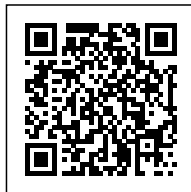


UNIFYING THE MARKET FOR INVESTMENT

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Lawyers divided over the effectiveness of new laws designed to draw in much needed investment by addressing the fragmentation of Spain's regions and local legislation.

The Spanish Government is attempting to simplify the rules to make it easier and cheaper to invest in the country's regions, with the Council of Ministers recently unveiling proposals for market unity. The bill, which still has to go in front of the Parliament, would sweep away many of the regional differences that can slow down business expansion and, crucially, foreign investment. Spain may be a single country but regional diversity is still very much celebrated. From Galicia to Catalonia to Andalusia, its 17 regions each have their own customs, cultures and, crucially, legislative autonomy. As such, when it comes to economics, the balance between national and regional has become fragile in recent years, some suggest, and an unwelcomed obstacle to foreign investment

in Spain.

"The Spanish constitution states that all commercial law issues fall under the remit of the Government as a uniform system," says Javier Fontcuberta, Corporate Partner at Cuatrecasas Gonçalves Pereira in Barcelona. "However, the legislation is not particularly clear on what 'commercial law' actually is, so each of the regions has developed its own parameters for commercial matters."

This has created a situation where, while the Spanish constitution recognises that goods and services should be free to trade across Spain, regional laws have created certain challenges to fulfilling that legislation. Effectively, Spain has developed 17 different sets of rules on commercial law based on geography in spite of the national commercial law framework.

This can make establishing a pan-national business a time-consuming process. For instance, companies may have to obtain different commercial licences from each community, have to operate different opening hours, abide by varying sets of consumer regulation and comply with conditions of sale in regards to regional branding or language requirements. Even logistical issues – such as transport – can vary from region-to-region. This convoluted model can act as a barrier to market expansion, as a company wishing to open across Spain has numerous hurdles to clear, agree lawyers.

Chief amongst the new measures to be introduced would be the creation of a universal commercial licence; so a business would only need to obtain a licence from one community and that would be binding across Spain.

"Any service or product produced under any regional regulations may be offered throughout the national territory without additional paperwork," says Marla Bojorge, Managing Partner of Bojorge & Associates in Valencia. "This principle of unity of the market practice eliminates the cost of having to go up to 17 different regulations for operating in Spain. The overabundance of legislation constitutes a clear disincentive to foreign investment, increased legal uncertainty and prevents companies benefitting from economies of scale, which hurts the competitiveness of Spanish economy and results in job losses."

While the move has on the whole been welcomed, there remain some doubts. It is not so much the legislative or economic frameworks that may require attention but the political implications. Some regions, for instance, prohibit companies without a presence in the area from entering public tenders. There is also the thin line between encouraging local businesses to thrive – which some communities have been doing – and uncompetitive protectionism. A recent example of the tension is the mammoth multibillion-dollar EuroVegas casino competition between Madrid and Barcelona. The two regions fought fiercely for the right to house the resort and were even willing to side step local laws to land the contract, offering to overturn the national smoking ban or provide generous tax breaks to attract investors. As such, politics is likely to be the biggest hurdle in terms of implementation.

There will also need to be a number of regulatory changes. "Numerous parties have highlighted the need for greater administrative simplification in Spain," says Bojorge. "Additionally, this new law establishes a streamlined procedure for resolving disputes with the participation of the National Commission on the future markets and competition."

The concept of market unity is good for the country and, while not a key driver, could make things easier for domestic and international investors, adds Fontcuberta. "Even so, this is just a draft law, and there would need to be a lot of regulatory changes too before the Government can reach the goal of a genuinely single market."