

ESG & DLA PIPER SPAIN

Posted on 13/10/2021



Category: [Uncategorized](#)





Even though it has increasingly become more popular - with the recent return of the US to the Paris Agreement, Europe has emerged, in recent years, as a worldwide leader in ESG, the origins of the ESG (regarding *Environmental, Social, and Governance*) date back several decades. One of the international firms that saw this trend in time and form, or relevance, was DLA Piper. Iberian Lawyer speaks to Joaquín Hervada and Paz de la Iglesia, partners of the firm and co-heads of DLA Piper's ESG practice in Spain.



When did DLA Piper implement this practice globally?

Joaquín: Pinpointing an exact date is not easy because, at DLA Piper, we have been considering ESG

for many years; this is not new for us.

In 2005, we implemented our global sustainability initiative entrusting a commission within our global board with the task of setting up DLA Piper's ESG strategy and ensuring correct and integrated management of our business. That could perhaps be taken as the launching date. Later, in 2007, we were the first law firm to achieve global certification to ISO 14001 on environmental management, an extremely relevant milestone. In 2010, we were founding members of the Legal Sustainability Alliance in the UK and have since been evolving.

As you can see, ESG has been in our strategy for a long time now, and we have continuously evolved, at DLA Piper, there is no "specific date" we can give you where the ESG practice was launched.

In fact, we believe ESG is not a practice area in the traditional sense, it is so wide that it goes beyond any legal practice taken separately. Despite the fact that some law firms offer ESG "specialists", we, at DLA Piper, would rather provide advice closely linked to each of our client's particular business sectors, knowing that each sector has specific ESG concerns. This is why we train all our lawyers in ESG matters so that they can apply an ESG lens to their day-to-day work. Our clients need lawyers that understand their business, not only the Law, and now also lawyers who understand ESG particularities.

For example, in 2019, we carried out an internal analysis and found out that 50% of DLA Piper's partners had provided advice on ESG matters over the previous two years. Nowadays, all our teams deal regularly with ESG.

What is your assessment so far? What kind of companies are you providing advice to? What type of advice are you offering?

Paz: Our assessment is clearly very positive. We have provided advice to multinational companies in very different sectors, from the more obvious such as infrastructure, energy and airlines to others that may seem less obvious, such as financial services and online-based businesses, and have witnessed directly how such businesses have seen their value increased with the implementation of ESG criteria.

We travel with our clients in their ESG journey and provide them with strategic and comprehensive legal advisory services. Some clients ask for more basic tasks, such as legal monitoring, but many count already on us as their partner in the transition to help them in many other aspects (opportunities and risk assessment, reporting criteria, or relationships with investors, among others).

And this works not only towards our clients but also internally. Let us not forget that we are a company too, and as such, we face the same challenges and changes our clients do, which help us better understand their needs.

In recent years, we have implemented a number of measures, from a clear commitment to the dissemination of our values among all our employees to Diversity and Inclusion and Welfare actions and, of course, several measures to reduce our environmental impact. All such measures have an impact on the new travel, recycling and efficient waste processing policies, on the use of renewables, and on our very ambitious target to reduce carbon emissions. And we seem not to be doing it so bad, as we have already achieved several "green certificates" supporting us!

Moreover, only last year, we delivered almost 230,000 hours of Pro-Bono legal advice throughout the firm, and 2,500 in the Madrid office, where 88% of the lawyers have engaged in Pro-Bono matters. Our Pro-Bono clients are mainly NGOs and UN agencies, and our work focuses on matters related to the environment, the rights of vulnerable groups, and the promoting of best practices. We are happy to say that these are the issues we feel most proud of.

At a European level, ESG issues are increasingly becoming more relevant. Which are the next foreseen legal milestones in our country in this regard? Which would be the "ideal" deadlines for a company that would like to "catch up" with these targets?

Paz: ESG's cross-cutting nature implies that its development is taking place through a large number of rules, which necessarily requires a multidisciplinary approach. In addition to that, the ESG issue has been closely linked to the widest idea of sustainability, the various international commitments – such as the Agenda 2030 or the Paris Agreement targets, and the recovery policies to afford the economic impact of the COVID-19.

The Spanish legislative developments also show this diversity, as the government, in its regulatory plan for 2021, provided for issues such as the elaboration of a sustainable fishing law, the regulation of electric vehicles charging services, and an international cooperation law on sustainable development. In addition to those are the amendment of the Technical Building Guidelines in order to promote electro-mobility, and the transposition of EU legislation on matters such as clean and efficient road transport, or the promotion of the use of energy from renewable sources. Furthermore, some of the projected regulations that are currently in progress may also be ESG-labelled, as is the case with the draft law on waste and contaminated soil.

In any event, the Spanish ESG regulatory future should always be analysed from a European lens. In April this year, the Commission passed a set of measures that, in addition to introducing certain amendments to the European legislation regarding the investment and insurance sectors, makes progress in the clarification of the ESG taxonomy for sustainable investments and proposes a sustainability reporting Directive for companies which will modify the current legislation on non-financial information. Similarly, it is expected that the long-awaited proposal of a Directive on sustainable corporate governance sees the light this month.

