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**Regional seminar on Legal protection for economic operators
(Rome, Italy, 23-24.11.2015)**

Communiqué

At the outset of the regional seminar, the participants approved the following communiqué including resolutions related to the main topics addressed during the seminar:

I - Rule of law as the basis of economic/commercial regulations and international trade

1.1. Rule of law

. An important basis for the development of international economic and trade relations is the sharing of the rule of law.

. Even in different legal and constitutional structure and in different legislative and judicial systems can be found the principles of common core elements of the rule of law that govern democracy and fundamental human rights.

. Common, clear and predictable rules, as well as short times in the performance of civil proceedings, are essential conditions to ensure the development of trade between states, in Central Asia as elsewhere in the World.

. Uniform rules in the trade when the playfield has become the entire world are a necessity. Only uniform rules may assure a sufficient level of trust between commercial partners. Looking at the experience of the European Union the creation of common rules with regard to contract law, the company law, the freedom of establishment of companies, the security interests, and the competition law may represent a milestone in the economic development.

1.2. Justice

. In a globalized economy the rule of law is important, and international commercial disputes need to find prompt and effective solution.



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. Judges must be independent of political power. Access to justice must be guaranteed. Judges and lawyers must have appropriate experience and preparation not only with regard to the interpretation and application of the law, but also on the technical content of commercial disputes.

. The negotiations for the conclusion of a contract and the protection of the parties in the event of unjustified failure of these negotiations, assistance in case of dispute on the fulfillment of the contract and for the enforcement of the same, adequate collateral discipline, are essential for the economic development of the cross-border trade relations.

. Conflicts in the execution of the contract and in the applicable law or in order to the jurisdiction can be resolved through regional agreements.

. Commercial/financial transactions are specific and economic operators need to rely on systems of alternative dispute resolutions, which normally provide a more satisfactory settlement to all Parties ("win-win"), especially when one party is a public entity (i.e. a state).

. At international level, specialised and extremely credible institutions (i.e. ICSID) should be available to settle commercial disputes between a private entity and a state, ensuring extremely flexible procedural options, high standing arbitrators and prompt execution perspectives. E.g. : The Florence Chamber of Commerce created the Florence International Mediation Chamber (in cooperation with the *Singapore International Mediation Centre* and the *International Centre for Dispute Resolution* in New York) in order to foster fast and reliable alternative dispute resolution.

II Resolutions related to competition and antitrust law

2.1 Introduction of anti-trust legislation

. Rationale: The introduction of antitrust law in Italy took place only in 1990. For a long time, in fact, Italy has decided to respond to the concentration of economic power in the markets through the direct intervention of the state, thus developing a wide presence of public enterprises. However, when they appeared obvious limitations of this model, the introduction of anti-trust law has appeared even more necessary: not only as a means of limiting the concentration of economic power but also to ensure a level playing field between public and private enterprises. The Italian anti-trust law is based on a conception of the market that sees in this development opportunity for companies, not a constraint.-

. Content: Antitrust law should contain provisions protecting competition. It should trigger a process of liberalization and privatization in markets characterized by public monopolies. The provisions on enforcement should focus on prohibiting restrictive agreements and abuse of dominant position.

In this respect, Italian antitrust law is closely modeled on European law, Article 101 and



102 TFEU). This has encouraged the activities of the Italian and his active participation in the European Competition Network, a network for exchange information and discussion of policies to achieve consistent competition.

2.2. Creation of a competition authority

. A competition authority must be established, as a public body intended to enforce the law of competition and consumers.

. This agency should be independent, i.e. without the possibility of interference by the government. Its decisions should be subject only to review by courts (administrative jurisdiction when they exist). Its decisions should be based solely on considerations of competition law. Independence may be guaranteed by mechanisms such as the appointment of the agency president and its assessors for one fix non-renewable term, by parliament, incompatibility of functions with other business or professional office, whether public or private. The agency should present an annual report to the executive and parliament. The decisions of the agency should be motivated and available to the public.

. The agency should have the power to take provisional measures, injunctions, and to impose administrative sanctions. The agency should have investigative powers that allow it to request information from companies, carry out inspections with the cooperation of public enforcement bodies, and conduct hearings with the parties. The parties should be granted the rights of defense, have access to documents in the case, a the right to a hearing, have guarantees in proceedings. The agency should have specific powers in the following areas: agreements and concerted practices (cartels), abuse of dominant position, concentration, prior notification of all mergers where the total turnover of the acquiring and the one built above a certain level. It should focus its efforts in the analysis of the potentially abusive conduct (but dominance should not constitute an infringement of competition rules).

