Basic information

2003/2093(INI) INI - Own-initiative procedure	Procedure completed
European contract law: action plan **Subject** 4.60.06 Consumers' economic and legal interests 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs and Internal Market	LEHNE Klaus-Heiner (PPE-DE)	18/03/2003

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2525	2003-09-22
Competitiveness (Internal Market, Industry, Research and Space)	2510	2003-05-19

European Commission

Commission DG	Commissioner
Health and Food Safety	

Key events

Date	Event	Reference	Summary
12/02/2003	Non-legislative basic document published	COM(2003)0068	Summary
15/05/2003	Committee referral announced in Parliament		
19/05/2003	Debate in Council		
08/07/2003	Vote in committee		
08/07/2003	Committee report tabled for plenary	A5-0256/2003	
02/09/2003	Decision by Parliament	T5-0355/2003	Summary
02/09/2003	End of procedure in Parliament		

22/09/2003	Resolution/conclusions adopted by Council		

Technical information	
Procedure reference	2003/2093(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/19524

European contract law: action plan

2003/2093(INI) - 23/09/2005 - Follow-up document

This report summarises the progress of the European Contract Law (ECL) initiative and the review of the acquis since the Commission's Communication on European Contract Law and the revision of the acquis of 2004, and outlines main policy issues.

Firstly, the report notes that the network of stakeholder experts on the Common Frame of Reference

("CFR-net") was established. Its participation ensures that the research takes into account the practical context in which the rules are to be applied and the needs of users. As indicated in the 2004 Communication, the relevant findings (e.g. definitions, model rules) in the CFR preparation will be tested in the field of consumer protection, in the context of the review of the consumer acquis.

The Commission discusses procedural issues, in particular enhancing the effectiveness of the CFR-net input.

Regarding substance, the Commission underlined the following, in the light of discussions with stakeholders and Member States:

-The Commission will feed issues arising during the diagnostic phase of the consumer acquis review into the CFR process.

-Definitions of abstract legal terms are indispensable for the CFR preparation and need to be included in the drafts. Where sector-specific differentiation is necessary this should be highlighted and explained. Definitions have to be closely coordinated with the elaborated rules.

-The overall coherence of a draft CFR is crucial: The interdependence between general and specific contract law needs to be clarified. For horizontal issues, coherent solutions need to be achieved. The scope of the rules should be clarified.

-Policy decisions should be clearly identified and explained, in particular in the researchers' outline and in the comments linked to the draft rules.

-The principle of freedom of contract needs to be emphasised as crucial for the process. Should rules be mandatory, this should be clarified and justified in the drafts. Appropriate differentiation between B2B and B2C contracts is paramount. Consumer law adjusts structural imbalances between a consumer and a trader; therefore policy decisions might be taken differently in a B2C and in a B2B context. In order to allow sufficiently differentiated solutions, a case by case approach that identifies where specific consumer rules are necessary and that, for these cases, suggests deviations from the general rules, appears appropriate.

The Commission will invite researchers to consider these issues when preparing future or revised drafts.

On the matter of reviewing the acquis, the Commission has launched the review to simplify and complete the regulatory framework. The review process draws on the example of the consumer acquis because of its relevance to contract law. This report aims at outlining in more detail this process and follows again an example based approach. Progress on the review is described with an emphasis on process. Although it is still too early to draw conclusions on the individual directives, the work undertaken so far on the Unit Pricing, Injunctions, Timeshare and Distance Selling Directive provides preliminary findings, which are described in the report. The Commission also describes possible options, if it were to find evidence that the acquis needs to be revised or completed.

In the 2003 Action Plan, the Commission agreed to examine whether it could promote the development by private parties of EU-wide Standard Terms and Conditions ("STCs") in particular by hosting a website on which market participants could exchange relevant information. After careful examination, the Commission considers that it is not appropriate to host such a website.

Finally, in the area of financial services, the Commission has taken note of the debate on a "26th regime", leaving the 25 sets of rules untouched. The Commission responds to the call to explore such 26th regimes further by launching a feasibility study, e.g. in the fields of simple (term-life) insurance and savings products.

European contract law: action plan

2003/2093(INI) - 12/02/2003 - Non-legislative basic document

PURPOSE : to present an Action Plan for a more coherent European contract law. CONTENT : the Action Plan presents the Commission's conclusions on the consultative process launched in its Communication dated July 2001 on European contract law. The Plan confirms that there is no need to abandon the current sector-specific approach. It also summarises the problems identified during the consultation process, which concern the need for uniform application for EC contract law as well as the smooth functioning of the internal market. This Action Plan suggests a mix of non-regulatory and regulatory measures in order to solve those problems. In addition to appropriate sector-specific interventions, this includes measures: - to increase the coherence of the EC acquis in the area of contract law, - to promote the elaboration of EU-wide general contract terms, and - to examine further whether problems in the European contract law area may require non-sector-specific solutions such as an optional instrument. A common frame of reference, establishing common principles and terminology in the area of European contract law is discussed in the paper. The Commission sees this common frame of reference as an important step towards the improvement of the contract law acquis. It will be a publicly accessible document that should meet the needs and expectations of the economic operators in the internal market. If the common frame of reference is widely accepted as the model in European contract law which best corresponds to the needs of the economic operators, it may be taken as a point of reference by national legislatures inside the EU and possibly in appropriate third countries. Thus the frame of reference might diminish divergences between contract laws in the EU. The objectives of the common frame of reference are threefold: - the Commission may use it in the area of contract law when the existing acquis is reviewed and new measures proposed. It should provide for best solutions in terms of common terminology and rules. These include the definition of fundamental concepts such as "contract" or "damage" and of the rules which apply in the case of the non-performance of contracts; - it could become an instrument in achieving a higher degree of convergence between the contract laws of the EU Member States and possibly appropriate third countries; - the Commission will base its reflections on whether non-sector-specific measures such as an optional instrument may be required to solve problems in the area of European contract law on the common frame of reference. In order to promote the elaboration by interested parties of EU-wide general contract terms, the Commission intends to facilitate the exchange of information on existing and planned initiatives both at a European level and within the Member States. Furthermore, the Commission intends to publish guidelines, which will clarify to interested parties the limits that apply. Finally, the Commission expects comments as to whether some problems may require non-sector-specific solutions, such as anoptional instrument in the area of European contract law. The Commission intends to launch a reflection on the opportuneness, the possible legal form, the contents and the legal basis for possible solutions.

