



GREENPEACE



13th March 2012

To:
The Management Committee of the European Investment Bank

Dear President,

In 2007, the EIB signed a contract with the Slovenian state-owned company Termoelektrarna Šoštanj (TEŠ) for construction of a sixth block at the lignite power plant in Šoštanj, Slovenia. In 2010, the initial loan of EUR 110 million was extended to EUR 550 million. The majority of EIB funds have not yet been disbursed, and the same applies to the EUR 100 million loan approved by the European Bank for Reconstruction and Development (EBRD).

Since its inception, the project has been troubled with numerous controversies including allegations of corruption, its effects on the environment and its economic feasibility. To this extent, the Slovenian parliament has refrained from providing a state guarantee necessary for the second tranche of the EIB loan.

We are writing to inform the EIB's highest decision-making bodies about recent developments that in our view should prompt you to drop your participation in this investment.

Serious suspicions of corruption and mismanagement

In February 2012, after more than two years of investigation, the State Commission for the Prevention of Corruption in Slovenia published a report¹ documenting numerous irregularities in the TEŠ project. The report says that corruption could have influenced the awarding of the contract for a construction of the sixth block to the French company ALSTOM. Furthermore, the tender for the

¹ The commission report can be downloaded (in Slovenian) at: http://www.kpk-rs.si/download/t_datoteke/2724. An unofficial English translation is available at: <http://bankwatch.org/si/TEŠ/default/files/StateCommissionReport-corruption-TEŠ6-23Feb2012.pdf>

The Commission for the Prevention of Corruption of the Republic of Slovenia is an independent state body, like the human rights Ombudsman, with a broad mandate in the field of preventing and investigating corruption, breaches of ethics and integrity of public office. The current CPC fulfils the requirements of an independent anti-corruption body as required by the UN Convention against Corruption (UNCAC) that Slovenia ratified.

main technological equipment has been exempted from the requirements of Slovene procurement law and EU procurement legislation, all without legal justification.

The Commission concludes that “the project is designed and implemented in a non-transparent manner, lacks supervision and is burdened with political and lobbying influences, and as a result there has been (and still is) a high risk of corruption and conflict of interest.”

The scale of the conflict of interest and political motivations behind the project are exemplified by the breach of lobbying regulations described in the report. The Commission found that the authors of the proposed Law on State Guarantee for TEŠ 6 are members of HSE, the parent company of TEŠ.

Ongoing investigations

Investigations into the possible unlawful acts at TEŠ have already been opened by the National Investigations Office and by the police in the town of Celje. The Commission for the Prevention of Corruption has also called on the Slovenian Prosecutor General to establish a special group to further investigate this case. Because of the ongoing investigations, the Commission could not reveal additional details but decided to publish the report in order to protect the public interest.

The European Commission as well is currently examining the possibility of Slovenian non-compliance with EU law in connection with this EIB-funded project. The European Commission had already registered a complaint on the possible breach of the EU Carbon Capture and Storage Directive in November 2011², and the second complaint, on the alleged non-compliance with the Procurement Directive, was submitted one month later³.

Moreover the EIB's own Inspector General and the EBRD's Office of the Chief Compliance Officer are currently investigating possible unlawful activities connected to the project and the integrity of the client.

Questionable economic feasibility

One of main reason of continuous debates about the necessity of providing the project with state support in the form of loan guarantee is the question of its economic feasibility. In April 2011, a Slovene government report described a lack of proper economic analysis of the investment, especially its sensitivity to changes in the project's main variables including the price of coal, carbon emission allowances, electricity and investment costs. The government concluded, “the project, as it is set now, is highly risky. The risk of the state is to lose its property if the project goes on in such a form, as HSE will have to pay for the losses of this project.”⁴

As a result, the government asked TEŠ to prepare a new investment program that should include a detailed sensitivity analysis with all the omitted costs. The estimates in the fourth version of the investment program set the internal rate of return (IRR) at a level of 7,59 percent. However this rate

² The complaint submitted by Environmental Law Service on 3 October, 2011. Registration number: CHAP(2011)3041).

³ The complaint was submitted by Focus in November 2011. Registration number: CHAP(2011)03253.

