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This is our attempt to bring your attention to the ongoing process of amending the Public Procurement Law (“Official Gazette” of the Republic of Serbia, No. 116/08).

This Law is undoubtedly one of the most important systemic and anti-corruption laws in the country, whose amendments should be carefully thought and conceived in order to facilitate the resolving of pressing problems in this area.

After six weeks of working on draft amendments and following controversial announcements concerning the contents of certain amended provisions, as released to the media and in communication with international organizations, the Ministry of Finance eventually made public the Draft Law on Amending the Public Procurement Law on 21 November 2011.

This Draft contains abundance of gaps, primarily in the domain of providing solutions for curbing irregularities and the corruption as the most acute problem in the public procurement system in Serbia. An illustration of magnitude of this problem is the fact that the Draft in this segment does not relate at all to the “Strategy for Development of Public Procurement in Serbia” adopted by the Government on 9 September 2011. Namely, although the Strategy identifies a plethora of ways to combat corruption in all three key stages of public procurement (planning/selection of bidders/contract implementation) and determines the need to proceed with amendments to the Public Procurement Law and other applicable legislation in order to facilitate addressing of the identified problems, almost nothing of these is reflected in the Draft. The competent working group tasked by the Ministry of Finance made no attempt to employ legislative intervention to contribute to combating corruption in the planning of procurement and in the management of public contracts, as the core problematic areas.

The Draft does not include changes in the areas that are instrumental in spreading corruption in public procurement. Among other issues not covered by the Draft, there are no substantial changes in the part governing procurements exempt from the Law, in spite of findings of EU experts (SIGMA) indicating a particular need for addressing this issue, also supported by the Strategy for Development of Serbian Public Procurement Strategy adopted by the Serbian Government. The Draft also lacks legal solutions for introducing stricter penal provisions in proportion to the social damage sustained by violations of the law.

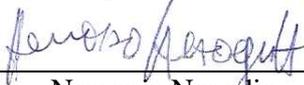
Another significant problem concerns the proposals for institutional setup. Instead of building upon the findings of system analyses which indicated lack of control within the system so to strive to reinforce and to define more precisely the competences of the existing institutions, ever since the beginning of drafting process the Ministry has been

focusing on an idea to transform the status of the Public Procurement Office and to take away some of its competences – rather than assigning to it new ones. This change, in addition to being completely unnecessary and adverse, was not foreseen either by the Government's Strategy or Action Plan, and was not recommended by any international stakeholder. Quite the contrary, all previous analyses and reports recommended the strengthening of PPO's capacities. In addition, this insistence on diminishing PPO's status and competences significantly hinders avenues to re-focus the public attention to some other provisions whose amendment is proposed by the Draft.

These partial changes as presently proposed are not sufficient, since this implies the Law will have to be amended again and soon, and frequent legal changes inevitably lead to legal uncertainties, which is the least desirable effect at this point of time. Although legal changes in the area of public procurement are necessary due to need for compliance with EU directives and due to problems that may arise in practice, in this particular case such changes amount to a serious problem. Namely, the Draft foresees incomplete and partially adverse changes, so that the expert community and the Government of Serbia concluded that numerous issues were left out and/or completely omitted from the scope of the proposed Draft.

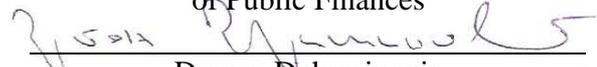
Having in mind detrimental consequences of endorsing the proposed amendments to the Public Procurement Law, we urge you to take steps within your competences to help avoid adoption of such partial amendments in an utterly inappropriate timeframe, before end 2011, and instead to comply with recommendations issued by the EU and national civil society and expert community, with a view to drafting comprehensive amendments to be developed by joint inclusion of all relevant stakeholders.

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