III – Resolutions concerning insolvency and bankruptcy

. A regional area needs also common rules governing the jurisdiction and the law applicable in case of crisis and insolvency of enterprises. Economic development will inevitably accompany successes and failures. Investors need to trust that in case of failure they are protected as creditors, without having to undergo excessive costs and with reasonable chance of claims' recovery.

. To solve these problems, states of a given regional area need a common crossborder insolvency discipline. Uncitral Model Law on insolvency provides common rules of private international law for countries that agree to implement it in their legislation. The Model Law allows the recognition of insolvency proceedings opened in another state in relation to assets which are in the territory of the state in which recognition is sought. It also allows the administrator of the insolvent company to obtain recognition of its quality by the Court of the State in which recognition is sought. Today the Model law has been recognized by United States, UK, Japan and 37 other States. Unfortunately none of these States is part of Central Asia. The transposition of the Model Law on insolvency



and the adoption of internal rules on crossborder insolvency that are inspired by the UNCITRAL Legislative Guide, can help to create common ground for insolvency within an area crucial for the future development of the planet.

IV - Resolutions concerning taxation and cross-border investment

4.1. General considerations concerning tax systems

. Tax systems are considered not only for their tax rates. In international relations, it is important to avoid or at least to reduce the international double taxation of income

. In this respect, rules regarding residence for tax purposes, permanent establishments and transfer pricing should be compliant with OECD standards

. Adopting an OECD Model Convention on exchange of information and mutual assistance in tax matters with a large number of states should exclude countries in the list of the so called "tax havens", which implies a non favourable tax treatment for the activities of the residents of these countries

. Relationships between tax administrations and taxpayers should be transparent. The assessment of taxes should be as fast as possible. Participation rights should be ensured to taxpayers during the administrative procedure.

Tax administrations should adopt rulings in order to settle taxes before a judgment (and instead of it), both in the domestic environment and (above all) in the international

4.2. Tax incentives for investment

. In the context of the strategy of economic growth of a country, the efforts of the government should be largely aimed at attracting foreign investment, and tax incentives play a vital role in this respect.

4.2.1. Example: the Italian Patent Box

. Among the tax incentives introduced by the Italian governments, the most attractive is the Patent Box. The Patent Box consists of a partial tax exemption (up to 50%) of the profits made by an Italian company, that derive from the exploitation of intellectual property. The company must have incurred expenses of research and development for the creation, maintenance or development of IP.

. The two key issues are: a) as a category of intellectual property is aid must b) how to determine the portion of profits derived from the exploitation of IP. Regarding the first aspect, the Italian Patent Box covers almost all categories of IP (is thus more "attractive" than many patent box exist in other European countries). As for the determination of income aid must, it must adopt a procedure for comparison with the Inland Revenue and then calculate a relationship with the costs of research and development activities. The Patent Box can lead to an effective tax rate of 15.7% on income facilitated.

. The effective tax rate can be further reduced by adding the Patent Box with other incentives. In particular, it is guaranteed a tax credit for the costs of research and



development activities. In addition, with the aim of encouraging companies to strengthen its capitalization, the cd Ace can be deducted from taxable provides that an amount equal to the increase in equity multiplied by a predetermined coefficient.

. Recently introduced is the so-called super-depreciation, making it possible to deduct 140% of the tax cost of the assets recently acquired. There are, finally, easing the tax burden on labor costs for permanent contracts.

4.2.2. Special economic zones

4.3. Non-tax incentives to international investment

. When developing IP rights regulations, governments and policy makers should consider size as well as stage of development of enterprises. While large companies approach IP rights in a structured and institutionalized manner, startups are only relatively informed about IP rights. As enterprises grow, they may leverage on IP rights to:

- Ensure their solution to a market need is "free to market";
- Use their patents as equity in place of money when opening capital to other investors;
- Work under non disclosure agreements with larger corporations to jointly develop new products/services.

E.g. : In Italy, G20 YEA, Yes for Europe and others promote their contribution to economic diplomacy as well as a networking opportunity building socio-economic bridges across ecosystems and, just like proper IP regulations, contribute to trade facilitation by boosting innovation and creativity.

. Set up cooperation agreements with local partners in cross-border investment (The Chamber of Commerce of Florence already has set up already working in the central Asian system with its special agency PromoFirenze in Tajikistan and Kyrgyzstan which supplies a training program to trade association and other chambers and it is particularly oriented on how to attract foreign investments and local marketing). A cultural transfer (to tell about your food, fashion, design, etc.) is a necessary preparatory phase prior to export brands and products.

. Have a reliable notarial system. Notaries fully participate to the dissemination and consolidation of the "rule of law", believing to be a protagonist in daily and widespread application of the principles of the rule of law, legal certainty in the knowledge and application of the rules and security agreements and legal relations.

