



FRANCE AND CIVIL LAW

LEGAL GUIDE



Ministry for Europe
and Foreign Affairs

The civil law system is the system used in countries that inherited the Romano-Germanic legal tradition. This system mainly originated in France and Germany. It differs to the common law system used in Anglo-American jurisdictions, which is based on the decisions of judges – originally those of the English common law courts.

2/3

This is the proportion of the global population subject to the civil law system. |

26

This is the number of European Union Member States that have adopted the civil law system. |

13

This is the number of the world's **leading 20 economies** that have adopted the civil law system. |

(World Economic Forum – Global Competitiveness Report 2016-2017)

The French Civil Code of 1804

“What will live forever is my Civil Code.” |

Napoleon Bonaparte

The globalization of law

Globalization sometimes results in competition between various laws, when States are looking to implement new legislation, or when regional bodies (such as the European Union or the Organization for the Harmonization of Business Law in Africa) seek to adopt supranational rules. The civil law system has major advantages when it comes to bringing together public and private stakeholders. Because it offers legal certainty, it is well suited to new international challenges, particularly those created by the 2030 Agenda for Sustainable Development.

The Index of Legal Certainty: supporting the competitiveness of civil law

The Index of Legal Certainty, a key publication by the Civil Law Foundation, is an empirical analysis of the forms of security offered to all economic stakeholders. Legal certainty is considered with respect to several essential elements: the accessibility of the applicable law; its intelligibility, through clearly written rules; its predictability, as achieved through the ranking of norms and predefined competencies of lawmakers and judges; reasonable stability over time; and the balance between economic interests and the parties concerned.

The main conclusion reached by the first two indexes (in 2015 and 2018) is that there is no dominant legal model in terms of offering legal certainty to economic stakeholders or supporting economic development. Countries with civil law traditions, some of which scored highly, are just as competitive as common law countries.

An accessible, predictable and democratic law

The civil law system is codified. French codes have been used as models in several European, Asian and Latin American countries. Codes from all areas of law have subsequently spread throughout the world.

Legal codification supports:

- material accessibility, as law is easier to know when it is set down in a code;
- intellectual accessibility, as law is easier to understand when it comprises a consistent set of general and ordered rules.

The civil law system, which is accessible and predictable, offers legal certainty to citizens and economic stakeholders. In addition, laws are easily spread at the international level.

Some examples of modern codes for the 21st century

Quebec Civil Code (1991),
Russian Civil Code (1994-2008),
Romanian Civil Code (2011),
Vietnamese Civil Code (2015),
Argentine Civil and
Commercial Code (2015),
Chinese Civil Code (currently
being adopted). |

ICC

This institution has managed
more than 12,000 arbitrations
involving parties in more
than 170 countries. |

"The values we defend
and the trust of litigants – this is
our real treasure." |

Jean-Marc Sauvé,
Vice-President of the Conseil d'État

Civil law and the rule of law

The civil law system fulfils and supports compliance with the checklist established by the Council of Europe for the rule of law: legality, legal certainty, the prevention of abuses of power, equality before the law and non-discrimination, access to justice, fair trial, and constitutional justice.

A pluralist law

The civil law system is characterized by linguistic and cultural pluralism: civil law countries are home to a wide range of languages and cultures, sometimes within national borders, as is the case in Switzerland, Belgium, Cameroon and Canada. As such, the civil law system has always supported discussion and dialogue. In several countries, this has meant that customs have been able to co-exist with codes, especially in fields such as family and land law.

Countries with a civil law tradition are also open to other legal cultures, as seen by the development of modern international arbitration in Paris

The International Court of Arbitration at the International Chamber of Commerce

The International Chamber of Commerce (ICC) was created in 1919, and supports the development of international trade and investment. Its founder and first president, Étienne Clémentel, a former French Minister of Commerce, also set up the International Court of Arbitration in 1923. This internationally renowned court based in Paris delivers sentences that definitively resolve disputes and have res judicata effect. They cannot be appealed and are covered by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As such they are enforceable in 145 States. The ICC has made Paris one of the leading arbitration venues in the world.

A contractual model

All codes contain a set of general rules which establish a regime for the main types of contracts. These rules are a model for parties to a contract, who can choose to implicitly or explicitly refer to them. There are many advantages in referring to texts where concepts have been legally defined, including savings in terms of time and money. As parties do not have to cover all topics, they need less time to write and determine the content of contracts.

Contracts are not just economic exchanges that can be avoided for reasons of competitive efficiency. Civil law places special emphasis on the social and moral dimensions of contracts. Contracts are therefore subject to unavoidable rules, to protect parties and balance the interests concerned. In order to ensure that promises are kept, judges can order the performance in kind of contractual provisions. The rule stating that contracts must be negotiated, entered into and performed in good faith is a principle of public order.

Dispute prevention

Preventing disputes is as important as resolving them. Unlike the common law system, where the rule of law is used to resolve legal proceedings, civil law is not adversarial. For legal certainty reasons, civil law gives precedence to the written word and dispute prevention.

If a proceeding cannot be avoided, the civil law system allows parties to access judges at the lowest possible cost. It has shown its ability to reduce the cost of justice, especially for legal professionals, but also for businesses and individuals.

TO FIND OUT MORE

- **Ministry for Europe and Foreign Affairs**
www.diplomatie.gouv.fr
- **Civil Law Foundation**
www.fondation-droitcontinental.org/fr/
- **JUSCOOP**
A digital platform showcasing French cooperation activities
in the legal and judicial fields
www.juscoop.org/

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