

WEDNESDAY 26 NOVEMBER 2008

Present

Blackwell, L.
Bowness, L.
Burnett, L.
Jay of Ewelme, L.
Lester of Herne Hill, L.
Mance, L. (Chairman)
Norton of Louth, L.
O’Cathain, B.
Wright of Richmond, L.

Memorandum submitted by Professor Vogenauer

Examination of Witness

Witness: **Professor Stefan Vogenauer**, Professor of Comparative law, University of Oxford.

Q1 Chairman: Professor Vogenauer, thank you very much for coming. I gather the risk, of which you may have been warned, that prorogation would curtail proceedings is unlikely to materialise. As you know, this is an inquiry which is held in public. It will be recorded and transcribed. You will get a copy of the transcript and have the opportunity to make any technical corrections. Any interests which members of the Committee have have been declared in the Register of Interests, but I mention specifically my own, which is as a judicial stakeholder in the CFR process responsible for co-ordinating the England and Welsh judicial response and, therefore, as someone who attended the launch in 2005 at the Commission and some of the workshops in that capacity. We are obviously grateful for your paper. Are there any matters which by way of an opening statement you would like to amplify or state?

Professor Vogenauer: Thank you very much for the invitation. I have just two preliminary remarks I would like to make. First of all, I am speaking very much as an observer of the DCFR process. I have viewed it from a distance, maybe from a close distance. I have been teaching European contract law for quite a few years and I know many of the people involved

in the various working groups, but I have never participated in these works and that has the disadvantage that I cannot give you a firsthand account or an inside account of the making of the DCFR. I am certainly less familiar with the substance of the DCFR than I would be if I had participated in the drafting, but I hope that is offset by the neutral outlook I will be able to present. I am not here with a product I need to sell, as some of my colleagues might be. The second issue is probably that I have a similarly neutral outlook with regard to English contract law. I received my legal education in England, France and Germany, but the biggest part of it in Germany, so although I teach English contract law I might have less of a sentimental attachment to English contract law than you might find with some of my colleagues at Oxford or other English universities. Those are the only things I would like to say as an opening statement.

Q2 Chairman: Thank you very much indeed. You have, I know, had a list of possible questions. If I could just start off by to some extent combining questions one and ten, which look at the history in question one and then at possible proposed ways in which the CFR might be used. Can I just go back on the history? Some of the briefing papers, and your own paper, outline that. It includes in Tampere in 1999 the Member States and in the European Parliament in 2000 there were announcements about an aim, or at least a desirability, of harmonisation of civil, especially contract law. Then in 2001 the Commission added the theme of revision of the Acquis, especially in the consumer area where it pointed out that there were seven Directives, and obviously recently we have had a proposal in the consumer area particularly relating to four of those Directives which Sub-Committee G is looking at. Then we have the Action Plan in 2003 which you mention in another footnote, footnote eight, where the Commission mooted the idea of a CFR to provide for best solutions in terms of common terminology and rules, the definition of fundamental concepts and abstract terms like “contract” and “damage”. There was a further suggestion that there might be an Optional

Instrument or, furthermore, standard terms. Then everyone seems to have joined around that prospectus: the European Parliament, the Council and the Commission in another document you have referred to in footnote eight, the October 2004 *Way Forward* document and a call for interests, which really started off the programme in 2005. As you mention, the decision was made to use the research budget and the Commission contracted with existing groups of academic researchers, who you describe. As I have mentioned, I was personally involved at that stage and at the initial meeting on the CFR there was much discussion against that background about what really was the nature, the scope and the purpose of the CFR. The Director-General of Health and Consumer Protection, Mr Robert Madelin, who also gave evidence to this Committee when we looked at this in 2005, said then that it was neither a compulsory code nor an off-the-shelf system which was envisaged, it was intended to be a handbook or toolbox to be useful for EU legislators to assist simplifying existing, and he also added new instruments. It was to be an area, or perhaps one should say a voyage of scientific discovery, and it might prove that there were too few buildings blocks. He said it would only be successful if it tackled the real problems which arise in contract law practice, it should be a practical tool, and I remember it should not be an ivory tower. There was talk of an Optional Instrument again. Against that background and in the light of picking up question one, I want to ask you how far have we got down all or any of those roads? Does the Draft Common Frame of Reference, this book which I have in my hand, published at the end of last year, do all or any of that?

Professor Vogenauer: If we look at it from a formal perspective and if the aim was in the area of contract law to provide fundamental principles and common definitions and model rules, I think the Draft Common Frame of Reference in its first three Books has achieved that. The other Books, of which only a few have been published, obviously go far beyond the scope of contract law. If we look at the product, it is a compilation of definitions,

fundamental principles and general rules, there is no doubt about that. Whether they always represent best solutions is a different question and one would have to look at each of those solutions and also if the Director General said the Common Frame of Reference should not provide an ivory tower solution I think many would argue that this is very much an academic document, as the drafters themselves readily concede. The other question is whether the aim of the Commission to have a document that is based on a comparative analysis of the national laws has been achieved. It is very difficult to make that judgment at this stage because the full Common Frame of Reference will only be published towards the end of next year with all the comparative notes and the explanations. We now only have the black letter rules and we do not know how the working groups got to those rules. One would have to reserve judgment on that particular issue.

Q3 Chairman: I may be party to information that you are not then because there is, in fact, a website for stakeholders on which I am able to inspect the notes, at least in their existing form, and the comparative law material, which I have done. You have not been able to do that. It is a closed website, so it is not surprising.

Professor Vogenauer: Yes.

Q4 Chairman: In the outline that I started with, we saw references to consolidating the Acquis, possibly it was said there might not be sufficient building blocks which, again, looks at the Acquis, but, as you have said, and I think I also said, the idea was to produce best solutions so there was comparative national law coming into it and then we have what is a fully fledged document covering all aspects of law. How far does it incorporate the Acquis? How far does it incorporate comparative law solutions? How far does it make up new solutions where there are gaps, if there any?

Professor Vogenauer: Certainly one would have to answer that for different Books in a different way. If I may focus on contract to start with, because that is where most of the Acquis is present in the form of Consumer Protection Directives, I think the existing Acquis has certainly found its way into this document. As far as I can see it has been done mostly in a way that restates what is there in the various Directives, that generalises from those Directives and removes some of the inconsistencies. The more controversial aspect, I suppose, is that sometimes it also generalises in a way that extends the scope of rules that are now in the Acquis, rules for consumer protection, also to business contracts. That, of course, is more controversial.

