

WHY CODIFICATION ?

Why a commercial code ?

That is the question....

1.The need of judicial certainty

- « *When legal certainty has disappeared, no value can survive* »
Doyen Roubier-Lyon, specialist in application of law over time.
- Observing regarding the sources of law :
 - Disorganized fragmentation of the sources of Law
 - Fragmentation of the Law across different texts
 - Difficulty in understanding scattered and dispersed rules
 - Uncontrollable regulatory inflation
- UNCERTAINTY = lack of trust

2. Consequences

- **Economic factor:** the need for legal certainty is linked to economic growth and the development of domestic and international trade.
 - But conversely, judicial and legal certainty is a factor encouraging investments, promoting the development of competition and international trade;
 - Legal certainty reduces costs for business by alleviating the burden of overly complex regulation;

- **Social aspect** : the inability to access the law creates a sense of injustice because it is difficult to prove one's case in court and is very expensive ;
- Credibility of institutions : magistrates, lawyers and legal profession can no longer identify the applicable rules; the justice system is discredited;
- State institutions find it difficult to justify a decision (environment, urban planning, construction, taxation, customs..)
- Encourages dishonesty and corruption; **Absence of a RULE OF LAW**

3. Possible solutions : rationalising the law , what it means in terms of codification (1)

- **Organising** : by subject matter or theme(bankruptcy, currency, competition, courtscriminal provisions...). This is a matter of **legal management** which must be carried out at higher level to be effective;
- **Effectiveness** , it means achieving the desired result. To be effective, choices must be in accordance with a guiding principle and specific objectives. Exemple the decision on how to allocate provisions (articles) between different codes. In France discussion about legislation on cheques or arms or ..flowers. **Decisions must be taken at higher level.**

Possible solutions (2)

- **Simplification** : to reduce delays in the administration and in the justice system. To harmonise the rules and to remove identical or obsolete rules; to harmonise the words and their meaning
- **Reducing complexity** : identifying points of law and breaking them down to better analyse the meaning of the provision, the description of the rule, and its relationship with other rules(eg on the responsible institutions, or on dispute resolution).

Possible solutions (3)

- **Modelling : having a simplified model to reduce complexity**
- And made understanding easier : exemple **the structure** of a code is divided into Parts, Books, Titles, Chapters and articles.
- And **one article = one idea**. This is a basic rule to go from the simplest to the most complicated.
- Insert general principles or institutions at the beginning of the code .
 - Why ? To help readers find their way around as there is a common logic .
Texts are organized according to a standard format and layout .
 - **The composition and writing rules in a code are the same for everyone.**

Possible solutions (4)

- **Justification and commentary :**
- Any action or drafting in the codification process must be justify. The writer of a code must think about the moment he writes to the reactions of his reader and his questions.
- Transparency, that is to say justifications and explanations are an element of education and pedagogy including for future decision makers ;
- It is a matter concerning the role of the State and its responsibility towards citizens. **The Law is a common good.**

4. Codification: the role of the State and private publishers

- In the 18th century private codifications developed throughout Europe and in those states that had not taken steps to remedy the disorderly proliferation of sources of law.
- Some thought to involve the central Government . (In France example of Barnabé Brisson and Henry III)
- Private publishers choose their own areas of law and organised the collect of texts in their own way.
- However, there were issues of **legitimacy** and methodology. These were compilations of unamended, existing law with no binding legal force.

- However private codifications pave the way for official codifications sometimes. EX : In France Dalloz or Litec code of administration and the official Code (CSC) of relations between Users and the administration.
- In addition, the most important decisions of the Court of Cassation can become a norm (**creation of an article**), since the code is finally validated by the legislative power.
- A principle is **Whoever can enact a law can amend or repeal it**. It is the reason why international conventions are not codified.

Conclusion

- The State must meet of legal certainty by providing an official, authentic code that is **legally binding**
- By codifying in this way, the State can choose or shape its legal framework and its objectives. E : In France GI de Gaulle with the Family code or Prst Hollande with Badinter and the criminal code.
- Thank a lot for your attention.