European contract law: action plan

2003/2093(INI) - 11/10/2004

This Communication sets out the Commission's follow-up to the 2003 Action Plan, in the light of the reactions from EU institutions, Member States and stakeholders. It outlines how the Common Frame of Reference (CFR) will be developed to improve the coherence of the existing and future acquis, and sets out specific plans for the parts of the acquis nrelevant to consumer protection, in line with the Consumer Policy Strategy 2002-2006. It also describes planned activities concerning the promotion of EU-wide standard contract terms and intends to continue the reflection on the appropriateness of an optional instrument.

Contributors to the Action Plan supported the need to improve the quality and consistency of the acquis in the area of contract law and emphasised that the CFR could contribute to that goal. In the light of this significant support the Commission will pursue the elaboration of the CFR. The CFR will provide clear definitions of legal terms, fundamental principles and coherent model rules of contract law, drawing on the EC acquis and on best solutions found in Member States' legal orders.

With regard to possible uses, the Commission states the following :

- the Commission will use the CFR as a toolbox, where appropriate, when presenting proposals to improve the quality and coherence of the existing acquisand future legal instruments in the area of contract law. At the same time, it will serve the purpose of simplifying the acquis;

- national legislators could use the CFR when transposing EU directives in the area of contract law into national legislation;

- another role, suggested by the European Parliament, is the possible use of the CFR in arbitration;

- Parliament indicated that the CFR could be developed into a body of standard contract terms to be made available to legal practitioners;

- the Commission is considering the suggestion that it could integrate the CFR in the contracts concluded with its contractors;

- finally the CFR, based on the EC acquis and on best solutions identified as common to Member States contract laws, could inspire the European Court of Justice when interpreting the acquison contract law.

In order to ensure that the CFR is of high quality the Commission will finance three years of research under the Sixth Framework Programme for research and technological development1. Proposals for research were evaluated and work is expected to begin soon.

The structure envisaged for the CFR (an example for a possible structure is provided in Annex I) is:

- it would set out common fundamental principles of contract law, including guidance on when exceptions to such fundamental principles could be required;

- secondly, those fundamental principles would be supported by definitions of key concepts;

- these principles and definitions would be completed by model rules, forming the bulk of the CFR.

Two types of contracts which were mentioned specifically were consumer and insurance contracts. The Commission expects the preparation of the CFR to pay specific attention to these two areas. Other areas mentioned specifically which the CFR could cover were contracts of sale and services and clauses relating to the retention of title and the transfer of title of goods.

The adoption of the CFR by the Commission is foreseen for 2009.

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2003/2093(INI) - 02/09/2003 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on its own-initiative report drafted by Klaus- Heiner LEHNE (EPP-ED, Germany). It welcomed the fact that, in its 'common frame of reference', the Action Plan initiates a common terminology for particular fundamental concepts and typical problems. The Commission was asked to encourage the development of the 'common frame of reference' as a priority and to tighten up the provisional timetable to 2008-9. The Commission should complete the 'common frame of reference' by the end of 2006. Parliament expressed its regret that the Commission did not act on Parliament's call to set up, by 2004, a data bank of national legal provisions and case law in the field of contract law. Such a data bank is necessary in order to begin work on the 'common frame of reference.' The launching of a website is not an appropriate tool for this. An additional point made was that users of the law such as judges, lawyers, notaries, undertakings and consumers should be involved in the process of elaborating the 'common frame of reference'. The Commission's earlier efforts to consult civil society, in particular the users of law and interested sectors, had been inadequate, particularly since the contributions submitted in the context of this consultation were not representative of all Member States. Parliament also regretted the fact that the development of e-commerce had not been sufficiently reflected in the Action Plan. On the question of optional instruments, Parliament stated that there must be early action in certain sectors, such as consumer transactions and insurance. Substantial benefits could accrue to the internal market as well as increase intra-Community transactions. There should be, therefore, a body of rules based on the 'common frame of reference'. Parties would initially have the option of using it voluntarily, and it could later become binding. Finally, Parliament called for the practical application of the 'common frame of reference' in conciliation proceedings, either through the existing 'European Extra-Judicial Network' or through a new European conciliation system in which only the 'common frame of reference' would be used.