

French Codification Method and implementation

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Elisabeth CATTA

catta.elisabeth@orange.fr

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1. Presentation by the speaker

- Project manager at the Ministry of the Interior – local authorities (1991–2000) for the development of the general code of territorial communities (legislative and regulatory parts)
- Member of the Higher Codification Commission (1995–2022) chaired by the Prime Minister
- Cooperation mission to the rule of law in Cambodia (2001) for the drafting of the penal code and the criminal procedure code
- Honorary Judge (Advocate General) of the Judiciary

Experience of codification in Cambodia (2001-2005)

- **Project "Support to the rule of law" (2001)**
 - Paris Peace Accords (1991) : a path to democracy and economic development
 - Political objectives : strengthen the institutions of the rule of law (separation of powers, hierarchy of norms, equality before the law)
- **Means :**
 - Codification of criminal law and procedure (2 codes)
 - Restoration of national legislation in conformity with the 1993 Constitution and international commitments
- **Issues**
 - Access to written legal sources
 - Cultural approaches (Cartesianism vs Khmer)

- **Solutions**

- Bilingual computer prototype "CAMBOcode" adapted from the French software MAGICODE (2/3 of the 76 French codes)

- **Results**

- Finalized and computerized version of the 2 codes submitted to the Authorities (2005)

- **Feedback**

- One-shot project with no political continuity or modelisation (the civil code)
- Absence of the transfer of legal and IT skills

2. Context note

- **Objectives**

- Transformation of the Cambodian legal framework into a uniform, efficient and consistent system
- Compliant with international best practices and standards
- Anchored in the historical and cultural context of Cambodia

- **Means**

- General codification of law by subject
- In particular: implementation of a commercial code

3. French legal codification

- **Compilation**

- Collect all the texts in force concerning a field of law
- Cover all international and national texts (EU regulations, laws, ordinances, decrees, ministerial orders, by-law, etc.)
- Highlight the links between the different texts (first legal analysis)
- Have all the legal standards of a given subject to propose a classification

- **Consolidation**

- Technical aspect: chronological insertion of all the modifications made to a legal text over time (addition, modification and deletion)
- Legal aspect: obtain an updated, secure and readable version of the legal text (source text of the codification)

- **Codification**

- Act of gathering, organizing and structuring the rules of law relating to the same matter in a code which is enacted by the public authority
- Defining the rules of development: need for a doctrine
 - Constant right (law as it stands) or not
 - Prioritization of concepts: development of the plan (from general to particular)
 - Uniqueness of the plan: single plane (legislative and regulatory)
 - An article of the code = a legal idea
 - ...
- Public management of law
 - Continued political will and institutional adaptability

- **Codification**

- What is not a code:

- A collection of texts, that is to say a compilation (international conventions, laws, decrees, circulars, jurisprudence, etc.)
- An outreach guide of practical knowledge (digital or paper support) suitable for users
- A teacher manual for students to graduate
- A "publisher's code", without any normative equivalent and without validation by the public authorities, comparable to a compilation at the initiative of a private publisher for a certain type of user (example of *the Company Code* published by the publisher Dalloz in France, which concerns all *profit-making groups*)

- **Codification**

- Prerequisites for codification:
 - Inventory and compilation of texts in the field of law
 - Consolidation of the legal fund to be codified



Meticulous, demanding, and time-consuming step

3.2. French legal codification/Different types of codification

Criteria	Constant law	Non-constant law
Primary Objective	Reorganization <u>without</u> normative modification	Reorganization <u>and</u> normative modification
Content of the legal rules	Keep it exactly as it is	Modernize (add and significant changes)
Legal certainty	Very high	Weaker
Political acceptability	High	Contestation and debates
Development time	Court	Long
Litigation risk	Low	High
Modernization	Limited	Significant
Correction of inconsistencies	Limited to essential adjustments	Wide possibility of corrections
Adapting to changes	Low	Important
Change management	Changing practices is difficult	Classical adaptations following a reform
Concordance table (link from the previous text to the new wording)	Essential	Essential

