

The Results of the JHA Council (4-5 June 2009): Bilateral Agreements with Third Countries in PIL matters and Common Frame of Reference (CFR)

On 4 and 5 June the Justice and Home Affairs Council held its 2946th session in Luxembourg, the last one under the Czech Presidency. Among the “Justice” issues, discussed on Friday 5th, two main points are of particular importance as regards the development of European private law and private international law. Here’s an excerpt of the press release (doc. n. 10551/09):

Civil Law: Bilateral agreements with Third Countries

The Council agreed on procedures for the negotiation and conclusion of bilateral agreements between member states and third countries concerning:

- *jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance; and*
- *applicable law in contractual and non-contractual obligations.*

The aim of the agreed regulations is to authorise a member state to amend an existing agreement or to negotiate and conclude a new agreement with a third country in certain areas of civil justice through a functional and simplified arrangement, while ensuring that the “acquis communautaire” will be safeguarded.

[The initial Commission’s Proposals can be found in documents COM(2008) 893 fin. of 19 December 2008 (contractual and non-contractual obligations, subject to the codecision procedure) and COM(2008) 894 fin. of 19 December 2008 (family matters, subject to the consultation procedure). The latest available texts of the proposed regulations are those resulting from the Parliament’s legislative resolutions at first reading, approved on 7 May 2009 (EP doc. n.

T6-0380(2009) on contractual and non-contractual obligations, and EP doc. n. T6-0383(2009) on family matters): the amendments voted by the EP were agreed with the Council and the Commission, with a view to reaching an adoption of the dossiers at first reading (see Council doc. n. 9338/09 of 13 May 2009, and further statements by the Council and the Commission in doc. n. 10250/09 of 26 May 2009).

Ireland and the United Kingdom have formally notified their opt-in (see doc. n. 8529/09 of 7 April 2009 and doc. n. 8728/09 of 16 April 2009).

The regulations will be formally adopted by the Council in a forthcoming session. Further information can be found in press release n. 10697/09, currently available only in French.]

Common Frame of Reference for European Contract Law

The Council adopted the following guidelines:

I. Introduction

1. In April 2007, the JHA Council decided to mandate the Committee on Civil Law Matters to define a Council position on fundamental aspects of a future common frame of reference [doc. n. 8548/07 of 17 April 2007].

2. In accordance with that mandate, the JHA Council on 18 April 2008 approved a position on four fundamental aspects of the common frame of reference (i.e. purpose, scope, content and legal effect) [doc. n. 8286/08 of 11 April 2008].

3. Further to this position, the JHA Council on 28 November 2008 adopted a set of conclusions setting out some major guidelines for future work (covering structure, scope, respect for diversity and the involvement of the Council, the European Parliament and the Commission in the setting up of the Common Frame of Reference) [doc. n. 15306/08 of 7 november 2008 and doc. n. 5784/09 of 27 January 2009, currently not available]. Both the position and the conclusions provide that the Committee on Civil Law Matters will follow the work of the Commission on the Common Frame of Reference (hereinafter “CFR”) on a regular basis.

4. To ensure regular follow-up to the discussions and to enlarge on and clarify the guidelines previously adopted, the Presidency submitted a questionnaire to delegations on 8 January 2009 [doc. n. 5116/09 of 15 January 2009] and invited them to reply in writing.

5. In the light of the comments made and the discussions held, the Committee on Civil Law Matters invites Coreper to recommend to the Council that it approve the guidelines set out below and suggest that the Commission take them into account in its future work.

II. Points Considered

6. The Council indicated that it wished **the CFR to have a three-part structure: one containing definitions of key concepts in contract law, one setting out common fundamental principles of contract law and one containing model rules.**

7. The replies to the questionnaire and the subsequent discussions held within the Committee on Civil Law Matters consequently focused specifically on **(a) the fundamental principles to be adopted, (b) the definitions which should be included and (c) the model rules to be provided for. The Committee also considered (d) the relationship that the CFR should have with the proposed Directive on consumer rights and (e) the form that the instrument establishing the CFR might take.**

[The Council's position on each of these points can be found in the press release "Guidelines on the setting up of a Common Frame of Reference for European contract law", n. 108340 of 5 June 2009.]