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Public Procurement Under the New EU Directive European Public Procurement Reform in Times of Financial Distress

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The European Commission is preparing a new reform on the European public procurement regimen by proposing new Directives that will modify the present regimen and substitute the present Directives on the classical procurement and on the special sectors procurement.

Following the 2010/2011 Green Book and the auscultation of the stakeholders the European Commission proposal will also include a Directive on concessions and changes on the defence procurement and on the remedies.

We are talking of a major change in European procurement.

The main objectives of the European Commission are to give this sector more flexibility and efficiency and to promote more social awareness. Therefore the new proposals stress the need to simplify and to give more flexibility to procedures. Moreover they pretend to boost the environment and energy saving solutions, the employment and social inclusion and a higher quality in the services rendered.

The reform comes in times of great need as the present financial difficulties are slowing down the public procurement market throughout Europe. Governments do not have the means to launch new procurements and new projects as the word is now to reduce the public deficit and cut on public expenses.

At the same time, the challenges for the countries that are capable to go ahead with new projects is to obtain the necessary financing from the market in times of great difficulty to banks and other financial institutions. The cost of money is overwhelming and the projects that go ahead cost much more to the promoters and to Governments. The sovereign risk is higher and is mounting as the ratings of Governments are pressed to go down and the access to funding for big projects are less likely to appear.

In the present credit distress times, the banks are much lesser inclined to fund any new public project so Governments need to address other ways of financing their projects.

The discussions nowadays are going towards new entities capable of funding public projects and new financial instruments. Discussions are presently on going as to bring Pension Funds, Asset Management companies, Private Equities and others to financing big public projects. Also we are seeing discussions around new financial instruments as projects bonds and financial enhancements.

The EIB is keen in promoting project bonds as a new and good way to finance projects around Europe. Specifically in Eastern Europe the BERD is also very interested in promoting and helping new projects. Large and wealthy Pension Funds have the money and are ready to invest.

The problem is not funding but the legal framework and the need for new mentality and new approaches. Dealing with all this new institutions and new instruments means a change in the rules.

All this new financial instruments and new financial institutions need a revision on the way business is done and on the contractual side of the deal.

This means also a revision on the public procurement regimen in place in Europe.

The change of the funding from banks to other financial institutions mean that the present regimen may no long be accurate and some changes have to be put in place in order to attract those new funding institutions with new needs and ways of dealing with a public project. Risk, durability and procedure are 3 main themes to be discussed.

Taking all this new discussions into account, the on-going revision of the European Public



Procurement Directives comes in good time.

The question is what level of change is really needed. Are the proposed changes by the European Commission enough? Do they satisfy the new funding institutions? Are they adequate to consider the new financial instruments being discussed? Those are the questions to be addressed.

We do think the moment is right for the UIA to participate in these discussions joining the lawyer's worldwide and some public procurement experts as some financial institutions in order to help the on-going discussions and to cooperate with specific proposals to the change the European Commission is preparing.

That is the reason for a seminar in Lisbon in May on a hot topic, which is important to lawyers, the financial business and Governments. I hope you all can come and participate.

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