

## REGULATORY SANDBOXES & EXPERIMENTATION CLAUSES: AN ATTEMPT TO MAKE (CROATIAN) LEGAL SYSTEM MORE ENTREPRENEURIAL

The Josip Jurak Strossmayer University of Osijek – Faculty of Law hosted 9 and 10 June 2022 the 6th **International Scientific Conference "EU and Comparative Law Issues and Challenges (ECLIC)"**. This year's ECLIC edition addressed the legal and economic aspects of EU membership, especially regarding current issues of EU institutional setting, and the impact of EU law on the various legal fields of the Member States. The research results conducted by international scholars are published within the serial publication.

For the past two years, the world and society have faced the challenges of a pandemic caused by Coronavirus Disease (COVID-19). The experiences and acquired knowledge of living in different and changed conditions of everyday life have created some new written rules and customs that allow us to function in unique social circumstances. However, one should look for ways to recover from the consequences and build immunity for future challenges. The Conference discussed the legal and economic aspects of the recovery and resilience of the European Union in the context of COVID-19.

Attorney-at-law Štefan Štefanek presented at the Conference his professional paper titled **REGULATORY SANDBOXES & EXPERIMENTATION CLAUSES: AN ATTEMPT TO MAKE (CROATIAN) LEGAL SYSTEM MORE ENTREPRENEURIAL**. The article emphasises a growing need to



develop a suitable regulatory framework for innovative business models, especially those that involve artificial intelligence and information technologies. Entrepreneurs who seek to explore new opportunities, test out new technologies and offer new services or products are constrained by the existing legal framework, which in most cases, does not allow any experimentation and requires the implementation of strict rules.

The EU Council Conclusions No. 13026/20 of 16 November 2020 on Regulatory Sandboxes and Experimentation Clauses highlight that better regulation is one of the critical drivers of sustainable, inclusive growth, fosters innovation, digitalisation, and job creation, increases transparency, and ensures public support for EU legislation. Štefanek explores the design of **regulatory sandboxes as testing environments** created by regulatory authorities for new business ventures and the distinctions of **experimentation clauses as legal provisions that enable the exercise on a case-by-case basis of flexibility in the testing of innovative entrepreneurial models**.



A regulatory sandbox can come to life only if **interactions are established between various stakeholders**, from government and public administration to business, science, and other fields, e.g., customer protection associations. The stakeholders enter into a cooperation agreement establishing the parameters of the cooperation and ensuring that the support they need is in place. In addition, principles guiding action and rules and hierarchies for decision-making can be clarified and stipulated amongst the partners with different instruments such as statements, certifications, or other forms. Regulatory authorities grant permissions for running a novel business model.

Regulatory sandboxes are seen as tools for making regulatory progress and proactive regulatory learning. They enable regulators to gain better regulatory knowledge and find the best means to regulate innovations based on real-world evidence, especially at a very early stage, which can be particularly important in the face of high uncertainty and disruptive challenges and when preparing new policies.

So far, regulatory sandboxes have been used in finance, health, legal services, aviation, transport, and logistics, as well as energy sectors, where there is a need or room for the use of digital and other new, emerging technologies (e.g., blockchain/distributed ledger technologies) or for innovative use of the existing technologies.

Designing efficient legal rules from scratch or adapting them to new factual circumstances has always been challenging. Legislators typically use *ex-ante* impact assessments, which rely on past experiences and many assumptions about the uncertain future. The actual effects of a regulatory framework often differ from the expected ones because the legal *status quo* simply cannot anticipate all current developments and reactions of individuals or groups whom the regulation addressed. Furthermore,

today's digital technologies have increased the gap between the quick emergence of business innovations and regulatory timeframes.

The solution to this problem was found by creating experimentation clauses and inserting them into the existing legal framework. The experimentation clauses are temporary exemptions from current legal rules. Experimentation clauses provide for exceptions, and therefore their duration in time is limited, making them sunset clauses. The validity period needs to be long enough to permit sufficient testing of the innovative model and to achieve meaningful findings. The duration of experimentation clauses and regulatory sandboxes generally ranges between six and 24 months.

The exemptions or adaptations remove direct legal barriers for a part or the entire innovation that otherwise is not allowed. It is, however, correct that the law serves to protect citizens and social values. Therefore, experimentation clauses must also consider legal provisions and principles outside the experimental scope. The knowledge about how the experimental clauses work and about their effectiveness is essential for their review, improvement, and, as the case may be, transfer into "regular operation."

We have noticed significant development in e-government services in Croatia. Today, Croatian citizens and entrepreneurs can use more than 100 public services through the e-Citizens Information and Services Portal (e-Citizens). The COVID-19 epidemic influenced the rapid development of e-Citizens. Although legally equivalent to standard administrative systems, this e-service portal is still an alternative. E-Citizens is a worthwhile project, but it does not satisfy many needs. Unfortunately, the progress of the e-Citizens was not the result of regulatory experimentation and synergy of various stakeholders, especially final users. Croatia



has not yet developed regulatory sandboxes. One of the reasons is the insufficiently developed communication culture between public institutions, the business sector, and citizens. Social and political consensus is needed to change the legal system. Furthermore, there is still no sufficiently reliable infrastructure to implement innovative solutions in Croatia.

The Croatian legal system and the legal systems of other countries have the opportunity to become stimulators of innovative entrepreneurial activities and market growth by introducing experimentation clauses in the system. At the same time, due to the social values, they care about, legal systems can influence the elimination of destructive and undesirable forms of entrepreneurial behaviour and preserve diligent ones. Of course, regulatory sandboxes do not eliminate the risk of business failure. But a well-established legal framework can reduce the unwanted consequences of the testing on consumers

and reduce risks.

The need for the legal system to be predictable and reliable is not lost with the application of experimentation clauses. Their objective is also to make legal effects predictable for those affected – innovators, competitors, customers, and similar third parties. The main parameters around which the experimentation clauses should be formulated to ensure legal compliance is openness to innovation, responsibility for innovation and efficacy.

A modern legal framework should be flexible, enable innovation and uphold high protection standards. In this context, experimentation clauses are a valid legal instrument.

Today, there is high time-related instability in the structures of legal norms. Should there ever be socially adequate legal concepts, they will have to be found by testing and re-testing solutions. A legal system that does not change lacks risk awareness.

You can find the full article at <https://hrcak.srce.hr/ojs/index.php/eclic/article/view/22416>.