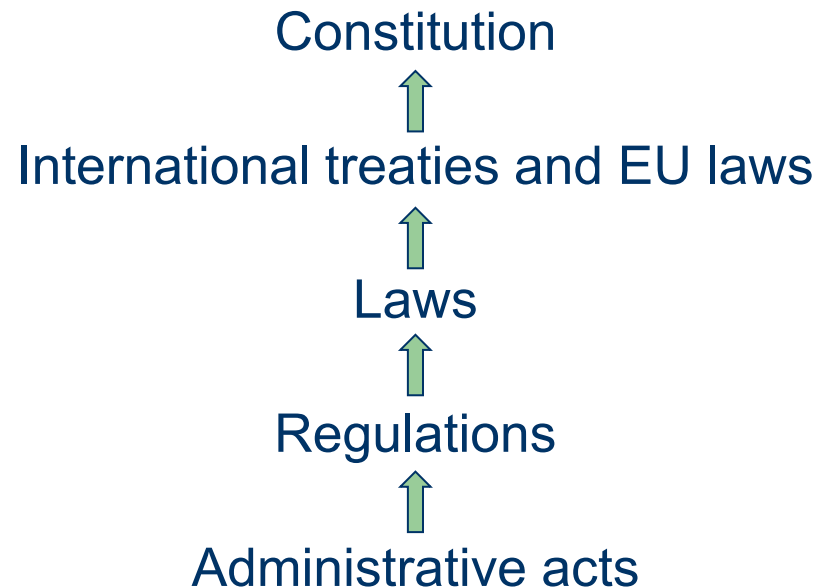
3.2. French legal codification/Different types of codification

	Constant law	Non-constant law
Benefits	- maintains legal certainty - Structures the law - facilitates the adoption of a code - reduces political debates - quickly updates the law - limits the risks of misinterpretation	- modernizes the law - corrects inconsistencies - adaptation of the law - reform the law
Disadvantages	- maintains obsolete rules - lack of innovation - possible complexification of the law	- longer works - sometimes important political debates - training of practitioners - risk of litigation
Conclusion	Legal certainty <u>The law as it is</u>	Modernization <u>The law as it should be</u>

- Principle of **constant law**: no creation of new standards
- Principle of **consistency of law**: each article listed is analyzed and put into perspective with a legal whole
- Principle of **legal certainty** : the codified articles are repealed, as well as any unnecessary, conflicting, obsolete or transitional provisions that have fallen due
- Principle of **readability** : editorial changes necessary to ensure the coherence of the text and the vocabulary are accepted and justified

- Principle of **exhaustivity** : concerns all the texts in the area of law examined
- Principle of **legal quality** : codification is an opportunity to propose improvements to the legal system (invalidity of certain texts or errors in the hierarchy of norms)
- Principle of **manageability** : only one legal matter in a single volume, which is more comfortable for the user and the legislator
- **Dissemination** principle: sign of good governance, transparency and improvement of international relations

- Codification is not just a thematic classification; it is also an organization that complies with the hierarchy of standards
- The hierarchy of norms makes it possible to organize the legal system in the code and to avoid contradictions between the rules.



- Ensuring the consistency of the law
- Protection of fundamental rights
- Legal certainty ensured
- Facilitated the control of standards

Fundamental principle of the rule of law

4. The experience of the commercial code in France

- **Is commercial law codifiable?**
 - The paradox of codification, which tends to stability, and commercial law, which is in constant flux
 - Integration of national and international constraints and adaptation of the law to these constraints
- **Is the codification of commercial law universal?**
 - Different choice of implementation depending on the country or institution
 - Autonomous Commercial Code (France, Germany, Morocco, etc.)
 - Commercial matter included in the civil code (Italy, Thailand, etc.)
 - Specialized laws and case law (United Kingdom, United States, etc.)
 - Draft EU Commercial Code

