

Philippe Maystadt, President
European Investment Bank
100 Boulevard Konrad Adenauer
L-2950 Luxembourg

Bratislava, 11th May 2010

Dear Mr. President Maystadt,

We would like to provide you with an update of D1 Phase I motorway PPP project in Slovakia. With this letter we aim to outline the points regarding to the conclusions and recommendations stated in the Complaints Office's Conclusion Report from 13th November 2009 and view whether they have been fulfilled in accordance with the European legislation:

In the point 9.1 of the Conclusion Report with the condition to provide documental evidence that administrative act launching the approval procedure was issued before 1st February 2006, as stated below:

"9.1 As regards the first allegation, it is recommended that, prior to signature of the Finance Contract, the Promoter provide the EIB with documental evidence that the administrative act launching the approval procedure was issued before 1st February 2006".

In the light of this point, we have not obtained any proof of fulfilling the condition. We would like to request the Bank to inform us whether such a proof has been provided by the project Promoter and request a copy of the document provided.

In the point 9.3 of the Conclusion Report with the condition to conduct appropriate assessment (in the meaning of the article 6 (3) of the Habitats Directive) as stated below:

"9.3 As regards the third allegation, it is recommended that, prior to signature of the Finance Contract, the Promoter provide the EIB with documentary evidence that the requirements of the Habitats Directive have been fulfilled (Forms A/B or equivalent) including evidence of an appropriate assessment of the impact of the project on NATURA 2000 sites as well as of the public participation carried out within the framework of such assessment".

- **Natura 2000**

There has not been any new assessment of impact of the project on NATURA 2000 sites carried out. Therefore, we would like to request the Bank to inform us whether the project Promoter provided to the Bank new documents or studies regarding the assessment of the project impact on NATURA 2000 sites. We would like to request disclosure of these documents if were provided.

- **Public participation**

Equally, there has been no changes with regards to the public participation within the framework of this assessment in line with the obligations stemming from Aarhus Convention and the Habitat Directive, Article 6 (3)*“the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public”*.

Thus, it shall be concluded that 9.3 recommendation has not been followed by the Slovak authorities.

- **Recent damage to the Rojkovske mire**

During preparation works in late April, motorway builders partially damaged a 15,000 year-old peat bog nature reserve called Rojkovske raselinisko (SKUEV 0238 Veľká Fatra). This outstanding biologically and paleontologically significant mire has been protected since 1950 under national legislation and now also under the EU Habitats Directive. Slovak biodiversity experts have 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).

In the point 9.4 of the Conclusion Report with the condition to provide zoning and building permits for all the project sections fully in force before the final signature, as stated below:

“9.4 As regards the fourth allegation, it is recommended that, prior to signature of the Finance Contract, the Promoter provide the EIB with zoning and building permits for all the project section, fully in force, approved by the competent authorities and complaint with international, EC and domestic law”.

- **Reasoning for the alternative options**

As the paragraph 8.5.3 of Conclusion Report further explains the reasoning for the alternative options shall be transparent and be based on the assessment.

However, till now, the relevant Slovak authorities has not provided with the reasoning for the choice for the currently approved variant of the motorway. There has been no improvement made in this respect. Therefore, it shall be concluded that this condition has not been likewise met.

Considering all aforementioned information, **we call on the EIB not to sign the finance contract** as the unfulfilment of the recommendations is **not in accordance with the**

environmental standards of the European Investment Bank. Taking into account that the **Promoter has not undertaken any steps to implement recommendations** of the EIB's Complaints Office, we would like to request the Bank to inform us if the Bank accepted these recommendations and if it informed the Promoter about the requirements stemming from the recommendations which have to be met by the Promoter before signing of the finance contract? We would like to request the Bank to disclose the communication sent to the Promoter regarding the above listed recommendations.

Yours sincerely,

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