



# The Codification model as a methodological attempt for the integration of the European private law

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the European countries belonging to Latin Christendom, (excepting England, which developed a different “common law” at the same period).

Prof. Coing described *jus commune* as follows: “This continental *jus commune* never superseded the local and national customs and statutes. Its authority was only subsidiary (...). It gave to the continental countries a common stock of legal institutions, rules and concepts. It also gave them a kind of *lingua franca* in the field of law”. This *jus commune* had three typical features: it was non-binding; but, at the same time, it provided a common corpus of rules that helped the local customs to adapt themselves and coordinate with the others; and its authority came from the quality of its rules.

The challenge for European harmonisation is not to refer to this old *jus commune* but to borrow some of its methodological instruments, one of those being comparative law. This new method of *jus commune* could be described in three sentences: (1) The European legal system would use the common heritage of the European countries. (2) Thanks to this heritage, the European Authorities would find sets of general binding principles orientating the European integration of legal systems. (3) The Authorities would call for national authorities to find the best means to make these principles efficient, and these means could be different just as long as they pursue the same goals. Differences in the respect of basic principles imposed by the European authorities can exist. They would, thus, avoid the “race to the bottom”. But they would imply a change in the legislative process in Brussels: Less binding settlements, more comparative consultations and reflection.

And we can assume that, in practice, this method would work, owing to two main reasons. First, it would be feasible since countries in western and central Europe share a certain conception of society. They adhere to similar constitutional and political values; they also have comparable economic systems; and they share basic ideas about democracy and the rule of law.

Secondly, it would be feasible since the famous distinction between common law systems and civil law systems is not what we first thought it would be. We thought that the difference was a matter of substance, a question of legal solutions. A

closer look shows that the difference is a matter of legal technicalities and method, not a matter of solutions. Take, for example, the comparative research in the field of tort law. In the early eighties, two famous professors showed that conceptual differences abounded, but that these often hid interesting similarities as far as results were concerned. In a word, completely different concepts, such as illicitness, fault, negligence, remoteness of damage, or protective nature of norms, have the effect of frequently paving the way for identical outcome.<sup>39</sup> The same comparative research in the field of companies allows us to point out the technical differences, the similarities in the results, and, finally, the need for harmonisation where the results do not converge. Traditionally, company law scholars used to emphasise the divergence among company laws, such as corporate governance rules, shares ownership, capital markets and business culture, and the differences across jurisdictions along these dimensions are real and must not be neglected. But, new studies tend to emphasize the fact that, notwithstanding those differences, the “underlying uniformity of the corporate form is at least as impressive”,<sup>40</sup> and this trend must be emphasised.

As a conclusion, we would argue for “natural” convergence, based on a common core of principles. Developments towards convergence will take place in Europe and it should let the systems converge while competing. This flexibility is all the more needed as, if today there is competition between civil and common law systems, tomorrow it will probably exist between eastern and western legal systems. Private law represents the accumulation of centuries of legal traditions as part of broader cultural and social traditions. Why eliminate the richness of this cultural diversity, and why choose between cooperation and competition when a flexible method of harmonisation can reconcile them?

<sup>39</sup> G. Viney & B.S. Markenisis, *La réparation du dommage corporel – essai de comparaison des droits anglais et français*, Paris, 1985, 3-43; See also, B.S. Markenisis, *The not so dissimilar tort and delict*, *Law Quarterly Rev.* 1977, 78.

<sup>40</sup> See Reiner R. Kraakman, Paul Davies, Henry Hansmann, et alii, *The Anatomy of Corporate Law. A comparative and Functional Approach*, Oxford university Press, 2004.

## The Codification model as a methodological attempt for the integration of the European private law\*

Anthony Chamboredon\*\*

The 2004 communication by the European Commission has intensified the debate about what is needed for the Europeanisation of private law.<sup>1</sup> In a recent conference on the matter,<sup>2</sup> a

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“business survey” presented by a leading law firm in Europe concluded that a large majority of business firms interviewed were in favour of both a European contract law and an optional instrument. According to a representative of the Euro-

<sup>1</sup> Communication from the Commission to the European Parliament and the Council on European Contract Law and The revision of the acquis: the way forward, 11 October 2004, COM(2004) 651 final.

