

Thursday 15 November 2001

7. Approximation of civil and commercial law

A5-0384/2001

European Parliament resolution on the approximation of the civil and commercial law of the Member States (COM(2001) 398 – C5-0471/2001 – 2001/2187(COS))

The European Parliament,

- having regard to the Commission communication to the Council and the European Parliament on European Contract Law (COM(2001) 398 – C5-0471/2001) ⁽¹⁾,
 - having regard to its resolution of 26 May 1989 on action to bring into line the private law of the Member States ⁽²⁾,
 - having regard to its resolution of 6 May 1994 on the harmonisation of certain sectors of the private law of the Member States ⁽³⁾,
 - having regard to the conclusions of the Tampere European Council (15 and 16 October 1999), in particular Conclusion 39,
 - having regard to the working paper drawn up by its Directorate-General for Research entitled 'The Private Law Systems in the EU: Discrimination on grounds of nationality and the need for a European Civil Code' ⁽⁴⁾,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0384/2001),
- A. whereas the similarities between the legal traditions of the peoples of Europe ultimately outweigh the differences between them,
- B. whereas without the abundant similarities between the various legal traditions the solemn proclamation of a Charter of Fundamental Rights of the European Union on 7 December 2000 at the European Council of Nice would not have been possible,
- C. whereas the discussion of large-scale harmonisation of Member States' core civil law is a politically charged and sensitive issue;
- D. whereas Article 61 of the Treaty provides that in order to establish progressively an area of freedom, security and justice the Council shall adopt measures in the field of judicial cooperation in civil matters as provided for in Article 65,
- E. whereas the internal market established by the European Union has proved an undeniable economic success,
- F. whereas the gradual completion of the internal market is leading to broader and deeper economic integration,
- G. whereas legal relationships with cross-border implications are, however, still the exception,
- H. whereas the internal market will only be genuinely complete when consumers can also take full advantage of the benefits it offers,

⁽¹⁾ OJ C 255, 13.9.2001, p. 1.

⁽²⁾ OJ C 158, 26.6.1989, p. 400.

⁽³⁾ OJ C 205, 25.7.1994, p. 518.

⁽⁴⁾ Legal Affairs Series, JURI 103.

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- I. whereas small and medium-sized undertakings in particular are reluctant to conclude cross-border contracts owing to uncertainties about which legislation is applicable and the often unpredictable costs of legal proceedings,
- J. whereas the provisions of the Rome Convention on the law applicable to contractual obligations and of the United Nations Convention on contracts for the international sale of goods (CISG) could provide a basis for a future common body of law, but will not finally solve the problem of cross-border legal relationships,

Current situation

1. Notes that directives, regulations and Conventions in force which have implications for the private law of the Member States include the following:

- Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (Amended by Directive 1999/34/EC of 10 May 1999)⁽¹⁾,
- Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises⁽²⁾,
- Council Directive 87/102/EEC of 22 December 1986 on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (Amended by Directive 90/88/EEC of 22 February 1990 and Directive 98/7/EC of 16 February 1998)⁽³⁾,
- Council Directive 90/314/EEC of 23 June 1990 on package travel, package holidays and package tours⁽⁴⁾,
- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts⁽⁵⁾,
- European Parliament and Council Directive 94/47/EC of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis⁽⁶⁾,
- European Parliament and Council Directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance contracts — Statement by the Council and Parliament re Article 6(1) — Statement by the Commission re Article 3(1), first indent⁽⁷⁾,
- European Parliament and Council Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests⁽⁸⁾,
- European Parliament and Council Directive 1999/44/EC of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees⁽⁹⁾,
- European Parliament and Council Directive 1999/93/EC of 13 December 1999 on a Community framework for electronic signatures⁽¹⁰⁾,
- European Parliament and Council Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')⁽¹¹⁾,

⁽¹⁾ OJ L 210, 7.8.1985, p. 29.

