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Bulgaria:

Centre for Environmental
Information and Education
(CEIE)

Za Zemiata, For the Earth

Croatia:

Green Action

Czech Republic:

Centrum pro dopravu a
energetiku (CDE)

Hnutí DUHA

Estonia:

Estonian Green Movement–FoE

Georgia:

Green Alternative

Hungary:

National Society of
Conservationists – Friends of
the Earth Hungary (MTVSZ)

Latvia:

Latvian Green Movement

Lithuania:

Atgaja

Macedonia:

Eko–svest

Poland:

Polish Green Network (PGN)

Russia:

Sakhalin Environmental Watch

Serbia:

Center for Ecology and
Sustainable Development
(CEKOR)

Slovakia:

Friends of the Earth – Center
for Environmental Public
Advocacy (FoE–CEPA)

Ukraine:

National Ecological Centre of
Ukraine (NECU)

CEE Bankwatch Network's
mission is to prevent
environmentally and socially
harmful impacts of
international development
finance, and to promote
alternative solutions and public
participation.

TO:

Lisa Rosen, Chief Compliance Officer
Sue Barret, Director Transport
European Bank for Reconstruction and Development
One Exchange Square, London EC2A 2JN, United Kingdom

20 January 2017

Subject: Questions about the Bratislava D4/R7 Highway

Dear Ms Rosen, Ms Barrett,

We would like to bring to your attention several issues on the Bratislava D4/R7 project, and to request your reflection on the questions and recommendations below. The paper presents information about improper practices in the procurement process for the feasibility study of the project and about the corruption investigation on land purchases for the highway construction. Linked to conflict of interest allegations are questions about the project's sustainability and economic feasibility, and concerns that it is neither a sustainable solution to Bratislava's traffic problems, nor an economically prudent investment of public funds.

According to the Project Summary Document of the project, the transition impact for the Project is expected to come from a significant demonstration effect, in Slovakia and in its neighbouring countries, by promoting continued private sector involvement in the road sector through the participation in the financing of this PPP, and the anticipated replication of the concession programme in similar PPP projects. This would only be possible, if the project can demonstrate good value for money for the public, not just for the concessionaire.

There have been a number of irregularities with the planning of the Bratislava D4/R7 project that have stirred public criticism about the imprudent spending of public money for this PPP. Below we present a summary of the facts and allegations detailed in the case study, which can be seen as corrupt and fraudulent practices that threaten the misuse of the EBRD's funds and jeopardise the EBRD's reputation, therefore warranting the attention of Office of the Chief Compliance Officer:

1. The Slovak Ministry of Transport appears to have strongly incentivised the bidders for the procurement of the project's feasibility study to present the PPP option as the best suited. The Ministry allocated EUR 0.75 million (as the maximum amount) for the study itself – and, as part of the same tender, a package of EUR 5.35 million for a series of consultancy services, mainly focused on the PPP scheme development.^{1 2} In other words, if the consultant failed to find that a PPP option was optimal, it would deny itself EUR 5.35 million worth of further work on developing the PPP. The tender received a single bid.

2. The Ministry of Finance warned³ the Ministry of Transport about the possible conflict of interest, if a single tender incorporated both the feasibility study and the consultancy for other phases of the project simultaneously.

3. The Ministry of Transport granted 37 days (only 21 working days, due to coincidence with various holiday periods) for the submission of the bids in April and May 2014 within the joint public procurement on feasibility study of the D4 with complex consultancy services.⁴ This practice is not compatible with EBRD procurement standards, specifically with PPR 3.23 *“Generally not less than 45 days from the publication of the invitation to tender or the availability of tender documents, whichever is later, should be allowed for the preparation and submission of tenders. For large or complex works or items of equipment, this period should be extended to 90 days or more.”*

1 Zákazka: Poskytovanie komplexného poradenstva pri zadávaní a realizácii koncesie vybraných úsekov diaľnice D4 a rýchlostnej cesty R7 a právna, technická a finančná podpora v súvislosti s aplikáciou koncesnej zmluvy na projektovanie, výstavbu, financovanie, pr [online]. <<http://uvo.gov.sk/vyhľadavanie-zakaziek/detail/139155>>.