<sup>2</sup> “Harmonisation of European Contract Law: Conference on the Implications for European Private Laws, Business and Legal Practice”, Institute of European and Comparative Law, University of Oxford, Clifford Chance, St Anne’s College, Oxford, 18-19 March 2005, not published yet.

pean Commission,<sup>3</sup> what is needed is not necessarily a European Civil Code: “*As far as it helps us to achieve more coherence in the acquis, I don’t care of what it looks like!*” On the other hand, there is a growing trend in legal literature to oppose all such project because, as a synonym of unification, they would be contrary to a pluralistic vision of the European Union that should be respectful of its diverse legal identities.<sup>4</sup>

A few historical notions regarding European continental codifications and a geographical survey of the present codification model’s influence will give us some preliminary insights to examine whether this methodology of codification undertaking on the European continent is still efficient and competitive within the context of the globalisation of law (I). Still, we need to agree on what we mean by “efficiency” and “globalisation of law”? – My point is that if we do not limit the efficiency criterion of a legal tradition to economic considerations and if we keep the methodological core of the continental codification model as an integration tool, globalisation of law will not mean legal unification (II).

### I. Historical and Geographical Perspective of the European Codifications Model

From an historical and geographical perspective, the choice of the European continental model of codification has obviously a cultural dimension because a code contains basic rules in particular for economical and political relationships. Directly inherited from Jacobinism ideals, the French Civil Code is considered as the genuine constitution of the bourgeoisie, grounded on the central notion of private property, of State sovereignty, guided to favour economic exchanges of a new social class in power. However, even if a code is the outcome of a peculiar political and economical history, deeply enrooted in a national or local culture, at the same time, it contains some common methodological and structural assets (A) which explain why it is still mainly adopted all over the world as a legislative tool (B).

#### A. Few Historical Notions: Polysemy and Univocity of the European Codification Model

A brief historical perspective about the use of a codification model shows simultaneously the polysemy of its practical terminology and the univocity of its methodological objectives.

Codification has originally be synonymous with a rational presentation of a legal system: Justinian’s *codex juris civilis* is regarded as a final attempt to present in the most rational way the state of Roman law at the end of its unification process – which also, by the way, corresponds to the end of the Roman Empire.

But Justinian’s codifications are in many respects very dif-

ferent from the codifications of the 19th and 20th centuries undertaken by European lawyers from States Nations. French or German lawyers for instance tried not only to sum up all the work of the past centuries, but they also succeeded in reforming their national law thanks to new Statutes in the aim of a legal unification.

That is to say that the notion of “codification” is a polysemic one.<sup>5</sup> It refers to various realities of legislation. So we need to be very prudent when using this term. Still, we can agree on a broad definition of codification by saying that it is a methodological tool for rationalising law (incidentally, one may note that this principle of legal rationality remains an occidental definition, which is not shared by every legal tradition in the world).

However, from an historical perspective, when we are referring to the European continental codifications model, we are referring to a legislative process, generally by statutes, and to a legal methodology aimed at reforming law in the most rational way (of course, one can also observe legislative processes that produce only codes “*à droit constant*” without any attempt to reform law, but even if they are called codes, they do not fit into a pure definition of a reforming code like the 1804 French civil code).<sup>6</sup>

Consequently, European codifications model as a legal reform instrument, cannot be considered as definitive piece of legislation. These codifications are merely texts subjected to changes. An historical overview of the French civil code would show how much this text has evolved since 1804. For instance, if we only take as example family law, most of the Code civil provisions of 1804 have been abrogated and replaced by new provisions in the seventies mainly inspired by one of the greatest French civil lawyer, Carbonier.

These preliminary notions lead us to a brief assessment of the present use and influence of European continental codifications model.

#### B. Some Geographical Perspectives of Codification Model

The European continental codification model is still widespread both in national and international legislations.

“*Grâce au Code civil, j’ai semé la liberté partout en Europe*”, said one day Napoleon, while speaking about this collection of 36 laws promulgated on 21 March 1804 under the title of Civil code of the French people. However, “*chacun voit le monde à l’horizon qu’il se fixe*”, said Guy Canivet, the actual First President of the French *Cour de cassation*, to explain how it was perfectly obvious that all the countries that borrowed from the French Civil Code continued on their own legislative way. This is already the case in France where a great number of reforms aimed at improving legal coherence, have been undertaken or will be undertaken through democratic processes.

<sup>3</sup> Dirk Staudenmayer was the director of the European Commission working group that prepared the communication of 2001 and the “Action plan” of 2003 (See ref. *infra*).

<sup>4</sup> For example in France, Yves Lequette, “Quelques remarques à propos du projet de Code civil européen de M. von Bar”, in *Dalloz*, n° 28, juillet 2002.