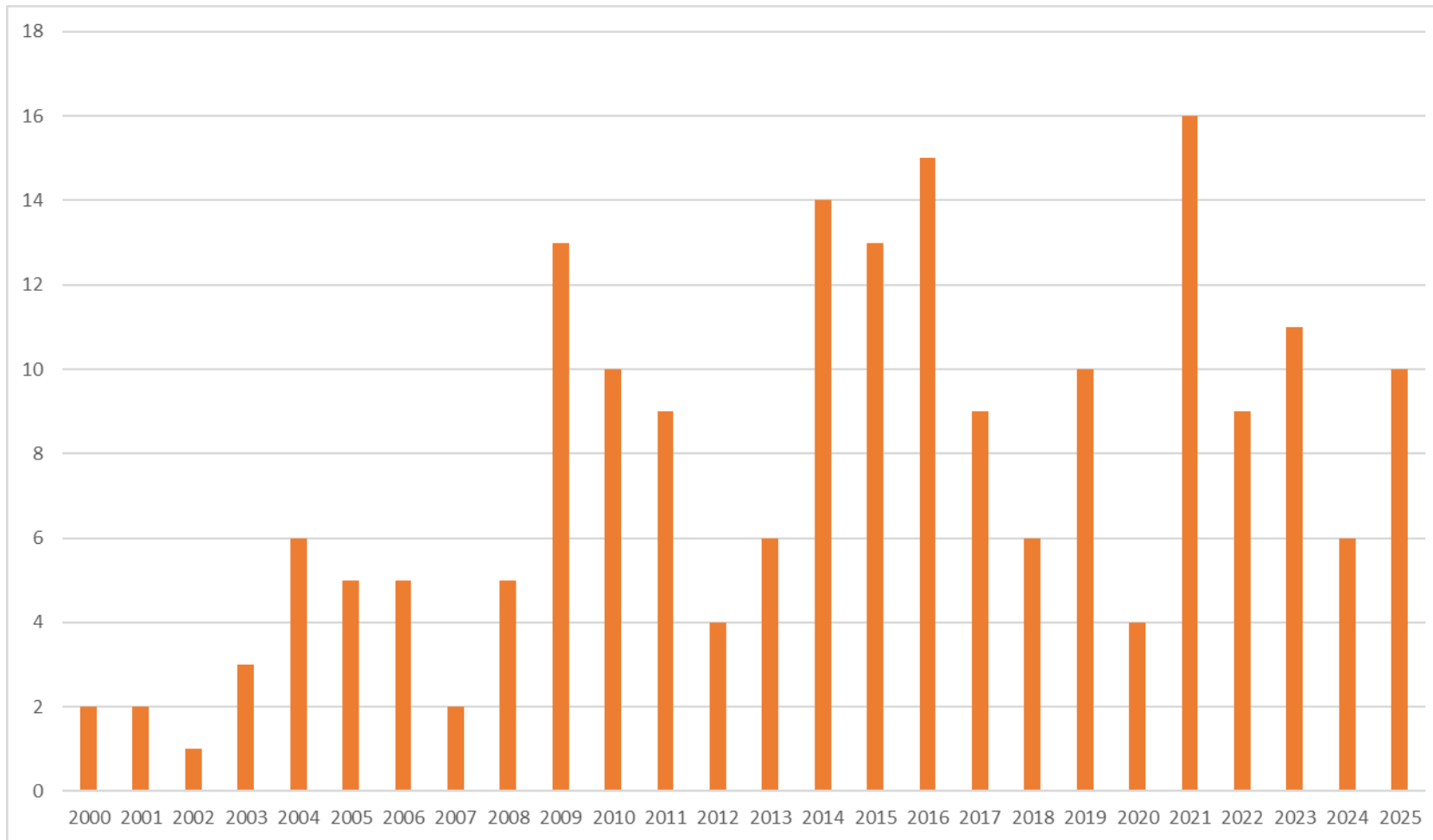
4.2. The experience of the commercial code in France/History of the code