2 PPP obchvat Bratislavy môže byť predražený až o miliardu eur [online]. In: KOVALČÍK, Ján a Marián JÁNOŠ. Bratislava: INEKO, 2015, 48 p. [cit. 2016-09-12]. Online: http://www.ineko.sk/file_download/900/Anal%C3%BDza+-+PPP+obchvat+Bratislavy+m%C3%B4že+byť+predražený+až+o+miliardu+eur.pdf

3 Protokol o výsledku kontroly: Kontrola správnosti zostavenia záverečných účtov a hospodárenia vo vybraných kapitolách za rok 2015. Bratislava, 2016. p.55 <<https://my.pcloud.com/publink/show?code=XZHEqTZdIQ1s62Ar0HVxfw6Y3iIEBrLvyuy>>

4 Ondruš, Ján, Júlia Bodnárová, and Samuel Spáč. "Ako Právnicki Prichádzajú O Ilúzie (o Férových štátnych Tendroch) « Transparency International Slovensko. Web. <<http://www.transparency.sk/sk/ako-pravnici-prichadzaju-o-iluzie-o-ferovych-statnych-tendroch/>>.

4. The feasibility study⁵ met the requirements for assessing alternative options only by assessing the zero option (the project not taking place) as opposed to the so-called overall option (all sections of the D4 and R7 combined). The Financial Policy Institute of the Ministry of Finance warned⁶ the Ministry of Transport that the State had not verified whether there were other cheaper or better alternatives (for the proposed project) as well as other type of projects altogether that could differently address the transport needs in Bratislava.⁷

5. The Supreme Audit Office of the Slovak Republic (SAO)⁸ investigated the matter in May 2016 and in its Final Report of June 2016 stated⁹:

"In the implementation of the public procurement for Provision of comprehensive consultancy on the D4/R7 project the Ministry of Transport has not complied with the law on public procurement in particular in the following cases:

- The Ministry of Transport combined tendering of two contracts of different complexity in a single procurement. Combining services into one procurement procedure (in which the contract was not divided into sections) could have distorted the competition and caused the submission of only one bid.*
- The Ministry of Transport merged the elaboration of a feasibility study with consulting services related to the commissioning and the implementation of the concession for construction works, thus not guaranteeing an objective and unbiased selection of the candidate for the feasibility study. At the same time, it implemented the tendering procedure in a manner that did not allow the assessment of the scope and quality to which the feasibility study would be elaborated when concluding the contract for the provision of consulting services.*
- Documents submitted by the Ministry of Transport to the SAO did not allow checking of the feasibility of the estimated contract value.*
- The Ministry of Transport did not adequately specify the conditions for participation to demonstrate the bidder's technical or professional capacity in the tendering procedure.*
- The Ministry of Transport defined an incomplete and ambiguous description of the contract's subject.*

5 Štúdia Uskutočiteľnosti Projektu PPP D4/R7. Tech. N.p., 31 Oct. 2014. Web.

<<http://www.obchvatbratislavy.sk/uploads/files/ppp-d4r7-feasibility-study-103.pdf>>.

6 Obradovič, Filip. "Martin Filko: Sme Ochotní Riskovať Naše Kariéry." Www.etrend.sk. N.p., n.d. Web.

<<http://www.etrend.sk/ekonomika/martin-filko-sme-ochotni-riskovat-nase-kariery.html>>.

7 "Čo by Malo Ministerstvo Dopravy Zohľadniť Pri Rozhodovaní O Projekte PPP D4/R7." INEKO. INEKO, 3 May 2016. Web.

<<http://www.ineko.sk/clanky/co-by-malo-ministerstvo-dopravy-zohladnit-pri-rozhodovani-o-projekte-ppp-d4-r7>>.