<sup>5</sup> Anthony Chamboredon, “The Debate on a European Civil Code: For an ‘Open texture’”, in: *The Harmonisation of European Private Law*, Mark Van Hoecke and François Ost (eds), Hart Publishing, Oxford, 2000.

<sup>6</sup> Christian Atias, “Le Code civil nouveau”, *Recueil Dalloz*, 1999, 18e cahier.

To illustrate the various ways of using and borrowing from the code civil model, another example can be taken from Spain. A first project of civil code was elaborated in 1821, following the coup d'état of general Riego. This project deviated notably from the French model. Emigrants returned in Spain in 1836 and a second project was born in 1851; this one was very influenced by the French civil code. Nevertheless, Spain has no centralist tradition, contrary to France. Spanish doctrines attacked violently the "harmful" idea of the legal unification, in the name of the fidelity of Catalonia in its previous history. As a result, the codification committee and the preparatory law in the civil code of 11 May 1888 acknowledged the legitimacy of the legal traditions of local autonomies stemmed from the Charta of foundation of free citizen communities (*fueros*), local rights (*derechos forales*) of autonomous Communities (regions) that is Catalonia, Aragon, Navarre, Biscay, Galicia and the Balearic Islands.<sup>7</sup>

In the rest of the world, the choice of codification as a rationalising legal process is very popular both in new created States and in States that have decided to reform their own legal tradition.<sup>8</sup>

One may take the example of Brazil that reformed its legislation in 2002.<sup>9</sup> A new civil code unifies civil law and commercial law and finds its inspiration mainly in the Italian *Codice civile*. Another example is Quebec that reformed its civil code in 1994,<sup>10</sup> deepening its roots in its own tradition, inherited from the European codifications, while extending its sources in international or common law traditions. One could also mention the new code in the Netherlands in 1998 or more recently the new code of obligations in Germany, which came into force in 2001.<sup>11</sup>

Nor should we forget to cite the present situation in the "emerging States". Both central European States, like Lithuania<sup>12</sup>

and Czech Republic, or East Asian States like China, are adopting in great part a principle of written law and codification methods for integration purposes.

The influential part of the European continental codification methodology as an integration instrument is not limited to national reforms but is extended to many international and European norms from conventional or doctrinal sources directly or indirectly based on it.

For instance, harmonisation of contract rules has been subject to many international researches and discussions. The aim varied from the establishment of a binding code to principles that could be used to provide reliable comparative information. Major pieces of academic work have been undertaken, in particular by UNIDROIT,<sup>13</sup> the Commission on European Contract Law,<sup>14</sup> the Academy of European Private Lawyers<sup>15</sup> or the Study Group on a European Civil Code.<sup>16</sup> One could also cite other academic groups addressing subjects and issues relating to private law.

Regarding the creation of a European civil code as a way to harmonise private law in Europe, the debate among all these groups has known a revival thanks to a first European Parliament initiative in 1998 confirmed in 2001 and 2003.<sup>17</sup>

Initially, the European legislator called for a codification that would be the sole institution, which could limit the excessive costs and the obstacles that legal diversity would oppose to international exchanges.

The 2003 green book untitled "A more coherent European

<sup>7</sup> One may cite el Fuero Nuevo de Navarra (1973), containing provision on consumer contract, the laws of Aragon (1999), Ley de Parejas, and the autonomous Community of Cataluña (1998).

<sup>8</sup> Xavier Blanc-Jouvan, "L'influence du code civil sur les codifications étrangères récentes", in Le code civil, 1804-2004, Dalloz, Litec, Paris, 2004, at 477.

<sup>9</sup> After 26 years of discussion and debates, the Brazilian President Fernando Henrique Cardoso finally approved the new Civil Code, on 10 January 2002 that is effective since January 2003. The writers of the new code adhere to the doctrine advanced by a current of Brazilian legal literature, who believes that a single document containing the basic norms of the law gives a firmer juridical base to the country than a series of rules, laws, decrees, case law and constitutional provisions. The project was introduced in the senate by Bahia senator and lawyer Joséphat Ramos Marinho, from the Partido da Frente Liberal (Party of the Liberal Front), a party allied to the Fernando Henrique Cardoso administration. Marinho called the old document "paternalistic and individualistic", while renowned jurist Miguel Reale described the old text as "overcome by the historical process".