Q5 Chairman: I think I am right in saying that there is virtually nothing, if anything, about what a contract is, for example, in the Acquis, which is a fundamental question, and yet this is a draft which addresses every aspect of that sort of problem, how you make contracts, how you set them aside.

Professor Vogenauer: That is certainly true. In a way, the starting point of the Common Frame of Reference idea is very much that the Acquis has such big gaps and one should provide a background, a structure, a framework of general contract law because the strange phenomenon is we have Directives with very precise rules on particular issues, like withdrawal or duties of information, but we do not have that general background of what a contract actually is, how it comes into being, what the rules on information are, what the rules on interpretation are, so these Directives have always existed in a sort of vacuum and the CFR was very much meant to remedy this. One might legitimately argue that aspect or that aim has been achieved, the rules of the Acquis have now been integrated in a broader framework.

Q6 Lord Wright of Richmond: Does the word “contract” and its translations in various European languages mean the same?

Professor Vogenauer: No. A contract in English law is not necessarily synonymous with a *contrat* in French law, although obviously you can use the translation and it is done all the time. The typical example that is always mentioned as a difference is that English contract law has this idea of a contract being a bargain where both parties have to suffer some sort of detriment to make it a binding agreement whereas, for instance, in the major civilian jurisdictions a gift would be a contract. Even at that very fundamental level there are certainly differences.

Q7 Lord Burnett: Remembering years ago my law lectures, the book *Cheshire and Fifoot* was the basic contract book and it is quite easy to define a contract in British law: “offer, acceptance, consideration, intention to create legal relations” and probably “capacity”. Is there that understanding that underlies this work?

Professor Vogenauer: You will find the definition of “contract” in the annex which gives a number of definitions on page 330. The major difference would be that the Draft Common Frame of Reference does not include the doctrine of consideration.

Q8 Lord Burnett: That is where the gift comes in.

Professor Vogenauer: And other issues come in.

Q9 Lord Burnett: What other issues, please?

Professor Vogenauer: For instance, “consideration” has a role in privity of contract; it has a role with regard to the bindingness of offers in English law; it has a role with regard to variations of contracts. In all of these instances one would have to look very closely as to how there would be differences from English law. “Capacity”, I must say I am not entirely sure, I think that is one of the issues that the Draft Common Frame of Reference does not deal with, but I would have to check that. Obviously the Draft Common Frame of Reference

would be based on the understanding that national rules of capacity would apply, so some sort of legal capacity would have to exist.

Q10 Lord Burnett: You have given us one example, which is gifts, which are recognised as contracts under this arrangement, and enforceable as such presumably?

Professor Vogenauer: Yes.

Q11 Lord Burnett: What other examples could you give us of a practical nature, please?

Professor Vogenauer: Where there would be a difference between this and English contract law?

Q12 Lord Burnett: Yes.

Professor Vogenauer: With regard to consideration or beyond?

Q13 Lord Burnett: The whole area.

Professor Vogenauer: If we look at more practical issues, and I would like to come to deeper issues later because they may be more significant in the long run, a very practical issue that arises quite often in the interpretation of contracts is that English law does not allow recourse to the preliminary negotiations, they are not to be used as an aid to the interpretation of contracts. Although much has changed in the law of contractual interpretation over the last ten or 15 years, as Lord Steyn once said that is a sacred cow of English contract law. The Draft Common Frame of Reference would admit those statements as aids to interpretation, which might lead to a very different outcome in a particular case.

Q14 Lord Burnett: Written or oral representations.

Professor Vogenauer: Yes. Another classic example where English law deviates very much from continental legal systems is that it has no overarching principle of good faith and it

would not even recognise an express agreement of the parties to negotiate in good faith. That is the famous case of *Walford v Miles* where even many English lawyers doubted whether that was a very wise decision if the parties expressly made such an agreement to hold that agreement not to be binding. That would be another example. Another example in standard terms, if you have the so-called battle of forms, if both parties use contradictory standard terms on a particular issue, the suggestion of the Draft Common Frame of Reference is to apply the so-called “knock-out rule” so that the remaining standard terms remain intact but that particular contradictory rule would be knocked out, so neither of the standard terms would apply, whereas in English law, as far as one can say, although uncertainty applies to the so-called “last shot rule”, the last party bombarding the other party with its standard terms would carry the day.

Q15 Lord Lester of Herne Hill: I am only going to ask one question, I promise, but it may be a slightly long question! I am trying to understand the point of all of this in a practical sense. When one looks at the world of contractual dealings, obviously the common law world is a world of very many nations in the former British Empire, among others, and it is badly represented within the European Union because there are only four countries, indeed four countries in the Council of Europe of the 47, that have the common law system: us, Ireland, Cyprus and Malta, so it is mainly us. Given that contract law is all about consent, consensual relationships, and given that there are, of course, important differences between the civil law systems, which I am quite familiar with because I have had to deal with them myself in my law practice, and common law systems, what I do not understand is what is the practical point? I can understand the academic points and your enthusiasm for identifying the oddities of the common law system I appreciate, I really do, but what is the point of all of this given that most of the world is in the common law system, but not in Europe, and it works perfectly well in that each party can nominate which system should govern its contract and we have

good rules of private international law to deal with conflicts and international arbitration mechanisms? I am sorry to sound like the naughty boy who said the Emperor has no clothes, but what is the practical purpose that we are embarked upon? End of question.

Professor Vogenauer: Obviously it is a very complex question.

Q16 Lord Lester of Herne Hill: I do not think it is complex.

Professor Vogenauer: It does not appear naughty to me at all, quite the contrary. Obviously the enthusiasm in identifying differences would also carry over to identifying differences with other national contract laws. It is not only about the common law, it is not only differing from the common law model, as you will know even the so-called civilian systems differ quite substantially in many respects. The question, of course, what is the point of all of it goes to the root of the problem. I very much agree with you that in trans-border contracts the parties, at least in Europe, are free to choose the governing law and often that works perfectly well and we have conflict rules dealing with possible conflicts and they work reasonably well also, with the exception of some borderline cases, but that is always the case in the law. I am by no means a staunch defender of this document and of the idea of European contract law at all. The starting point is that the divergence of contract laws within Europe, looking at Europe in isolation, not necessarily at the common law world overall, is perceived by many to be an obstacle to trans-border trade. That is at least the reasoning of the Commission, that trans-border trade is made more difficult.