8 SAO is the independent external audit body. It audits how taxes and other sources of revenue such as customs duties and fines are calculated and collected and how the expenditure of public funds is managed. The SAO performs the audit in term of legal public statutes observance, economic, efficiency and docility. <<https://www.nku.gov.sk/web/sao/about-us>>

9 Záverečná správa: Kontrola postupu Ministerstva dopravy, výstavby a regionálneho rozvoja SR pri schvaľovaní veľkých infraštruktúrnych projektov. 2016. <<https://www.nku.gov.sk/documents/10157/265201/95924-144888-57.pdf>>

- *The Ministry of Transport disregarded the complexity of the subject of the contract when setting the deadline for the submission of requests to participate.*
- *The Ministry of Transport did not assess the fulfilment of conditions for participation in public procurement in line with the text of the call for tenders."*

6. The chronology of events is as follows:

16 May 2016: the Supreme Audit Office of the Slovak Republic (SAO) criticises the procurement procedures.

19 May 2016: deadline for the Ministry of Transport to raise objections.

23 May 2016: postponed deadline for the Ministry of Transport to raise its objections to the findings of the draft audit report.

20 May 2016: the Ministry of Transport and the concessionaire Zero Bypass Limited signed the contract.¹⁰

25 May 2016: approval of the EUR 148.5 million loan by the EBRD¹¹.

7. Additional to the irregularities in the procurement of consultants, there are allegations about corruption in the process of land purchase for the Bratislava D4/R7 project. The Ministry of Transport has not disclosed names of the beneficiaries of the purchase contracts for the land, while the total value of the purchase has been estimated to be more than EUR 350 million.^{12 13} The amount is reportedly the highest in Slovak history and there are indications that entrepreneurs from other corruption scandal are involved.¹⁴ Disclosure of beneficiaries is a common good practice, as the National Motorway Company has disclosed them in several other projects before. Slovak media reported that the National Criminal Agency started an investigation on this matter in Autumn 2016.¹⁵

10 Koncesia na projektovanie, výstavbu, financovanie, prevádzku a údržbu úsekov diaľnice D4 Jarovce – Rača a rýchlostnej cesty R7 Bratislava Prievoz – Ho. *Centrálny register zmlúv* [online]. <<https://www.crz.gov.sk/index.php?ID=2463256&l=sk>>

11 "D4/R7 Highway PPP Project." European Bank for Reconstruction and Development (EBRD). N.p., n.d. Web. 04 Jan. 2017. <<http://www.ebrd.com/work-with-us/projects/psd/d4r7-highway.html>>.

12 TREND.sk. "Kto Zarobil Na Pozemkoch Pod Obchvatom Bratislavy, by Sa Malo Zverejniť." *Www.etrend.sk*. N.p., 07 July 2016. Web. 03 Nov. 2016. <<http://www.etrend.sk/ekonomika/kto-zarobil-na-pozemkoch-pod-obchvatom-bratislavy-by-sa-malo-zverejnit.html>>.

13 Dugovic, Matej. "Bugár Zarobil Na Pozemkoch Pod R7 Poľ Milióna Eur, Kúpil Ich, Keď Trasa Ešte Nebola Definitívna." *Denník N*. Denník N, 16 June 2016. Web. <<https://dennikn.sk/488929/bugar-zarobil-pozemkoch-r7-pol-miliona-eur-kupil-ked-trasa-este-nebola-definitivna/>>.

14 <https://dennikn.sk/605187/bugarov-minister-rozhodne-ci-obchody-smeru-s-pozemkami-za-400-milionov-ostanu-tajne/>

15 Krajanova, Daniela. "Trestné Stíhanie Pre Jaguar Prerušili, Tú Istú Partiu Preverujú Pri Biznise Okolo Obchvatu." *Denník N*. 02 Nov. 2016. <<https://dennikn.sk/597247/trestne-stihanie-pre-jaguar-prerusili-kriminalisti-ale-zacali-preverovat-tu-istu-partiu-pri-biznise-okolo-obchvatu/>>.

A. Questions to the EBRD Transport Department on the application of the EBRD's Procurement Policy and Rules (PPR) to PPPs and to the Bratislava D4/R7 project.

Can you clarify why there are two Project Summary Documents for the project? One for the D4Highway/R7Expressway project¹⁶, #47107, from November 2015 (cancelled) and another one for the D4/R7 Highway PPP project¹⁷, # 48345, from March 2016 (disbursing). Can we kindly request an up-date of the PSD to reflect on the selection of the concessionaire?

It is important to clarify how the EBRD applies its Procurement Policy and Rules (PPR) to Public- Private Partnership projects (PPPs)? Can the classification of the project as Private (according to the PSD) exempt the Slovak Government from applying the EBRD standards on procurement during the planning stages of the project?

