

PROCUREMENT REFORM

Spanish public procurement reforms draw flak for their lack of rigour

Proposed amendments to the way public infrastructure is procured in Spain could make it a riskier proposition for lenders, and are likely to do little to deter corruption in the water sector.

The Spanish government is attempting to fast-track legislation incorporating EU directives on public procurement and concessions – which Spain was required to approve by April 2016 – into Spanish law, despite worries over the reform's potential impact.

Contract law reform is much needed in a national water sector which has been shaken by ongoing investigations into alleged corruption at government water infrastructure procurement agency Acuamed and the renewal of municipal concessions held by private sector companies. Spain's largest water concession, the €1 billion deal for the ATLL bulk water operator in metropolitan Barcelona, has been entangled in legal battles from the moment it was awarded in 2012, while the failure to create an appropriate concessionary model has prevented much-needed private sector investment from addressing Spain's pressing problems with wastewater treatment.

In a debate on opposition amendments to the draft legislation on 16 February, finance minister Cristóbal Montoro told parliament that the new law would provide "maximum transparency", making it "harder for episodes of fraud and corruption to occur." He promised the proposals would simplify and make more efficient the procurement process, resulting in "improved quality in the infrastructure and services provided" and "greater competition."

The opposition Podemos political group criticised the government's use of parliamentary procedures to abbreviate discussion on a matter of such importance, given that

the European Commission has flagged up Spain's problem with "irregularities in public procurement."

Spokesman Josep Vendrell Gardeñes warned during the debate that the proposals' lack of rigour would lead to "a repetition of cases like Acuamed". They would also, he alleged, allow the practice of unreasonably low bidding to continue, despite the fact that corruption largely stems from these bids, which are then adjusted during the execution of the contract.

Opinion within the water industry is divided on the merits of the draft. According to José Carbonell, president of the Spanish association of water management companies (AGA), the current wording of the proposals "will not help attract much-needed investment into the sector."

Under pressure from Brussels, the draft legislation removes concession-holders' rights under current Spanish law to obtain compensation for investments which have not been recouped, and limits the responsibility of public administrations to paying market value for infrastructure.

Furthermore, tighter rules regarding the transfer of risk to concession-holders "will make it more difficult for financing institutions to provide guarantees," Carbonell told GWI. The new rules "were drawn up to respond to the case of motorway concessions," which ended up costing the taxpayer millions of Euros in compensation, "but the water sector is a different issue," he added.

Despite the rhetoric, Carlos Vázquez and Irene Fernandez of the Foro Infraestructuras lobby group do not see so much of a

threat to the sector in the tightening of rules regarding concessions.

"The new regulations will provide more security by clarifying the rules of the game, although bidders will have to analyse very carefully the conditions of the contract and the levels of demand," Fernandez told GWI.

The most important positive reform contained in the draft is the modification to contracts for integral water cycle services and public services, according to Vázquez.

The proposed change will allow for an extension of service contract durations for the operation and maintenance of water infrastructure beyond the maximum five years if more time is required to recoup investments. Under existing law, in order to include an element of investment in an O&M contract, a concession with risk transfer language has to be created in order to extend the contract's duration, Vázquez explained.

The government's interest in approving the new law swiftly to avoid problems with Brussels is indicated by the fact that the draft was the first piece of legislation to be presented to parliament by the newly elected Popular Party government in December 2016. "It's very important legislation which needs to be debated in detail. We are concerned by the government's haste," commented Carbonell.

The end of April was initially set as a target for approving the legislation but, according to Vázquez, the time limit for submitting amendments has already had to be extended "because huge numbers of amendments have been submitted." ■

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