

The crucial role of legal capital for the formation of legal strategies

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The term of « legal strategies » is currently used within the academic field nowadays but without giving accurate definition of this concept. This lack of clear definition may explain that this key notion is often confused with the concept of "economic strategies within a legal framework".

The first challenge of this article will be to determine whether or not there is certain homogeneity within these strategies and if so whether it is possible to classify them. Such an approach will be useful to understand how it is possible to mobilize legal resources in any situation.

The second problem comes from the fact that different kinds of public responses to legal strategies are possible (for example by harmonizing the current rules, by founding a network of co-operation, by hardening or softening the regulatory framework or by supporting private or public enforcement). However, none of these responses are able to prevent legal strategies. Moreover, regulatory bodies also follow their own strategies, which interact with that of the firm. So question will be for theses regulatory bodies to try to determine the best (or legal) policy mix possible to minimize strategic opportunities.

Thirdly, the strategic use of the regulatory framework requires for firms to mobilize different characteristics of their legal capital according to the policy mix (or rather legal mix) adopted by public authorities. From then, our analysis shall move from the concept of "legal resources" to that of "legal capital" in order to understand why firms invest into this legal game and others do not.

Lastly, the current trend in favor of a harmonization of the legislations at a European level which creates a homogeneous "level playing field", does not prevent legal strategies from differing according to the legal capital of each company. It seems that worldwide firms find within this trend new strategic opportunities to compensate deterioration of their sensibility to forum shopping.