In this project the Slovak government proposed the project and was involved in its planning, but the EBRD client is the concessionaire, so it is not clear how the EBRD regards in such cases the provisions of the PPR on *Client Responsibilities* "2.8 Clients are responsible for implementing Bank-financed projects, including all aspects of the procurement process from the planning stage through the award of contracts, as well as the administration of the contracts themselves"?

In view of the fact that the project is co-financed with the EIB (and the EFSI), the policies of which financier are applied?

In view of the SAO findings, what steps did the EBRD take to ensure "*the cost-effective use of public funds, a matter that is of concern for both the Bank and its countries of operations*"¹⁸?

Has the EBRD carried its own feasibility assessment or commissioned an independent assessment of the Transport Model and the socio-economic benefits of the project?

If yes, has this assessment considered questions and concerns raised by both independent experts and state institutions, namely: the Regional Transport Master Plan of Bratislava does not include the Bratislava Bypass; the project's Transport Model uses misleading level of detail for the traffic zones, does not include data from the toll system, does not consider essential traffic differences in specific intersections; and uses misleading speed?¹⁹

In conclusion we would like to underline that the project will cause serious problems if implemented as currently envisioned and there is limited time to prevent traffic problems that the improper planning and design of the project might cause.

16 PSD for the D4 Highway / R7 Expressway project: <http://www.ebrd.com/work-with-us/projects/psd/d4-highwayr7-expressway.html>

17 PSD D4/R7 Highway PPP project: <http://www.ebrd.com/work-with-us/projects/psd/d4r7-highway.html>

18 EBRD PPR 1.2

19 "Čo by Malo Ministerstvo Dopravy Zohľadniť Pri Rozhodovaní O Projektoch PPP D4/R7." INEKO. INEKO, 3 May 2016. Web. <<http://www.ineko.sk/clanky/co-by-malo-ministerstvo-dopravy-zohladniť-pri-rozhodovaní-o-projektoch-ppp-d4-r7>>.

B. Questions to the Office of the Chief Compliance Officer on

- a) the relevance of the comprehensive findings of the Slovak Supreme Audit Office investigation to the EBRD due diligence, approval, contract signing and disbursement decisions, and
- b) lack of transparency and criminal investigation of land purchase deals for the needs of the project.

Did the Slovak government inform the EBRD about the investigation and the findings of the Slovak Supreme Audit Office (SAO) related to the joint public procurement on the feasibility study for the D4 project with complex consultancy services²⁰ before Board approval or before signing of the project contract?

How was the EBRD assured that its funds are not at risk before loan disbursement?
Is OCCO aware of the criminal investigation of the land purchases worth 350 million Eur?

What steps has the EBRD taken to ensure that the purchase of land for the needs of the project has followed best standards of transparency and its investment is not at risk of being misused?

According to the EBRD's Integrity Risks Policy and Terms of Reference for the Office of the Chief Compliance Officer, the bank applies the highest standards of integrity and seeks to promote high ethical standards and good business practices. It recognizes that a failure to address these integrity risks can result in reputational risk which can damage the bank's name and standing. The OCCO is designated as the key office responsible for investigating allegations on fraud and corruption and other prohibited practices, and avoiding integrity failures.

We therefore ask the OCCO to thoroughly examine all the information presented above and, if these allegations are found valid, to recommend the suspension of the loan. Meanwhile we respectfully ask the OCCO to ensure loan disbursement is put on hold until its own investigation and on-going national level investigations are completed, because otherwise the integrity and reputation of the Bank may be jeopardized as a consequence.

Looking forward to your reply!

Sincere regards,



Juraj Melichar
CEE Bankwatch Network

²⁰ *Zákazka: Poskytovanie komplexného poradenstva pri zadávaní a realizácii koncesie vybraných úsekov diaľnice D4 a rýchlostnej cesty R7 a právna, technická a finančná podpora v súvislosti s aplikáciou koncesnej zmluvy na projektovanie, výstavbu, financovanie, pr* [online]. <<http://uvo.gov.sk/vyhľadavanie-zakaziek/detail/139155>>