Period	Comments
1673 Savary code 122 articles	- Constant law - Two ordinances by Colbert (Land trade 1673 and Sea trade 1681). It is a subjective view of the law related to the person (merchant) and not to the activity
1807 Code Napoléon 648 articles	- Difficulty in departing from the Civil code (1804) - Code for merchants (desire to control them not to help) - The importance of bankruptcy seen as a punishment (1806 bankruptcy Récamier) - Creation of a capital company only under authorization from the government - Lack of provisions on credit and sale
1807-2000 Decodification period	- All commercial law texts are taken outside the code: bankruptcy, corporate law, commercial property, commercial lease, securities regime, currency, stock exchanges, competition law, banking law, intellectual property law, etc.
1948 20 articles Reform project	- Failed. Abandoned project. - Lawyers believe that the commercial code needs to be completely reformed

Period	Comments
2000 Ordinance No. 2000-912 of 18 September 2000 relative to the legislative part of the commercial code 1 918 articles	- Dynamics of codification since 1989 (creation of the Higher Codification Commission) - Decision of the Constitutional Council (16 December 1999) - Constant law without innovation with a consolidation of the previous law - Grouping of all the texts, laws, and decrees, dispersed and de-codified - A Code that restores the hierarchy of standards - Sharing of commercial law in different codes: monetary and financial code, consumer code, intellectual property code, etc. <u>Criticisms from the legal world</u> - Overlapping of civil and commercial law (bankruptcy of civil companies, civil society law) - Inadaptation to the different sizes of companies - European law not taken into account (European Regulation) - No integration of case law, an important source of commercial law (national and EU courts)

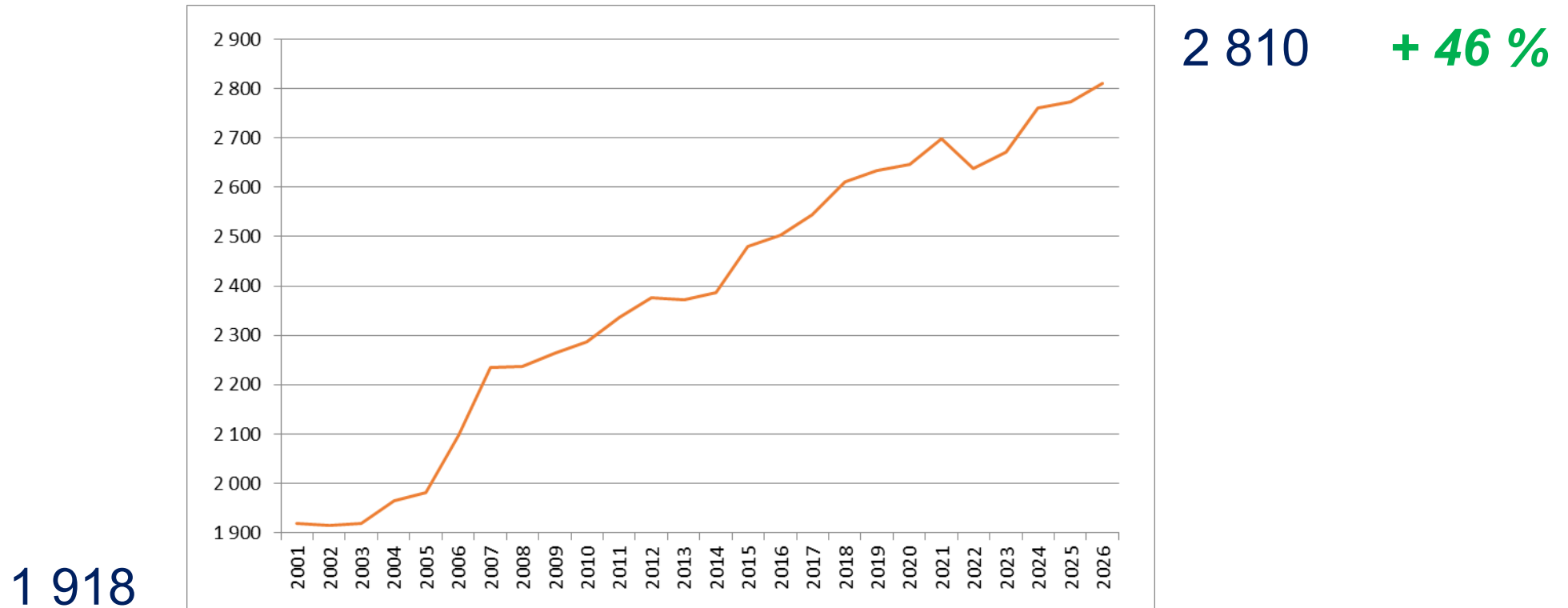
4.3. The experience of the commercial code in France/Maintenance