Q17 Lord Lester of Herne Hill: Forgive me, when you say “trans-border trade”, do you mean only intra-Community? You do not mean trans-border with the United States or Canada, for example?

Professor Vogenauer: Yes. Obviously the logic of the European Communities is that of the internal market, not necessarily looking at the other trade relationships. So the argument goes

that the diversity in contract laws makes it more difficult for parties to predict what will happen if they enter into a contractual relationship, say a French buyer and an Italian seller, and one of their laws will be applicable, or a third law. By definition the applicable law will be foreign law for at least one party and that makes it more difficult to predict the legal position and that will discourage a party, at least to some extent, to engage in that transaction that might be economically beneficial. That is very much the idea behind it. That is one strand of thinking. The other strand of thinking is that of just tidying up and revising the *Acquis Communautaire*, but I think everyone agrees one does not need a big Common Frame of Reference to do that, one can do that in a very limited fashion as it has just been done more or less by the Draft Directive on Consumer Rights.

Q18 Chairman: I was going to say that. In the Draft Consumer Directive, which deals with the Distance Selling Directive, the Contracts Negotiated Away From Business Premises Directive, the Unfair Terms Directive and the Consumer Goods, Sale and Associated Guarantees Directive, those four, that is done without any general substratum of the law of contract, it just assumes that the national law of contract will apply. Has there been any area of European law where it has been necessary or would have been desirable to have a full contractual frame underneath really a code at the European level available to the legislator?

Professor Vogenauer: If you look at the potential CFR as the background for future legislation or revising existing legislation ---

Q19 Chairman: Existing legislation has survived without that frame.

Professor Vogenauer: It would certainly be useful for future legislation in the consumer protection area. It might be useful for future legislation in competition law, that is always about agreements and there is a big area of uncertainty, and in areas of company law. It is not only relevant to the legislation, it might be relevant, for instance, for the European Court of

Justice's interpretation of the existing Acquis. There is a recent case¹ with a name I cannot remember because it is parties from Eastern European countries where the Advocate General refers very much to the Draft Common Frame of Reference, which to my knowledge is the first quasi-judicial acknowledgement of the Draft Common Frame of Reference when interpreting an EC Directive. She refers to that particular issue, "What is a contract in European consumer law?" and she draws inspiration from that source. That would certainly be an area where this might be helpful. Having said that, interestingly, on the Draft Consumer Rights Directive, we happened to have a presentation by the drafter at Oxford University just last week, Mr Abbamonte of the Directorate-General of Consumer Affairs, and in that draft you will find a few definitions of terms that deviate from the Draft Common Frame of Reference. I asked him to what extent he had taken into account the Draft Common Frame of Reference when drafting that Directive and he said that first of all it is still a draft so he is in no way bound to adopt that, but I think his position was quite indicative of what we might see happening in practice. He said, "The Common Frame of Reference is an authoritative but non-binding statement, so we took it into account and we followed it when we thought it was sensible, but we also deviated from it when we thought it did not really fit". This is perfectly legitimate if you look at it from the perspective of the drafter of an individual Directive who wants to get it right, but the whole idea of having a toolbox with definitions that apply across the board will not be fulfilled if the Commission itself adopts that sort of approach.

Lord Lester of Herne Hill: Could I break my self-denying ordinance and ask one more question?

Chairman: Baroness O'Cathain booked the slot first.

Baroness O'Cathain: No, I defer to the noble Lord, of course. I always do!

¹ *Note by Witness: Case C-180/06 Ilsinger v Dreschers, Opinion of AG Trstenjak, of 11 September 2008. In fact, the parties to the case were from Austria and Germany; the AG was from Slovenia.*

Q20 Lord Lester of Herne Hill: That is very sweet of you. Has a cost benefit analysis been done of the effect of adopting European contract principles and rules on trade between Europe and North America given that North America has common law and if you made it very continental it might, I suppose, theoretically serve as a barrier to trade rather than enhancing it? Has anyone done a cost benefit analysis not within the Community but between the Community and the wider world to see what the effects of this exercise would be?

Professor Vogenauer: First of all, I think one has to be fairly clear that although private laws of the states in the United States are common law systems, their contract laws actually diverge to a not inconsiderable extent from English law, so there might be similar problems as they now exist between different jurisdictions of the civilian tradition within continental Europe. To my knowledge, and I am pretty sure I would know if they existed, there has been no cost benefit analysis at all, not even as to the trade within the European Union, and certainly not with regard to the trade with other countries

Q21 Lord Lester of Herne Hill: Thank you very much.

Professor Vogenauer: There has been a fairly thorough impact assessment, for instance, of the Consumer Rights Directive. At Oxford we have tried to do something going in that direction. Three years ago we did a business survey and asked businesses whether the existing diversity of contract laws might actually have a negative impact on their business. A slight majority said yes, but most of them said it is not a deal breaker, “We will go ahead with a good transaction if we think it is a good transaction, although we might prefer to have a sort of uniform framework, a neutral contract law, that we might opt into”. It was a very mixed response. No formal cost benefit analysis has been undertaken to my knowledge.

Q22 Chairman: Just on that last point, before going to Baroness O’Cathain, on that last survey is it right that it did not distinguish between problems created by mandatory rules of

law in particular European countries and other rules of law which parties could actually opt out of by choosing a different law? Secondly, it did not actually identify the teething problems or the long period of gestation of any new single European law.

Professor Vogenauer: Yes. The costs of transferring to a new regime would certainly be considerable but that, of course, applies to all projects of law reform.

Q23 Chairman: The hypothesis of a single law does assume that at some stage one would have effectively a mandatory European contract law to which all people would be transferred with the consequent period of learning necessary to accumulate authority. If you had a voluntary system the alternative problem is whether people would actually choose it.

Professor Vogenauer: Absolutely, yes. Our survey indicated they might choose it, but obviously it is one thing to say that in a survey and another thing to do that in a particular transaction.

Q24 Baroness O’Cathain: I am absolutely in the foothills on all of this, I really do not understand an enormous amount of it. What I want to ask you, and I would be very grateful if you could be patient with me, is from where is the impetus for all of this coming? Is it from the Commission who just feel that it would be a nice thing to have, or is it from the law authorities in the various 27 Member States? If it is the latter, is it coming from the previous Western European states or is it coming from the Eastern European states? The reason I am asking is my limited exposure to the former Soviet Union states which are now part of the European Union is that they really want to try and break with the previous 70 years, or whatever it is, and piggyback onto what is reasonable in Western Europe, maybe because it would be easier for them to trade and have other contracts. The subtext of that is was their existing law contract so different from the existing law contract in Western European states? Following up on what the noble Lord, Lord Lester, said about cost benefit analysis, I do not

really want to know about cost benefit analysis but the cost. Is this going to be absolutely extraordinarily extortionate in cost?

