| Luxembourg | 0 | 0 | 0 | 0 | 0 | 0 |
| Netherlands | 0 | 0 | 0 | 0 | 5 | 5 |
| Portugal | 1 | 0 | 0 | 0 | 0 | 1 |
| Spain | 0 | 1 | 0 | 1 | 10 | 12 |
| Sweden | 1 | 2 | 0 | 1 | 4 | 8 |
| UK | 2 | 11 | 1 | 7*** | 5 | 26 |
| International, including EU | 0 | 18 | 2 | 4 | 4 | 28 |
| EU total | 13 | 44 | 4 | 27 | 65 | 153 |
| Non-EU | 2 | 0 | 0 | 0 | 5 | 7 |
| Total | 15 | 44 | 4 | 27 | 70 | 160 |

* The Belgian Government's contribution was a synthesis, put together by the Ministry of Justice, of the opinions of the Ministries of Finance and Economic Affairs, the Belgian Banking and Finance Commission, Euronext SA, Nasdaq Europe SA and the Belgian Consumers' Council. For the purposes of these statistics, this contribution is treated as a single governmental contribution. However, it is not a position of the Belgian government as such.

** The attribution of academic responses to nationalities was based, except in the case of international groups, on the location of the universities concerned. Where individuals from institutions in more than one country collaborated, the contribution is listed as international. Where two separate submissions were received from a single individual, these have been counted as one combined contribution. The submission of the Society of Public Teachers of Law of the United Kingdom and Ireland is treated as a UK submission.

*** The two submissions from the Law Society of England and Wales have been treated as one submission.

**** The response from the Swedish IT Law Observatory has been treated as a business response because most of the members of the observatory are representatives of IT business.