⁴ See details about the report of the Slovenian Ministry of the Economy (in Slovene): http://www.vlada.si/si/medijsko_sredisce/sporocila_za_javnost/sporocilo_za_javnost/article/130_redna_seja_vlade_rs_16831/

does not satisfy the requirements of the April 2011 Slovene energy sector policy, which requires a minimum discount rate of 9 percent⁵. According to the analysis prepared for Bankwatch and Focus by CE Delft,⁶ the IRR in the fourth investment program is calculated wrongly and, in fact, the IRR will not reach 7 percent and in some cases not even 6 percent.

In this context, it is worth mentioning that another binding law in Slovenia, the “Decree on the uniform methodology for the preparation and treatment of investment documentation in the field of public finance”, requires the internal rate of return at a level of at least 7 percent⁷. The economic feasibility remains an open issue also for the new government, which decided to back the state guarantee only if the investor ensures that all the conditions are met for achieving the internal rate of return in line with the sectoral policy⁸.

TEŠ 6 is an expansion of the existing power plant, NOT a replacement

The EIB Board document 'Šoštanj Management Proposal' claims that “(...)the project will replace existing lignite-fired generation capacity at the same location, using the same quantity of fuel, and therefore it will not increase the overall emissions of CO₂.” While the project promoter publicly claims that the sixth block will replace existing capacities at the Šoštanj power plant, the environmental permit for the project⁹ does not support these assertions. The environmental permit says that the manager must ensure closure of units one, two and three by the time the new sixth unit begins operations and, at the same time, ensure that unit four becomes a cold reserve that can only operate if both units five and six are stopped. When units five and six run together at full capacity, CO₂ emissions from the plant will reach 5,5 million tonnes per annum, more than all operating blocks of the plant combined, which emitted 4,78 million tonnes in 2010.

It is therefore not possible to talk about replacing existing capacities as long as the official documentation i.e. the environmental permit allows for the continued operation of unit five alongside unit six.

Possible gaps in the EIB due diligence

For these reasons we believe that the quality of the EIB's legal, environmental and economic due diligence of the project has been called into question. Controversies over the integrity of TEŠ were already widely known among the Slovene public in April 2010, when the EIB signed the contract for the second tranche of the loan¹⁰.

Additionally two complaints submitted by Focus and Environmental Law Service^u about possible maladministration are currently under investigation by the EIB Complaints Mechanism, and the EBRD Project Complaints Mechanism is as well examining potential irregularities in the project.

⁵ Sectoral policy for the energy sector, Ministry of Economy, January 2011 (in Slovene)
http://www.mg.gov.si/fileadmin/mg.gov.si/pageuploads/Energetika/Dokumenti/Sektorska_politika_Energetika_Final.pdf

⁶ A critical examination of the investment proposals for Unit 6 of the Šoštanj Power Plant, CE Delft, November 2011,
<http://bankwatch.org/sites/default/files/Sostanj-TEŠ6-economics.pdf>

⁷ Official Gazette of the Republic of Slovenia, No. 60/2006.

⁸ Announcement of the government of the Republic of Slovenia, 23 February 2012
http://www.vlada.si/fileadmin/dokumenti/si/Sporocila_za_javnost/sev103.doc

⁹ The environmental permit was issued by the Slovenian Environment Agency on 16 February 2011.

¹⁰ The see the examples of press articles (in Slovene): TEŠ 6 pod očesom Kosove komisije, Delo, 22.01.2010; Ekološka bomba iz Šoštanja, Dnevnik, 19.12.2009.

¹¹ Two complaints on maladministration of the EIB staff submitted by Focus on 28 February 2011 and Focus with ELS on 9 January 2012.

Demands

We ask the EIB Board of Directors and management to suspend the disbursement of the loan until all legal investigations and non-judicial proceedings are concluded.

By allowing the project to go ahead in spite of serious corruption allegations concerning the client and questions about the integrity of the EIB's own due diligence, the EIB risks acting against its own procedures, as well as legislation in Slovenia and the EU.

We recommend that the EIB abandon its involvement in this project, one that contradicts long-term EU climate targets and damages the reputation of the EIB, the largest provider of finance for renewable energy among all international development banks.

Sincerely,

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