Professor Vogenauer: The first part of the question relating to whether the impetus came from the European Commission or the Member States, I think it clearly came from the European Commission. I am not aware of the Member States or the national ministries of justice banging at the Commission's door crying out for a European contract law. As I tried to set out in the briefing note, there was very strong impetus by academics who started that off as a research project. In the political arena, the impetus clearly came from Brussels. In a way that answers the question whether it was the Western or Eastern European states. Maybe I should say a few words on the Eastern European states. Imagine you were in a transition country in around 2000 and you were still stuck with a civil code that was either enacted during the socialist period or that predates the socialist period, is often based on German law or Austrian law, but has been interpreted for 30 years in a socialist mode, then you would have a very strong incentive to reform your contract law and bring it to Western standards, standards that cherish party autonomy, freedom of contract and break with a socialist understanding of a contract that really sees the contract as an instrument in promoting the overall general good of the socialist society. There was a clear need to reform these contract laws. Assuming at that stage that there had been a European instrument in place, and assuming that this instrument reflected best practice, whatever that means, it would have been terribly attractive, particularly for small countries like Estonia or Latvia, to adopt those. The precursor of this Draft Common Frame of Reference, the Principles of European Contract Law, the first product of the first academic group, has been highly influential in the enactment of contract law codes in the Baltic countries. It was even well received in China when China revised its contract law in 1999. One should not underestimate the model function that such instruments might have, although, for the time being, they are virtual law or soft law. The

question as to the costs is a crucial one and I fear a question that no-one can answer. What one can do is look to the costs that legal systems incurred that underwent major changes in their contract laws in the recent past. The two major examples in Europe would be Dutch law with a new Code of Obligations in 1992, and German law with a major revision of its contract law and - partially - law of obligations in 2002. It has not really derailed these legal systems, it is fair to say. There were transition costs in terms of educating the legal professions, standard terms had to be rewritten, but one did not see a real dip in the GDP of these countries following those reforms. The costs there were moderate but I cannot specify them. It might be a different story, of course, at a European level where you have much more divergence, different languages, so it would not be as easy as it is at a national level.

Q25 Chairman: The cost question, of course, depends upon what is done with this. I think the European Commission has disavowed, and certainly the Member States have disavowed, any intention, even if they had competence, to move towards full harmonisation. We are talking at the moment about an instrument which could be used for European legislation and could gradually gain an influence, possibly also through references in the European Court of Justice judgments. In those terms, I suppose Lord Lester's problem would be a very long-term problem, it would only be if the gradual accumulation of a different contract law led to fundamental exclusion of national laws in large areas that you would have a problem of major adaptation internally and reconciliation with third countries externally, is that right?

Professor Vogenauer: That problem would arise if you had a European contract law Regulation or European contract law Directive, but I do not see that on the horizon in the foreseeable future.

Q26 Lord Blackwell: As a non-lawyer, I am fascinated by the way law seems to evolve without necessarily specific decisions by executives, governments. There are two extremes

one could see for this body of work. One extreme would be that it is formally adopted under Article 95 or whatever as an overriding legal framework for use within the European Union. The other extreme is that it sits as an academic document on shelves gathering dust with no impact on the real world. My suspicion listening to you in your answers to Lord Lester and the Chairman is, is it not likely that the very fact that this exists and that people are engaged in workshops in it and it is referred to and considered in the way Directives are drafted over time the very fact it exists means that it will tend to force it without any decision ever being taken at any point being incorporated into a convergence or merging of legal systems. My question is can that actually happen? Is there such a fundamental difference between the legal systems that that could not happen without legislation happening at some point in time to say this body of law will replace that, or could you just get a pidgin English combination? We have been talking about contract law, if that happens in one area of law can you really isolate that from all the rest of civil law or does it have a similar effect because of the whole of the civil law system?

Professor Vogenauer: One has to be clear that although this was very much an academic initiative, and maybe my short briefing note has been too short on this, it has not only been an initiative that was endorsed and advanced by the Commission, as the Lord Chairman mentioned at the outset, the European Parliament has been very interested in this and promoted it even before the Commission got involved. The European Council in the 1999 Tampere document set a European civil law as a distant objective and we have had the recent endorsement of April 2008. There was a political will, albeit a diffused will, attached to this project. One probably cannot say that this has happened completely without involvement by the political authorities. In answer to the question of what happens, if there is no formal adoption will it just sit on the shelves and gather dust or might it lead to a state where the bodies of national contract laws are fully replaced by some sort of European contract law, I

think the answer has to be no, it would not be that influential, but there would be influences. There would be influences through the European Court of Justice's, case law, through legislative reform that is going on in Member States. A very good example is French law at the moment. There are various reform proposals for the French law of contract because French lawyers feel that their contract law has become outdated after 200 years. They are very much looking to the Principles of European Contract Law, to another set of rules called the UNIDROIT Principles of International Commercial Contracts that go beyond Europe even. They pick and choose elements they think represent good contract law rules and try to implement them in French law. Obviously every national legislator is free to do that and you might find a very slow tendency to more convergence in contract law through this route. Another converging factor would certainly be legal education. A good contract law teacher would not only teach English contract law or French contract law to his or her English or French students, but would refer them to these other instruments and make them aware of them so people would develop an understanding of this and they might use that and apply it later on in practice. I do not see that a non-formal adoption could lead to a full-blown replacement of domestic contract laws. Depending on your position, there is no danger or opportunity for this to happen. Whether this could also happen in other areas of law, or civil law as you asked, certainly it would happen less in other areas of law because in the area of contract you find the biggest commonality between European legal systems. If you move into areas like land law or family law it would be even more difficult than in the area of contract law.

Q27 Chairman: Can I just ask a follow-up question in relation to the scope. You said that there was a diffused will attached to this project. From a European angle how much has there been any control or limitation over the project? One of the points you make in paragraph 14 of your note for us is that this is much more than a toolbox, "...it even goes beyond a

potential European Contract Law Instrument. It is clearly meant to be a blueprint of a European Civil Code in the area of patrimonial law”, something currently not advocated by any of the European institutions or any of the Member States, not a realistic political option. I know that the researchers had academic freedom, but is this something that simply is the result of the researchers’ will to produce an absolute maximum solution? Does it mean that we have got a lot of work which has no European context at all?

