Large-scale legal reform has been one of the defining elements of social life in Central and Eastern Europe in general, and in the Commonwealth of Independent States (CIS) in particular, over the last fifteen years. There has barely been an area of law left untouched in a process underpinning the region’s move toward independent statehood, parliamentary democracy, a market economy, and the rule of law. A key place in this process was accorded to the revival of private law, particularly in relation to the legal framework for companies and other business operators. Deservedly, a great deal of attention was directed at domestic developments in the area of company-law reform by scholars and policy-makers both in the East and the West. Much of that attention focused particularly on the extent to which new laws reflected modern international legal standards and paradigms developed in the area of company law and corporate governance.

What has remained insufficiently studied, however, is the contribution—actual and potential—to legal reform in the post-communist world of the process of voluntary harmonization through model laws undertaken within the CIS framework. The adoption of model legislation has been considered important enough to attract the support of major international donors. Yet the process has escaped the rigor of research and heat of de-

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4 Such as the European Bank for Reconstruction and Development (EBRD), GTZ
bate accorded both to legal reform as such and to similar developments in pursuit of legal harmonization internationally or in other regional settings. Much of this neglect, we believe, is not necessarily deliberate but rather the result of general attitudes to regional cooperation in the post-Soviet space and the perceived—both in the East and the West—“grand failure” of the CIS formula in promoting new-style economic integration.5

As with other “soft” and “hard” instruments for harmonization,6 the use of model laws in the CIS can be discussed by reference to the advantages associated with legal uniformity, such as the creation of a regulatory level playing field, the reduction of cross-border transaction costs, predictability, and the general promotion of economic integration.7 Another frequently mentioned purpose of harmonization is the improvement of domestic legal institutions, the presumption being that such an improvement is better done by a central legislator for a variety of reasons, such as economies of scale or the need to overcome domestic opposition to reform. We believe that CIS model legislation in the area of company law has a valuable role to play in both these directions and examine, in this work,

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5 See, for example, M. Brill Olcott, A. Aslund and S. Garnett, Getting It Wrong: Regional Cooperation and the Commonwealth of Independent States, Washington, DC 1999; I. Shishkov, Integratsionnye protsessy na poroge XXI veka, Moscow 2001. We also recognize that, for many, it has simply been difficult to follow CIS developments. This is particularly so in view of the problems in obtaining reliable information and the confused and contradictory nature of CIS integration, poignantly described as “Byzantine” and needing non-standard analytical tools—like chaos theory or another post-modern theory—to help qualify it. See K. Malfliet, “The Commonwealth of Independent States: Towards Supranationalism?”, in F. Feldbrugge, ed., Law in Transition, The Hague 2002, 152.

6 In this work, we use “harmonization” as a generic term for efforts directed at a given level of legal uniformity. For a more specific distinction, we refer to G. Benacchio, Diritto Privato della Comunità Europea. Fonti, modelli, regole, Cedam 2004, 11, who defines:

(1) “unification” as the process whereby a rule is produced by a single supranational “legislator”, but is subject to interpretation and application by national courts;
(2) “uniformization”, whereby a rule is produced by a supranational “legislator” as well as interpreted and applied by a single system of supranational courts; and
(3) “harmonization”, whereby the “legislator” decides that a certain level of uniformity needs to be achieved, but single states retain some liberty in implementation.