



Directorate B Investigation II
Unit B.4 Agriculture and Structural Funds II

Brussels
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OLAF Investigations

FINAL REPORT

OF No OF/2012/0118/B4	
Type of case	Investigation
Legal basis for the opening decision	Article 3 of the Regulation (EC) No 1073/1999
OLAF Staff	Amira Szőnyi Nóra Szavov Miklós Szenczi Ágnes Halmai Nancy Romano
Date of creation of OLAF case	30/01/2012
Date of opening decision	02/02/2012
EU institution, body, office or agency concerned	DG REGIO - Regional and Urban Policy ECA - European Court of Auditors
Persons concerned	Budapest Municipality Alstom Transport S.A. Mr Péter Medgyessy
Source of information	The European Court of Auditors and The Directorate General for Regional and Urban Policy of the European Commission.
Fraud Notification System (FNS)	No
Offence category	Irregularity Fraud Corruption Misappropriation of EU funds
Area concerned	Cohesion Fund

Investigative activities carried out	On-the-spot checks Operational meetings Analysis of documents
Has the person concerned been notified of the opening of an investigation?	<input checked="" type="checkbox"/> Yes (Budapest Municipality, Mr Péter Medgyessy) <input checked="" type="checkbox"/> No (Alstom Transport S.A.)
	30/10/2012 - THOR(2012)25039 - notification of AFCOS requesting to notify the beneficiary on one contract investigated 25/4/2012 - THOR(2013)10727 - notification of AFCOS requesting to notify the beneficiary on the whole project (followed by on-the-spot control) Alstom Transport S.A. was not notified because the judicial authorities requested confidentiality on that specific contract.
Has the person concerned been given the opportunity to comment on facts concerning him?	<input checked="" type="checkbox"/> Yes (Budapest Municipality, Mr Péter Medgyessy) <input checked="" type="checkbox"/> No (Alstom Transport S.A.)
	OLAF's letters: 29/1/2016 - THOR(2016)3289, 19/10/2016 - THOR(2016)31392 Reply: 09/03/2016 - THOR(2016)9347, which contains the unified opinion of the Budapest Municipality and the BKV Zrt. Reply: 02/11/2016 OLAF.C1(2016)2895 which contains the answer of Mr Péter Medgyessy Alstom Transport S.A. was not given the opportunity to comment on facts concerning it because the judicial authorities requested confidentiality on that specific contract. Accordingly, in line with its procedures, OLAF has decided to defer the opportunity to comment in this instance see Decision THOR(2016)26093.
Evidence of irregularity or fraud	Yes

Financial and other impact	
Impact on EU financial interests	Yes
Serious matters relating to discharge of professional duties	No
Estimated financial impact of the facts established	<ul style="list-style-type: none"> The total project financing amount was EUR 1 747 313 606 (HUF 452 554 224 000) The total financial amount in respect of the contracts affected by the different types of irregularities uncovered, is EUR 1 053 372 541 (HUF 272 823 488 215).

	<ul style="list-style-type: none"> The calculated financial impact of the irregularities described and the other matters uncovered by OLAF on the EU co-financed "KÖZOP Operative Program" is EUR 295 950 247 (HUF 76 651 114 014), of which the Cohesion Fund amount is calculated to be EUR 227 881 690 (HUF 59 021 357 791).
Amounts prevented from being unduly spent	N/a
Judicial proceedings	Yes

Summary

In January 2012 the Court of Auditors notified OLAF about its serious concerns in relation to the implementation of Project Budapest Metro No. 4 (KÖZOP-5.1.0-07-2008-2001), which was the most expensive EU funded project in Hungary for the period 2007-2013. Later the Directorate General for Regional and Urban Policy of the European Commission also informed OLAF about serious irregularities established within this project and which had already resulted in the exclusion of 11 contracts from the EU financing. The beneficiary of the project was the Municipality of Budapest.

The total final cost of the project as declared was 452 554 224 000 HUF (approximately 1 747 313 606 EUR), of which the Cohesion Fund amounted to 696 490 000 EUR. Two EIB loans totalling 530 500 000 Euro also contributed to the project financing.

The body which was responsible for the project implementation was the BKV Zrt. (Budapest Transport Plc.), and more precisely the DBR Metro Projects Directorate in the BKV Zrt. The BKV Zrt. is 100% owned by the Municipality of Budapest.

In the course of its investigation OLAF has established that serious management irregularities and errors affected the project as a whole. Some of these matters are very serious, such as conflict of interests, breach of the principles of non-discrimination and equal treatment of bidders and some may be regarded as fraud.

The total financial amounts of the contracts affected by the different types of irregularities is EUR 1 053 372 541 (HUF 272 823 488 215). The total estimated financial impact of the irregularities established is EUR 644 780 920 (HUF 166 942 383 356), (calculated by recovery rate recommended by Commission Decision taken into account each type of irregularity¹).

Out of the total estimated irregular amount of EUR 644 780 920 established, following the different audits and irregularity procedures, the Hungarian State already agreed to exclude from EU financing more than EUR 230 million and also exclude another EUR 92 million of irregular complementary financing (Hungarian State + Municipality of Budapest). From the EU budget perspective the estimated financial impact on the EU co-financed "KÖZOP Operative Program" is EUR 295 950 247 (HUF 76 651 114 014). **From this OLAF concludes that the financial impact on the Cohesion Fund is EUR 227 881 690** (HUF 59 021 357 791). OLAF has also found that the European Investment Bank (EIB) loans, namely the EIB loan to the State of Hungary (EUR 472 000 000) and the EIB loan to the Municipality of Budapest (EUR 58 500 000), were also found to be affected by irregularities.

Finally, it should also be noted that OLAF has made findings of a judicial nature which are also described in detail in this report.

¹ Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds or the Cohesion Fund for non-compliance with the rules on public procurement, COCOF 07/0037/03 (so called "COCOF Guidelines").

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1. BACKGROUND INFORMATION

Project Budapest Metro No. 4 is the most expensive EU funded project implemented in Hungary for the period 2007-2013. The total final cost of the project as declared was 452 554 224 000 HUF (approximately 1.7 billion EUR), of which the Cohesion Fund contributed 696 490 000 EUR. Two EIB loans also contributed to the project financing.

More than 100 contracts were signed under this project, out of which 20 were described as large works contracts.

OLAF received information from various sources in relation to suspected irregularities, fraud and corruption (mainly the Court of Auditors and DG REGIO) affecting a huge number of the contracts in question. OLAF also became aware that several administrative and judicial authorities were conducting audits and investigations in parallel to its enquiries in the matter.

1.1. INITIAL INFORMATION RECEIVED BY OLAF

The investigation was opened following information received from various sources:

- The initial information was received from the European Court of Auditors (ECA). The ECA sent information to OLAF on 5/01/2012 (letter registered on 11/01/2012 under reference THOR2012)491) on serious irregularities and suspected fraud concerning several contracts signed between BKV Zrt., the representative of the beneficiary and an English company, Matrics Consult Ltd.
- Information concerning possible irregularities and fraud was received by OLAF in another OLAF investigation (OF/2008/0083), related to a project implemented with the participation of Siemens AG in a third Country. OLAF received under this case file a huge amount of documents concerning Budapest Metro 4 project, in particular documents related to the public procurement procedure for the signature of the contract C-9 with Siemens AG but also other contracts, for example contract C-10. This information (registered under THOR(2008)24572 and THOR(2012)25727) was transferred into investigation OF/2012/0118/B4.
- Information concerning possible irregularities and fraud in relation to contracts C-04/A, C-06/B and C-06/C was contained in an OLAF coordination case (OF/2009/295). This coordination case was closed on 02/10/2012 (decision to close THOR(2012)22677) and its scope was transferred to this investigation (OF/2012/0118/B4).
- Additional information was received from DG REGIO concerning serious irregularities in a considerable number of contracts (see minutes of operational meeting held on 17 June 2012, THOR(2012)17092 and DG REGIO note registered on 26 October 2012, THOR(2012)24798).
- Publicly available information (press) also reported on several potential serious irregularities, as well as possible fraud and corruption issues concerning several contracts signed under the project.

1.2. THE PROJECT BUDAPEST METRO 4

1.2.1. THE "FIRST METRO ACT"

After protracted negotiations and various start/stop decisions and then revisions during the 1990's the Budapest Metro 4 project started in earnest in the early 2000's.

By way of resolution No. 1048 of 28 May 2003 the Hungarian government decided that the State would participate in the Metro construction. According to the Resolution, 30 % and 70 % of the cost of the project amounting to HUF 194.9 billion, exclusive of VAT, calculated at 2002 prices, would be financed by the capital Budapest and the State, respectively.

The National Assembly passed Act LV of 2003 (**the "First Metro Act"**) on 23 June 2003, under which the State would provide an aid of HUF 153.9 billion to Budapest Municipality for the construction of Section I of Metro line 4.

1.2.2. "FINANCING AGREEMENT" BETWEEN BUDAPEST MUNICIPALITY (BENEFICIARY) AND HUNGARY

The **Financing Agreement** (*Finanszírozási Szerződés*) for the project was signed on **19 January 2004**. The subject-matter of the Financing Agreement was the implementation of the first Section of Metro line 4 between Kelenföldi Railway Station and Keleti Railway Station of Budapest and the related above-ground projects (7.34 km, 10 stops).

The amounts stated in point 4 of the Financing Agreement were as follows:

- State financing: HUF 153 943 900 000;
- Financial Contribution by the Municipality: minimum HUF 40 976 000 000.

1.2.3. "INVESTMENT CONTRACT" BETWEEN BUDAPEST MUNICIPALITY (BENEFICIARY) AND BKV ZRT.

Budapest Municipality (Beneficiary) signed a **"Investment Contract"** (*Beruházói Szerződés*) with Budapesti Közlekedési Vállalat Zártkörűen Működő Részvénytársaság (Budapest Transport Company, hereafter BKV Zrt.) on **19 January 2004**, which was commissioned to implement the project. The Investment Contract was amended on 18 July 2005.

The Investment Contract stipulates that *"BKV shall engage an Independent Verification Engineer (or Independent Supervising Engineer) for overseeing the decisions made by the Project Owner during the Project and the implementation of the Project. The Independent Verification Engineer shall perform his or her tasks under the conditions set by the BKV with the agreement of the Capital, with the aim of ensuring oversight of the Project by Budapest Municipality . The requirement of an Independent Verification Engineer was included into the Investment contract because it was also a requirement of the European Investment Bank EIB (see below).*

Government Resolution No. 1004 of 30 January 2007 on the indicative list of transport development projects to be implemented in the 2007–2013 programming period specifically mentioned the Metro Line 4 Project of Budapest.

The New Hungary Development Plan which contained the Transport Operational Programme (KÖZOP) was approved by the European Commission in August 2007.

The National Development Agency (NFÜ) published a call for proposals under code No. KÖZOP 2007-5-1 on 21 December 2007.

