

ROADMAP

Title of the initiative: **Communication to EP and Council on the Common Frame of Reference**

Type of initiative (CWP/Catalogue/Comitology): CWP

Lead DG/contact person/details: JLS/E5

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Version No: 4

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative?

The Stockholm Programme invites the Commission to submit a proposal on a CFR in the area of European Contract Law in order to ensure greater coherence and quality in the law making process.

Furthermore, the Europe 2020 Strategy stresses the importance of European contract law in "making it easier and less costly for businesses and consumers to conclude contracts across borders, notably by offering harmonised solutions for consumer contracts, EU model contract clauses and by making progress towards an optional European Contract Law".

The European Parliament has supported the Commission's process of developing a CFR in a series of resolutions. In its most recent resolution of 3 September 2008, it also states that the Commission should bear in mind that the CFR could result in an optional instrument.

The Council has also supported the Commission's process of developing a CFR, notably in a report adopted in June 2009.

(ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

Following a request of the European Council of Tampere in October 1999, the Commission elaborated a Communication in 2001 (COM (2001) 398 final) with the purpose of consulting on actions in the area of European contract law. In 2003, the Commission issued an Action Plan (COM (2003) 68 final), which proposed to improve the quality and coherence of EU contract law legislation through the establishment of a Common Frame of Reference (CFR) in the area of European Contract Law. Its objective was to provide the Community legislator with a non-binding "toolbox" to be used when revising existing Union legislation and when preparing new legislation in the area of contract law.

The work on the CFR could result in an optional instrument for business to consumer and/or business to business contracts. Any optional instrument will coexist alongside the Union's 27 national contract laws. However, once chosen by the parties, it will bind the parties to the contract and the courts called to enforce the contract. Such an instrument for business to consumer contracts might complement the proposed Directive on Consumer Rights (CRD) by giving parties the opportunity to choose a comprehensive, self-standing set of contract law rules applicable everywhere in the EU.

What are the main problems identified?

The fragmented national contract laws constitute deterrents for the European economy. The situation is particularly detrimental in the retail internal market where a trader wishing to sell cross-border into another Member State will have to make sure that he is respecting the level of consumer protection in the country(ies) of destination. This creates legal uncertainty and inherent legal and other compliance costs for businesses. These costs reduce the incentive for businesses to sell cross-border, particularly to consumers in small Member States. Businesses either refuse to

sell cross-border or pass these costs on to consumers in the form of higher prices. In both cases consumer welfare is below the optimum level.

Who is affected?

The problems described above affect all internal market participants, in particular traders and consumers (potentially) engaged in cross-border transactions.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

The legal fragmentation problem cannot be solved by the Member States individually since it is the different domestic laws of the Member States that are at the root of the problem. Action by Member States alone in an uncoordinated manner would not allow the internal market to deliver results both for business, in particular SMEs, and consumers. Indeed, such an uncoordinated action would not make proper use of the potential of the internal market.

B. Objectives of EU initiative

What are the main policy objectives?

The Communication will move forward the work on European Contract Law by setting the path for future activities.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

The development of European Contract Law, including consumer law, is the logical follow-up of the Commission Action Plan for a more coherent European Contract Law of 2003, the Stockholm Programme.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

No clear policy options at this stage. Any future policy initiative(s) in this field should address all the barriers created by diverging national contract laws thereby truly allowing businesses to operate on the basis of a single set of contract terms and a uniform commercial policy across the EU.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The possible scenarios might have an impact on actions taken/planned in all Commission departments which are related to contract law and/or consumer issues, in particular DGs MARKT, ENTR, MOVE, SANCO, COMP, EMPL.

Explain how the options respect the proportionality principle

The principle of proportionality is respected. The possible scenarios of Commission action are the proposal of a soft law instrument or that of an optional instrument which parties could choose to apply to their contract as the applicable law. Both options do not modify the legislation of the Member States and leave the greatest freedom to the Member States and individual parties.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

No impact assessment is planned because the communication will merely outline options for the Commission's future course of action, and will not commit it. Any follow-up measures likely to have significant impacts will be accompanied by a separate Impact Assessment.

Depending on the decision taken by the Commission, a CFR could serve as a better regulation toolbox for the European legislator. The toolbox could considerably contribute to the coherence and quality of the European legislation in the area of contract law and simplify the legislative process in these areas. If the Commission opts for a CFR as an optional instrument, it would have the positive effect of facilitating cross-border transactions and considerably decreasing administrative burdens, especially for traders such as SMEs.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

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E. Planning of further impact assessment work

When will the impact assessment work start?

Because the communication will merely outline options for the Commission's future course of action, no impact assessment is planned.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when? (v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The work on the Common Frame of Reference in the European Contract Law started in 1999, following a request of the European Council of Tampere. The Commission elaborated a Communication in 2001 (COM (2001) 398 final) with the purpose of consulting on actions in the area of European contract law. In 2003, the Commission issued an Action Plan (COM (2003) 68 final), which proposed to improve the quality and coherence of EU contract law legislation through the establishment of a Common Frame of Reference (CFR) in the area of European Contract Law. Its objective was to provide the Community legislator with a non-binding "toolbox" to be used when revising existing Union legislation and when preparing new legislation in the area of contract law.

Which stakeholders & experts have been/will be consulted, how and at what stage?

The Commission's work has been informed by academic research financed through a research grant within the 6th framework programme. The end-result of the research carried out by the network of international researchers was an academic Draft Common Frame of Reference (DCFR). In the course of the work, the Commission has held a number of workshops together with the researchers and the relevant business and consumer stakeholders.

Any further work on the CFR will build upon the existing knowledge base including the results of the 2001 public consultation, stakeholders' workshops, academic input and numerous bilateral contacts with stakeholders and experts held by the Commission so far.

In April 2010, the Commission will set up an expert group comprising academic researchers and

stakeholders, which will assist the Commission in its further work on the CFR.