

# WHEN 'THE TROIKA' COMES TO THE RESCUE

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**The IMF's Memorandum of Understanding with Portugal opens the door to a 'liberalisation' of regulated professions, among them – legal, says John Flood**

El Memorandum del FMI acordado con el Gobierno portugués, abre las puertas a la “liberalización” de todas las profesiones reguladas, entre ellas la abogacía. Portugal se ha comprometido a reformar sus profesiones reguladas, transformando su sistema judicial y procesal para acelerar la resolución de los casos que están colapsando los tribunales y llevar a cabo una evaluación profunda de aquellos requisitos innecesarios que afectan al buen funcionamiento del sistema.

To the surprise of lawyers, the rescue of troubled economies by the so-called ‘Troika’ came with a nasty bite. Not only would there be fiscal restructuring and adjustment of pensions, there would be ‘liberalisation’ of regulated professions, including legal.

Under present rescue schemes, the Troika has told Ireland, Greece and Portugal to make changes to the way they regulate their professions. Portugal must also improve its judicial system and remove the backlog of cases in the courts. None of these countries is known for their hands-off approach to regulating professions, and the relationship between state and professions has usually been close. Even Italy in the dying days of Berlusconi’s regime, without IMF funds, agreed to radically allow external ownership of law firms.

We now have the extraordinary situation where external supra-national agencies are telling governments how to regulate their professions. Professions and the rule of law are seen as key to helping countries raise their economic standards, especially if they want to participate in global markets.

For the past few years, mainland Europe has been amazed by the changes to the legal profession and legal services introduced by the UK. They served two purposes. First, to increase competition in the market for legal services (hence the introduction of alternative business structures (ABSs), and the ownership of law firms by non-lawyers). Second, to improve conditions for consumers of legal services that were presumed to be getting a bad deal given the rising tide of complaints against lawyers. The UK was an anomaly — it is now the model for future developments.

Ireland is the first country to move in the same direction. Several years ago, the Irish Competition Authority reported on restrictions in the legal services market and the Irish legal profession dismissed them. Until the crisis, that is. When the IMF reviewed the Irish economy, it included that very report in its recommendations in the rescue package. The Irish Government has taken the recommendations a step further with its Legal Services Bill. The Bill creates a new external regulatory authority for the profession (with members appointed by the Justice Minister), makes legal costs more transparent and introduces an improved complaints system. It will also permit multi-disciplinary practices. What happens in Ireland may well happen elsewhere.

Portugal has agreed to reform its regulated professions and transform its judicial and court system to speed up cases. In its original 2011 Memorandum of Understanding (MoU) with the IMF, Portugal said it would: review and reduce the number of regulated professions; eliminate the restriction on the use of advertising; improve the recognition framework on professional qualifications; and, ease the burdens on cross-border suppliers, thereby fully implementing the Services Directive.

Portugal also said it would carry out “a comprehensive review of requirements affecting the exercise of activity and eliminate those not justified or proportional”, which opens the door to the UK ABS.

This has been reaffirmed in subsequent MoUs, although targets have become more elastic.

Finally, in its March 2012 MoU, the Portuguese Government gave timelines for change. Reviewing requirements affecting exercise of activities and eliminating advertising restrictions would produce a draft law in the second quarter of 2012, receive approval by the autumn and be fully implemented by the end of 2012 — a potentially cataclysmic year for Portugal’s professionals.

The aim is to eliminate all court backlogs by the second quarter of 2013, and introduce a new improved, efficient court system following the judicial reform roadmap. The ‘tedious’ judicial process will be based on new chambers and alternative dispute resolution will be actively promoted. Under-used courts will be closed in June 2012 and revisions to the Civil Procedure Code will be submitted to Parliament by September 2012.

The CCBE and the American Bar Association jointly complained to Christine Lagarde about these

threats to the core principles of the legal profession. Given that Lagarde was once head of global law firm Baker & McKenzie, they might have expected a sympathetic hearing. They didn't get it. Spain too has of course now agreed a financial rescue package, although it is too early to say whether the legal community should be expecting the same wave of reforms as Portugal. The rate of change in Europe's legal services market is beginning to resemble those old cinema serials where each episode left viewers biting their nails over what would happen next.

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