On the basis of Decision No. 554 of 24 April 2007 of the General Assembly of Budapest Municipality submitted a project proposal registered under identification No. KÖZOP-5.1.0-07-2008-0001 for the implementation of Metro line 4. At its meeting of 2 July 2008, the Government supported the project proposal and approved the submission of the application to the European Commission.

1.2.4. "TREASURE CONTRACT" BETWEEN BUDAPEST MUNICIPALITY, BKV ZRT. AND THE HUNGARIAN STATE TREASURY

The Metropolitan Government of Budapest, BKV Zrt. and the Hungarian State Treasury signed a "**Treasure Contract**" (*Kincstári Szerződés*) on **19 January 2004**.

Budapest Municipality and BKV Zrt. entrusted the Hungarian State Treasury to manage all matters pertaining to the funding of the project, to open the accounts used to receive the funds from subventions and other sources and for the payments.

1.2.5. THE NEW "METRO ACT"

In its resolution No. 1059 of 4 June 2005, the Government approved the cost of the construction of Metro line 4 (Sections I and II) at a 2002 price of HUF 264 500 000 000.

Act LXVII of 2005 (the new "**Metro Act**") entered into force on 29 June 2005, and set the amount of the State aid at 2002 price of HUF 208 900 000 000 for Metro line 4 (Sections I and II).

1.2.6. THE TWO EIB LOAN AGREEMENTS

The EIB ("the Bank") signed two loan agreements on **18 July 2005**, one with the Budapest Municipality ("Debtor") and another with the Hungarian State ("Debtor").

In the loan agreement between the Budapest Municipality and the EIB under reference FI Nr. 23.127HU, EUR 1 167 000 000 was indicated as the project amount, of which EUR 922 000 000 was to be a state subsidy (including the EIB loan), EUR 61 000 000 was to be from the City's own resources and EUR 184 000 000 was to be an EIB loan to the City.

Of the EIB loan of EUR 184 000 000, only EUR 58 500 000 (approximately HUF 15 172 000 000) was eventually paid to Budapest Municipality. Based on an Agreement concluded on 24 February 2014, the Hungarian Government assumed the debt of Budapest under the contract (at that date the debt amounted EUR 55 250 000).

In the loan agreement between the Hungarian State and the EIB under reference FI Nr.23.126HU, EUR 1 167 000 000 was again indicated as the project amount, of which EUR 231 000 000 was the State's own resources, EUR 245 000 000 was Budapest City's own resources (including the EIB loan), and EUR 691 000 000 was an EIB loan to the State of Hungary.

Of the EIB/Hungarian State loan of EUR 691 000 000, an amount of EUR 472 000 000 was eventually paid (the Hungarian Treasury transferred in total HUF 119 473 200 000 to BKV Zrt. under the line of EIB loan: HUF 74 865 000 000 on 09.11.2005 and HUF 44 608 200 000 on 22.03.2006). In the meantime, the entire loan was repaid by Hungary to the EIB.

The EUR 1 167 000 000 indicated as project amount in both loan agreements includes both the first and second Sections of Metro line 4 (a total of 10.5 km, 14 stops).

Only the first Section of the metro line was implemented by December 2015 (7.34 km).

According to point 6.09 of the contracts ("Project implementation") "*The Debtor shall ensure that an independent and internationally acknowledged engineer ("Engineer"), employed under conditions that are acceptable by the Bank, (the EIB) will assist the Project Directorate and supervise the implementation of the Project*".

1.2.7. "GRANT AGREEMENT" BETWEEN BUDAPEST MUNICIPALITY (BENEFICIARY) AND THE NATIONAL DEVELOPMENT AGENCY (GRANTOR)

This **Grant Agreement** (*Támogatási Szerződés*, the "GA") was signed on **12 December 2008**.

The GA made between Budapest Municipality (as Beneficiary) and the National Development Agency (as Grantor) was signed with a commitment clause by KIKSZ Közlekedésfejlesztő Zrt. (KIKSZ Transport Development Zrt., as Intermediate Body) and with an acknowledgement clause by Budapesti Közlekedési Zrt. (BKV Zrt. as Implementer).

During the implementation of the project, the DBR (South Buda-Rákospalota) Metro Projects Directorate of BKV Zrt. (previously DBR Kft.) acted on behalf of BKV Zrt.

The financial amounts stated in the original GA (Section I of Metro line 4) were as follows:

- The total planned amount of the project was HUF 353 766 300 000;
- The eligible cost (with non-deductible VAT) was HUF 292 983 200, which initially corresponded to an aid level of 89.0943% (share of financing from Cohesion Fund alone: 76.585 %);
- Of this amount, the aid part was HUF 224 381 200 000, which comprised 85 % of EU aid (Cohesion Fund), 15 % of State aid (HUF 36 650 100 000) and own resources (HUF 31 951 900 000, all of which was financed by the capital).

1.2.8. DECISION OF THE EUROPEAN COMMISSION ON MAJOR PROJECT "BUDAPEST METRO 4" (CCI No. 2008HU161PR003)

In its **decision No. B(2009)6793 of 2 September 2009**, the Commission of the European Union approved the Major Project. According to this, the total amount of aid was EUR 857 090 000, the financing rate of which (fifth priority axis) was to be 85 % by the EU and 15 % by the Hungarian State. After the Commission's decision, the GA was amended in February 2010. After the amendment, the details of the project were as follows:

- The total planned amount of the project was still HUF 353 766 300 000 (this increased to HUF 452 554 224 302 until project closure).
- The eligible cost was HUF 235 935 400 000 (unchanged at project closure), which corresponded to an aid intensity of 89.0943 % at that time.
- Of this amount, the aid was HUF 261 031 300 HUF, which comprised 85 % of EU aid, HUF 224 381 200 = **EUR 728 526 000 (Cohesion Fund)**; 15 % of State aid, HUF 36 650 100 HUF (part of which may also be an EIB loan); and HUF 31 951 900 HUF of own resources (financed by Budapest Municipality, part of which may also be an EIB loan).

Clause 7 of the GA between Budapest Municipality and the National Development Agency also includes provisions relating to **Additional Financing**. According to this, the amount of the Additional Financing is maximum HUF 211 231 537 837, of which HUF 164 722 170 000 and HUF 46 509 368 000 were financed by the State and the capital, respectively.

All amounts exceeding the KÖZOP financing plus the Additional Financing should be 100% covered by the Budapest Municipality's budget.

The Commission Decision of 2 September 2009 stipulates that 11 contracts (total amount HUF 56 624 200 000, i.e. approximately EUR 229 000 000 at that time), will be removed from the eligible project costs for Metro line 4 following the conclusions of an irregularity

procedure conducted by the Managing Authority (NFÜ KÖZOP IH) (see section 2.3. for the list of contracts excluded).

Decision No. B(2009)6793 of 2 September 2009 was modified by Decision No. C(2015)8726 of 4.12.2016 (see below, 1.2.9).

1.2.9. AMENDMENTS TO THE FINANCING AGREEMENTS, THE GRANT AGREEMENT, COMMISSION DECISION AND RELATED LEGAL BASIS

The proposed deadline for the implementation of Section I of Metro line 4 changed several times:

- according to the Financing Agreement of 2004 the deadline was 2008;
- according to the amended Financing Agreement of 2005 the deadline was 2009;
- according to the Grant Agreement of 2008 the deadline was end of 2011;
- according to the amended Grant Agreement of 2010 the deadline was end of 2013.

After the last amendment of the GA, the date for the first putting into operation - *üzembe helyezés* - was 31 March 2014.

With regard to project elements to be financed by the **European Union**, the date of Project Completion is the last day for Eligibility Period, which is **31 December 2015**. All elements which could not be implemented by this date are not eligible.

With regard to the additional Government financing of HUF 77 billion (Government financing in addition to Hungarian State part in KÖZOP, 12%), the financing period is up to 31 December 2017.

On **21 December 2012** Budapest Municipality and the National Development Agency signed a **Consolidated Financing Agreement** (*Egységes Finanszírozási Szerződés*²). This included (Annex 4) the Amended Implementation Agreement (*Módosított Megvalósítási Megállapodás*), signed also on 21 December 2012 and replacing the "Investment Contract" signed on 19 January 2004. New Guidelines on "Eligible Expenses" were also adopted.

According to the comments of Budapest Municipality (THOR(2016)9347, see also Annex 1 of the letter), the primary goal of the amendments was to determine the funds required in order to successfully complete the project, update the project budget and lay down new detailed rules for the utilisation of additional government financing.

This was partly due to Section 61 of Act. CLXVI of 2011 amending certain laws laying the foundation of Hungary's budget for 2012, and amending in particular Act. LXVII of 2005 (the "Metro Act of the Year 2005").

On 5 April 2012, the Government amended Government Decree No. 130/2006 on the National Development Agency (NFÜ). With this decree the NFÜ became responsible for all activities of the Government in connection with Project "Budapest Metro 4".

In **Government Resolution No. 1787/2015 of 30 October 2015**, the Government decided to **reduce the technical content of project KÖZOP-5.1.0-07-2008-0001** and remove the following elements, which could not be implemented until 31 December 2015:

- Preparation and implementation of the area of the Kelenföldi Railway Station, Western Exit, modified interchange at the M1-M7 motorway link;
- Construction of P+R parking lots in the area of Kelenföldi Railway Station.

This resulted in the decrease of costs with HUF 11 307 473 000 (incl. VAT). The same Government Resolution also approved the new project applications KÖZOP-5.5.0-09-11-2015-0010 (HUF 10 318 677 000, of which HUF 8 633 219 000 from KÖZOP, and HUF 1

² "Szerződés a budapesti 4-es metróval és kapcsolódó felszíni bevezetései megvalósításához kapcsolódóan kötött Támogatási Szerződés, Finanszírozási Szerződés és Finanszírozási Szerződés Kiegészítő Megállapodás módosításáról és egységes szerkezetbe foglalásáról".

685 458 000 from IKOP) and KÖZOP-5.5.0-09-11-2015-0011 (HUF 4 321 853 000, of which HUF 2 674 254 000 from KÖZOP, and HUF 4 647 599 000 from IKOP) including those two elements. The elements which could not be implemented until 31 December 2015 are now financed under the new financial period.

In its **Decision No. C(2015)8726 of 4.12.2016**, modifying Decision No. B(2009)6793 of 2 September 2009, the European Commission decided to decrease the total eligible amount of Major Project Budapest Metro No. 4 from EUR 857 090 000 to EUR 819 410 000, which implies the decrease of **Cohesion Fund financing** (85%) from EUR 728 526 000 to **EUR 696 490 000 = HUF 180 830 600 000**.

