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THE EUROPEAN UNION**

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**NOTE**

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from: Presidency  
to: Committee on Civil Law Matters (Contract Law)  
Subject: Questionnaire on the setting up of a Common Frame of Reference for European contract law

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1. Delegations will find attached a questionnaire on the setting up of a Common Frame of Reference for European contract law.
2. Delegations are invited to submit the replies to this questionnaire to the Secretariat General of the Council before 27 January 2009 so that the Presidency can prepare a document to be discussed at the meeting on 19 February 2009.

## Questionnaire on the future Common Frame of Reference for European Contract Law

### BACKGROUND

In April 2007 the JHA Council decided to mandate the Committee on Civil Law Matters with defining a Council position on the fundamental aspects of a possible future common frame of reference (hereinafter "CFR")<sup>1</sup>. In accordance with this mandate the JHA Council on 18 April 2008 endorsed a position on four fundamental aspects of the CFR (that is, purpose, scope, content and legal effect)<sup>2</sup>. As a follow-up to this position the JHA Council on 28 November 2008 adopted a set of conclusions setting out some basic guidelines for the future work (that is, guidelines on structure, scope, respect for diversity and involvement of the Council, the European Parliament and the Commission)<sup>3</sup>. As well the position as the conclusions stated that the Committee on Civil Law Matters would follow the Commission's work on the CFR on a regular basis.

In order to comply with this obligation to follow the Commission's work on a regular basis the Czech Presidency would like to invite delegations to comment on a number of aspects of the future CFR on the basis of the questions listed below.

### EXPLANATORY COMMENTS

1. Considering that the latest Council conclusions clearly spelled out that the future CFR should include (a) general principles, (b) definitions and (c) model rules as three, intimately linked parts delegations are invited to reflect on these three parts.

(a) As far as the general principles are concerned delegations should indicate which general principles they think should feature in the future CFR drawing on their national law, on the case law of the Court of Justice, on all available research material on the subject and of course on the DCFR.

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<sup>1</sup> 8548/07 JUSTCIV 90.

<sup>2</sup> 8286/08 JUSTCIV 68 CONSOM 39.

<sup>3</sup> 15306/08 JUSTCIV 236 CONSOM 167.

(b) With regard to the definitions delegations should take a closer look at Annex I of the DCFR which contains a series of definitions and examine whether these definitions cover all the needs for definitions in the future CFR or whether they need to be expanded upon.

(c) As for the model rules delegations should consider how to draft such rules in a sufficiently broad way to make them adaptable to different situations and make them reflect adequately the needs which the future CFR is expected to meet. It seems clear that the current model rules of the DCFR do not correspond to the Council conclusion call for a CFR requirement which is "clear, concise and easy to understand" and that a simplification is called for by way of a reduction of the number of rules.

2. On 8 October 2008 the Commission presented a proposal for a Directive on consumer rights<sup>4</sup>. The proposal aims at revising four Directives relating to consumer contracts (Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises, Directive 93/13/EEC on unfair terms in consumer contracts, Directive 97/7/EC on the protection of consumers in respect of distance contracts and Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees) merging them into one single horizontal instrument based on full harmonisation which purports to regulate common aspects "in a systematic fashion, simplifying and updating the existing rules, removing inconsistencies and closing gaps". The objectives of the proposed Directive are in many aspects similar to those attributed to the future CFR. Against this background it seems appropriate that delegations discuss some aspects of the relationship between the future CFR and the future Directive on consumer rights.

3. Finally delegations are invited to indicate whether they consider it appropriate at this stage to start discussing which legal form should be chosen for the future CFR, even though such a discussion may not be finished during the Czech Presidency and may continue during the following Presidencies. Those delegations which are in favour of starting such a discussion are invited to indicate which instrument(s) could be acceptable to them.

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<sup>4</sup> Proposal for a Directive of the European Parliament and of the Council on consumer rights (COM(2008) 614 final) (14183/08 JUSTCIV 220).

## QUESTIONS

- (1) Please list the general principles which in your opinion should imperatively be included and defined in the future CFR ?
- (2)
  - (a) Do you think that the definitions included in Annex I of the DCFR are all relevant ?
  - (b) Should further definitions be added? If yes, which ones ?
- (3) In the light of the Council conclusions from November 2008 calling for a CFR which should be clear, concise and easy to understand, do you think:
  - (a) that the model rules should be limited in number?
  - (b) that they should be of a general nature so as to be applicable to all contracts (for instance a general model rule on offer and acceptance and on grounds of invalidity)?
  - (c) that they should be drafted in a sufficiently broad way in order to be easily adaptable to all contractual situations?
  - (d) that, where appropriate, they should provide alternative solutions?
- (4) Considering the consensus on the inclusion of consumer contracts in the future CFR
  - (a) how do you think that the provisions of the future Directive on consumer rights should be reflected in the future CFR?
  - (b) to which extent could these provisions be taken into account in the general principles, the definitions and/or the model rules of the future CFR?
- (5) Do you consider it appropriate, at this stage, to start discussing what kind of instrument the future CFR should be? If yes, which instrument(s) could be envisaged in your opinion?
- (6) Do you have any further comments or suggestions, especially with regard to other aspects of the future CFR which could be discussed in the Committee on Civil Law Matters (Contract Law) at this stage?