Joaquín: There is no need to get obsessed with ideal deadlines for getting up to speed on ESG since, at the end of the day, it is a question of adequately positioning your company, something which requires a delicate balance between acting quickly and acting properly. It is obvious that ESG is already here to stay, we just have to look at the news on the impact that ESG is having on corporate decisions, corporate finance and valuations, but the playing field is very large, and there will be some who would rather accelerate to gain a competitive advantage as soon as possible, and others who would rather take it at a more relaxed pace but with safer steps.

It is the first anniversary of the firm's ESG practice in Spain. How is this practice structured in Spain?

Joaquín: To be consistent with our way to understand ESG, in Spain, we have created a multidisciplinary team, integrating specialists from all legal areas (corporate, finance & projects, tax, real estate, litigation, etc.) and, for operational purposes, there is a lawyer responsible for coordinating each of these areas, so that we can more easily monitor issues, with more frequent and more efficient meetings, and maintain a flexible team to rapidly adapt to our clients' needs.

This is perhaps better illustrated by way of an example: the UK government has appointed us as legal services providers for the next UN conference on climate change (26th UN Climate Change Conference of the Parties (COP26)) to be held in November. There is no doubt that legal advice may have an impact on many issues (supplies, sponsorships, reporting, etc.) and will be changing as the following weeks go by. The configuration of our team enables seamless monitoring and the identification of areas where we can add value to the government, as we know that sometimes the key element will have a corporate nature, but other times the focus may be on intellectual property, litigation or any other legal area.

What are your first impressions? Is there a "true" interest in the compliance of these

requirements, or is this part of a compulsory and politically correct discourse difficult to execute? Are ESG objectives a luxury for medium-sized Spanish companies? In your view, how does the Spanish public administration contribute to accelerating the achievement of these requirements? And, which would be the ideal scenario?

Paz: Certain companies show a true interest in compliance (it rather depends on their directors and leaders), and interest in ESG is less "real" in other companies that, however, foster compliance because of the competitive advantage we discussed previously (e.g. better financing or reputation). Now, besides the level of conviction of each company, almost all large companies have acknowledged that meeting ESG requirements is basic if they want to increase the value of their businesses, have access to better financing or attract/retain their most skilful employees, who no longer wish to work for companies that have different ESG principles than theirs.

With regard to whether compliance with these requirements is a luxury or not, we definitively believe they are not. The cost of implementing equality, diversity and inclusion measures, best practices, transparency, etc., is small and, certainly, very small compared to what we may lose both in terms of value and reputation, should we fail to comply. Having said that, it is true that the cost of implementing ESG criteria may be greater for companies within certain sectors, such as energy.

We believe the role of the Spanish Public Administration, understood as the government, largely adds to the compliance with ESG. Let us not forget that, since their commitment to the UN Agenda 2030, several initiatives have been promoted that are turning into sweeping changes for large companies.

According to the 2021 survey by the Association of Corporate Counsel (ACC) on legal directors, 15% thereof are leading the implementation of the ESG criteria and related efforts (including environmental sustainability) in their companies. Do you consider this figure still too low? How would you rate our country's progress in this regard, compared to other European countries?

Paz: Yes, of course. If the target is to generate an impact short-term, the percentage is too low. In any event, we believe, and so do our clients, that the implementation of ESG criteria is not up to their in-house lawyers. Or, at least, not solely up to them. To achieve a true implementation that effectively permeates the business and generates added value, the involvement of all employees is crucial, starting, of course, with the management body and the most relevant business areas, which shall convey the importance of this issue throughout the organisation.

This is, perhaps, the main difference with countries in Northern Europe, where ESG criteria have been long established. Having said that, over the last couple of years, we have witnessed an outstanding change in the top Ibex 35 companies. Those companies are indeed leading the way forward since there is no doubt that the embedding of ESG criteria into companies is here to stay.

Now from a different standpoint, are law firms really ready to provide effective advice? Since these are medium/long-term targets for companies, how is the cost of the relevant services calculated? Is the cost reasonable/affordable? Is the outcome measurable? How do you, at DLA Piper, measure it, which tools do you use? Do new technologies (IA, Machine Learning, Blockchain etc.) play somehow a role in the journey to achieving the targets?

Joaquín: It will depend on the firm's profile. The more traditional are perhaps less ready since legal advice on ESG has a very strong component of strategic advice. Those law firms with a focus on explaining to their clients "what the law says" shall suffer the most. However, this will not affect us as much since we have been working along the same line for years and have been progressively developing from a traditional legal service approach to a more strategic legal advisor.

We do not charge for "advising on ESG". It may be reasonable to do so in a very particular assignment, but not in general. As we say, our ESG strategy involves providing our advice with an

ESG lens and, therefore, at the end of the process, there is no item in the invoice related specifically to ESG. The outcome is indeed measurable but allow us not to open our little box of secrets.

How do you see ESG implementation in Spanish companies in two years' time?

Joaquín: Large companies, e.g. IBEX 35 companies, shall lead the market in ESG, whether voluntarily or under the market's pressure. And a group of companies will leverage the opportunities brought about by these sweeping changes and will grow strong.

In percentage terms, it will depend on how this is measured. Based on the number of companies in Spain, ESG criteria will not be implemented in the majority of them because the Spanish business landscape includes many small and medium-sized companies. However, in terms of PIB, we do foresee that a significant number of companies will have in place defined goals and measuring tools/systems for ESG Compliance.

By Desiré Vidal

To read the full interview on issue number 108 click [here](#)