Introduction in DCFR –*Draft Common Frame of References*

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Abstract
DCFR –Draft Common Frame of Referencesis the most ambitious attempt to create a model of common legislation at European level in the field of private law, being called the European model of a Civil Code. Although itsscope and applicabilityare not yet clearly defined and there is also plenty of criticismregarding its purpose within academia, DCFR is a work of undeniable legal value in that it succeedsin gathering rules and regulations from most European countries into one legislative work. At European and even international level, DCFR has been extensively analysed in the literature, but internally DCFR is less known. This paper aims to be a short presentation of the DCFR based on its purpose and content, structure and basic principles as presented even by the authors in the introduction to this paper.
Key words: *European private law, contract law, principles of European law, standardization of law.*

Section 1. Introduction

Interim Outline Edition of Draft Common Frame of Reference (DCFR), the first version of the DCFR, was published in February 2008, following that the final version to be published in 2009. The final work includes model rules, commentaries and comparative notes structures in 6 volumes and approximately 6,100 pages. Explanations and examples for each rule regarding its applicability are providedin the chapter dedicated to comments. The notes reflect legal solutions provided by the Member States' national systems for the subjects covered by the DCFR; when appropriate, there are also mentioned the Community legislation and international instruments such as the CISG and UNIDROIT.

The DCFR project was launched and funded by the European Commission and is the result of over 25 years of collaboration between lawyers from across the European Union. In 1982, the Commission on European Contract Law (CECL)was constituted under the leadership of Professor Ole Lando, the working group that created PECL –*Principles of European Contract Law*. The study was taken over in 1998 and continued by the Study Group on European Civil Code (briefly called The Study Group), an working team led by Professor Christian von Bar. In drawing DCFR, several working groups were created, each of them with clearly defined goals and objectives. The Research Group on the Existing EC Private Law –also called *The Acquis Group*, founded in 2002, was tasked with the integration of existing European legislation mentioned in the acquis communautaire in the model rules of the DCFR.

In May 2005, Joint Network on European Private Law was founded in the sixth research program of the European Commission, with the aim of creating the *Common Frame of References for European Contract Law*. The network included the following working groups and study groupson a European Civil Code: *The Study Group*, *The Acquis Group*, *Project Group on a Restatement of European Insurance Contract Law*, *Association Henri Capitant*together with*Société de Législation Comparée* and the *Conseil Supérieur du Notariat*, *Common Core Group*,*Research Group on the Economic Assessment of Contract Law Rules*or"*Economic Impact Group", "Database Group"*and *Academy of European Law* (ERA).

The study group worked in research teams made up of students and young graduates of law, teams that were aimed at comparative research of the laws of the Member States, development of threads and assemblageof material needed to create notes in the final part of the paper. Each research team worked under the supervision of a senior leader in research and had a consultative body allocated. The working versions were submitted for discussion and improvements to the coordinating group –the decision-making body of each study group. In 2004,the coordinating group had representatives from all jurisdictions of EU Member States before the accession of new Member States. DCFR texts were written by individual drafting teams, thanthey were subjected to further discussion to the drafting committee and thegroup for terminology, following to be approved in their final form within plenary sessions convened twice a year. All the proposals for regulationwere discussed several times and presented and discussed with representatives of businessenvironment prior approval. The project was funded by the National Research Councils of Member States and, since 2005, has been funded by the European Commission through establishingthe CoPECL Network of Excellence groupwithin the 6th research program.

Section 2 - The DCFR purpose and structure

DCFR is an academic text, the work of a large group of researchers. The purpose of DCFR is to be a working material for education and research of law. DFCR can be also used as inspiration beyond academia, in order to find optimal solutions on private law following the example of PECL (incorporated into DCFR in a revised form) which was used by many European legislative authorities in modernization of contract legislation. It is possible that DCFR tobe also an inspiration

for a Common Frame of References CFR- *Common Frame of Reference*as commoncontract law at European level, but this aspect is a political one at community level, thusexceeding the purpose of DCFR. In particular it is expected that the DCFR will help highlighting the similarities and differences in national laws of the Member States.

Regarding the structure, it was agreed from the outset that the text should be structured in Books, each book divided into Chapters, Sections and Subsections where necessary, and articles. There is an exception to this structure in the book IV dedicated to special contracts which, due to the huge volume, was divided into Parts, each part being dedicated to a particular type of contract. The numbering mode is similar to the technique used in modern European codes, the Books being numbered with Roman numerals, the chapters, sections and subsections – with Arabic numbers and the Articles are numbered with Arabic numbers,in sequence for each book.

First Book is a general guide on using the entire text, interpretation and identification of key terms and definitions. Books II and III deal with contracts and other legal acts: Book II regulates the formation, interpretation, invalidity and content, and Book III covers both contractual and non-contractual obligations. The division, different from the approach of most European civil codes, was made to distinguish clearly between the contract, as type of agreement between the parties, and the contractual relationship that involves a series of reciprocal rights and obligations arising from this agreement. Another issue discussed within Book III was the treatment of both contractualand non-contractual obligations. One of the ways could be to treat the contractual obligations first and the non-contractual ones second. Butthis method was not chosen, considering that it will lead to unnecessary duplication and interference between articles. The solution chosen was the integration of articles dealing both contractual and non-contractual obligations in Book III, in a more general approach so that the applicability ofboth types of obligations to be possible, and when an article deals only with contractual obligations, this is expressly mentioned.