<sup>10</sup> The current Civil Code is a complete restatement of the civil law in Quebec as of the date of its adoption including judicial interpretation of codal provisions on privacy, personality rights protection and the adoption patrimony of affectation. The reform of the Civil Code of Lower Canada was one of the largest legislative recodification undertakings.

<sup>11</sup> Fulfilling the duty to transform the European guideline for the purchase of consumer products (EC-G 1999/44) into national law, the legislator took the chance to adjust the main provisions of the German Civil Code (BGB), which is more than 100 years old. The legislator has gone far beyond a simple transformation of the guideline, after the reform the central regulations of the guideline are applicable not only to consumer products but to all contracts of sale.

<sup>12</sup> "The Seimas" (Parliament) of the Republic of Lithuania adopted a new Code of Civil Procedure on 28 February 2002 and entered into force on 1 January 2003. Valentinas Mikelėnas, principal expert in the drafting of the Code of Civil Procedure explain that numerous national and international legal sources were studied in drafting the Code; among the former, the Codes of Civil Procedure of Austria, Germany, France and Japan, the Swedish Code of Judicial Procedure, and others.

<sup>13</sup> The UNIDROIT Principles are the product of a Working Group composed of representatives of the major legal systems of the world and chaired by Professor Michael Joachim Bonell. The Principles are not a binding instrument in international law.

<sup>14</sup> Principles of European Contract Law, Parts I and II (O. Lando and H. Beale (eds)) (2000) and Part III (O. Lando, E. Clive, A. Prum and R. Zimmermann (eds)) (2003). The origins of the Principles of European Contract Law, prepared by the Commission on European Contract Law (the Lando Principles), can be traced back to a conversation in the Tivoli Gardens in 1974, between Professor Lando and Dr Hauschild, then Head of Division in the Commission's Directorate General for the Internal Market, when the latter said "We need a European Code of Obligations".

The outcome of these two exercises is two statements of contractual principles, which, though they diverge in both legal policy and technical detail, demonstrate how much uniformity can be achieved. For a comparison of the two sets of rules see Bonell, The UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law: Similar Rules for the Same Purpose? 26 Uniform Law Review (1996) at 229-246.

<sup>15</sup> The Academy of European Private Lawyers (Pavia Group) has also published a "European Contract Code -Preliminary draft". This code also contains a set of rules dealing with the formation, validity and interpretation of contracts, together with rules on performance and remedies. The work of the Pavia Group is ongoing.

<sup>16</sup> The Study Group, led by Professor von Bar of Osnabrück (DE) and made up of experts from all Member States and from candidate countries, has a wide remit not limited to contract law. The Study Group has teams working on various special contracts (sales, services, franchise and agency, personal security, insurance and financial services, as well as security over moveable property, tort, negotiorum gestio and unjust enrichment).

<sup>17</sup> OJ 2001, C 255, at 1; and OJ 2003, C 63, at 1.

law of contract – Action plan” of the European Commission,<sup>18</sup> and European Parliament recommendations and a Statement of the European Council have launched what seems to be an irresistible codification process.

In the “Action Plan”, the European Commission had not given up the notion of some contract code and observed that the development of a “common frame of reference” (CFR) might assist in ensuring greater coherence of existing and future *acquis* in the area of European contract law. The Communication states: “*The CFR will provide clear definitions of legal terms, fundamental principles and coherent model rules of contract law, drawing on the *acquis* and on best solutions found in Member States’ legal orders*”. It is intended to be used as a “toolbox” when proposals to improve the quality and coherence of the existing *acquis* are presented and when future instruments in the area of contract law are drafted.

Even if the Communication states that it is not the Commission’s intention to propose a “*European civil code*” which would harmonise contract laws of Member States. It appears clearly that CFR, which is “*merely an aid to the interpretation of existing Directives*” (...) “*necessary to bring coherence to European regulation of markets*” is already an instrument towards achieving a higher degree of convergence between national contract laws. The Common Frame of Reference will appear in a form that will easily turn into an optional instrument but it would be surprising if the results were to bear much influence from the common law.

## II. “Efficiency and Law Globalisation”: Still a Chance for a Codification Model?

However, the European codifications model is being more and more called into question. And this for very contradictory reasons: for the tenants of a globalisation of law that would mean a unification of law, this model would lack of efficiency compared to the common law model (much closer to the economic requirements of the business world), for those who are considering the model of codification as a legislative unification tool, this model would mean the end of our own legal identities. In other words, in the context of the globalisation of law, the codification model would be or should be at the dawn of its decline. In my opinion, these assumptions can be qualified in many respects, and therefore, we firstly have to agree on what we actually understand by “efficiency” (A) and “globalisation of law” (B). This could be briefly summarised by straightforward remarks.