1.2.10. SUMMARY OF TOTAL PROJECT COSTS

The total cost of the completed project notified to the Managing Authority was **HUF 452 554 224 000** (HUF 439 317 998 440 without reserves), approximately EUR 1.7 billion. This amount includes also penalty charges, legal costs and amounts to be paid after litigation, either accepted by the Beneficiary or under litigation. **The total amount of claims** (accepted or under litigation) **was evaluated by the Beneficiary to be HUF 67 591 200 000 (approximately EUR 260 969 000)**.

This amount does not include certain contracts concluded centrally by the BKV Zrt. on its own budget (e.g. the contracts of Metraport Bt. and Metcontrol Kft. for performing the Independent Verification Engineer's tasks). The explanation of the beneficiary is that those contracts were not directly in connection with the Project Metro Line 4 (THOR(2016)9347, comment on Fact 7).

The final costs of the project consists of the following financing elements:

	European Union, Cohesion Fund	Hungarian State	Budapest Municipality	Total amount
KÖZOP	HUF 180 830 600 000 (77%)	HUF 29 913 900 000 (12%)	HUF 25 215 900 000 (11%)	HUF 235 960 400 000 (HUF 228 466 751 121 without reserves)
Additional Financing (State + Budapest Municipality)		HUF 164 722 170 000 (78%)	HUF 46 509 368 000 (22%)	HUF 211 231 538 000
Financing provided by the Budapest Municipality itself			HUF 5 362 286 000	HUF 5 362 286 000 (reserves = 0)
Total amount	HUF 180 830 600 000 (40%) (EUR 696 490 000 on the basis of the decision of the European Commission)	HUF 194 636 070 000 (43%)	HUF 77 087 554 000 (17%)	HUF 452 554 224 000

1.3. JUDICIAL INVESTIGATIONS RELATED TO THE PROJECT

In the course of its own enquiries OLAF became aware of several judicial investigations conducted in relation to this project. These include the following:

1.3.1. "BIG METRO CASE" (GERMAN AND AUSTRIAN JUDICIAL AUTHORITIES)

Investigation ref. No.: BRFK Gazdasági Főosztály 8651/2009 (Economic Department of Budapest Police)

Prosecutor's ref. No. Fővárosi Főügyészség KÜO. 31962/2009 (Metropolitan Prosecutor's Office)

Documents registered into the OLAF case file: THOR(2013)24760 and OLAF.C.1(S)(2013)25087.

Subject of the investigation:

Suspicion of significant value misappropriation of public funds of significant value (Btk. Art. 319. (1) and (3) c), különösen nagy vagyoni hátrány okozó hűtlen kezelés gyanúja³. This suspicion was raised on the basis of:

- 11 public procurement procedures mentioned in a denunciation received from a Member of the Hungarian National Parliament and the report of the State Court of Auditors;
- The three works contracts of BPV Konzorcium mentioned in the assistance request from the Landshut Prosecution.

Suspicion of corruption/bribery (Btk. Art. 250. (1), hivatali vesztegetés gyanúja). This suspicion was raised in relation to:

- The contracts of the Supervisors Metraport Bt. and Metcontrol Kft., AMM Tanácsadó Zrt. Swietelsky Kft. (particularly high item price of bitumen and the labor hours price), and the three contracts of BPV Konzorcium.

Stage: investigation closed on 27/07/2012.

Summary: the file contains a huge amount of expert reports, witness hearings, public procurement documentation in relation to the different allegations.

In relation to the suspicion of misappropriation of public funds, the case was closed because according to the findings of the police, the facts uncovered did not qualify as criminal⁴. In relation to the suspicion of corruption, the investigation was closed because on the basis of the data uncovered by the police, the commission of criminal action cannot be proven and results could not be expected from the continuation of the procedure⁵.

Some of the evidence found in such national enquiries are used in this OLAF report to support findings of serious irregularities.

1.3.2. "SIEMENS CASE"

This investigation was into the German company SIEMENS AG which was supposed to provide the power supply system for the project.

Investigation Hungary ref. Nyom.395/2011 (Központi Nyomozó Főügyészség, Central Investigative Prosecution Office)

Hungarian Prosecution ref. No.: Fővárosi Főügyészség KÜO. 31962/2009 (Metropolitan Prosecutor's Office)

Hungarian General Prosecutor's Office ref. No.: LÜ KF. 8432/2010

Subject of the investigation: Suspicion of corruption/bribery (Btk. Art. 250. (1) and (2) a), fontosabb ügyekben intézkedő személy által elkövetett vesztegetés büntett gyanúja). This suspicion was raised in relation to the works contract signed with Siemens AG, and the public procurement procedure which preceded the signature of the contract.

³ Hungarian Criminal Code, Act IV of 1978 .

⁴ "A cselekmény nem bűncselekmény".

⁵ "Mivel a nyomozás adatai alapján nem állapítható meg bűncselekmény elkövetése és az eljárás folytatásától sem várható eredmény".

Documents registered into the OLAF case file: THOR(2013)28513 and OLAF.C.1(S)(2013)29359.

Stage: investigation closed on 29/04/2013.

Summary: the EIB sent to the German Prosecutor's services, the Hungarian Prosecutor's services and to OLAF the report of the law firm Debevoise & Plimpton LLP and its annexes in relation to alleged corruption in the Budapest Metro Lines 2 and 4. The report had been requested by Siemens AG following suspicion of irregularities. The annexes contained evidence of payments made to different consultancies and media companies. It also contained several "witness statements" of people interviewed by the law firm. Judicial investigations were launched in Germany and Hungary. OLAF opened its own investigation under the reference OF/2008/0083.

During a meeting held between OLAF and the German authorities on 28-29/01/2009⁶, it was agreed that OLAF would investigate only the aspects linked to an EU financed project in a known third country, but would temporarily not do any investigative activity in relation with EU financed projects in Hungary.

Finally the German judicial authorities investigated only other contracts signed by Siemens AG, and not the Budapest Metro line 4 contract. The German judicial investigation was closed following a settlement with Siemens AG. OLAF decided to investigate the Siemens AG contract signed under the Project Metro line 4 under investigation OF/2012/0118/B4. All information concerning this aspect was transferred from case OF/2008/0083 to OF/2012/0118/B4.

The Hungarian authorities interviewed some of the witnesses mentioned in the Debevoise & Plimpton LLP report, who then refused to respect their earlier statements. The Hungarian authorities also analysed different bank data but did not obtain evidence corroborating the allegations. The investigation was closed because on the basis of the data in the investigation the commission of criminal action could not be evidenced and such results could not be expected from the continuation of the procedure.

Some of the evidence collected by the Central Investigative Prosecution Office are used in this OLAF report to support findings of serious irregularities .

1.3.3. "ALSTOM CASE" (SEVERAL MEMBER STATES)

In the Metro 4 project ALSTOM signed a contract for the supply of rolling stock (see point 2.3.20).

Investigation Hungary ref. No: NNI: 128/2012.bü (Nemzeti Nyomozó Iroda, National Investigative Bureau)

Metropolitan Prosecutor's Office ref. No.: KÜO.2737/2011

General Prosecutor's Office Hungary ref. No.: LÜ KF.785/2011

Documents registered into the OLAF case file: THOR(2013)24760 and OLAF.C.1(S)(2013)25087 (documents received from the Hungarian judicial authorities).

Subject of the investigation: Initially alleged misappropriation of public funds, but it was changed to corruption/bribery (Btk. Art. 250. (1)). This suspicion was raised in relation to the works contract signed with Alstom Transport SA, and the public procurement procedure which preceded the signature of the contract.

Stage: investigation ongoing.

Summary: this is a cross-border investigation being coordinated by Eurojust with several Member States authorities.

Some of the evidence received from the Hungarian judicial authorities are used in this OLAF report to support findings of serious irregularities.

⁶ Ares I(2009)002029, registered under case OF/2008/0083/A2.

2. INVESTIGATIVE ACTIVITIES CARRIED OUT AND EVIDENCE COLLECTED BY OLAF

2.1. LIST OF INVESTIGATIVE ACTIVITIES CARRIED OUT BY OLAF.

- Collection and detailed analysis of documents from the Hungarian competent administrative authorities, continuously during the whole investigation period.
- Collection and detailed analysis of documents from the European Commission's Directorate General for Regional and Urban Policy, continuous during the whole investigation period.
- On-the-spot check on Budapesti Közlekedési Vállalat Zártkörűen Működő Részvénytársaság (BKV Zrt.), Hungary, on 29/05/2013, see OLAF Report: THOR(2013)15416.
- On-the-spot check on Matrics Consult Ltd., England, on 29/9/2013, see OLAF Report: THOR(2013)24784.
- Eurojust coordination meeting, 15/05/2014.
- Operational meetings and follow-up with different judicial authorities. Collection and detailed analysis of judicial documents.
- Correspondence with different judicial authorities, collection and detailed analysis of documents.

2.2. AUDITS CARRIED OUT BY DIFFERENT NATIONAL AUTHORITIES IN RELATION TO THE PROJECT AND IRREGULARITIES EVIDENCED DURING THE PROJECT IMPLEMENTATION

a) Audit of Dezső és Társa Law Office, commissioned by KÖZOP Managing Authority, 2008

In December 2008, the KÖZOP Managing Authority (KÖZOP MA) commissioned an independent legal and public procurement expert, Dezső és Társa Law Office, to carry out, in connection with the project, the subsequent review of payments transacted between May 2007 and December 2008 in order to ensure their eligibility for financing from the Cohesion Fund.

According to that review -document called "Post-Clearance Audit (PCA)" dated 12 December 2008 - the actual contracts of the project had been preceded by public procurement procedures in which the principle of publicity, the principle of a fair competition and the European Union's principle of equal opportunities were breached on several occasions. On the basis of the PCA Report, the KÖZOP Managing Authority initiated an **irregularity procedure**, in which the irregularity committee audited 15 contracts where substantiated risk factors had been established by the expert report. On the closure of the procedure, irregularities of varying gravity were ascertained in the case of 11 of these contracts. With reference to the provisions of Regulation (EC) No 1083/2006, these **11 contracts were then declared to be 100 % irregular by the European Commission and thus 100 % of amounts involved were deducted from the total amount of the Aid Application under the KÖZOP project. This deduction amounted to EUR 229.5 million or HUF 57 billion.** Thus these 11 contracts were removed from the eligible project costs for Metro line 4 according to Annex 1 of Commission Decision No B(2009)6793 of 2 September 2009.

Comments of the Beneficiary (also in relation to point 2.2.6, and points from 2.2.8 to 2.2.15):

In connection with the public procurement of the contracts referred to in these Facts, in its letter no 48/344/11/2010, the NFÜ established in irregularity, declaring that the full amount of the contracts was not eligible for financing under the Transport Operational Programme. With regard to financing that had already been settled, in the letter no 48/586/1/2010, the NFÜ instructed the Municipal Government to reimburse the amounts concerned, which were then settled by KIKSZ Zrt. by a set-off transaction on the payment of aid application no 81 in accordance with the letters no KIKSZ-K-2742/2011 and 4060/2011. It should be noted that no infringement of the law of public procurement occurred and no condemning decision was issued by the Public Procurement Arbitration Board in connection with any of the public procurement tenders concerned.