Professor Vogenauer: I think the work in the areas that are not related to contract has a European context and has value as academic research, but it clearly goes beyond the remit set by the Commission in its 2003 and 2004 documents. That remit was clearly limited to contract law and very specific areas of the law of property that have a very close relationship with contract law. It would be unfair to say that the academics have in a way run off with the Commission’s ball because, as I set out in the briefing note, that academic research project had been ongoing since 1998, so the academics were already on the playing field when the Commission decided to join the match.

Q28 Chairman: This has been funded to some extent by the Commission. Is there a question as to whether some of the funding has gone on matters which are actually outside the terms of any remit, or is that a question which is outside your remit?

Professor Vogenauer: That is a question on which I would only be able to speculate. You are absolutely right that the funding of the Commission under the so-called Framework Programme 6 was provided for a research programme that had the words “European contract law” in the title, something like, “Towards European contract law”, so you might argue, for instance, that publishing the Books on delict/tort or unjustified enrichment should not have been covered by the Commission funding. I do not know enough about the terms of that funding agreement so I should not imply anything.

Q29 Lord Burnett: Just on a point from Lord Blackwell and Baroness O’Cathain. After a reasonably long transitional period, and I very much took the point you made about young students being taught this system, could you envisage that domestic contract law will atrophy in due course, over a period of ten, 20, 30 years or whatever, and be replaced by this system internally as well as cross-border? Could I ask another question grafted on Baroness O’Cathain’s point. Has there been any survey or any impetus for these changes from the chambers of commerce in the different EU countries, we call it the Confederation of British industry as you know, the German one, the French one and all the others? Has there been a welling up of a desire for this new approach?

Professor Vogenauer: The question whether national contract laws could basically lose their significance entirely ---

Q30 Lord Burnett: Atrophy.

Professor Vogenauer: I think the absolute maximum that could happen that one might reasonably envisage is turning this into a binding instrument for all trans-border contracts within the European Union.

Q31 Lord Burnett: No, you misunderstood. I do understand that point. I am just talking about a gradual process.

Professor Vogenauer: So it would never be made mandatory for purely national contractual relationships and that is still the bulk of contracts by a big majority. Quantitatively these are the most frequent contracts.

Q32 Chairman: That would mean a dual system.

Professor Vogenauer: They would still be governed by national law. Whether you would then have in the distant future what you might call a spill-over effect, as you can see in other

areas of European law, is speculation. It might happen, as I said, with national law reform proposals, as with national case law that would at least take up these ideas. I do not see that this would, in a way, slowly strangle national contract laws to death, national contract laws are vital enough to survive. There was a second question?

Q33 Lord Burnett: My second question is have you surveyed business?

Professor Vogenauer: The European Commission has consulted widely and has invited national interest groups and bodies like the CBI and representatives of the professions to input.

Q34 Chairman: There are papers, are there not?

Professor Vogenauer: Those papers are available on the Commission's website. One clearly could not say that there was a welling up of enthusiasm. Most of the professional bodies representing groups of interests were rather reserved.

Q35 Lord Burnett: What does that mean? Antipathetic?

Professor Vogenauer: Either antipathetic or indifferent. One has to be careful there. I am sorry, I have to refer to the survey we conducted again because we asked the businesses, we did not ask lawyers' representatives. By nature they are conservative, they do not want any changes. The business people were more sympathetic generally, for whatever that is worth. There was clearly no enthusiasm in those circles. That was a reproach frequently made to the European Commission that although it consulted widely it seemed to go ahead in the face of not outright opposition but despite certain indifference.

Chairman: We are under a certain amount of pressure of time because I think the Minister has just started summing up, so we may face prorogation soon. One of the examples given in one of the Commission papers is the car manufacturer who cannot have a uniform policy of

insurance to cover all European countries because there are different mandatory rules in different countries. That is the classic example, I think. Lord Lester's point about the absence of an impact assessment relates to this question.

Q36 Lord Lester of Herne Hill: The American Law Institute model of doing restatements works very well, the restatements of contract law, because they are not binding, they are scholarly, and are influential on the 50 states of the Union as well as the federal system. I just wonder whether you agree with me that it would be better really to adopt that kind of model than what we have here, which is if I look at the composition of the planning and funding of it, it is so heavily weighted against the common law system, if you look at the Book and describe who they all were, and as it has gone on over time the Scottish, Irish and British representatives have got fewer and fewer, and some would say somewhat less authoritative - some would say that. I am troubled that one has gone to this model when with something like that model concerned with public education, the education of lawyers, students, having a model for lawmakers, truly would it not be so much better done if the Max Planck Institute aligned itself with the Institute of Advanced Legal Studies here and other bodies like that had collaborated on an independent project, nothing to do with the Commission or governments, to put forward what is considered to be best practice on the basis of contract laws of the most influential systems?

Professor Vogenauer: I have to declare a vested interest here now because I am a former Senior Research Fellow of the Max Planck Institute.

Q37 Lord Lester of Herne Hill: I know that.

Professor Vogenauer: I would very much like to see a stronger role of institutions like this. Very briefly as to the assumption you made that the composition of the working group is heavily weighted against the common law, that is slightly unfair because, as you said at the

very beginning, the common law represents an extremely important legal tradition within Europe but is only represented by four legal systems, so there is an issue there.

Q38 Lord Lester of Herne Hill: Is that not completely the wrong approach? We are not concerned with counting up numbers of states; we are concerned with what are the most influential legal systems across the world. The fact that the common law system is only in four states tells you nothing about its wider influence.

Professor Vogenauer: I absolutely agree, but in such groups obviously it is very important to strike some balance. I agree there should not be a headcount going on. The British members in these working groups, leading academics, such as Hugh Beale, a former Law Commissioner ---

Q39 Lord Lester of Herne Hill: Originally that was so, but as it has moved on I have noticed --- Anyhow, let us not go into it now.

