



BUNDESRECHTSANWALTSKAMMER

**Position
of the Bundesrechtsanwaltskammer
(The German Federal Bar)
on the European Union initiative to create
a uniform European contract law**

**drafted by the Bundesrechtsanwaltskammer's
Working group on European contract law**

Members:

Prof. Dr. Burghard **Piltz**, Gütersloh
Dr. Martin **Abend**, Dresden
Andreas Max **Haak**, Düsseldorf
Dr. Ulrich **Münzer**, Stuttgart
Dr. Volkert **Vorwerk**, Karlsruhe

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The German Federal Bar is the self-regulatory body of the German legal profession as well as the umbrella organisation representing the 27 regional Bars and the Bar at the Federal Court of Justice. The Bars represent a total of currently approximately 138,300 lawyers in the Federal Republic of Germany.

In October 2001 The German Federal Bar submitted a position paper on the Communication from the Commission to the Council and the European Parliament on European Contract Law (COM (2001) 398). Since that time the Commission has been working on a draft Common Framework of Reference (CFR) for contract law, taking into account the large number of rules pertaining to private law that are contained in the *acquis communautaire*. In March 2006 the European Parliament's Legal Affairs Committee adopted the report on European contract law and the revision of the *acquis communautaire* (in the area of contract law) and the Union's further action in this field (A6 – 0055/2006).

For The German Federal Bar, this is an opportunity to comment again on the European Union's project to create the basis for a common contract law:

I.

The German Federal Bar supports the Commission's intention to harmonise the *acquis communautaire* as far as private law and particularly contract law is concerned. Harmonised contract rules which are applied in the same way by all Member States will undoubtedly facilitate the free movement of goods, services and also legal advice in the Union, and will have considerable effect outside the Union. The German Federal Bar is very much in favour of a Common Frame of Reference for contract law - which still needs to be established or identified by the Commission on the basis of the ongoing legal comparative studies - to serve as a *basis for a future common European contract law*. This Common Frame of Reference must incorporate the minimum standards for consumer contracts stipulated by the *acquis communautaire*.

The German Federal Bar is decidedly against the creation of legal provisions that would only cover consumer contracts. The German Federal Bar prefers a uniform European contract law as opposed to the existing patchwork of directives which regulate individual aspects and areas of contract law.

Therefore, The German Federal Bar welcomes the Commission's discernible effort to initially propose the Common European Frame of Reference for private law – a frame that respects the requirements under European contract law and the *acquis communautaire* on contract law – simply as a basis for discussion on contract rules to be introduced into the Member States' legal regimes.

II.

Regarding the further elaboration of the Common Frame of Reference for contract law, The German Federal Bar would like to recommend that the following aspects that are of particular concern for the German legal profession and their clients, be taken into account:

1. Creating a Common European Frame of Reference has fundamental as well as general significance. The Frame of Reference must reflect general as well as specific contract law. The German Federal Bar rejects the creation of various different sets of rules, a “model law” for consumer contracts and another “model law” for all other types of contracts or contract-like relations.
2. When integrating existing rules of the *acquis communautaire* on private law into the Common Frame of Reference, it has to be *re-examined if a particular rule that applies to one specific case scenario does serve its purpose, whether it is appropriate and necessary or not*. The German Federal Bar welcomes the efforts towards harmonisation, but when it comes to consumer protection rules, it also supports giving less importance to rules that provide for just one particular case scenario and rules that are unnecessary.
3. In the event that European contract law were to be codified on the basis of the Common Frame of Reference, The German Federal Bar is in favour of a Directive. A Directive is preferable to a Regulation since contract law presents a large number of intersections with the law of obligations, property law and the remainder of private law, which the national legislators can only adapt in accordance with their national rules of private law - which will continue to apply - via the flexible implementation of a Directive. Providing for new rules by way of a Regulation would make the incorporation of model rules into national private law more difficult.

4. The German Federal Bar strongly advocates a Common Frame of Reference which sets out the fundamental principles of general contract law as well as the fundamental principles of special contract law. The Common Frame of Reference should be “model law” that will remain applicable also in the long run and for future contract types. Detailed rules that provide for every imaginable case scenario would make the applicability of the Common Frame of Reference as “model rules” much more difficult.

III.

The German Federal Bar is very much in favour of putting the work on the Common Frame of Reference on a broader basis, including primarily the interested parties: consumers, businesses and those who apply the law (lawyers and judges). This would also help promote this project – which is so important for Europe - as a whole. The work undertaken in connection with the Common Frame of Reference must not be limited to a revision of the consumer *acquis*. Apart from the fundamental principles underlying the law of obligations of the three major legal areas, all Community Directives and Regulations regarding the law of obligations have to be taken into account.

The German Federal Bar strongly supports the project to create a uniform European Frame of Reference for contract law with the long-term objective of providing “model rules” for implementation into national law. Integrating such “model rules” (restatement of law) into the Member States’ private law regimes would facilitate legal relations and would also serve the interests of the public, businesses as well as individual persons, and the interests of those who apply the law. Put into practice, this project will have considerable economic importance for the European Union Member States.