### A. The Criterion of Efficiency

The efficiency of a legal model criterion is generally defined in economic terms, this has been criticised for being not exhaustive; to assess the efficiency of a legal model, social and cultural considerations have also to be taken in consideration.

Generally speaking, the assessment of efficiency comes from

the economic analysis of law. This analysis seems to be privileged in Common law traditions. Legal norm is then considered instrumentally, as “a tool with objectives defined in economical terms”.<sup>19</sup> The aim is to provide guiding patterns for normative productions and interpretation. These guiding patterns are based on the research of an optimum economic efficiency. As such, the economic analysis of law considers law as a social tool and tries to evaluate it functionally. What is emphasised is the place of a legal institution within the general and common economic structure of society. The claim is that legal practices are best characterised as tools for encouraging economically efficient social relations.<sup>20</sup>

A World Bank report of 2004, untitled “*Doing business in 2004: understanding regulation*”, compared various States on the ground of this economic “efficiency” analysis. Several areas of national laws have been compared, including labour law, insurance law, security law, land law, transaction cost in adjudications, facilities to get a loan or duration for creating a corporate company etc. This report is very critical about codified legal traditions because, contrary to Common law traditions, they would not fit in the requirements of the economic efficiency criteria. Therefore, they would be bound to die out as only one single model of regulation should be used for a better efficiency of globalisation of law.

This can be easily qualified as a non exhaustive analysis of legal efficiency which also has to be considered through the prism of social and more broadly cultural criteria.

Accordingly, if the European continental codifications model is still chosen for new legislative reforms, this is simultaneously for formal and substantive pragmatic reasons offering an economic as well as a social efficiency:

- Accessibility of the law, materially and intellectually; in terms of communication, this is a condition for promoting democracy;
- Stability and adaptability, thanks to a combination of legislative and judiciary interpretation;
- Cost of adjudication, thanks to a greater legal certainty and foreseeability of a written law;
- Cost in making contracts, thanks to clear references to codified principles.

Moreover this economic efficiency assumption adopted by the World Bank report assumes that there should be only one prevailing legal model for a better efficiency in global regulation. And this is also to be qualified. Are we really moving towards a unification of our regulation processes? There is nothing less obvious than this prediction. On the contrary, one could easily say that globalisation is rather a vector of a greater fragmentation of law; this leads us to our concluding remarks.

<sup>19</sup> Ronald Coase [1961] and Guido Calabresi [1961]

<sup>20</sup> Posner, Richard A., *Economic Analysis of Law* (New York: Aspen, 5th ed., 1998. Posner (1973) made two claims: (I) Common law legal rules are, in fact, efficient; and (II) Legal rules ought to be efficient. In both claims, “efficient” means maximisation of the social willingness-to-pay. On the best interpretation of law, common law doctrines promote efficiency.

<sup>18</sup> General Directorate 24 – Consumers and public health – Communication de la Commission au Parlement et au Conseil – Un droit européen du contrat plus cohérent – Un plan d’action; COM (2003)68 final.

## B. The Meaning of "Law Globalisation": Unification or Integration?<sup>21</sup>

Between all these codes, there is a subtle interplay of influences and convergences that constitutes a security of continuous improvement of law, said Guy Canivet. *"In fact, I dream about a new legal culture which would be more than the sum of every laws."* Following his path, I would add that this improvement should then not be towards legal unification, but towards a greater coherence and integration thanks to a common legal rationalising process.

This diversity of experiences of codification in European countries shows how private law is so rooted into a cultural identity,<sup>22</sup> and we can understand that replacing this plurality of codes by one single code would represent a dramatic change that could be regarded as a considerable loss for local and legal identity.

However, again, all depends on the meaning given to the European civil code. Does this necessarily mean a unified law? I would answer by a straightforward twofold example.

Firstly, when a French substantive law is chosen in a foreign legal tradition, this is no longer a French law; the foreign lawyer who is going to apply this piece of legislation will consider it differently than a French lawyer.<sup>23</sup> And, reversely, when an American legal rule is supposed to be integrated into French law this is no longer an American legal rule which is translated into French law, so this is not the same thing anymore and not the same legal rule;<sup>24</sup> for instance, the Anglo American concept of "Corporate governance" translated as *gouvernement d'entreprise* is very far from being applied in the same way. Substantive law may then change when it is integrated into a foreign law.

