

INNOVATIVE BUSINESS AND LEGAL SYSTEM

Facing a complex world

Both law and entrepreneurship are facing a complex world. Law is often understood as a restriction of behavioural choices. However, the law can be understood as support for innovative behaviour, which would not be possible without the law. In some instances, legal rules and practices are tailored to the entrepreneurial context, and in others, rules of law find novel expressions in the entrepreneurial context. As a result, studying the ties between law and entrepreneurship offers unique insights into both of them.

Law is often understood as a restriction of behavioural choices. However, the law can be understood as support for innovative behaviour.

Business models based on artificial intelligence (AI) and information technologies (IT) often require a normative regulation that allows for innovation and upholds high standards of legal protection. In that context, the legal system is challenged to create the necessary infrastructure to facilitate the testing of innovations. Another significant challenge is to keep the legal framework constantly updated.

Entrepreneurial uncertainty and legal certainty

Today's actions are sources of the changes that make the future uncertain. Uncertainty is a part of real-world economies.

A new product or service environment is unclear and unknown because there is no market experience. Uncertainty arises mainly because the future is not bound or determined to emerge from the present in a stochastically predictable way. Moreover, today's actions are sources of the changes that make the future uncertain. Uncertainty is a part of real-world economies.

As part of such an environment, the legal system cannot predict nor respond to all creative entrepreneurship challenges. But let us suppose the legal framework is not structured to respond adequately to new factual circumstances. In that case, the result of a legal operation, i.e., deciding whether an endeavour is illegal, will disappoint the stakeholders.

We presume two main features of entrepreneurship and law. The first is that each business event has a factual ground, meaning that it is based on a real deal of the involved parties. The second is that the legal system tells an abstract story of imagined future behaviour, providing what is expected from the actors (their mutual commitments) and how each of the actors will be sanctioned if these expectations are not met (the parties' liabilities).

When a legislator creates a law, i.e., parliamentary acts, and when the authorised institutions apply it or even when they develop a second-level law, i.e., ordinances, all lawmakers expect reduced uncertainty in future events.

Legal professionals supporting their clients try to predict future events and provide solutions for possible problems by drafting, contracts and other documents. Thus, created legal framework is a tool for dealing with future uncertainty.

Also, parties to a contract have the same motive to avoid or manage possible unwanted side effects. Legal professionals, especially attorneys supporting their clients, try to predict future events and provide solutions for potential problems by drafting statements, contracts and other documents. In that sense, a legal framework is also a tool for dealing with future uncertainty.

It would be wrong to think that stability and certainty are unwanted features of entrepreneurial endeavours. It is simply that in real life things do not last forever and are not unchangeable.

Legal certainty can be defined as the request of knowing in advance what legal consequences will follow from one's conduct. Dimensions of legal certainty are stability and predictability. The stability of law stands for an expectation that the law will not be arbitrarily changed. Predictability tells it is possible to foresee that the legal consequences of one's behaviour will apply equally to all in same circumstances. However, the principle of legal certainty should not be interpreted as a request for the immutability of legal rules. Instead, a certain degree of gradual or temporary uncertainty may be necessary to ensure that laws continue to mirror changes of society and grant sufficient certainty.

On the other hand, it would be wrong to think that stability and predictability are unwanted features of entrepreneurial endeavours. It is simply that in real life, it is accepted that things do not last forever and are not unchangeable. In entrepreneurial science, it is known as *the Strong Premise of Entrepreneurship*.

Legal rules as formal expressions of commitments and social artefacts can never be completed and immutable but should reflect equilibrium and ability to change.

This premise holds that even if some markets approach a state of equilibrium and stability for some time, the human condition of the enterprise, combined with the temptation of profits and advancing knowledge and technology, will, in due

course, destroy achieved equilibrium. In simple words, entrepreneurial endowers need some lasting stability while inevitably being disposed to constant change. Therefore, legal rules as formal expressions of commitments and social artefacts can never be completed and immutable but should reflect equilibrium and the ability to change.