Besides a coherent structure, a special attention was paid to the terminology as being chosen clearterms that cannothave double meaning.The language in which the DCFR was published in English, which is also the language of the editorial team. Also, the terminology was chosen so as to be suitable for multiple translations, with the avoidance of interpretations which could be given in one legal system or another.

DCFR addresses topics exceeding the contractual sphere. While PECL contained general rules related to contracts, such as the formation, validation, interpretation and content of the contract, applicable by analogy to other legal acts, DCFR also contains, in addition to the contractual area, rules for the so-called special contracts and the rights and obligations arising therefrom. DCFR also covers other aspects of the private law, such as the non-contractual obligations, which include: unjust enrichment, negotiorum gestio or torts law. DCFR also contains aspects related to the ownership rights of movable assets, respectively aquiring and loss of the ownership right and the regulation of trust (in Books VIII, IX and X). Topics concerning the individual capacity, will and succession, family relationships, labor relationships, real estate, commercial law, civil procedure regulations and enforcement of judgments are excluded from the DCFR.

Section 3 – Content of the DCFR

DCFR contains principles, definitions and model rules. The term “principles” is not agreed by the European Commission (point of view express within the release regarding the CFR) being susceptible to several interpretations. The word “principles” appears in the communications of the European Commission, but accompanied by the adjective “fundamental”, suggesting a core, abstract value. The model rules comprised within the DCFR are built on these fundamental principles, regardless of whether this aspect is expressly stated or not. The inclusion of separate parts containing core principles, mentioning no less than 15 such principles, was also considered. However, it was emphasized that the principles inevitably come into conflict with each other, so that their reconciliation is possible based on the model rules. This is the reason why a separate chapter dedicated to the fundamental principles does not exist within the DCFR, but these are presented within the introduction.

The definitions are intended to enable the development of a uniform European legal terminology. Definitions are placed in a separate appendix of the DCFR, both to maintain the first part of the DCFR shorter and because the terminology can therefore be modified, without changing the model rule. It was considered that no maximum benefit can be obtained from inconsistently used definitions; therefore, apart from the definitions contained within a dictionary which consist of a series of terms originating from different sources, the definitions from the DCFR appendix are

tested and integrated within the model rules, being modified along with their development.

The model rules form the largest part of the DCFR. The use of the adjective "model" indicates that the regulations do not possess normative force, being *soft law* regulations, such as PECL or similar.

Section 4– Basic principles within the DCFR

DCFR does not contain a special chapter dedicated to the underlying basic principles. As priorly mentioned, this option was chosen due to the fact that the term 'principles' is susceptible of several meanings, but also due to the fact that in many cases the principles come into conflict with each other, being best reconciliated through the model rules. The introduction presents the basic principles explicitly or implicitly recognized by the DCFR, as well as the way in which the editing team introduced these principles within the model rules.

The first fundamental principle explicitly recognized within the DCFR is the Protection of human rights. The superiority of this article is recognized by its consecration in one of the first articles, art. I-1:102(2), which stipulates that the model rules shall be interpreted so as to apply the instruments which guarantee the protection of the human rights and fundamental freedom.

Another principle found within the DCFR regards the solidarity and social responsibility. This principle, especially considered to belong to the public law, is found within the DCFR in the model rules governing the negotiorum gestio, donation and tort law, but also in contractual law.

Apart from the so-called "fundamental principles", there are some basic principles considered in the process of drafting the DCFR; these basic principles are the principle of freedom, the principle of security, the principle of justice and the principle of efficiency. These principles have several aspects, interact with each other but may also come into conflict. Compared to the other principles, freedom is more important in contracts, unilateral acts and obligations arising therefrom. Security, efficiency and justice are important in all areas, but this does not mean they have an equal value in any situation. For example, the principle of justice is surpassed by the principles of security and efficiency in relation to prescription. In other situations, the principle of security is surpassed by the principle of justice, as in Books IV and V and when the reduction of the obligation of a disadvantaged party is permitted. Liberty,

particularly contractual, may be limited for reasons of justice, such as the prevention of discrimination and prevention of the abuse of the dominant party.

Section 5 – Conclusions

By highlighting the principles underlying the aquis communautaire, DCFR shows the way in which the existing directives can be made more consistent and the way in which various sectorial provisions may have a clearer application, in order to eliminate gaps or overregulations. DCFR also aims to identify the best solutions, taking into account the national legislation on contracts (including case law), the aquis communautaire and the relevant international instruments, such as the 1980 UN Convention on International Sales Contracts. DCFR therefore contains recommendations based on an extensive analysis and comparison work. DCFR does not offer a greater protection in terms of, for example, the right to information than provided within the national laws, this not being suitable for an academical work. Such issues are related to politics and are sensitive issues, which do not have, in the first instance, a legal nature. DCFR only issues a proposal on the way in which regulations may be advantageously modified and may be made more consistent, given the current adopted policy.

Another purpose of the DCFR is the improvement of the aquis by developing a consistent terminology. Directives frequently use legal terms and concepts, but fail to define them. A European CFR comprising definitions will create a presumption that a word or a concept used within a directive has the meaning used within the CFR, unless otherwise provided within the Directive.

Shall the European legislation be harmonized with the laws of the Member States and particularly if the creation of gaps or incisivenesses of the European legislation within the national ones is not intended, the legislator shall own information on different regulations of the Member States. The DCFR notes are a useful tool in this regard.

The purpose of this article is to present the issues related to designing, drafting and structuring of the DCFR, as well as the way in which this can be used, making use of the information comprised within the introduction of DCFR. Knowing the DCFR, even with the lack of perspective in the near future, adopting a binding European CFR based on the DCFR constitutes an advantage for the law specialists.

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