

PRESENTATION FOR THE CCBE AT THE EUROPEAN COMMISSION WORKSHOP ON EUROPEAN CONTRACT LAW – 16TH JUNE 2003

- The CCBE is the representative body of over 500,000 European lawyers through its member Bars and Law Societies. In addition to the membership of its EU Bars, it also has observer representatives from a further 13 European countries' Bars. The CCBE responds regularly on behalf of its members to policy consultations which affect European lawyers.
- The CCBE welcomes the debate on the future of European contract law and the opportunity to participate in this. It has submitted an initial response to the Action Plan, following consultation with its Standing Committee comprised of representatives of its membership. It hopes to provide further detailed comments on the future proposals which will be made in due course by the Commission.
- The CCBE is in favour of improving the coherence of the EC contract law acquis and supports the establishment of common definitions and principles which remedy problems due to incoherence or inconsistency in current EC legislation. It is therefore broadly in favour of the creation of a Common Frame of Reference for this purpose. However, this is subject to the following points.
- The CCBE believes that it is most important to draw together the different EU initiatives which are considering overlapping areas to the Action Plan, e.g. the Green papers on the European payment order, small claims and the Rome Convention and further harmonisation of consumer protection, to ensure consistency in how these issues are dealt with.
- It also believes that the debate on harmonisation of European contract law should be raised to a higher and more political level, with strong participation from both legal practitioners and the business community, as part of an overall approach to harmonising EC law and legal procedure in areas that need it. This will enable consistent principles to be established to deal with the various proposals.
- The CCBE suggests that a high level group of experts, similar to that recently set up in relation to company law, be established to oversee the process. The group's role would be to develop a global vision of the future of harmonisation of law and procedure across the Member States, of which contract law would form part. We believe that this is the only way to achieve

a coherent European contract law within the context of an overall policy on harmonisation of EC law and legal procedure.

- The CCBE proposes a core principle for dealing with harmonisation of EC law and legal procedure, which takes account of the need to balance harmonisation and subsidiarity. Whilst the CCBE recognises that a degree of harmonisation in law and procedure is necessary to achieve a single market (and without it there is forum shopping and unequal treatment of consumers in different Member States), these areas are not easy candidates for total harmonisation because the law is part of the tradition and cultural heritage of a country. Subsidiarity is vital to preserve such traditions. The CCBE proposes that the solution to the balancing act between harmonisation and subsidiarity is that subsidiarity is the presumption and harmonisation should only be applied where subsidiarity would cause injustice. In this context injustice means things such as undue expense or delay in obtaining a remedy in one Member State as compared to another.
- In line with this principle the CCBE does not believe that the Common Frame of Reference and any optional instrument that may be based upon it should go beyond problems with the existing *acquis* and should not be a wide-ranging code covering all areas of contract law which do not require harmonisation according to the above principle. However, the CCBE does believe that two areas needing to be addressed are the execution and enforcement of contracts which cause problems for contracting parties in different Member States and therefore create injustice.