Dealing with legal obstacles

Consideration of legal obstacles starts with the question of whether innovation can be allowed to launch on the market under the existing legal framework. If there are doubts about the positive answer to this question, it is necessary to determine the legal barriers that stand in the way. Designing efficient legal rules from scratch or adapting already existing ones to new factual circumstances has always been challenging. Legislators typically use *ex-ante* impact assessments, which rely on past experiences and many uncertain future assumptions. The actual effects of a regulatory framework often differ from the expected ones because the legal *status quo* 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. Elster noted that "history is the result of human action, not human plans."

Adequate legal concepts will have to be found by testing and re-testing solutions. A legal system that does not change lacks risk awareness.

Today, there is high time-related instability in the structures of legal norms. The law cannot guarantee long lasting security if society sees its future as a risk contingent on decision-making. Should there ever be

socially adequate legal concepts, they will have to be found by testing and re-testing solutions to establish possible eigenvalues of the legal system in modern society. A legal system that does not change lacks risk awareness.

Call to entrepreneurial effectual normative action

Modern legal systems allow entrepreneurs to create legal norms tailored to their business needs. That is

When creating your law, an innovative entrepreneur fills legal gaps and achieves business transparency, clarity of intents, actions, and goals.

accomplished by adopting personal decisions, internal acts, and contracts between stakeholders. The legal system accords legal validity to such individual normative action.

The task of legal professionals is to get entrepreneurs acquainted with the essential features of the legal framework and help in exploiting legal call to effectual normative action.

When creating your law, an innovative entrepreneur fills legal gaps and achieves business transparency, clarity of intents, actions and goals. Contracts allow for interaction between stakeholders and mutual

understanding, determining roles, fulfilling commitments and profits and achieving rights. In that sense, we can talk about *an effectual creation of law*. The task of legal professionals is to get entrepreneurs acquainted with the essential features of the legal framework of business and help them to exploit this legal call to effectual normative action.

REFERENCES

1. Bischoff, T. S. et al., *Regulatory experimentation as a tool to generate learning processes and govern innovation – An analysis of 26 international cases*, Sofia-Diskussionsbeiträge, Vol. 20-7, Darmstadt, 2020, [https://www.sofia-darmstadt.de/fileadmin/Dokumente/Diskussion/2020/Netzversion_PortmannRegulatory.pdf], Accessed 17 February 2022
2. Davidsson P., *Entrepreneurial opportunities and the entrepreneurship nexus: A re-conceptualisation*, Journal of Business Venturing, Vol. 30, No. 5, 2015, pp. 674-695, [<https://www.sciencedirect.com/science/article/abs/pii/S0883902615000130>], Accessed 7 January 2022
3. Drucker, P. F. *Innovation and Entrepreneurship*, Harper & Row Publishers Inc. 1985
4. Elster, J., *Uvod u društvene znanosti, Matice i vijci za objašnjenje složenih društvenih pojava*, Croatian edition: Jesenski i Turk, 2010
5. Ibrahim, D. M.; Smith, G. D., *Entrepreneurs on Horseback: Reflections on the Organization of Law*, Arizona Law Review, Vol. 50, pp. 71-89, 2008, [<https://ssrn.com/abstract=1030503>], Accessed 10 March 2022
6. Luhmann, N., *Law as a Social System*, Oxford University Press, 2004
7. Luhmann, N., *Organization and Decision*, Cambridge University Press, 2018
8. Ranchordas, S., *Sunset Cluses and Experimental Regulations: Blessing or Curse for Legal Certainty?*, Statute Law Review, Vol. 36, 2015, No. 1, pp. 28 – 45
9. Venkataraman S., *The Distinctive Domain of Entrepreneurship Research, Advances in Entrepreneurship, Firm Emergence and Growth*, Vol. 3, 1997, pp. 119 – 138, [https://www.researchgate.net/publication/228316384_The_Distinctive_Domain_of_Entrepreneurship_Research], Accessed 12 February 2022