Professor Vogenauer: The British influence was particularly strong in one respect because Eric Clive, a former Scottish Law Commissioner, had a determining role in drafting the document. I think it would go too far to say that the UK was under-represented, but that was just one part of the question. The idea of the restatement was the original idea of the Commission on European Contract Law that led to the Principles of European Contract Law. That was very much the model of American restatements and the idea was to leave it there. Turning it into something more was only the idea once the Commission weighed in. It would be perfectly legitimate, particularly if this is not going to be turned into any binding instrument, to follow that model and proceed on that basis and give some European Law Institute or European Private Law Institute that might emerge, or existing institutions, research institutions, with some input from the professions and the judiciary, a role in developing this further. That is a very workable model.

Q40 Chairman: You have made some comments about the scope of it and it also includes very detailed chapters on particular contracts, mandate, commercial agency, franchise and so on. Which bits of the Draft Common Frame of Reference for present purposes are likely to be helpful in drafting some document which will actually be used at a European level in the immediate future by European legislators?

Professor Vogenauer: I find it very difficult to answer this. Obviously, instinctively contract sales are the most important group of contracts, but whether there is a real need to have a European instrument there is a different question. An area where most people agree that there is a need and where most people agree that it is feasible is insurance contracts, but I do not know enough about insurance law to comment on that. At least I have heard many voices in that area who would like to see this as a sort of area that goes ahead because there seems to ---

Q41 Chairman: Is this in addition to the basic contractual framework of Books I, II and ---

Professor Vogenauer: Yes, that would be another type of contract to be provided for in Book IV. It is not included in this version but the working group has finished its deliberations and I understand it will be in the final version of the Draft Common Frame of Reference.

Q42 Chairman: So we have not yet got two additional bits, additional to Books I, II and III?

Professor Vogenauer: Yes.

Q43 Chairman: Looking at the core areas which you identify, Books I, II and III, possibly sales and insurance law, how far is what we have got likely to be in English eyes acceptable, firstly if it is used in the consumer field and, secondly, if it is proposed to be used in the business field?

Professor Vogenauer: This will very much depend on the observer's view on the strengths and weaknesses of English law. If you think, for instance, that the parol evidence rule has lost its significance and only exists on paper and is more dead than real you would like to see it go. If you think it is still an important rule that protects the integrity of the written document you would like to maintain it. That takes up a point I wanted to make earlier. The most significant departures are on a deeper level. If we go beyond the individual rules on offer and acceptance, one I have already mentioned, the abandonment of a requirement of consideration; and then the other one puts freedom of contract or party autonomy as "subject to the rules on good faith and fair dealing", that is Book II Article 1:102, a crucial provision. The model of English contract law is a bargain between the parties who are essentially at arm's length. You might argue if this model of contract law carried the law, the DCFR model, it would provide a less commercial, less hardnosed contract law, a contract law that is more open to considerations of substantive justice and fairness, as Professor Collins from the LSE would say, "considerations of social justice". Whether you think that is desirable or not depends very much on your vision of contract law and commercial relationships.

Q44 Lord Burnett: You could almost say that is putting the parties in a fairer position philosophically.

Professor Vogenauer: Philosophically. It would certainly lead to a contract law that is more in line with continental ideas of seeing the contract as a joint enterprise of the parties striving towards a common goal and not seeing them as essentially antagonistic.

Q45 Lord Burnett: It equals the balance perhaps rather more in favour of the weaker party to the contract.

Professor Vogenauer: That is certainly one of the points that some people would like to see. If, for instance, you look at the areas where, as I said earlier, rules from the Acquis, from the

Consumer Law Acquis, are generalised so that they now cover business relationships, that exactly would happen. Even in a business-to-business contract the economically weaker party, however you define that in a particular context, would be better protected. Again, it very much depends on your vision of contract law, whether you think that is a good idea or not.

Lord Lester of Herne Hill: My Lord Chairman, we have not got time to do this now, but could I just express some dissent. I do not accept that English contract law is ethically aimless. We had better not go into it now. I believe there are mechanisms that are there to secure fairness that go beyond what you call a commercial --- There is no time to go into it now, it is the subject of probably a five hour debate.

Q46 Chairman: Just trying to encapsulate that point - I am sure we are all fully aware of it - there are plenty of rules in English law, the underlying conception of which is to ensure a fair result.

Professor Vogenauer: Absolutely.

Lord Burnett: You smoked my colleagues out with those questions!

Q47 Chairman: England as a forum and English law as a law are chosen regularly by businesses. One asks why and whether there are features in the approach taken in the Draft Common Frame of Reference which would make English forum, English law, less attractive.

Professor Vogenauer: Yes. First of all, of course I did not want to argue that English law is ethically odious, quite the ---

Q48 Lord Lester of Herne Hill: No, aimless. I am using Max Weber's expression "ethical aimlessness".

Professor Vogenauer: I would not even go that far. One of the major arguments against the Draft Common Frame of Reference from the English perspective is precisely that this Draft Common Frame of Reference would not really work in commercial relationships where the parties want predictability, they want certainty, they want clear-cut rules, even if that is at the expense of the party that might be the weaker one. Whether the adoption of a draft Common Frame of Reference would make English law less attractive as a choice is an open question. It might make English law even more attractive if business people thought that English law played out better for their transactions. As long as they have the freedom to choose you might see a flight into English law if English law is really perceived to be superior for business transactions. It is by no means clear that English law would lose from whatever kind of adoption of the Draft Common Frame of Reference.

Q49 Lord Wright of Richmond: Can I ask a question on a rather different point. Do you know whether there have been any cases in the European Court of Justice in which any reference has been made to this draft?

Professor Vogenauer: No, apart from the one reference made by an Advocate General a few months ago that I mentioned earlier. To my knowledge they have not but, of course, the draft has only been around for a few months.

Q50 Lord Wright of Richmond: And it is a draft.

Professor Vogenauer: And it is a draft. One can see a tendency because the precursor to Principles of European Contract Law, as far as I know, has only been referred to once by an Advocate General, although the first edition of those principles dates from 1998.

Q51 Chairman: I am sure you will have seen them, there have been two articles, certainly a major one by Eidenmüller, Faust, Grigoleit, Jansen, Wagner and Zimmermann, from the Max

Planck Institute in Hamburg, and the other one by Professor Reiner Schulze, which you may or may not have seen, on the general focus of the DCFR and his wish to recontractualise it, in other words to focus it on the law of the contracts and his regret that it is so widely focused. Have you got any comments on either of those papers? They are very broad and I think it is right to say in the case of the Zimmermann paper fairly critical.