With regard to the contracts, in 2013, the under-secretary of state of the Ministry of National Development in charge of Transport Operational Programmes requested an expert opinion from the Municipal Government in order to determine the relevant market prices at the time the bid was submitted. In its letter no KÖZOPHÁT/10688-149/2014-NFM, the Ministry of National Development accepted the expert opinion and determined a rate of correction applicable to each contract, on the basis of which the amounts paid under the contracts were deemed to be eligible for financing from the additional financing budget.

Contract number	Number of notification letter	Difference from the market price	Rate of correction
Co00-B	KÖZOPHÁT/14401-6/2015-NFM	+11.97 %	11.97 %
Co-03	KPPF/874-13/2016-NFM	-13 %	0 %
Co-04/A	KPPF/874-12/2016-NFM	+8.35 %	8.35 %
Co-04/B	KPPF/874-10/2016-NFM	-2.27 %	0 %
Co-04/C	KPPF/874-9/2016-NFM	-12.82 %	0 %
Co-05/A	KPPF/874-11/2016-NFM	+10.59 %	10.59 %
Co-05/B	KÖZOPHÁT/14401 /2015-NFM	+10.87 %	10.87 %
Co-06/A	KÖZOPHÁT/1009-46/2015-NFM	+10.57 %	10.57 %
Co-06/B	KÖZOPHÁT/1009-85/2015-NFM	+8.28 %	8.28 %

b) Audit Report no 32/18/18/2010 of the Government Audit Office of Hungary (KEHI, the Audit Authority), 2010

Audit Report No. 32/18/18/2010 of the Government Audit Office of Hungary ordered that all contracts under the project, including the ones that had been treated as minimum-risk contracts by the independent expert's report (Report Dezső és Társa Law Office), should be fully audited and subjected to an irregularity procedure and the required financial corrections should be determined. On the basis of the above, on 30 June 2010, an irregularity procedure was initiated by the Managing Authority concerning the remaining 38 contracts that had been audited and declared by the expert report to be of relatively low risk in terms of public procurement and eligibility.

The amount affected by the irregularity procedure was HUF 46 006 288 640, while the total value of contracts subjected to the audit exceeded HUF 174 billion.

As a result of this further assessment, **19 of the 38 contracts in question were declared irregular**. The subject-matter of these contracts had typically been project consulting, legal and public procurement consulting, translation and interpreting services. The most common irregularity identified was that the agreements did not comply with the laws and, in general, the public procurement legislation of Hungary. Some of the disputed contracts had been concluded unlawfully by skipping a public procurement procedure (in some cases, aggregation problems arose in terms of public procurement).

In connection with the 19 contracts declared to be irregular, the Recipient was required to carry out a **financial correction of HUF 93 549 171 (EUR 334 100)**. With regard to such correction, however, the Recipient's liability to pay an interest also arose, on the basis of which the Recipient (Budapest Municipalaty) was required to pay **HUF 9 314 114 (EUR 33 264) by way of interest**.

c) Audit Report 1023/2010 of the State Court of Auditors (Állami Számvevőszék)

The State Court of Auditors (hereafter SCA) conducted an audit in September 2010 in relation to Project Metro Line 4. They concluded inter-alia, the following⁷:

- **The project investment exceeded the costs and time duration foreseen.** At the time of the audit, because the conditions of the project implementation, it was **impossible to estimate the total costs of the project and the date of end of implementation**. For example, at the date of the audit, the competent authorities had not issued the authorizations for the Metro carriages (the Alstom contract) and therefore their manufacture could not begin. There were numerous problems linked to land acquisition both before the beginning of works and also afterwards. For example, the land acquisition at Kelenföld was delayed by more than 6 months, which caused an additional cost of 3 billion HUF (approximately 11 million EUR) to the project.
- The reduction of capacity of the P+R parking (300 parking places instead of 1500) will decrease the possibility for commuters to park at the end station and use the Metro.
- SCA ascertained that the project implementation to be characterised by the acceptance of **disadvantageous contract conditions, wrong decisions** of the Beneficiary, such as the choice of the FIDIC "yellow book" contractual environment with a "Design and installation of engineering and electric equipment designed by the Contractor", while the approved construction designs were not yet approved. The estimated timeline of the project was completely incoherent with the state of technical preparation of the project, those timelines were included into the contracts. For example, in relation to four metro stations (Fővám tér, Kálvin tér, Rákóczi tér, Népszínház utca), the works contracts were signed before the obtaining of the construction plans, which were obtained between 3-8 months after the conclusion of the contracts.
- The Investor did not employ an Independent Verification Engineer, and numerous irregularities were ascertained by the NFÜ (Managing Authority).
- The FIDIC Engineer was in a conflict of interests situation with three works contractors, because it received payments from them as a sub-contractor in 2005 and 2006.
- The clarification of financial responsibility for the delays is impossible without the revision of the different works contracts, because there is no clear identification of responsibilities in case the timeline is not respected.
- There were approximately 1 000 claims submitted at the moment of the audit. 40% of them were without a specified amount (this was a possibility given by the contracts), therefore the State Court of Auditors could not establish the total amount of claims, and could not establish whether or not the total amount of claims were financially covered by the reserve amount of the different contracts.

⁷ The given list is only an extract and does not contain all the conclusions of the Court.

*The accepted claims and modifications/additional works amounted to HUF 8.5 billion (approximately EUR 30 million, EUR 1= HUF 280 in 2010). **76% of those claims were caused by the delays in the technical and financial preparation of the project** and to the fact that **the Beneficiary did not ensure the access of the contractors to the place of construction** at the date and under the conditions foreseen in the contracts.*

- *The deadlines and costs foreseen for the tunnel drilling were largely exceeded. Out of the 126 weeks of delays, at least 35 weeks were due to the fault of the Investor as acknowledged by the Investor itself. Because this 35 weeks delays the Investor accepted the financial claim of BAMCO, responsible for the tunnel drilling, for EUR 17.4 million (at the time of the audit). This was paid on the reserve amount of the contract and therefore financed by "the EU, the State and the Municipality". The rest of the delay, according to Eurometro Kft., was due to the fault of the tunnel driller itself, BAMCO, and should result in penalty as foreseen in the contract (maximum contractual penalty: 10%, EUR 20 million). This was not accepted by BAMCO and the matter give raise to litigation. The 126 weeks of delays caused cascading consequences on all the other works deadlines, and therefore costs, as the station constructions, tracks, power supply works could not begin as the tunnels were not drilled.*
- *According to a comparison study (made by Egis Rail in 2009), amongst 10 European Metro constructions, Budapest Metro 4 is the most expensive immediately after the Paris metro. The reasons is partly linked to the environment, for example the tunnel is in some cases 30 meters underground because the circumstances in the city center (historical buildings, utilities), but also because the design and technical choices made by the Investor.*

d) The Audit of the European Court of Auditors, 2011

Following an audit conducted by the European Court of Auditors in the framework of 2011 DAS (Task 11ETEDAS, PF4363), in the opinion of the European Court of Auditors and the European Commission, 100 % financial correction to the value of additional services (i.e. the value of the amendment of the contract) was required in case of **contract P20/5 concluded under the project with Matrics Consult Kft.** for the hiring of an expert to carry out risk management services. The Recipient was ordered to reimburse **HUF 420 666 584** and the related interest under Article 127(2) and (3) of Government Decree No. 292/2009 of 19 December 2009.

Following this audit, in 2011 the European Court of Auditors also sent initial information to OLAF on possible fraud in relation to this contract, which was the first information received under this investigation.

e) Audit of Kölcsényi & Némethi Law Office commissioned by KIKSZ Közlekedésfejlesztési Zrt. (KÖZOP Intermediate Body)

This audit was related to the technical, public procurement and legal aspects of 71 "+ 5 %" contracts and 27 "+5 %" contract amendments. Those contracts and contract amendments were committed on the 5% reserve of the total project costs.

As a result of the audit, 35 suspicions of irregularity arose, giving rise to 33 irregularity procedures launched by the Intermediate Body. To date, an irregularity has been established and a financial correction has been instructed for 11 of these contracts. No irregularity was established for 20 of the contracts, whereas the audit of the remaining two contracts is currently in progress.

f) Irregularity audit of the contract with MetroConsult Kft.

With regard to Lot 6 of the total quantity to be purchased under a public procurement procedure concerning the "Contract of agency for expert services related to the DBR Project Management during Section I of the construction of Metro 4", on 14 May 2009, the Budapesti Közlekedési Zrt. and MetroConsult Tanácsadó, Tervező és Vállalkozó Mérnöki

Iroda Kft. entered into a contract of agency ("Contract") entitled "Contract of agency for expert services related to the DBR Project Management during Section I of the construction of Metro 4, Lot 6: Technical cost analyst expert" (BSZ-22/2009).

The Managing Authority established that, during the performance of the Contract and the public procurement procedure prior to the conclusion of the Contract, the Recipient had breached Article 50(1) and 99(1) of Act CXXIX of 2003 on public procurement and paragraph 1.2 of the National Eligibility Guidelines. The amount of required financial correction was established by the Managing Authority on the basis of Section 2.3.22 of the COCOF Guidance Note. As a correction measure, **the Managing Authority ordered:**

- **the recovery of the full amount of financing of HUF 356 239 399** for the net invoice amount of HUF 398 864 000, which had been charged without legal justification in excess of the contract value of HUF 270 000 000;
- **and a 25% correction** of the aid of HUF 241 029 590, paid to a net contract value of HUF 270 000 000 (the initial contract), in the amount of **HUF 60 257 397**.

g) Additional Managing Authority audits concerning the Metro 4 project

- Metro 4, technical expert, 2012–2013 (FTBM Kft.). Duties: review of contracts and contractors' claims, on-the-spot checks
- Financial audit of the reimbursement of advance financing charged under the Metro 4 project, 2013–2014 (Credit Debit Kft.). Duties: to carry out the audit specified in Section 6.6.5 of the contract amending and consolidating the Grant Contract, the Financing Contract and the Supplementary Agreement to the Financing Contract concluded in connection with the implementation of Budapest metro line 4 and the related surface projects

h) Additional audits concerning the Metro 4 project, carried out by KIKSZ Zrt. as the Intermediate Body

- Due diligence related to the public procurement contract documentation, 2011–2012 (Réti Law Office)
- Market price inquiry, 2011–2012 (Ernst & Young)
- Due diligence related to the public procurement contract documentation and legal support to the drafting of the Grant Contract (DLA Piper, Horváth és Társa Law Office), 2011–2012
- Audit of project-related claims (change requests and claims arising from hindrance, delays and time-limit extensions) and contract amendments from a public procurement law aspect, 2012–2013 (Szterényi Law Office)
- Audit of project-related claims (change requests and claims arising from hindrance, delays and time-limit extensions) and contract amendments from a public procurement law aspect, 2014–2015 (Törös Law Office)

2.3. FACTS EVIDENCED

2.3.1. THE ABSENCE OF A "GENERAL CONTRACTOR"

OLAF has found that the Beneficiary entered into **20 separate and independent construction contracts** for the implementation of the Metro Line 4 Project.