Secondly, to integrate or include "does not mean here to lock into one identity or to close on the other one; to include the other one means rather that the borders of the community are opened to all, including and precisely those who are foreign for the others and wish to remain so".<sup>25</sup>

So, coming back to our preliminary question: What is the methodological core of the European continental codification that would promote law integration in Europe? If the most difficult point is to find out the best conditions for a genuine exchange that does not cause an outbreak of fear about losing our own legal identity, the axiological principle enshrined into the methodology of European continental codifications, that is formal rationality, remains of great value.

Even if we move from a pyramidal model to a network

model of normative production,<sup>26</sup> there is still a great part to play in that competing network for European continental codification methodology as a rationalising process. In that regard, *"an effort of imagination is necessary, not to be opposed to the globalisation in a dogmatic way, but to base oneself on the force of the things in order to invent answers. The dialectic between the irreducible diversity revealed by comparative studies and the unity of the international legal order, still utopian but already announced by international law, remains to be transformed into an open and evolutionary synthesis"*.<sup>27</sup>

<sup>26</sup> "De la pyramide au réseau? Pour une théorie dialectique du droit", by Ost, F. and van de Kerchove, M., Bruxelles (BE), Publications des Facultés universitaires Saint-Louis, 2002, showing how law is challenged today in its foundations by the implementation of procedures related to concepts such as "regulation" or "governance". Through an observation of concrete transformation in positive law, authors analyse how the hierarchical and pyramidal paradigm is slowly replaced by a network paradigm.

<sup>27</sup> "Un effort d'imagination est nécessaire, non pour s'opposer à la globalisation de façon dogmatique, mais pour s'appuyer sur la force des choses afin d'inventer des réponses. La dialectique entre l'irréductible diversité révélée par les études comparatives et l'unité de l'ordre juridique international, encore utopique mais déjà annoncée par le droit international, reste à transformer en une synthèse ouverte et évolutive." *Mireille Delmas Marty*, "Etudes juridiques comparatives et internationalisation du droit", Cours et travaux du Collège de France, Résumés 2003-2004, annuaire 104e année.

ECJ 16 March 2006 – C-234/04 – Rosmarie Kapferer v Schlank & Schick GmbH

Article 10 EC; Brussels I Regulation<sup>1</sup> Article 15 – Jurisdiction in civil matters – Jurisdiction over consumer contracts – Prize notification – Misleading advertising – Judgment on jurisdiction – Res judicata – Review on appeal – Legal certainty – Primacy of Community law

The principle of cooperation under Article 10 EC does not require a national court to disapply its internal rules of procedure in order to review and set aside a final judicial decision if that decision should be contrary to Community law.

*Facts: In her capacity as a consumer, Ms Kapferer, an Austrian national domiciled in Hall in Tirol (AT), received advertising material on a number of occasions from Schlank & Schick GmbH ('Schlank & Schick') containing prize notifications. Two weeks after a further letter addressed to her personally, according to which a prize in the form of a cash credit in the sum of ATS 53,750 (EUR 3,906.16) was waiting for her, Ms Kapferer received an envelope containing, inter alia, an order form, a letter concerning the final notice of that cash credit and a statement of account. According to the participation/award conditions on the reverse side of that notice, participation in the distribution of the prizes was subject to a test order without obligation.*

<sup>21</sup> A. Jeammaud, "Unification, uniformisation, harmonisation, de quoi s'agit-il?", in F. Osman (dir.), *Vers un code européen de la consommation*, Bruylant, 1998, at 35.

<sup>22</sup> Hugh Collins, "European Private law and Cultural Identity of State", *ERPL*, 1995, at 353 et seq.

<sup>23</sup> See J.-C. Delaunay, in *Services, cultures, mondialisation*. "Les services juridiques dans les relations économiques euro-arabes", *De Boeck Univ.* 1994, at 51 et seq.

<sup>24</sup> Pierre Legrand, "L'hypothèse de la conquête des continents par le droit américain (ou comment la contingence arrache la disponibilité)" in *l'Américanisation du droit*, *APD*, vol. 45, at 37-41, Dalloz, Paris, 2001.

<sup>25</sup> J. Habermas, "L'intégration républicaine. Essai de théorie politique", Paris, Fayard, 1996, at 6.

<sup>1</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001, L 12, at 1).