

Newsletter n° 12/2010

Conference on a Common Frame of Reference for European Contract law

Agenda of the Colloquium (Dublin, 19 March 2010)

Editorial

President Melchior

In Dublin, on 19 March next, we will appoint the new President of the Network. In this, my last editorial, I would like to express my deep gratitude to all my colleagues for their help during my term of office. I am particularly pleased that a larger number of colleagues have participated in our work, example of which, in this issue of our Newsletter, is the report on recent developments in European contract law prepared for us by First President Londers. Six years after its creation, our Network, by enabling us to get to know one another, has demonstrated its usefulness as a forum for dialogue and exchanges of views and has become indispensable to us for working together. We have held a discussion on the strategy of the Network as regards our relations with the European institutions and with the other main networks of judges as well as on our ways of co-operating with one other and how this could be improved. It will now be for you to discuss these matters further. I look forward to seeing you in Dublin at our Colloquium on the practical aspects of the independence of justice and, on behalf of us all, wish to thank Chief Justice Murray for being our host.

CONFERENCE ON A COMMON FRAME OF REFERENCE FOR EUROPEAN CONTRACT LAW

STOCKHOLM 22-23 OCTOBER 2009

In connection with the Swedish presidency of the European Union, the Swedish Minister of Justice organised a conference entitled 'A Common Frame of Reference for European Contract Law' which was held in Stockholm from 22 to 23 October 2009.

The Swedish Minister of Justice, Mr Magnus G. Graner, kindly invited a delegation from the Network of the Presidents of the Supreme Judicial Courts of the European Union to participate in the proceedings of that Conference.

In the conference hall, in front of the rostrum, somewhat like a tabernacle, the complete edition in six weighty tomes of the 'Principles, Definitions and Model Rules of European Private Law' which had just been published by 'Sellier European Law publishers' in Munich (Germany), was on display. This gigantic work, running to over six thousand pages, contains not only the text of the draft of a common frame of reference for European contract law (Draft Common Frame of Reference or DCFR) drawn up by the 'Study Group on a European Civil Code' and the 'Research group on EC Private Law', usually referred to as the 'Acquis Group', but also all the notes and commentaries written by the various participants in the above-mentioned working groups.

Publication of this report is without doubt a major step in the development of a future common frame of reference for a European contract law, but is not an end in itself.

The aim of the Conference was therefore both to take stock of the draft and also to examine the future and determine the options as regards the scope and purpose of this common frame of reference.

One thing was clear from the very outset of the Conference proceedings: the European judiciary was very little involved in preparing this common frame. Only a handful of judges had been consulted on specific topics by the above-mentioned working groups consisting mainly of academics. It strikes us as obvious that judges could have made a decisive contribution to the drafting of this common frame of reference on the basis of their experience and day-to-day practice of contract law. For judges are regularly called upon, especially in transboundary disputes, to reconcile sometimes very divergent views of contractual obligations. Also, they are well placed to observe that the classical tools, which essentially come down to us from the Roman tradition, no longer suffice to deal with new forms of contractual relations and the problems raised by relations between the parties to a contract as well as between third parties.

There can only be one conclusion: in future, our Network should present itself as an indispensable intermediary when Europe-wide projects such as the DCFR arise.

The statements by the various speakers in turn and the very many comments from the floor during the discussions indicate that opinions on the purpose of the common frame of reference, on its content, scope and the legal effects associated with it, are highly divergent, so much so that it would be ill-advised to develop a common view on the future of the CFR.

It seems to be accepted that the CFR can in no event be considered as the embryo of a European civil code and therefore of a harmonisation of the contract law of Member States.

On the other hand, it seems that the bulk of the participants agreed that the CFR should be regarded as a 'tool kit', from which national and Community legislators could draw inspiration in order to guarantee greater consistency and to improve the quality of legislations in the area of contract law.

Others considered that the CFR might also constitute a set of standard clauses and conditions for contract law which the parties to a contract could choose as a law applicable to their particular contract.

This shows that the CFR will probably not develop as a set of binding provisions, but rather of definitions, of general principles and standard rules relating to contract law. As one participant summed it up: 'no rules, but definitions and fundamental principles'.

There was the same lack of a common view of the topics covered by the CFR. Some wished to limit the CFR to consumer contract law, others wished not only to include general contract law in it, including consumer contracts, but also to extend the CFR to include special contracts and tort law.

The Conference held in Stockholm provided an opportunity to put forward and compare the different opinions and views, which will help to clarify future discussions. However, there is no denying that a great deal still remains to be done. Considering the major importance of this project, discussions must continue. Let us hope that judges will be fully involved. It is a project that the Network must closely follow.

Let me conclude with some personal remarks.

The Common Frame of Reference, can, as stated above, serve as a useful instrument of legislation. It could also be used as an instrument of jurisprudence. To the extent that the general principles, definitions and standard rules which the CFR contains are derived from Community legislation, from national legislations and from the great legal traditions, they may, particularly in the field of commercial contracts, serve as 'guidelines' which the judge may use to interpret a contract or to make good its shortcomings. The Belgian Cour de cassation, in a recent Judgment (Cass., 19 June 2009,

in the case concerning Scafom International v. Lorraine Tubes, No. C.07.0289.N, published at www.juridat.be [1]. The French translation of this Judgment delivered in Dutch is being prepared), recognised that the judge had this right by reference to the UNIDROIT principles.

Ghislain Londers

First President of the Belgian Cour de cassation

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?Practical Aspects of Independence of Justice?

Welcome by The Hon. Mr. Justice John L. Murray, Chief Justice of Ireland

Session I: ?Protection of Independence?

Chair: Chief Justice Vincent A. De Gaetano, President of the Constitutional Court and of the Court of Appeal, Malta

Introductory Report:

Prof. Dr. Klaus Tolksdorf, President of the Bundesgerichtshof (Germany)

Session II: ?Working Conditions?

Chair: Mr Geert Corstens, President of the Supreme Court of the Netherlands

Introductory Report:

Mr. Ghislain Londers, First President of the Cour de cassation (Belgium)

Session III: ?Relationship with Outside Partners?

Chair: Mr Branko Hrvatin, President of the Supreme Court of Croatia

Introductory Report:

Mr. António Silva Henriques Gaspar, Vice-President of the Supreme Court of Justice of Portugal

Attached file:

[Newsletter n° 12/2010.pdf](https://www.network-presidents.eu/sites/default/files/Newsletter_February12%5B1%5D.pdf)^[2]

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