The contracts corresponded to the "Conditions of Contract for Plant & Design-Build" contract type under the FIDIC⁸, the so called 'Yellow Book'⁹ standards. This means that

⁸FIDIC: Fédération Internationale des Ingénieurs-Conseils (International Federation of Consulting Engineers).

⁹ First Ed, 1999, in Hungary, published first in 2001 under reference ISBN 963 85287 8 8.

the working designs were to be drawn up by the successful applicant of the public procurement tender.

The Contracting Authority was responsible for giving the main directions, the planned quantities and for obtaining the detailed designs and the building permits. The contractor is responsible for construction level design, thereby assuming liability.

Under contracts concluded on the basis of the FIDIC Yellow Book, contractors are not entitled to charge liquidated damages (the quantitative risks are borne by the contractor). In case of additional expenses and additional time-limit needed, contractors are however entitled to submit their claims under Clause 20 according to specific rules of procedure.

When the public procurement tenders were published, only tender designs were available, building permits and detailed designs were not yet ready.

In many cases, the building permits were only obtained and handed over to the contractors after long delays. The actual construction work could be started only after that. During the delay, the contractors were entitled to a penalty.

The Beneficiary did not agree with this fact. According to the comment letter on facts established by OLAF¹⁰, the project budget does not include liquidated damages paid by BKV Zrt. to the contractors, because the "implementation period" of the contracts did not start until the building permit/construction site are available, which means that this was taken into account on the calculation of the time-limit for liquidated damages.

In reality BKV Zrt. had to pay following the legal actions of the different contractors due to the delays in the handing over of the building permits and construction site availability. Some of the claims¹¹ are still on-going, therefore the exact amount of the claims cannot be established, but it is estimated in the worst case scenario to approximately EUR 260 969 000.

The proposal of 2012 for the Consolidated Grant Agreement (FPH057/139-6/2012, dated 30.10.2012 and signed by the Deputy-Mayor dr. Balázs Szeneczey) explicitly states that **"the project was suffering from a serious mistake made at the beginning, in particular from the absence of a general works contractor"**. The interface risks were all at the charge of the BKV Zrt., and therefore of the Municipality of Budapest.

According to the proposal for the Consolidated Grant Agreement, this is one of the reasons that in 2012 the claims from the different contractors to the Municipality amount in total to several tens of billions of HUF at the moment of the proposal, and that the works contractors blame each other, and through each other and even directly the BKV Zrt. for the delays between 2006 and 2010 (and the increase of costs). **The total amount of claims (accepted or under contested litigation) was calculated by the Beneficiary to be HUF 67 591 200 000 (approximately EUR 260 969 000)**. This was the amount also in the Consolidated Grant Agreement.

2.3.2. THE PROJECT DIRECTORATE AND THE PROJECT MANAGEMENT

There was neither a general designer nor a general contractor in the project.

Coordination was performed by BKV Zrt. - DBR Metro Projects Directorate.

a) DBR Metro Projects Directorate (from 1998, part of BKV Zrt.)

DBR Metro Projects Directorate was initially a separate legal entity (DBR Metró Kft.). By Resolution No. 00853/1998 of 25 June 1998, the General Assembly of Budapest Municipality decided that BKV Zrt. should take the required measures for the winding-up of DBR Metró Kft. through a settlement. The functions and the staff of DBR Metró Kft.

¹⁰ THOR(2016)9347

¹¹ Such claims are called in Hungarian "követelés".

were taken over by BKV Zrt., in particular its newly created DBR Metro Projects Directorate.

During the implementation of the project, the DBR (South Buda-Rákospalota) Metro Projects Directorate of BKV Zrt. (previously DBR Kft.) acted on behalf of BKV Zrt.

In carrying out this task, the BKV DBR was assisted by a Project Manager, which was for most of the project preparation and implementation period, the company Eurometro Kft.

At the beginning of the Project Directorate, BKV Zrt., then DBR Metro, had neither sufficient staff, nor the expertise needed to conduct its work in a proper manner. This was one of the reasons for the several problems during the whole project implementation, it caused bad coordination, delays and therefore numerous claims from the different works companies for a total amount of HUF 67 591 200 000 (approximately EUR 260 969 000). The failings of the DBR Metro were also recognised in 2012 by the Beneficiary (see the proposal of the Municipality 30.10.2012 for the Consolidated Grant Agreement dated).

Initially, the DBR had only seven employees.

Following an internal audit of 2007 (see also below), a proposed reorganisation took place; the project management tasks were mostly performed by the reorganised/strengthened DBR after 2008. The staffing level of the DBR was increased from 7 to 40.

b) The first Project Management Consultancy contract with BMPK Consortium (Eurometro Kft.), 15 October 1998

On 15 October 1998, the DBR entered into a Project Management consultancy contract (the "**Basic Contract**") with the BMPK Consortium (its members: Euróút Kft., Louis Berger S.A., OTP Ingatlan Rt. and MÁV Rt.). The BMPK Consortium established **Eurometro Kft.**, which was made responsible for the performance of the contract.

Under the Basic Contract, Eurometro Kft. assumed Project Management consulting tasks for two periods: first, during the preparation of the project (deadline: 30 June 1999, HUF 590 million net = ECU 610 000) and, second, in connection with the implementation of the project (deadline: 30 June 2004, HUF 2.2 billion = ECU 2 970 000). According to Article 37 of the contract, "the project management consultant maintains the property right of all document prepared, the BKV can use them only for the destination they were drafted for."

Eurometro Kft. participated in the preparation and management of the public procurement procedures and in the assessment of the tender documentation submitted. Eurometro Kft. **prepared Volumes 1, 2 and 3 of the tender documentation** (guidelines for tenderers, draft contract and requirements of the Principal).

Under the contract, the time required for the preparation of Section I was eight and a half months, which was eventually increased to six years after the contract amendments. The amount paid in connection with preparation increased six-fold relative to the original amount (HUF 3.5 billion, EUR 3.6 million), and exceeded the total amount specified for both preparation and implementation.

On the basis of Report No. 1023 of the State Audit Office (September 2010), no half-annual/annual terms of reference detailing the consultant's tasks were prepared until the amendment of the Basic Contract in May 2010, although it was mandatory under Article 3 of the contract. The tasks were determined in general terms, in a non-accountable manner, and the performance was not measurable on the basis of the contract. The appropriateness of the payments and the actual services rendered could not be established.

The audit report of 30 November 2007 made by DLA Piper Horváth & Partners Law Firm at the request of the DBR established that "Eurometro Kft. performed project management consultancy and public procurement consultancy tasks; in respect of construction

contracts (FIDIC), legal advisory, FIDIC Engineer's and EIB loan tasks; and in respect of the Financing Agreement between the Budapest Municipality and the BKV Zrt., the Independent Engineer's tasks at the same time. Performing responsibilities simultaneously reduces the efficiency of advocacy on behalf of the Principal, because the control functions that usually exist in the case of investment projects between the various roles do not apply within the given organisation". The Law Firm proposed several improvements to the project management, including its reorganisation.

The reorganisation was partly accomplished as the project management tasks were mostly performed by the reorganised/strengthened DBR after 2008 and the staffing level of the DBR increased from 7 to 40.

Eurometro Kft. continued to perform the FIDIC Engineer's tasks. The construction contracts also included that the FIDIC Engineer was Eurometro Kft.

c) The second Project Management Consultancy contract with Eurometro Kft., including also the function of "FIDIC Engineer", 27 June 2006

As a result of negotiated procurement procedure without publication of prior notice based on Article 225. (1) b) of the Public Procurement Act, the DBR signed a new Project Management Consultancy contract for the preparation and implementation of the **whole** Metro line 4 with Eurometro Kft. on 27 June 2006. According to the contract, Eurometro Kft. also performed, among other things, the FIDIC Engineer's tasks.

The total contract amount was HUF 5 795 210 000 + EUR 5 911 510, which included the implementation of Section I and the preparation and implementation of Section II.

The total contract amount with Eurometro Kft. for the Project Management Consultancy in relation to Section I represented HUF 2 921 400 000. The contract term foreseen was 4,5 years, i.e. until end of 2010.

Under its 2006 contract, Eurometro Kft. was required to perform the design reviewer and technical inspector's tasks and to make a declaration on the progress of the project as required in the Grant Agreement. Under the contract, the services to be performed comprise basic, supplementary and special services, and also include the FIDIC Engineer's tasks. Therefore, according to this, **Eurometro Kft. performed both the FIDIC Engineer and Technical Inspector's functions and certain Supervising Engineer's functions** (e.g., preparation of reports for the Project Owner).

According to Article 37 of the contract, "the project management consultant maintains the property right of all documents prepared, the consultant reserve its right to dispose of the intellectual creations delivered to the BKV DBR according to the contract. The rights of BKV DBR do not cover the revision, modification of the documents delivered, or to delegate such tasks."

Report No. 1023 of the State Audit Office stated, inter-alia, that "under this contract that no annual terms of reference including performance deadlines had been prepared, and the performance of the contract was non-measurable and non-verifiable".

The financial cover for the contract of 27 June 2006 was exhausted on 31 March 2010. The DBR initiated non-competitive procurement again on 14 December 2009 in order to sign a project management consultancy contract with Eurometro Kft. After conducting proceedings instituted *ex officio*, the Public Procurement Arbitration Board annulled the public procurement procedure and imposed a fine of HUF 5 000 000 in its decision D.858/15/2009.

It was only then in 2006 that the DBR started preparing an open public procurement procedure.

On the basis of its declaration of 4 March 2010, Eurometro Kft. temporarily continued to perform its tasks defined above. It demanded a consideration of HUF 2 318 000 000 for

the services performed between 1 April 2010 and 30 June 2012, in respect of which litigation was initiated.

Under the 2006 contract, Eurometro Kft. undertook the consultancy activity for **Section I** of Metro line 4 for the **contractual amount of HUF 2 921 400 000** until 31 March 2011.

