

FOREWORD

“Ubi societas, ibi jus”....Since the origin of human societies law has always been an inherent part of how societies are organised. The various legal systems were originally set up to serve the ruling powers before, in democracies, being used to protect individuals and economic players from the excesses of the same ruling powers according to the choices societies made.

Nowadays law is no longer constructed purely by the influence of political powers but increasingly by that of the different players in the life of society, particularly corporations for which it lays down the essential “rules of the game”.

Since 2007 the Civil Law Initiative has brought together professionals of Romano-German influenced law from over thirty countries from all five continents. While the Foundation is convinced of the qualities of continental law, the “global law” that governs two-thirds of humanity and thirteen of the twenty most powerful economies, this does not mean it is hostile to the world’s other legal systems, particularly the various types of Common Law.

We are in fact convinced of the inevitable “hybridising” of the various legal systems in a globalised economy and of its corollary, namely the need to build bridges between these systems, a process to which we contribute with our annual Convention of Legal Professionals in the Mediterranean.

The first edition of the Index of Legal Certainty that we are now presenting is thus one of a series of measures the Foundation is undertaking to promote knowledge of continental law.

The first category of these measures is educative: funding professorships in a number of Universities all over the world and organising the Summer University in Paris which brings together students from nearly fifty countries.

The second consists in ensuring the active presence of the Foundation in international “lawmaking” institutions, both as regards written law (the European Union) or “soft law” (the United Nations Commission on International Trade Law - UNCITRAL).

The Index illustrates a third aspect of our work, namely scientific research. This work targets all the economic players in law, particularly but not solely investors.

The aim of the Index is to help all these players to establish what system offers the most guarantees regarding legal certainty. On this point, the Foundation believes that well thought-out legal certainty is not synonymous with immobility or the equivalent of either total lack of legislative or regulatory constraint or even minimal constraint. On the contrary, it presupposes the accessibility of the applicable law – contained in fully inclusive, validated, published form - its predictability, achieved through the ranking of the norms and the predefined competencies of lawmakers and judges, reasonable stability over time, and lastly a balance between economic interests and the parties concerned.

Legal certainty should enable States that choose to create new legal rules to question the credibility and validity of norms that have been tried and tested and recognised in the international community and to make informed choices. It should also help investors to assess the risks they will be running before they take definitive decisions about where to locate a factory or subsidiaries.

It was with this in mind that the Foundation commissioned an independent scientific team of legal specialists and economists supervised jointly by professor of law Ms Catherine Kessedjian and professor of economics Mr Bruno Deffains to devise a research method applicable for this first edition in 13 countries located in four areas of the world. In order to ensure we were as close as possible to economic reality, a questionnaire specific to the six sectors of law chosen in this first exercise (viz. contracts, liability, corporate law, property law, employment law and the settling of disputes, this last subdivided in turn into the court system and arbitration) was drawn up after discussions between researchers and legal professionals. In addition, in order to ensure that analysis was as objective as possible, two case studies were devised for each of the six sectors. The second stage – the most difficult – consisted in putting together a panel of respondents who were themselves legal professionals, sometimes nationals of the countries concerned, sometimes working closely with those countries, to whom the questionnaire was submitted. Finally the research team examined the responses, established averages weighted using certain criteria and performed aggregations in order to rank the systems. This entire methodology is accurately explained in the report.

An ad hoc working group chaired by Jean-Louis Dewost, monitored and supervised the researchers' work on behalf of the Civil Law Initiative.

How should we view the results of this exercise?

We first need to show a certain humility.... We know that any ranking is subject to imponderables related to the quality of the material it works with (in this case the responses) and the weightings chosen. Are there really no more than twenty global rankings in the field of law? The present case is our first exercise and the methods used can certainly be improved for future editions of this Index to include new countries and new legal sectors.

In order to improve transparency the joint directors of the team, at the request of the Civil Law Initiative, set out the choices of method (Chapter 4 of the report) they used to produce the final ranking so that readers might, if they saw fit, aggregate the results differently for each sector.

Nevertheless a few bottom lines stood out very clearly:

a) groups of States emerged clearly that do not necessarily follow the distinction between Continental Law States and Common Law States.

Countries can be assigned to three groups: those where legal certainty is high, those where legal certainty could be increased, and those somewhere in between.

b) legal certainty is one factor of economic appeal. Companies' needs for stability and predictability are greater at a time when the globalisation of trade is accompanied by greater competition. "Know

and predict” have become major imperatives and risk evaluation – particularly of disputes – is a factor in any economic decision.

c) certain sectors of law are more divisive than others; this is the case of corporate law and employment law.

From the preliminary conclusions of this first report and the feedback from questionnaires for each country, it would appear that sensitivity to legal certainty, if it results from choices by societies that are themselves governed by historical, geographical and cultural factors, in fact affects all public and private actors.

This first report should contribute to correcting certain judgements of the different legal systems, particularly the Continental Law system. It should also provide food for thought for those in public office concerning the economic appeal of the law. And finally it should stimulate dialogue between legal systems worldwide.

That is our hope and our ambition.

Jean-François Dubos

President of the Civil Law Initiative