

# General counsel concerned about new wave of regulation

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## Businesses seeking consultation on new legislative reforms

Portuguese businesses have been facing an increasing amount of regulation over the last decade, according to some senior in-house lawyers, in such key business areas as public procurement as well as competition and antitrust law.

Speaking at a recent Iberian Lawyer In-House Club meeting hosted by Vieira de Almeida in Lisbon, participants from some of Portugal's major businesses, including BPI, Millennium BCP, Espírito Santo Saúde, PT, Galp Energia and Brisa were strongly divided as to what new regulation the new year could bring.

While some senior lawyers are predicting that the economic downturn could bring a whole new era of market regulation in key business sectors, others believe that the difficult market conditions will require both government and regulators to adopt more flexible approaches. Some pointed to recent EU decisions as marking an increasing awareness that a more pragmatic approach is required for current times.

The best approach, participants heard, depended very much on each specific sector. Those within financial services are already digesting a new wave of international regulation - including Basel I, II, III, IV and V - some of which has been due to the financial crisis.

New requirements for capitalisation and liquidity standards for banks have already been adopted under the Basel Committee on Supervision – comprised of the financial regulators in the major countries – and referred to as Basel III. Under these new rules, banks must maintain a Tier 1 common ratio of 7%, although in practice there will be a day-to-day requirement for higher reserves.



Any further

domestic banking reforms, suggested one participant, would only complicate what is already a difficult situation. "The state has a tendency to over-regulate the financial sector, leaving consumers with a wave of regulation which they may not require nor even understand."

Lawyers in the telecoms sector are also expecting further reform, however the interplay between different regulatory agencies can bring both interpretation and enforcement confusion, said one participant: "There are three main players in the sector, the Government, national regulators and the European Union. As we have seen in the way the Government has tried to promote its 'Digital

Agenda' there can be conflicts with regulators' own agendas. It can be really difficult to find a balance between them – while sometimes we face regulation that does not have the detail and quality required.”

In one example given, businesses were not consulted over changes to new legislation on consumer credit and were given only 30 days to comply with the amendments. The costs of such changes were huge, said some, when balanced against the benefits. Consumers often lacked the motivation or time to read all of the specific terms and conditions, while a second challenge was that due to poor drafting, it was also not clear whether the obligations placed on businesses were voluntary or compulsory. The breakfast debate, one of a series of Iberian Lawyer In-House Club events, was hosted by Luís Brito de Goes, General Counsel at Grupo José de Mello with the assistance of Nuno Ruiz and Paulo Pinheiro who lead the EU and Competition law and Public Law teams, respectively, at Vieira de Almeida. International companies were also represented, with lawyers attending from, L’Oreal, Novartis, Odebrecht, Unilever and Vodafone.

A common theme was the extent to which companies should be able to, and indeed be encouraged to, engage in the legal reform process helping to ensure that any new regulation will work in practice. At other events, lawyers in private practice have also admitted that not enough is done by law firms to engage with the legislators, or to feedback constructive criticism in any formal manner.

Businesses have an important contribution to make when the government is discussing regulation, agreed in-house lawyers at the debate, although they did not currently have a coherent common voice.

While acknowledging that a more public and transparent debate could only be beneficial, businesses are however nervous that their comments on specific laws could be viewed as political lobbying.

While in many countries, businesses were actively encouraged to put forward legal reform, in Portugal, say lawyers, there remains a danger that this could be viewed negatively.

Organisations like the In-House Lawyers Club, participants said, therefore had an important role to play by providing a neutral platform where businesses could share their views with government bodies and regulators – to help debate, shape and lead the legislative agenda.