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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.

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Bratislava D4/R7 Highway

According to the Project Summary Document, the transition impact of the project is expected to come from a significant demonstration effect in Slovakia and its neighbouring countries by promoting continued private sector involvement in the road sector through the participation in the financing of this public–private partnership (PPP), and subsequently the anticipated replication of the concession programme in similar PPP projects. This however will only be possible if the project can demonstrate good value for money for the public and 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. Below we present a summary of the facts and allegations that can be seen as corrupt and fraudulent practices which threaten the misuse of the EBRD's funds and jeopardise the bank's reputation:

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 one. The ministry allocated EUR 750 000 (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 development of a PPP scheme.^{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 in further work on developing the PPP. The tender received a single bid.
2. The Ministry of Finance warned³ the Ministry of Transport about a possible conflict of interest if a single tender incorporated both the feasibility study and the consultancy for other phases of the project simultaneously.

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%B4%C5%BDe+by%C5%A5+predra%C5%BEn%C3%BD+a%C5%BE+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>

3. The Ministry of Transport granted 37 days (only 21 working days, due to various holiday periods) for the submission of the bids in April and May 2014 within the joint public procurement on the feasibility study of the D4 with complex consultancy services.⁴
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 types 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.*
- *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. In addition to the irregularities in the procurement of consultants, there are allegations about corruption in the process of land purchase. The Ministry of Transport has not disclosed the 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

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

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

million.^{10,11} The amount is reportedly the highest in Slovak history, and there are indications that entrepreneurs from other corruption scandals are involved.¹² The disclosure of beneficiaries is a common good practice, as the National Motorway Company has disclosed these in several other projects before. Slovak media reported that the National Criminal Agency started an investigation into this matter in Autumn 2016.¹³

Conclusion

According to the EBRD's Integrity Risks Policy and Terms of Reference for the Office of the Chief Compliance Officer (OCCO), the bank applies the highest standards of integrity and seeks to promote high ethical standards and good business practices. It recognises that a failure to address these integrity risks can result in reputational risk which can damage the bank's name and standing.

A March 2017 reply from the EBRD's OCCO and Transport department stated that the above information is insufficient and so will not investigate the case further. With regards to land acquisition the reply states: *"We are not aware of any ongoing criminal investigations as we have not been contacted by the Slovak authorities concerning this matter, although we are aware of the media reports mentioned in your letter."*

This reply still requires further discussion with regards to the following questions:

How can the EBRD avoid possible corruption issues involving state authorities, if it relies solely on state authorities to flag irregularities, in spite of the warnings from civil society or the media?

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

10 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>

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

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

13 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/>



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