- The codes are being modified as reforms progress and are gradually becoming disorganized.
- Number of amendments to the Commercial Code per year (196 in total)



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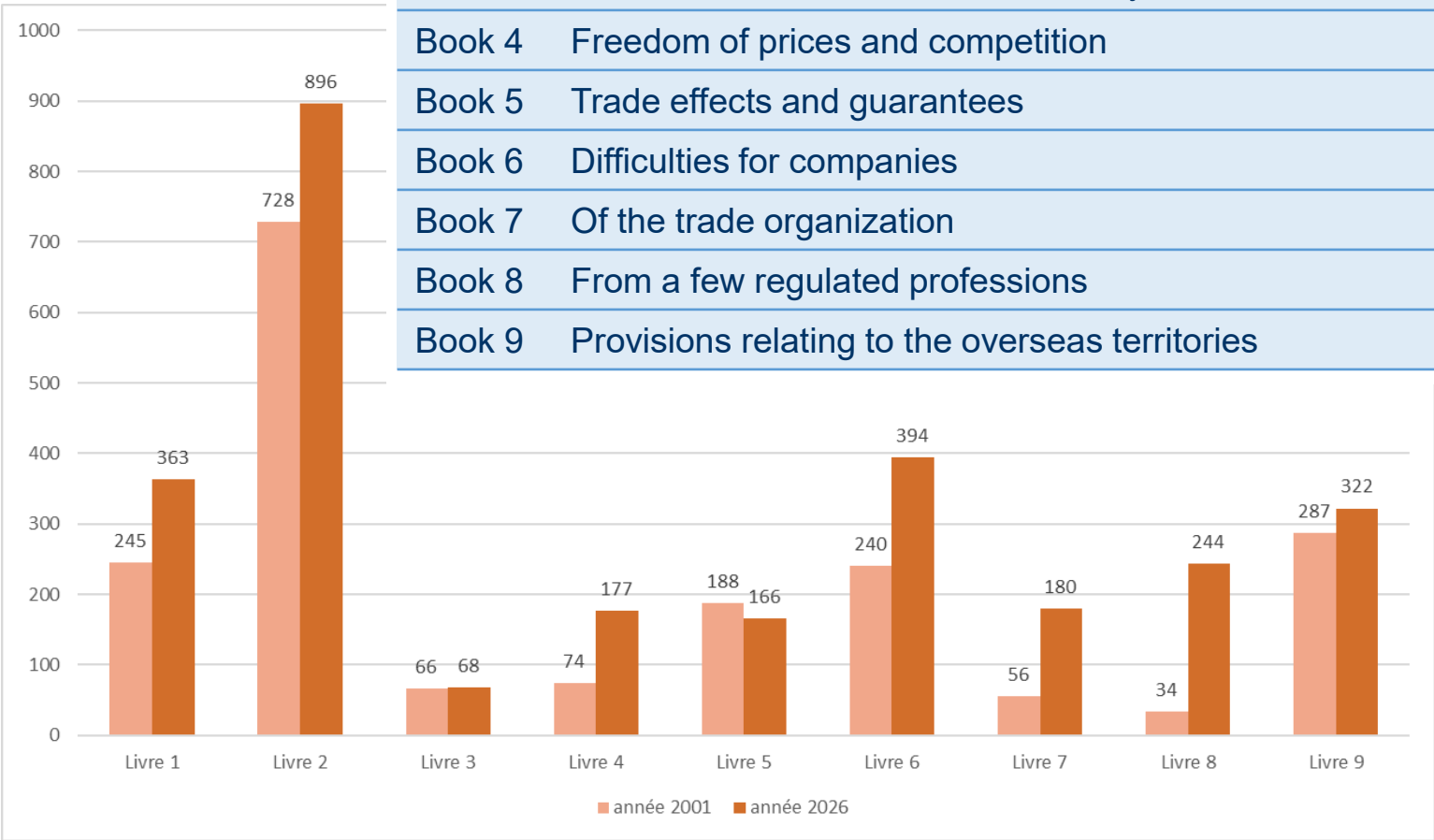
- The structure of the code breaks down. The code's construction rules are not respected (one article = a legal idea). The number of articles is increasing.
- Change in the number of commercial code articles per year