Professor Vogenauer: Yes. It would be too far to engage with the individual points made there, it is another five hour topic. It is very important to note, for instance, that article by the five or six German scholars is highly critical and it is a good example that it is not only the common lawyers who feel under threat or who feel a certain unease, you have a strong current of criticism in France and Germany. That relates both to the form and substance of the DCFR, the changes that would be made to contract laws, and it is by no means a common law only problem that we see here. I should not comment on the articles because ---

Q52 Chairman: Trying to look at it generally, what is the general thrust of the criticism?

Professor Vogenauer: The general thrust of the criticism is that paradoxically the DCFR is both too detailed - it has very detailed rules going into the nitty-gritty - but, on the other hand, it uses an astonishing number of vague and ambiguous terms, concepts like “reasonable” and “good faith”, so it leaves a lot of discretion to the judge or anyone else who would apply that sort of instrument. Of course, there are all sorts of criticisms as to particular substantive rules. I am not sure whether you have seen the onslaught of Professor Ulrich Huber on the sales contract, which says this deviates fundamentally from German sales law and does not deviate in a way that would be beneficial to sales law, so what is the whole point of it.

Q53 Chairman: Maybe you can supply us with a reference for it.

Professor Vogenauer: That is in *Zeitschrift für Europäisches Privatrecht*, the last issue.

Q54 Chairman: Is it available electronically?

Professor Vogenauer: I suppose so. I will certainly be able to send a copy to the Committee.

Q55 Chairman: That would be very kind. I heard Baroness O’Cathain say *sotto voce*, if she will not mind me repeating it in the light of your comment, that what you said sounded like a recipe for lawyers. Is there a recipe for lawyers and also possibly a risk that it might lead to quite a lot of litigation to work out what it meant?

Professor Vogenauer: That is certainly part of the transition costs that you have. It will be a recipe for lawyers in the sense that all pieces of legislation are recipes for lawyers. You have, of course, a lot of costs incurred in legal advice today with the given complexity. Just imagine for a moment that we had a single uniform contract law applying throughout Europe. That would create enormous problems, say, for the first ten years until we have a body of settled case law. This is not going to happen but, just assume that, you would then save an enormous amount of costs that you now have to pay your legal advisers to advise you which law to choose, how to go about it, what is feasible and what is not. In the long run it might be beneficial in a cost benefit analysis but, as I said before, there is no way to predict this with any mathematical precision.

Q56 Lord Burnett: Could it be even more chaotic than that? Could you have decisions on this in different countries, Greece or England or Germany or France, in the lower courts which seek to define these nebulous expressions that you have referred to and give different meanings to them in different jurisdictions?

Professor Vogenauer: That would be bound to happen. That happens with all international uniform law instruments. That happens with regard to European law. If you look at, say, administrative or environmental law, because the national courts are community courts they may have to, and in some instances do have to, refer to the European Court of Justice and ask

for clarification and interpretation, but First Instance Courts, for instance, do not have to. This would be bound to happen, but I venture to say it is not a killer argument because it happens all the time with European law and it happens with all other international uniform law instruments. With European law it is less problematic because you have a European Court of Justice as an ultimate arbiter on these questions.

Q57 Baroness O’Cathain: Does the word “subsidiarity” come anywhere near this?

Professor Vogenauer: That is a legitimate question. That is a question that the Commission has not answered to my knowledge.

Baroness O’Cathain: Am I surprised?

Q58 Lord Blackwell: This is a question directly related to that. At the end of the day we are scrutinising this in this Committee. Supposing we came to the view that a combination of political will and legal momentum meant that this is going to have an impact on English law that over time will force changes, and if we concluded that our own cost benefit analysis was questionable, bearing in mind that the UK is different from some of the other continental countries, not just in its legal system but in the extent to which it trades with the result of the world, and if as a result of that we concluded this was not a good thing for the UK, is there any mechanism by which the UK Government or legislature could decide that it wanted to opt out?

Professor Vogenauer: It depends very much on the legal effect that such an instrument would have; on the legal basis, whether it would be subject to qualified majority voting or whether there would be a veto for national governments. One cannot really give an answer to this before one knows what kind of legal instrument would be adopted. The UK Government probably could not block this on its own, but it really depends on which legal base it is going to be given. One has to make one point. This might be an enormous opportunity for English

law. English law might come out very strongly, it might become the law of choice, or, given that the legal professions in London are so strong, they might develop an expertise in this and get a lot of business by becoming experts in that. A good example where the UK chose to opt out is the uniform sales law, the Vienna Convention on the International Sale of Goods, where all Member States of the European Union today, apart from Portugal, Ireland and the UK, are Convention states. It is clearly felt by many that although this is not detrimental to the economy of the UK, there is a real lack of legal expertise in the City of London on the Vienna Convention which is an important instrument in international trade. There might actually be tremendous opportunities for English law and for the British economy there.

Lord Blackwell: With respect, our primary interest is not the interest of the British legal profession.

Chairman: On that controversial note, Lord Lester.

Q59 Lord Lester of Herne Hill: My difficulty is that in my experience as a practitioner I have not encountered a sufficient problem to make any of this worth the effort. I can see that in a small Eastern European country that has lived under dictatorships of a fascist and communist kind, and now emerged with the Velvet Revolution, from their point of view the transition towards a new system is a different problem which needs to be addressed, but my experience of international arbitration, whether it is ICC or World Bank arbitration or in an ordinary private commercial contractual dispute where the applicable law is, say, Spanish and yet it is a contract involving an English commercial concern, is this is really taken care of without too much cost and without too much difficulty. As I look at this, that is why I say what is the point of it all because if they have not done cost benefit analysis --- I do not share Lord Blackwell's fear that this is somehow going to flow into our system, I do not think that will happen, but as a European citizen I think what is the point of spending money on this project if it is not going to deal with the pressing problem in a practical way. Going back to

Baroness O’Cathain’s question about subsidiarity, surely what that teaches us is that by all means deal with conflicts between systems in a central way, by all means try and harmonise private international dealing with conflicts, but leave the states themselves with their own legal systems to the extent that you possibly can because good governance, in law as in elsewhere, consists of taking decisions at the lowest level compatible with good government and not at the highest level, which is what I understand subsidiarity to mean.

Professor Vogenauer: I have nothing to argue with on the subsidiarity point, I fully agree. On the costs argument one has to be a bit more careful. Once you have reached the state of international arbitration you have racked up considerable costs, of course, and once you hire a world-class QC that does not come cheaply.

Lord Lester of Herne Hill: You would be surprised!

Q60 Baroness O’Cathain: Try it, he says!

