

Thomas Mirow, President
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN

Bratislava, 29th April 2010

Dear President Mirow,

We are very surprised to hear that the EBRD Board of Directors on 27th April approved a loan for the D1 motorway Phase 1 project in Slovakia, **as the EC's appraisal of the project's impact on the Natura 2000 network has not yet been resolved. Furthermore new information has come to light on legal violations during building works carried out on the project which cast renewed doubt on the ability and willingness of the project promoter to fulfil the EBRD's environmental requirements.**

On Friday 24.04.2010 we received information from the European Commission that the EC had not given the project clearance because it required further information from the Slovak government about the Natura 2000 impacts of the project, and that the EBRD and EIB would wait for this before approving the projects. However it seems that this did not happen.

In our opinion the project appraisal therefore has not fully complied with the EBRD's 2008 Environmental and Social Policy, for the following reasons:

Performance requirement 6, Para 6: "The extent of due diligence should be sufficient to fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders."

"Para. 8: The client will need to identify measures to avoid, minimise or mitigate potentially adverse impacts and, where appropriate and as a last resort, propose compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity."

The EC is not yet convinced that the biodiversity impacts have been fully characterised. Neither are several Slovak biodiversity experts who, together with FoE CEPA, have drawn the EC, EIB and EBRD's attention to the deficiencies in the original Natura 2000 assessment.

Therefore it cannot be said that the concerns of relevant stakeholders have been reflected, nor that the impacts have been fully characterised. It also therefore follows that appropriate measures to address the impacts have not been developed.

Para. 14: "Critical habitat must not be converted or degraded. Consequently, in areas of critical habitat, the client will not implement any project activities unless the following conditions are met:

- Compliance with any due process required under international obligations or domestic law that is a prerequisite to a country granting approval for project activities in or adjacent to a critical habitat has been complied with.
- There are no measurable adverse impacts, or likelihood of such, on the critical habitat which could impair its ability to function in the way(s) outlined in paragraph 13.
- Taking a precautionary perspective, the project is not anticipated to lead to a reduction in the population of any endangered or critically endangered species or a loss in area of the habitat concerned such that the persistence of a viable and representative host ecosystem be compromised.
- Notwithstanding the above, all other impacts are mitigated in accordance with the mitigation hierarchy."

If the EC is not convinced that the Natura 2000 obligations have been met, "Compliance with any due process required under international obligations or domestic law" has clearly not been proven, while the EC's assessment about measurable adverse impacts on critical habitats and reduction in the population of any endangered or critically endangered species or a serious loss in area of the habitat concerned is still ongoing. It is therefore unclear why the EBRD has concluded that either there are not serious adverse impacts or that adequate mitigation measures have been applied.

Para. 15: "Areas may be designated by government agencies as protected for a variety of purposes, including to meet country obligations under international conventions. Within defined criteria, legislation may permit development in or associated with key evolutionary processes; adjacent to protected areas. In addition to the applicable requirements of paragraph 14, the client will:

- consult protected area sponsors and managers, local communities and other key stakeholders on the proposed project in accordance with PR 10;
- demonstrate that any proposed development in such areas is legally permitted and that due process leading to such permission has been complied with by the host country, if applicable, and the client; and that the development follows the mitigation hierarchy (avoid, minimise, mitigate, offset) appropriately; and
- implement additional programmes, as appropriate, to promote and enhance the conservation aims of the protected area."

The fact that the EC has not yet given clearance to the project regarding its Natura 2000 impacts means that it cannot be demonstrated that "any proposed development in such areas is legally permitted and that due process leading to such permission has been complied with by the host country". Neither is clear whether the mitigation measures proposed are appropriate and sufficient. Since these measures are not determined, there is also presumably no

agreement on which party in the proposed public-private partnership is responsible for their implementation.

Unfortunately it is already too late for one Natura 2000 site. Last week Slovak biodiversity experts filed a complaint to the Slovak authorities for a breach of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) as motorway builders had damaged a peat bog nature reserve called Rojkovske raselinisko (SKUEV 0238 Veľká Fatra). The damage, which is considered by the experts to be very serious, took place during works that were not even allowed in the building permit.

We therefore call on the EBRD to investigate this incident, review its decision to approve the project and not to sign the loan for the D1. Public financing must not support project promoters who do not respect EU legislation. We would also appreciate closer co-ordination between the EC, EIB and EBRD in future.

We thank you for your time and look forward to seeing your next steps.

Yours sincerely,

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