4.3. The experience of the commercial code in France/Maintenance

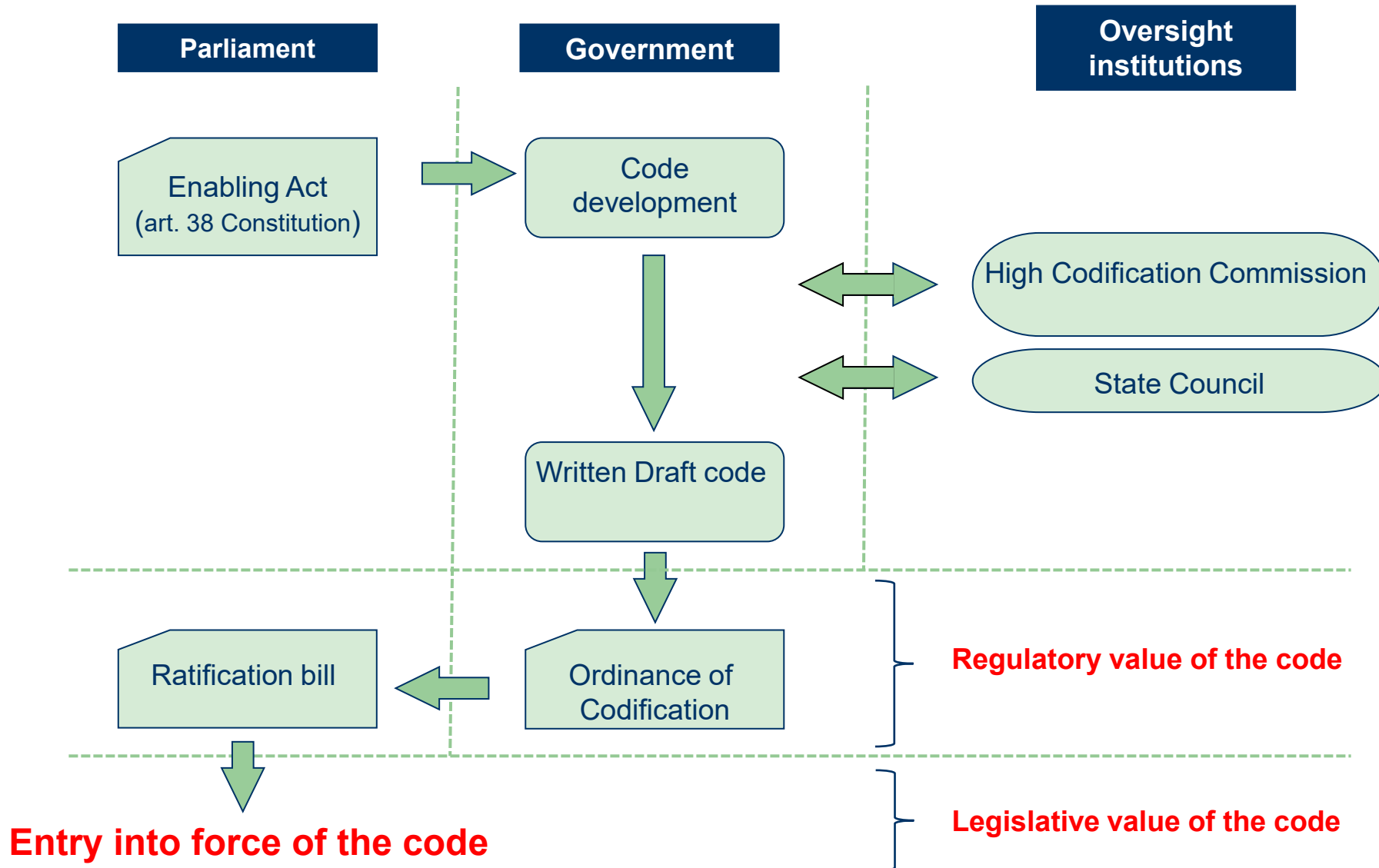
- Change in the number of articles per book for the commercial code (2001 to 2026)