Professor Vogenauer: The wine seller in Bordeaux and the purchaser in Bristol, again in an ideal world they would not have to quibble about the applicable law, they would not need legal advice, they would have a European contract law into which they could opt, ticking a box possibly, and they would have that regime and be able to rely on the general overall fairness of that regime that has been approved by the European authorities. For such small businesses, that might be fairly attractive.

Q61 Lord Lester of Herne Hill: That is a good answer.

Professor Vogenauer: Once you come to litigation you have costs.

Baroness O’Cathain: Do you really think that at the moment the way they deal, the vineyard and purchaser of wine, causes them any problems? Relationships have grown up over years and they trust one another. All the things you said about trust, ease and all the rest of it are going to be there now, are they not? I just think this is meddling.

Q62 Lord Bowness: That is an example, is it not? There must be lots of new businesses and new sorts of trade going on that have not got these sorts of relationships.

Professor Vogenauer: E-commerce obviously, but that is taken care of by the draft Directive. There is no trust whatsoever in e-commerce. One of the ideas of the European Commission is the so-called “blue button” where you would have a consumer contract law or consumer law and by clicking that blue button you would make that European consumer law applicable and as a consumer you would know wherever you are based you have a level playing field and are being looked after.

Q63 Chairman: This is the Optional Instrument and it requires some regulation or Directive at its base.

Professor Vogenauer: We have to be careful, there are many sorts of international contracts. There are the very big commercial law contracts with legal advice to both parties, millions at stake, but you can order a bicycle by e-bay or something like it, and you might wish to do that from Holland and all of a sudden you are in an international consumer contract.

Q64 Chairman: Can I just try and wrap up the questions. There are two areas which I think we have not covered, which are really the areas of questions ten to 13 first and then questions 14 and 15. On ten to 13, which looks to the future, we have this document. How should Europe set about extracting from it in order to be useful in the short-term, as the Council has indicated, as a tool for better law-making targeted at Community lawmakers? How can this be done? We have got an academic document produced by researchers, are they the people to do it, or ought the Commission to be doing it? Is there any other possibility?

Professor Vogenauer: First of all, my suggestion would be to focus exclusively on Books I to III and postpone all further research in the areas of torts and unjustified enrichment, really focus on these essential parts of the Draft Common Frame of Reference. Who would be the

best people to deal with that? I think it would make enormous sense to keep the academics onboard who have worked on this for almost a decade because they have a lot of expertise.

Chairman: Would they not just say, “We have done it”?

Baroness O’Cathain: And take the t-shirt!

Q65 Chairman: You told us there has been a lot of criticism of the nature of the rules, how can that be accommodated now in the system?

Professor Vogenauer: In a way one would wish for a second Commission that would look at this Draft Common Frame of Reference and would consult again. The consultation period was very short for this document that was really only available at the beginning of January of this year and is meant to be the basis for a final draft by the end of this year. Ideally, I would like to see another group, not only of academics but including Commission officials and - to use that phrase - stakeholders, giving them more time to come up with a draft that takes into account the criticism.

Q66 Chairman: Is there any sign of that happening? Do you know what is happening?

Professor Vogenauer: I do not know what is happening. What I understand is from comments that have been made by the Commissioner in charge of this, Commissioner Kuneva of DG Consumer Affairs. She has not said this explicitly, but the feeling I have is that this is not going to happen during this Commission, it is not a matter of priority. The Consumer Commissioner seems to wish to focus on the review of the Consumer Acquis and regards the CFR as a long-term project.

Q67 Chairman: So it is not going to happen this year?

Professor Vogenauer: That is my impression. I am not within the Brussels machinery.

Q68 Chairman: Have you got any comments on the last two questions, the process to date and whether any lessons are provided for future law reform projects and whether the Union should develop an equivalent of the Law Commission to avoid having to engage with academics who have their own particular programme of interest?

Professor Vogenauer: My Lord Chairman would be much better placed to answer the question on the stakeholders. What I have heard from stakeholders is that they were generally rather frustrated by the process because they got the drafts at a very late stage and had very short meetings at which they had to discuss enormous amounts of provisions. I was not party to that process so, again, I can only pass on second-hand information. Whether there was, as is insinuated by the question, an exclusion of key stakeholders, I am not so sure. National governments could nominate stakeholders and so could some interest groups, so that might also be an omission on the part of the legal professions to get involved with the process that was going on.

Q69 Chairman: Speaking from personal experience, in the case of England and Wales there was very substantial legal representation so I understand your comment about the way in which the question is formulated.

Professor Vogenauer: There was a frustration on the part of the stakeholders and that was also due to the time pressures. I am sure one could organise that in a better fashion in an ideal world. One has to be careful, I think the Commission tried something here and it gave them a lot of flak. They tried to be very transparent and not to set an agenda at the very beginning and were told in response that they were indecisive, did not set clear goals and no-one knew where the journey was leading. The traditional way, as we can see with the Consumer Rights Directive, is very different, there is a very short consultation procedure then the Commission official goes away, drafts a Directive, there is then consultation and it goes into the political process, arguably with much more far-reaching political and legal consequences because this

is going to be a Directive. Although I agree that this was not organised in a perfect way, one has to give the Commission some credit for having tried. Whether a European Law Commission would be a good thing, that follows from one of the questions asked by Lord Lester. In general, I think it would be a good thing and I understand rumour has it that the Swedish Presidency might launch an initiative once it takes over the Council Presidency for a European Law Institute, but I have no further information on it.

Chairman: Does any member of the Committee have any further questions?

Lord Wright of Richmond: Could I just ask a very simple question. The conclusion that I draw from this discussion is that that document is descriptive and not prescriptive, and is unlikely ever to become prescriptive. Is that a fair summing up?

Q70 Baroness O’Cathain: You do not expect him to answer that!

Professor Vogenauer: I agree with the second part, it is certainly not going to become prescriptive in this form. Elements of it may become prescriptive. I disagree with the first part, it is not necessarily descriptive because the working groups have developed new rules, particularly where they did not find a common core of European contract laws, and have developed what they call “best solutions”.

Lord Wright of Richmond: Thank you. I stand corrected!

Q71 Chairman: It is those which may be among the ones to which there has been objection?

Professor Vogenauer: Yes.

Chairman: Professor Vogenauer, unless anyone has any further questions, we are extremely grateful to you, thank you very much for your help. If you would not mind sending us the reference or a copy of that document it would be extremely helpful, in whatever language. Thank you very much.