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CEA VIEWS ON THE COMMON FRAME OF REFERENCE (CFR)

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1. Introduction

- 1.1. The Commission considered in its communication – Action Plan “*A more coherent European contract law*” of 12 February 2003 (COM[2003] 68 final) the drafting of a Common Frame of Reference (CFR), establishing common principles and terminology in the field of European contract law.
- 1.2. The European Parliament as well as the EU Council adopted resolutions supporting the Action Plan but at the same time stressing the necessity to involve all interested parties in the elaboration of the CFR.
- 1.3. The European Economic and Social Committee released an opinion on the European Insurance Contract recommending that the Commission take initiatives in that specific field and to submit them for public discussion.¹

1) European Economic and Social Committee, Opinion on European Insurance Contract, 15 December 2004 (INT/202).

- 1.4. As already indicated in its comments sent to the Commission on 4 June 2003² and although European general or insurance contract law is **not a front-line priority for the insurance sector**, CEA supports the drafting of a CFR insofar as it could, eventually, improve the quality of the *acquis communautaire* in the field of contract law and reinforce convergence between national contract law in the European Union.³
- 1.5. CEA considers that simplifying the regulatory environment as envisaged by the Commission and improving the quality and coherence of the *acquis communautaire* can be useful both for undertakings and for consumers and will help to lead toward a genuine single retail insurance market.

2. Method of work: consultation and coordination

- 2.1. The setting up of the stakeholder expert network on the CFR (CFR-net) translates into practice DG SanCo's intention to proceed in the framework of the preparation of the CFR with the consultation of all interested parties including the European insurance industry. CEA welcomes the opportunity to present the views of the insurance sector as well as to give its practical input on this project
- 2.2. Such a network will mainly allow DG SanCo to benefit from the contribution of practitioners with specific experience, in particular of insurance. It should also offer an opportunity to associate with the process of setting up the CFR DG MARKET's Insurance Unit whose unique competence in insurance within the Commission could be exploited advantageously.
- 2.3. CEA considers it to be of the utmost importance to ensure full coordination of this initiative with the projects of the different Commission DGs. To this end, it seems natural that for all activities with a potential impact on insurance such a role should be given to the DG MARKET Insurance Unit.

3. Future outcome of the CFR

- 3.1. As stated above, the European insurance industry recognises that the CFR could help to increase the coherence of the *acquis communautaire*, and to promote convergence between national contract laws in the EU.
- 3.2. However CEA underlines the fact that its support for the establishment of a CFR by DG SanCo is without prejudice to its position, either on a future Commission initiative for the development of a "26th regime", or on the idea of harmonising insurance contract law. In this respect, CEA understands the view

²) CEA comments on the European Commission's Communication on a more coherent European contract law – an action plan, OJ (2003/C 63/01).

³) Although the exercise of preparing a CFR may be a difficult one for Member States applying Common Law.

of the Commission to be that, although the content of any future optional instrument could be based in particular on the CFR, the latter's adoption will not necessarily lead to the creation of such an optional instrument.

- 3.3. From a general point of view, CEA will be particularly attentive to ensuring that one potential consequence of the CFR is not additional costs for the insurance industry without added-value for consumers. Hence, CEA stresses that financial costs and the administrative burden which will possibly result from proposals for a CFR to be submitted in 2007, constitute a criterion of the practicability test like feasibility, efficiency and utility.

4. Problems the CFR should solve

➤ Complexity of the *acquis communautaire*

- 4.1. Concerning the so-called "harmonised" *acquis communautaire*, the number and complexity of provisions contained in the various texts covered by contract law in the insurance sector⁴ pose real problems. Several provisions relating notably to matters concerning the agreement, the insurer and the exercise of rights of appeal are repeated unnecessarily in each applicable text.
- 4.2. As far as information (contractual and pre-contractual) is concerned, for instance, the requirements imposed on operators on the insurance market with a view to protecting consumers widely lack homogeneity. Insurance companies and insurance agents are unable to determine precisely what information they need to impart. On the other hand, policyholders, buried under a pile of facts and figures, do not have the means at their disposal to make an appropriate assessment of the products on offer and to make their choice in full knowledge of the facts. The attached tables illustrate this situation (*annex 1 and annex 2*).
- 4.3. CEA therefore recognises that the *acquis communautaire* in the field of insurance contract law is currently rather cumbersome and difficult to implement, and would welcome work in the CFR-Net on pre-contractual information.

➤ Diversity of national contract law

- 4.4. Despite the initiatives taken at community level, components of contract law remain very different from country to country. This is visible at the pre-contractual information stage, the level of the formation of the contract (contractual information), for the execution of the contract (withdrawal periods etc.) as well as for the methods of cancelling the contract.⁵

⁴) See directives on (life and non-life) insurance, insurance intermediation, electronic commerce and distance marketing operations of financial services.

⁵) See CEA Policy Report 2004, *The European Retail Insurance Market(s)*, (page 15).

- 4.5. However it must be taken into account that language, local cultural and social factors and regulatory customs and practices (including obstacles arising from contract, social and tax regulations) all lead to a need for a local presence and are the main obstacles to the development of cross-border transactions in the insurance sector.
- 4.6. The diversity of national regulations governing insurance contracts concluded with consumers (natural persons acting for purposes outside their professional or commercial activity) requires for cross-border business costly adaptation of products to domestic legal requirements. However, this represents just an addition to the barriers outlined in paragraph 4.5.
- 4.7. In conclusion, insurance can essentially be summed up as the sale of a contract and not a product or a material service. The number and deep-rooted nature of the barriers to the cross-border sale of insurance clearly represent a block on the integration of the retail insurance market. However, there is no rapid and easy solution to this.

5. Possible content of the CFR

- 5.1. CEA considers it advisable to start the work within the CFR-net with the general principles of contract law: legal responsibility and capacity to act, the definition of property, rights, legal competence, the requirements and effectiveness of declarations of intent, conditions, time stipulations, consent and approval, representation, time-limits, deadlines and the prescription period.
- 5.2. Amongst the concepts likely to be covered by the work on definition, the concept of consumer, the various interpretations of which are a source of dispute, could usefully figure in the framework of the CFR.
- 5.3. In CEA's opinion, the CFR scope should be extended to B2B, B2C and C2C contracts and wherever possible and appropriate, envisage the same rules for all types of contracts provided that B2B is still able to come under a large degree of contractual freedom.
- 5.4. Only after the ground rules for general contract law have been established could a more specific approach be envisaged, for example, if that seems appropriate then, with insurance contract law.⁶ In any event, the work of the CFR should be restricted to the legal envelope of the contract, and should not consider the obligations contained in the contract.

⁶) In this connection, CEA regrets that the planning of workshops had not been fixed in line with this logic.

- 5.5. In such a case, the special characteristics of the insurance contract should then be taken into account through their treatment in special contract law as a separate type of contract.
- 5.6. CEA would then encourage the simplification of insurance contract law via the rationalisation of the hotchpotch of pre-contractual information due to the policyholder, by replacing dissimilar terminology in the directives by common terminology (including, in particular, the concept of consumer).⁷

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⁷) See CEA Policy Report 2004, *Prospects For Simplifying European Insurance Legislation* (pp.18 and 19, also annex, page 1).