However, OLAF notes that under this contract, **a total of HUF 8 157 143 814 in invoices were issued and paid to Eurometro Kft.** in connection with the implementation of Section I as follows:

- Under the **original contract, dated 27 June 2006, HUF 5 402 921 814**, of which HUF 4 663 951 046 was financed jointly by the State and the capital, while HUF 738 970 768 was financed by Budapest City) and HUF 155 631 504 was non-refundable VAT (fully financed by Budapest City);¹²
- Under the **1st contract amendment of 16 December 2010, HUF 2 034 006 00** (of which HUF 1 888 784 000 was financed jointly by the State and the capital, while HUF 145 222 000 was financed by the capital) and HUF 37 463 9000 (fully financed by the capital);
- Under the **2nd contract amendment of 30 June 2012** (the contract did not provide for a total contract amount but for payments made on monthly fee basis, valid until December 2012), **HUF 720 216 000** (of which HUF 648 328 769 was financed jointly by the State and the capital, while HUF 71 887 231 was financed by Budapest City) and HUF 19 409 552 (fully financed by the capital);

In regard to the above, the Beneficiary stated (see letter of comments submitted in answer to OLAF on facts concerning it) that the fee defined in accordance with the 1st and 2nd contract amendments did not exceed the quarterly amount under the basic contract, and the Engineer's duties did not change until the end of 2012. The contract with Eurometro Kft; was a flat-rate contract, the expenses were not charged on an item/hourly rate basis. Previous audits (State Audit Office, OLAF and law offices) had not raised any objection concerning the contract concluded in 2006 and the pricing applied under the contract.

It should be noted that the fact that OLAF did not raise any 'objection' immediately following its 'audit' (the Beneficiary probably referred to the on-the-spot check on DBR Metró) does not mean that the contract is regular, as the investigation is on-going until the Final Report and the closure of the investigation.

It is also noted that the State Audit Office audit report mentions several objections to those contracts.

Comments of the Beneficiary (for more details, see also comments letter):

Amounts paid:

- *Under the basic contract: HUF 5 402 921 814 net of VAT for Section I and related projects, HUF 628 916 630 for Section II, in the case of the related project, non-deductible VAT amounts to HUF 155 631 504*
- *State financing was cut back from the level envisaged in the Consolidated Grant Contract of 2012. The contract and its amendments were admitted by KIKSZ with a correction. The Municipal Government was required to finance the 100 % of the correction amount on the subsequent settlement of invoices. As HUF 77 170 165 from the 1st amendment and HUF 62 628 560 from the 2nd amendment are borne in 100% by the Municipal Government, the amount charged according to supplementary financing amounts to HUF 7 061 265 089.*

¹² This is the data calculated according to the comments and list of invoices provided from the Beneficiary to OLAF. In the summary table provided to OLAF during the on-the-spot check, as well as in the table of the Consolidated Grant Agreement, the total amount under the initial contract is HUF 5 734 184 500 (of which HUF 4 952 506 500 was financed jointly by the State and the capital, while HUF 781 678 000 was financed by the capital) and HUF 172 381 100 was non-refundable VAT (fully financed by the capital).

d) Conflict of interests between Eurometro Kft. and several works contractors supposed to be controlled by Eurometro Kft., Project Manager and FIDIC Engineer

Document No 101/406/2007 of the Internal Control and Security Department of BKV Zrt. entitled "Report on Investigation No 108" established a **conflict of interest involving Eurometro Kft.**, given that the company participated in the preparation and management of the public procurement procedures throughout the project as a project management consultant, then performed the Supervising Engineer's functions as commissioned by the project management. In addition, in 2005 and 2006 Eurometro Kft. also performed design and consultancy tasks as a subcontractor of three contractors in relation to the implementation of the same project.

The report referred to established the following:

- There is a **conflict of interest between the Strabag Bridge Construction Consortium** (its members: Strabag Rt., Hídépítő Rt., Contract No CO-00A) **and Eurometro Kft.** Firstly, Eurometro Kft. made out the following bills as a subcontractor, which it later provided with a certificate of performance as Supervising Engineer under progress bills Nos 1, 2, 3, 4, 5, 6, 7 and 8 of Strabag Zrt.: Nos 2003/2005, 2207/2005, 0011/2005, 0013/2005, 0001/2006, 0006/2006 and 2007/2006 (6 March 2005 and 14 July 2006). Total amount: **HUF 64 225 598** It also occurred that the same engineer, natural person, certified performance on behalf of subcontractor Eurometro Kft., who certified the bill of Strabag Zrt. on behalf of Project Management Consultant Eurometro Kft.
- There is a **conflict of interest between Strabag Zrt.** (Contract No CO-04/C) **and Eurometro Kft.** Eurometro Kft. made out bill No 0011/2006 to the amount of **HUF 2 700 000** as subcontractor, which it later also provided with a certificate of performance as Supervising Engineer under progress bill No 2 of Strabag Zrt. (the date of the latter is 30 September 2006).
- There is a **conflict of interest between BPV-Metro 4 Kkt.** (Contract No CO-04/A, Allgemeine Baugesellschaft-A.PORR Aktiengesellschaft, Bilfinger Berger and Vegyépszert Zrt.) **and Eurometro Kft.** Eurometro Kft. made out bill No 0009/2006 to the amount of **HUF 1 300 000** as subcontractor, which it later also provided with a certificate of performance as Supervising Engineer under progress bill No 2 of BPV-Metro 4 Kkt. (the date of the latter is 31 August 2006).

The Head of the Transport Unit of the Mayor's Office of the Metropolitan Government of Budapest notified the executive of Eurometro Kft. and the Director of the DBR Metro Projects Directorate on 28 April 2006 and 10 May 2006 of the fact noticed under Contract No CO-004, whereby Eurometro Kft. appeared on both the customer and supplier side, and requested subsequently parties to refrain from this practice in the future. Nevertheless, further payments were also made. (See above, progress bill No 8 dated 14 July 2006 of Strabag Zrt. and progress bill No 2 of BPV-Metro 4 Kkt. dated 31 August 2006.)

On several occasions, the amounts of financial advances were stated incorrectly in the bills of the contractors concerned, not at the EUR exchange rate valid at the date of performance of the action or service required but using the date when the advances were paid, which was favourable for the contractors.

It was also established in connection with progress bill No 1 of the Strabag Bridge Construction Consortium that the annexes (mandatory is required in the contract) lacked budget documents, certified assessment logs, approved change initiatives and progress reports. It was also established in respect of other "bills" that the construction logs and the DBR Metro Project Director's signature were missing.

Comments of the Beneficiary on this issue:

- *On the basis of proposals drawn up in the report by Internal Control, on 15 November 2007, disciplinary proceedings were initiated by BKV Zrt's CEO against László Gulyás, DBR Metro's Assistant Director, while a disciplinary committee was also set up. László Gulyás' employment was terminated.*
- *In a letter no 20/50/2008 of 2 June 2008, BKV Zrt. DBR's Assistant CEO Ferenc Olti declared that, by Instruction no 9/DBRPI-U607 of 12 November 2007, DBR Metr6's Project Manager had ordered that each invoice submitted by the contractors and acknowledged by the Engineer should be reviewed by the competent project manager from the point of view of potential conflicts of interest. According to his statement, all activities and practices of Eurometro Kft. that had been affected by a conflict of interest were discontinued in accordance with the above.*
- *In a Summary submitted on 2 June 2008, the head of Internal Control notified the Chair of BKV Zrt's Supervisory Board of the measures taken.*
- *The Corporate Security Manager, recruited by BKV DBR Metr6's Project Directorate in the summer of 2012, was charged with carrying out the review of the basic contract of agency between BKV Zrt. and Eurometro Kft. and its subsequent amendments. In its letters of 14 January 2013 and 17 January 2013, DBR Metr6's Project Directorate notified the CEO of BKV Zrt. of the outcome of the investigation. On the basis of that investigation, on 5 April 2013, the CEO forwarded the findings of the investigation to the Head of the Department for Fighting Corruption and Economic Crime of the Budapest Police Station. The Economic Protection Division I of the Department Against Corruption and Economic Crime of the Budapest Police Station started an investigation, which was discontinued by its decision no 01000/1450-88/2013, issued on 29 October 2015 (served on 5 November 2015), on the basis of Section 190(l)(b) of the law on criminal proceedings as, on the basis of the data of investigation, it could not be established that a crime had been committed and no results could be expected from continuing the investigation.*

Please note that the correct blanket amount of the contract of 27 June 2006 is HUF 5 795 210 000 net of VAT and EUR 5 911 500 + VAT.

In the 1st amendment, that blanket sum was changed to HUF 6 719 736 100 net of VAT and EUR 3 900 820 + VAT, following the realignment of the original blanket sums and by accounting for actual euro payments in forint. That did not increase the blanket sum, only the blanket sum proposed to implement Section II was realigned.

The OLAF investigation also revealed a further conflict of interest situation between Eurometro Kft. and Siemens AG. Significant payments took place from Siemens AG to members of the BKV's DBR Metro Directorate and Eurometro Kft. Those payments took place in 2006 and 2007, which shows that even after the report of the Internal Control and Security Department of BKV Zrt., the representatives of Eurometro Kft. did not end such practices. For more details on these payments, see point 2.2.19 below.

2.3.3. THE ROLE OF THE "ENGINEER"

a) Different definition of the "Engineer" in different contracts and their legal bases

There were several descriptions in different legal bases, contracts and agreements for the need of an "Engineer" in the Project.

The different contracts signed by DBR for the project implementation were concluded on the basis of the **FIDIC yellow book standards**. The FIDIC standards (Article 3 of the Yellow Book) foresees the need of an "Engineer" (also called in the common language the 'FIDIC Engineer').

According to the **Loan Agreement with the EIB¹³** the borrowing party agrees that an independent and internationally experienced Engineer (a so-called **Independent Verification Engineer, IVE**, in Hungarian "*Független Ellenőrző Mérnök*", *FEM*) will support the work of the projects directorate and will oversee the implementation of the project.

The Grant Agreement, as well as the Consolidated Grant Agreement (Point 10 of Annex 4, Amended Implementation Agreement) also stipulates, in relation to Additional Financing, that the BKV is obliged to engage an **Independent Verification Engineer**.

According to the interpretation of the BKV Zrt. DBR Metro and the Beneficiary¹⁴ there were two different Engineers in two different roles: the FIDIC Engineer and the Independent Verification Engineer (IVE). The FIDIC Engineer assists the Beneficiary and he or she is not necessarily independent of the projects directorate. On the other hand the IVE represents the interests of the Project Owner, therefore, he or she must be independent of both the Principal and the Contractor. As understood by BKV Zrt. DBR Metro, the IVE was supposed to oversee the work of the "Engineer" (FIDIC Engineer).

b) The role of the "FIDIC Engineer"

Initially the role of FIDIC Engineer was included into the tasks of the **Project Manager** under the second consultancy contract. **Eurometro Kft. was the FIDIC Engineer from June 2006 to 30 December 2012. During this period, the role of FIDIC Engineer was implemented by a company which was in serious conflict of interest with several works contractors** (see above, details on the conflict of interest concerning the Project Manager).

In June 2012 BKV Zrt. DBR Metro launched an open procedure to enter into a FIDIC Engineer's Contract, but this was unsuccessful, because the amount of the only valid bid was HUF 5.5 billion, while the budget for it was set at HUF 1.7 billion.