⁽²⁾ OJ L 372, 31.12.1985, p. 31.

⁽³⁾ OJ L 42, 12.2.1987, p. 48.

⁽⁴⁾ OJ L 158, 13.6.1990, p. 59.

⁽⁵⁾ OJ L 95, 21.4.1993, p. 29.

⁽⁶⁾ OJ L 280, 29.10.1994, p. 83.

⁽⁷⁾ OJ L 144, 4.6.1997, p. 19.

⁽⁸⁾ OJ L 166, 11.6.1998, p. 51.

⁽⁹⁾ OJ L 171, 7.7.1999, p. 12.

⁽¹⁰⁾ OJ L 13, 19.1.2000, p. 12.

⁽¹¹⁾ OJ L 178, 17.7.2000, p. 1.

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- European Parliament and Council Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions ⁽¹⁾;
 - Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽²⁾;
 - the 1980 Rome Convention on the law applicable to contractual obligations ⁽³⁾.
2. Notes that the Community directives referred to above are not coordinated as well as they might be;
 3. Notes that some of the abovementioned directives give rise to problems when implemented in conjunction with national civil codes;
 4. Notes that in an enlarged Union of 500 million inhabitants it will become more and more difficult to guarantee the uniform application of European law;

Assessment of future developments

5. Is convinced that electronic commerce and the introduction of the euro in 12 Member States will lead to a substantial increase in the number of cross-border legal relationships;
6. Recalls for this reason the importance of ensuring rigorous implementation of the e-commerce directive in Member States in order to achieve its objective of establishing a genuine internal market for electronic commerce, and underlines the need to pursue the harmonisation of contract law with the aim of facilitating cross-border transactions in the internal market in particular in the following areas:
 - equitably balancing the interests of undertakings and consumers,
 - decisions determining the competent court in a given case,
 - procedural costs,
 - the effectiveness of legal protection,
 - the workload imposed on even the lowest courts by complex international legal issues,
 - the burden placed on consumer and legal representatives by complex legal issues,
7. Takes the view therefore that the differing national, European or international rules should be applied more consistently,
8. Advocates a body of law which is close to citizens, accessible, respects established traditions and at the same time takes into account the requirements of the internal market;

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9. Regrets the fact that the Commission has surprisingly restricted its communication to private contract law, although under the terms of the mandate of the European Council of Tampere it could have broadened its scope;
10. Underlines the need to pursue targeted harmonisation of contract law where mutual recognition of national rules cannot be applied and where divergence of these rules leads to obstacles to the functioning of the internal market as defined by the Court of Justice ⁽⁴⁾;

⁽¹⁾ OJ L 200, 8.8.2000, p. 35.

⁽²⁾ OJ L 12, 16.1.2001, p. 1.

⁽³⁾ OJ C 27, 26.1.1998, p. 34.

⁽⁴⁾ Case C-376/98, European Court reports 2000, p. I-8419.

