

PORTUGUESE LEGAL FRAMEWORK 'NOT READY' FOR THE DIGITAL WORLD

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The Portuguese legal framework is still not ready for the digital world, and this is creating challenges for technology, media and telecommunications lawyers when drawing up contracts, says Joana Gomes dos Santos, partner at Caiado Guerreiro in Lisbon.

Gomes dos Santos adds: "Portugal is a civil law country, which means that a lot of things are already foreseen in our legislation, so we don't need to include them in contracts." However, she adds that, as TMT [technology, media and telecommunications] is such a fast-moving area, legislation "just isn't keeping up as we would like it to, which means that the contract process in this area is a little more exhaustive". TMT lawyers must approach contracts in a slightly different manner than they would

normally, says Gomes dos Santos. "Sometimes, a big challenge for us is to give a very straightforward answer, to say yes or no, because the legislation is not really ready," she explains. "You have to say, look this is our understanding of the law, this is what we think is the correct interpretation, but there is a big chance the regulator will not agree." Gomes dos Santos continues: "And even then the regulator can change its opinion, particularly now there's a new generation coming in that is more comfortable with new technology."

Meanwhile, people working in the technology sector tend to forget that most people are unfamiliar with the terminology used, says Gomes dos Santos. "Contracts in Portuguese are usually simpler than those in English, but in the area of TMT, there are new words used and new inventions, so lawyers must detail them and specify their meaning to avoid conflict."