In September 2012, BKV Zrt. DBR Metro again initiated an open procedure. This time, three companies submitted valid bids: Eurout Kft., the M4 Engineering Consortium and Metrőber Kft. The lowest-cost bid was that of Metrőber Kft., but the decision awarding the contract was contested by Eurout Kft. before the Public Procurement Arbitration Board.

Meanwhile, BKV Zrt. DBR Metro extended the contract of Eurometro Kft. (Eurout Kft. is a co-owner of Eurometro Kft.).

At this time, BKV Zrt. DBR Metro referring to the interest of the national economy, asked the Public Procurement Arbitration Board for permission to sign the contract with Metrőber Kft., but the Public Procurement Arbitration Board rejected the request.

Finally, on the basis of a **Government Decision**, BKV Zrt. entered into a contract with **BKK Közút Zrt.** owned by Budapest Municipality out of the **interest of the national economy on 21 December 2012.**

Contract No, date: bsz-13/2013, 21/12/2012

Subject matter: FIDIC engineer

Contracting party: BKK-Közút Zrt.

Value of the contract under the financing agreement: HUF 45 000 000. Total amount paid: HUF 2 400 000 000 + HUF 238 516 471 (non-deductible VAT).

Financing method:

- KÖZOP: HUF 2 317 332 579 (HUF 2 097 488 942 + HUF 219 843 637 VAT)

¹³ Clause 6.09 of the Loan Agreement between the Metropolitan Government of Budapest and the EIB and Clause 6.10 of the loan agreement between the Hungarian State and the EIB.

¹⁴ The Beneficiary confirmed this position in its comment to the established facts (THOR(2016)9347),

- Complementary funding: HUF 321 183 892 (HUF 302 511 058 + HUF 18 672 834 VAT)

Contract No. bsz-13/2013 is included in the list of contracts of the Metro Line 4 Project, and forms part of the "total cost of the completed project". According to the reasons stated, BKV Zrt. had such commitments that "would have adverse implications of several hundred billion Hungarian forints on the national economy if the Metro construction was not completed on time (the aid for the Metro Line 4 Project would be lost)".

According to Section 0 (definitions), point 25 of the initial Grant Agreement, the "Engineer" was an engineer according to FIDIC (or equivalent), *independent* from the Beneficiary (Budapest Municipality) and the "Project Implementer" (BKV Zrt.).

In the original Guidelines on eligibility of costs, the "Engineer" should have been a FIDIC (or equivalent) Engineer *independent* from the Beneficiary and the "Project Implementer".

In the revised Guidelines adopted on 21 December 2012 the "Engineer" was a FIDIC (or equivalent) Engineer. It was *not* compulsory anymore to be "*independent*", therefore BKK Közút Zrt., a subsidiary of Budapest Közlekedés Központ (BKK) could become the "Engineer" of Budapest Metro No 4 project, and the invoices issued by BKK Közút Zrt. became eligible under the project costs.

Since the Consolidated Grant Agreement, signed in December 2012, the "Engineer" was assimilated to the building inspector under Government Decree No. 191/2009 of September 2009. With this change its proprietary and organisational independence of the FIDIC Engineer had ceased to be a requirement where the independent engineer performs his duties under a public service contract pursuant Section 114(2) of Act CVIII of 2003 on Public Procurement (so called *in house* procedure).

c) The role of the "Independent Verification Engineer" ("*Független Ellenőrző Mérnök*", hereafter **IVE**)

According to the Loan Agreement with the EIB¹⁵ the borrowing party agrees that an independent and internationally experienced Engineer (a so-called Independent Verification Engineer) will support the work of the projects directorate and will oversee the implementation of the project.

The Grant Agreement, as well as the Consolidated Grant Agreement (Point 10 of Annex 4, Amended Implementation Agreement) also stipulates, in relation to Additional Financing, that the BKV is obliged to engage an Independent Verification Engineer.

The Independent Verification Engineer should have been independent from the Beneficiary even after 2012. Therefore this role could not have been included after 2012 into the function of the new FIDIC Engineer, BKK Közút Zrt. which was owned by the beneficiary.

Both BKV Zrt. and Budapest Municipality¹⁶ are on the view that - at least for this project - **the Independent Verification Engineer is different from the FIDIC Engineer and it has a different role**, see also above, point a). Such view is accepted also by the International Federation of Consulting Engineers (FIDIC). Therefore **there should have been two different contracts signed with two different Engineers covering the whole duration of the project implementation.**

OLAF established that this was not the case.

Comments of the Beneficiary:

In its Resolution No. 1676/2005 of 30 June 2005, the General Assembly of Budapest Municipality "Calls upon the project owner BKV Rt. to commence the duties related to the

¹⁵ Clause 6.09 of the Loan Agreement between the Metropolitan Government of Budapest and the EIB and Clause 6.10 of the loan agreement between the Hungarian State and the EIB.

¹⁶ See comments of the facts, signed by Deputy-Major dr. Balázs Szenczey THOR(2016)9347

selection of the Independent Supervising Engineer without delay, while it calls upon BKV Rt.'s Supervisory Board to monitor the implementation of the project on a monthly basis by commissioning an expert **until the selection of the independent verification engineer.**"

On the basis of that Resolution, BKV Rt. entered into a contract with **two experts** to carry out the tasks of the Independent Verification Engineer's (IVE):

1) Financial supervision of the reports and handover notes provided by the Supervisor Engineer (FIDIC Engineer): "financial expert", **Deloitte & Touche** was hired, on whose behalf an auditor, Mr Zoltán Nagy carried out the related tasks between 14 November 2005 and 21 November 2012.¹⁷ One of its tasks was to verify the financial reliability of the reports and handover notes provided by Eurometro Kft.

2) Technical supervision of the reports and handover notes provided by the Supervisor Engineer (FIDIC Engineer): BKV Zrt. entered into a contract¹⁸ with **Metraport Bt.** on **21 October 2005** for the provisional performance of the duties of the IVE tasks for Section I of Metro line 4. The IVE's tasks were performed on behalf of Metraport Bt. by its owner, Mr Péter Jávör, a licensed transport construction engineer.

According to the contract, BKV Zrt. entrusts the Expert with the technical auditing of the technical delivery and acceptance report drawn up by the project management consultant (Engineer) for the Supervisory Board of BKV Rt. Mr **Péter Jávör reported only to the Supervisory Board of the BKV and not to Budapest Municipality.**

At the meeting of the Supervisory Board of 11 November 2008, Mr Péter Jávör announced his resignation. The reason for this is, according to his own declaration, that he felt that his findings had not been taken into account. The termination of the appointment took effect on 17 November 2008 with this action by Mr Jávör .

OLAF notes that the project did not have an Independent Verification Engineer responsible for the technical supervision of the project between 17 November 2008 and 4 February 2009.

Comments of the Beneficiary:

While it is true that during the period between 17 November 2008 and 4 February 2009, the project was being carried out without an Independent Verification Engineer MetControl Kft.'s first reporting assignment was to review the period between 1 October 2008 and 1 January 2009 with a view to ensuring continuity. The summary technical and financial report was discussed each month by the Supervisory Board as the first item on the agenda of its monthly meeting; measures were adopted as appropriate on the basis of the report.

BKV Zrt. entered into a contract¹⁹ with **Metcontrol Kft. on 5 February 2009** for the temporary performance of the Independent Verification Engineer's 's tasks for Section I of Metro line 4 for a consideration of HUF 1.5 million per month. This contract is not included in the list of contracts of Metro line 4. The IVE's tasks were performed on behalf of Metcontrol Kft. by its owner, Mr József Vagács.

¹⁷ The data related to the contract with Deloitte Könyvvizsgáló és Tanácsadó Kft. are as follows: Contract number: BKV Rt. 63-V-83-2005, Date of contract: 14 November 2005, Parties to the contract: Botond Aba (BKV CEO, as the Customer) & Deloitte Kft. (the Contractor), Cost bearer: BKV Zrt. Termination of the contract: By the letter no 1/470-1/2012/1 of 28 September 2012.

¹⁸The data related to the contract with METRAPORT Mérnöki Kivitelező és Tanácsadó Bt. are as follows: Contract number: BKV Rt. 63-V-75/2005, Date of contract: 21 October 2005, Parties to the contract: Botond Aba (BKV CEO, as the Customer) Péter Jávör (METRAPORT Bt.). The contract is not included in the list of contracts of Metro line 4 and does not form part of the "total cost of the completed project".

¹⁹ The data related to the contract with MetControl Korlátolt Felelősségű Társaság are as follows: Contract number: 1/195/2009, Date of contract: 5 February 2009, Parties to the contract: Dr István Kocsis (BKV Zrt. CEO, as the Customer) József Vagács (MetControl Kft, as the Contractor), Cost bearer: BKV Zrt.

Comments of the Beneficiary:

The contract was terminated by Mr József Vagács by his letter no 1/470-2/2012/1 of 28 September 2012. Reason for termination: The Independent Verifying Engineer started the job on 1 October 2012.

In its Resolution No. 373/2011 of 30 November 2011, the General Assembly of Budapest Municipality agrees that a public procurement procedure must be launched for the selection of the Independent Verification Engineer to supervise the project owner's decisions adopted during Section I of the Metro 4 project under Section 10.7.1 of the project contract of 19 January 2004 (amended on 17 August 2005) between Budapest Municipality and BKV Zrt.

BKV Zrt. also a signed second contract with Metcontrol Kft. on 10 May 2010. The subject-matter of Contract No. bsz-10/2010 is an "expert's report on the basis of document No NKH KU/VF/1841/1/2010 (on the stability of the wall of the damaged tunnel of line M2 and railway traffic safety)". The relationship between the contract and the Metro Line 4 Project is not clear.

Comments of the Beneficiary in relation to the relationship between the contract and the Metro Line 4 Project:

Sections 1.1, 1.2 and 1.4 of the Background section of the contract points out the link between the contract of agency and the Metro M4 project. While boring the Kelenföldi Railway Station – Baross tér section of the underground, between noon and 1 p.m. on 20 April 2010, the contractor company BAMCO damaged the cast-iron lining of the tunnel of the M2 metro line. The National Transport Authority (NKH) suspended any construction activities along the M4 line with immediate effect, ordering that an expert report must be drawn up.

After having launched an open public procurement tender procedure on 4 April 2012, on **1 October 2012**, BKV Zrt's DBR Project Directorate entered into contract²⁰ with the successful bidder **VIA Pontis Kft. Mérnöki Tanácsadó Kft.** for the performance of the IVE's duties.

In 2015, the task to engage an IVE was transferred from BKV Zrt. to the Hungarian State. The contract was signed by the NFÜ.

2.3.4. CONTRACT Co-00A, STRABAG RT. - HÍDÉPÍTŐ RT: – CONFLICT OF INTEREST.

Contract No, date: Co-00A, 2/12/2004

Contracting parties: Strabag Rt. - Hídépítő Rt.

