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The Rt. Hon. The Lord Woolf  
Chairman of the Financial Markets Law Committee  
c/o Bank of England  
Threadneedle Street  
London  
EC2R 8AH

21 June 2009

Dear Lord Woolf,

### European Contract Law – Common Frame of Reference

Thank you for your letter dated 1 June about the Financial Markets Law Committee's concerns on the Common Frame of Reference (CFR).

I should like to begin by saying that the Government shares many of the concerns raised by the Financial Markets Law Committee about the CFR, and the Government also strongly opposes any move towards harmonisation of contract law.

The consensus among Member States, with which the Government agree, is that the CFR should be non-binding guidance (also referred to as a 'toolbox') for use by the European Community lawmakers on a voluntary basis as a source of inspiration or reference in the law-making process. The Government considers that such non-binding guidance would help to improve the quality and coherence of the *acquis* in the area of European contract law. If such a 'toolbox' is finally developed, we would monitor its use to ensure that it did not develop into a European Civil Code.

It is necessary to distinguish between the development of the 'political' CFR from the development of the 'academic' CFR (referred to as the DCFR). An interim outline edition of the DCFR was published in January 2008, with the final version published in December 2008. The complete version with notes and commentary will be published this autumn.

The Government considers that the DCFR is an impressive piece of academic work that will be one of the sources from which inspiration will be drawn for the content of the political CFR. The Government considers that a better understanding of respective legal traditions of Member States can only help to develop better legislation that fits and works.

Last year, as you know, Professor Simon Whittaker, was commissioned by the Government to analyse the interim outline edition of the DCFR. The Government agrees with Professor Whittaker's analysis and conclusion, that the DCFR would not be a suitable model for a CFR intended to provide guidance, or to serve as a 'toolbox' for, European lawmakers. However, the DCFR will only be one of the sources from which inspiration will be drawn for the content of the political CFR.

Although the political CFR has yet to be drafted by the European Commission, I can assure you that it will have to be approved through the relevant institutional processes.

As to future developments, the European Commission has stated that it will review the work done to date on this dossier before considering what the next stages should be. It seems unlikely that they will produce a White Paper before late in 2010.

I am of course willing to meet you and other members of the FMLC to discuss the CFR, if this would be helpful. I suggest that your secretary contact Caroline Davies, my Diary Secretary on 020 3334 3662, to arrange a date.

*Yours sincerely,  
Willy Bach*

**WILLY BACH**