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11. Considers, with regard to the forms of contract frequently arising in cross-border legal relationships, that it is appropriate to draw up, in the form of a regulation, a European instrument available for use on an optional basis under private international law in legal relationships (for example sales contracts, the law on security, and financial services);
12. Urges the Commission to present proposals to revise the existing consumer protection directives relating to contract law in particular to remove minimal harmonisation clauses which have prevented the establishment of uniform law at EU level to the detriment of the protection of consumers and the smooth functioning of the internal market;
13. Notes that current problems concerning the conclusion, performance and termination of contracts cannot be solved unless issues relating to general formal provisions, non-contractual liability, the law of restitution and property law are also addressed;
14. Welcomes the Commission communication which contains many good ideas and urges it to take the next step towards achieving the approximation of the civil and commercial law of the Member States and, on the basis of detailed expert advice, to submit an action plan comprising the following steps:
- (a) by the end of 2004: to compile a database in all Community languages of national legislation and case law in the field of contract law, and to promote, on the basis of such a database, comparative law research and co-operation between interested parties, academics and legal practitioners. This co-operation should aim to find common legal concepts and solutions and a common terminology of the legal systems of the 15 Member States which could be applied on a voluntary basis (Option II of the Communication) notably in the following fields: general contract law, the law on sales contracts, the law governing service contracts including financial services and insurance contracts, the law governing personal securities, the law governing non-contractual obligations (tort, law of restitution), the law governing the transfer of ownership of moveables, the law governing credit guarantees and moveables, the law on trusts;
 - (b) to regularly present reports to the European Parliament on progress of these comparative analyses and possible common legal concepts and solutions for contract law; the European Parliament should provide its opinion on these reports when they provide draft common legal concepts and solutions;
 - (c) in parallel to the above by the end of 2004: on the basis of detailed expert advice to put forward legislative proposals aimed at consolidation (for example, streamlining, simplification and standardisation of legal concepts, codification, extension and abrogation) of the law in the instruments referred to in paragraph 1;
 - (d) by the end of 2004 to consider whether further provisions relevant to the internal market are essential, paying particular attention to the expansion in electronic business;
 - (e) at the beginning of 2005 in co-operation with the European Community's Office for Official Publications: the publication of the comparative analysis and common legal concepts and solutions in the appropriate form;
 - (f) from 2005: measures to promote the dissemination of comparative analysis and common legal concepts and solutions in academic training and in the syllabuses of the legal profession, as well as promote dissemination of Community law to the same academic and legal circles;
 - (g) from 2005: the consistent application of the common legal concepts and solutions and legal terminology by all EU institutions involved in legislative drafting and implementing procedures;
 - (h) from 2006: European legislation implementing the common legal principles and terminology for cross-border or national contractual relations with the possibility of abrogating contracts;

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- (i) beginning of 2008: review of how far the common legal principles and uniform terminology in European law have proved their value in practice, and consideration of whether uniform European provisions should be laid down in respect thereof, so as to lead, in the longer term, to uniformity in contract law within the EU and as regards the laws of its Member States;
- (j) from 2010: establishment and adoption of a body of rules on contract law in the European Union that takes account of the common legal concepts and solutions established under previous initiatives;

15. Advocates setting up by the end of 2002 a 'European Legal Institute' in which legal policy-makers, the administrative authorities, the judiciary and those responsible for applying the law cooperate on a scientific basis in the drawing-up of the principles of the abovementioned reforms;

16. Takes the view that the Commission could secure legal advice from, for example, the following working groups and bodies together with the academic bodies competent for other branches of law and all interested parties throughout the course of the action plan, whilst ensuring a balanced view from both civil law and common law traditions:

- Commission on European Contract Law, Holte,
- Study Group on a European Civil Code, Osnabrück,
- Academy of European Private Lawyers, Pavia,
- European University Institute, Florence,
- European Academy of Law, Trier,
- national professional organisations of lawyers and reform bodies in the Member States;

17. Takes the view that, owing to the topical nature of the problem, progress should be made first and foremost on the work on the harmonisation of the civil procedure of international law (jurisdiction and enforcement), the recognition of judgments, and mutual assistance;

18. Calls on the Commission to have recourse to the legal basis provided by Article 95 of the EC Treaty (internal market) for the further consolidation and development of the harmonisation of civil law;

19. Takes the view that directives which are not aimed at complete harmonisation but pursue specific objectives such as consumer protection, product safety or product liability should continue to be drafted as directives which contain few detailed rules and are not based on any particular legal system, so that they can readily be incorporated into the various national legal systems;

20. Calls on the Commission to examine whether it might not be more effective and reasonable to use the instrument of the regulation for future single market legislation;

21. Insists that the codecision procedure involving the full participation of the European Parliament must in principle be used when adopting legislation in the field of civil law;

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22. Instructs its President to forward this resolution to the Council and the Commission.
