

Procedure file

Basic information		
INI - Own-initiative procedure	2003/2093(INI)	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		18/03/2003
		PPE-DE LEHNE Klaus-Heiner	
	Committee for opinion	Rapporteur for opinion	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		
Council of the European Union	Council configuration	Meeting	Date
	Competitiveness (Internal Market, Industry, Research and Space)	2525	22/09/2003
	Competitiveness (Internal Market, Industry, Research and Space)	2510	19/05/2003
European Commission	Commission DG Health and Food Safety	Commissioner	

Key events			
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	2510	
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 54
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/19524

Documentation gateway

Non-legislative basic document		COM(2003)0068	12/02/2003	EC	Summary
Committee report tabled for plenary, single reading		A5-0256/2003	08/07/2003	EP	
Text adopted by Parliament, single reading		T5-0355/2003 OJ C 076 25.03.2004, p. 0038-0095 E	02/09/2003	EP	Summary
Non-legislative basic document		COM(2004)0651	11/10/2004	EC	Summary
Follow-up document		COM(2005)0456	23/09/2005	EC	Summary

European contract law: action plan

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 an optional 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

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.

European contract law: action plan

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.