6TH WORKSHOP FOR THE ECONOMIC ASSESSMENT OF INTERNATIONAL COMMERCIAL LAW REFORM PROJECT

EXPERTS DISCUSSION ANALYSING VARIABLE D

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Variable D is “the extent, measured from 1 to 0, that new [commercial law] rules have been or will be effectively applied by courts and authorities.”

Based on the background documents and the discussion made by Prof. Lipson I provide two comments on the "dynamics" of the variable D.

I. “Informational limitations” as a risk to the effective implementation of regulation. This risk changes over time.

II. Regulation as a non-valuable element or as a destroyer of value.
• (“Factors”) that contribute to political risk and/or the risk that legal authorities will fail to apply law (...). (c) **Informational limitations** (...) “*not understanding the new rules, thus not effectively apply them*”.

• This is a dynamic factor. Users of the rules (and enforcement institutions) may need time to learn their content. D **would increase over time**
  • This learning factor may be different in each country.

• If the content of the rules is sufficiently planned and “advertised” prior to their formal adoption, this "delay" may not be relevant.
  • The Spanish Constitutional Court has numerous rulings in which it has pointed out tax rules that are sufficiently "predictable".
    • STC 9/2019 ... (...) ... STC 97/1990

• **Generally, in terms of economic analysis, rules have a lagging impact on the economy.**
  • This element can be estimated/taken into account using econometric techniques (Matea Rosa and Mora-Sanguinetti, 2012).
“(...) law is a product, and the consumers of that product expect it to have positive value. While they may sometimes be disappointed, it seems implausible that law systemically adds no value (as a coefficient of 1) or destroys value (as a coefficient of anything less than one).”

I generally agree. Regulation does not generally destroy value.

It may not reach its potential because of poor design/obsolescence/etc (North 1981, 1990 and 1999).

However, there is a widespread view in economic literature that "deregulation" can be good for generating value.

Source: [Di Vita (2015)]
II VALUE AND COMPLEXITY

• Laffont and Tirole (1993)’s “New theory of regulation”:
  • Market failures constitute a necessary, though not sufficient, condition for regulation. Poor design of the regulation may lead to increased transaction costs (see also Helpman (2008) and Mora-Sanguinetti and Pérez-Valls, 2020).

• One possible way to reconcile the perspective usually found in both legal and economic literatures is the figure below (Di Vita, 2015). “U interaction”.

• Regulation generates beneficial effects until a certain level of "complexity" is reached.

• Too “complex” (difficult to use, difficult to implement) regulations are inefficient.

Source: [Di Vita (2015)]


THANK YOU FOR YOUR ATTENTION

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