Book	Title	2001	2026	Variance
Book 1	Trade in general	245	363	+ 48 %
Book 2	Commercial companies and economic interest groups	728	896	+ 23 %
Book 3	Certain forms of sales and exclusivity clauses	66	68	+ 3 %
Book 4	Freedom of prices and competition	74	177	+ 139 %
Book 5	Trade effects and guarantees	188	166	(- 12 %)
Book 6	Difficulties for companies	240	394	+ 64 %
Book 7	Of the trade organization	56	180	+ 221 %
Book 8	From a few regulated professions	34	244	+ 618 %
Book 9	Provisions relating to the overseas territories	287	322	+ 12 %



5. Management of the codification project

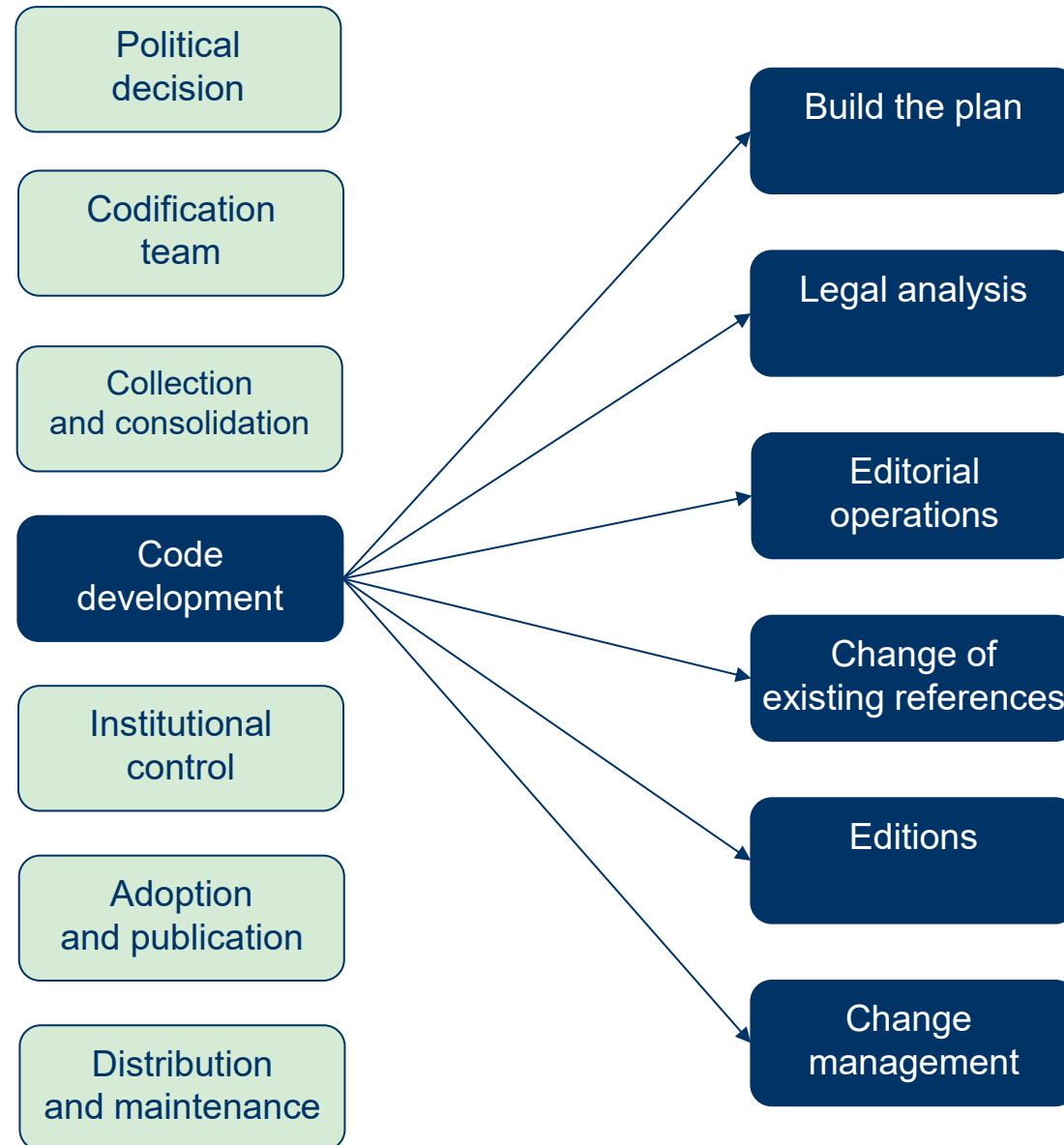
- Adoption cycle of the legislative part of a code in France



• **National management of codification**

- The government's General codification program (1996-2003-2024)
- Draft code prepared by the competent ministry
- Institutions supervising the codification work (Higher Commission for Codification, Council of State and General Secretariat of the Government): planning, project analysis, monitoring of work, implementation of doctrine, arbitration between ministries, etc.
- Definition of a methodology: reproducibility, rule modeling, etc.
- Preparation rule: hierarchy of the plan, parallelism of the plan (legislative/regulatory), identification and numbering of articles, repeal of source articles, drafting guide, etc.
- Use of a specific and suitable computer tool common to all those involved in codification

- Code Roadmap



• Managing a Code

- Codification mission dedicated to the work of developing the code (human resources) within the administration
- Multidisciplinary mission working group: legal expert, specialist in the field of codified law (professor of law, practitioners, magistrates, etc.), computer scientist
- Collective intelligence: interdepartmental relations and internal relations within the ministry
- Imperative political support from the minister responsible for the legal field to be codified
- Appropriate technical resources and training for members of the codification mission

6. Conclusion

- To codify is a major political, legal and institutional work, which is not only a compilation of texts
- Why codify, what to code, how to code?
- Codification carries risks: freezing the law, erasing customs, producing too abstract a code, importing an unsuitable foreign model, etc.
- It is essential to involve the relevant stakeholders in the draft code in order to benefit from collective intelligence.
- Manage post-coding (change management): training, publication, translation and maintenance of the code

To codify is not just to write the law

It is to organize a vision of society, public authority,
and justice

It is therefore necessary to codify with clarity,
prudence and respect for the national context