Subject matter: Surface redevelopment works and civil engineering and structural works for exit No 2 on Metro line 2 at Baross Square

Value of the contract under the financing agreement: HUF 2 973 076 722

Amount paid: HUF 2 970 507 832

Financing method: Complementary funding (Member State +Budapest Municipality). Although this contract was not officially excluded by Commission Decision No. B(2009)6793 of 2 September 2009, it was not included into the KÖZOP payment requests either.

²⁰ The data related to the contract with VIA PONTIS Mérnöki Tanácsadó Korlátolt Felelősségű Társaság are as follows: Contract number: Bsz: 7/2012, Date of contract: 1 October 2012, Parties to the contract: Tibor Bolla (BKV Zrt. CEO, as the Customer) Gyula Kolozsi (VIA Pontis Kft, as the Contractor) Cost bearer: BKV Zrt. Metro Project Directorate M4 contract project.

Facts: Document No. 101/406/2007 of BKV Zrt., containing the "report on investigation No. 108", established that there was conflict of interest between the Strabag-Hídépítő consortium and Eurometro Kft.

OLAF remarks that Eurometro Kft. issued the following bills as a subcontractor, in relation to which it later issued a certificate of performance as Independent Verification Engineer under progress bills Nos 1, 2, 3, 4, 5, 6, 7 and 8 of Strabag Zrt.: Nos 2003/2005, 2207/2005, 0011/2005, 0013/2005, 0001/2006, 0006/2006 and 2007/2006 (6 March 2005 and 14 July 2006). Total amount: **HUF 64 225 598**

OLAF also noted that the same engineer certified performance on behalf of subcontractor Eurometro Kft., who certified the bill of Strabag Zrt. on behalf of Project Management Consultant Eurometro Kft.

2.3.5. CONTRACT Co-00B, HÍDÉPÍTŐ ZRT: - BREACH OF THRESHOLD RULES AND ABSENCE OF PUBLICITY.

Contract No, date: Co-00B, 29/3/2006

Subject matter: Building the interior of exit No 2 of the metro stop at Keleti Railway Station on Metro line 2, in Baross Square

Contracting party: Hídépítő Zrt.

Value of the contract under the financing agreement: HUF 1 184 499 900, including a conditional amount of HUF 200 500 000 (17 %)

Financing method: Complementary funding (Member State + Budapest Municipality)

Further to Commission Decision No. B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for Metro line 4.

Facts: According to the Irregularity Committee of the National Development Agency (NFÜ) and Annex 4 of report No. 32-18/18/2010 of the Government Control Office (KEHI), the contracting authority did not take into account the aggregation rules in the course of the public procurement based on the national procedure. The procedure in question should have been conducted in accordance with the EC threshold rules by adding also the other building investment projects launched in 2005 (e.g. Co-05 and Co-06).

The award of the contract did not comply with the publicity provisions of the EU Public Procurement Directives, and did not ensure a level of publicity enabling economic operators in other Member States to access the contract in question.

2.3.6. CONTRACT Co-02, ROLE OF THE BAMCO CONSORTIUM AND EXCLUSION OF THE TAISEI CORPORATION.

Contract No, date: Co-02, 23/1/2006

Subject matter: Line tunnels and related engineering structures

Contracting parties: BAMCO Consortium. Consortium leader: Vinci Construction Grand Projects (company registration number 334 851 664 RCS Nanterre, tax number FR 33 343 088 134). Members: Hídépítő Zrt. (company registration number 01-10-042234, tax number 10845462-2-44); Strabag AG (company registration number 61689, tax number 022/4246 Klagenfurt AT); Strabag International GmbH (company registration number HRB 19036, tax number DE 214/5824/0485); Strabag Rt. (company registration number 01-10-044850, tax number 12927012-2).

Value of the contract under the financing agreement: EUR 207 415 841

Amount paid: HUF 54 782 200 000

Financing method:

- KÖZOP [Transport Operational Programme] (EU + Member State + Budapest Municipality): HUF 41 524 644 555
- Complementary funding (Member State + capital city): HUF 13 257 555 445

Facts:

Public Procurement. On 22 December 2004, the contracting authority launched a negotiated procedure with prior publication of a contract notice, under chapter V of the Public Procurement Act, for "Contract No 2 relating to section I of metro line 4 in Budapest - line tunnels and related engineering structures".

Decision No. 11973/2007 of the Public Procurement Arbitration Board concluded that the arguments presented by the contracting authority (the connections between the public procurement operations for Metro line 4 and the investments for the main collector on the banks of the Danube, the efforts to minimise traffic restrictions, economic efficiency and expediency considerations, the owner's requirements) did not render the application of the negotiated procedure lawful.

The contracting authority laid down different eligibility requirements for individual bidders and consortia. In the case of joint bids, contrary to the conditions for joint eligibility, the requirement was that the consortium leader should individually meet a given criterion (e.g. five years of experience implementing contracts for drilling tunnels).

The companies that took part in the last (third) round of negotiations were the following:

- Taisei Corporation (initial price: HUF 41.3 billion; alternative bid: HUF 39.9 billion);
- Hochtief-Bouygues consortium (initial price: HUF 71.3 billion; alternative bid: HUF 62.6 billion);
- Zosw-Metro 4 (HUF 45.9 billion);
- BPV Metro 4 (Bilfinger Berger, Porr, Vegyépszer: HUF 62.9 billion)
- and the BAMCO consortium (HUF 51.8 billion).

Taisei Corporation's bid was excluded from the last round, because it had indicated Betonút Zrt. as a subcontractor it intended to use for more than 10 % of the contract value. In the preselection phase, Betonút Zrt. was also present as a member of another participating consortium that was not invited by the contracting party to the tender phase. According to BKV Rt., Betonút Zrt.'s designation as a subcontractor by Taisei Corporation made the bid invalid.

In the course of the negotiated procedure, the tenderers had the possibility to amend their bids up to the last tender session.

BKV Rt. never warned Taisei Corporation, in the course of the procedure, that designating Betonút Zrt. as a subcontractor would make the bid invalid.

The successful tenderer was the BAMCO consortium. The contracting authority signed the contract with them on 23 January 2006.

Contract implementation by the BAMCO Consortium.

The deadlines and costs foreseen for the tunnel drilling were greatly exceeded. **The tunnel drilling suffered of a total delay of 126 weeks.** Out of the 126 weeks, at least **35 weeks (approximately 9 months) were due to the fault of the Investor** as acknowledged by the Investor itself. In fact, BAMCO Consortium did not receive the pre-design plans until nine months after the signing of the contract. In the absence of those plans, the procedure could not continue.

Because this 35 weeks delays the Investor accepted the claim of BAMCO, responsible for the tunnel drilling, for **17.4 Million EUR**. This was paid on the reserve amount of the contract and therefore financed by "the EU, the State and Budapest Municipality" (see State Court of Auditors report September 2010).

The rest of the delay, according to Eurometro Kft., was due to the fault of the tunnel driller company, BAMCO. It was the State Court of Auditors' opinion, that such delay

should result in penalty as foreseen in the contract (maximum contractual penalty: 10%, 20 Million EUR).

Comments of the Beneficiary:

While an appeal procedure was in fact started in connection with the Co-02 public procurement procedure, the Public Procurement Arbitration Board did not adopt a decision condemning the Contracting Entity. The unsuccessful applicants did not initiate any additional civil-law appeal procedure. At the initial project phase, performance of the Co-02 Contract was delayed due to reasons under the Customer's control. This was mainly due to the following factors:

- *Re-design and organisation issues arising from the difficulties to acquire land in Etele square ;*
- *Delay in the implementation of the perforated shaft at the Szent Gellért square station, due to the following reasons:*
 - *delay in obtaining the final building permit*
 - *time-frame of the review of designs by the general architect/designer*
 - *final reinforced concrete support beams were erected instead of provisional steel trusses*
 - *stoppage of works for Christmas*
 - *relocation of public utility lines*

The Beneficiary also attached the calculations for the "9 month" period delay (see comments letter).

According to the Beneficiary, *"both the 9-month delay and the amount of EUR 20 million are, without specific references and breakdowns, appear to be implausible and irrelevant. In the case of complex and interrelated contracts, which often accumulate delays of interim and/or final time-limits themselves, it is impossible even to assume the facts that amount is based on and the methodology by which such an amount was arrived at. By contrast, it can be established as a fact that the number of disputed cases between BAMCO Kkt. and BKV Zrt. at various courts (Hungarian Chamber of Commerce and Industry's Court of Arbitration²¹ and the Budapest-Capital Regional Court²² (Fővárosi Törvényszék) is 36, 22 of which have been closed, while the amount in dispute has exceeded EUR 40 million."*

2.3.7. CONTRACT CO-03, HÍDÉPÍTŐ ZRT: - AN INVALID BID.

Contract No, date: Co-03, 27/12/2006

Subject matter: Structural works for the metro station at Kelenföldi Railway Station

Contracting party: Hídépítő Zrt. (company registration number 01-10-043037, tax number 10845462-2-44)

Value of the contract under the financing agreement: HUF 13 490 000 000 (including a conditional amount of HUF 2 800 000 000 - 21 %) + HUF 289 826 236 (succession on the contractor side and contract price adjustment)

Amount paid: HUF 13 779 826 236

Financing method: Complementary funding (Member State +Budapest Municipality)

²¹ In Hungarian: Magyar Kereskedelmi és Iparkamara Választottbírósága

²² In Hungarian: Fővárosi Törvényszék

Following Commission Decision . B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for Metro line 4.

Facts: According to the National Development Agency's Irregularity Committee and Annex 4 to report No. 32-18/18/2010 of the Government Control Office, the winning bid selected by the contracting authority was invalid.

Under the rectification procedure, the contracting authority asked some of the tenderers to amend the deadlines subject to penalties and the completion times in accordance with the requirements in the documentation (based on minimum/maximum values).

The bid could not be amended after the bid submission deadline. The completion time was an award criterion.

The successful tenderer submitted a price bid that was lower than those of two other tenderers that had properly submitted the completion period before the rectification.

The land acquisition at Kelenföld was delayed by more than 6 months, which caused an additional cost of 3 billion HUF (approximately 11 million EUR) to the project.

2.3.8. CONTRACT Co-04/A, BPV METRO 4 ÉPÍTÉSI KKT: - AN INVALID BID.

Contract No, date: Co-04/A, 1/3/2006

Subject matter: Structural works for the metro station at Tétényi Street

Contracting party: BPV Metro 4 Építési Kkt. Members: Allgemeine Baugesellschaft - A. Porr Aktiengesellschaft (company registration number FN34853f, tax number 14490102 AT); Bilfinger Berger Aktiengesellschaft (company registration number HRB4444, tax number 38182/01002); Vegyépszer Zrt. (company registration number 01-10-042273, tax number 10866966-2-44).

Value of the contract under the financing agreement: EUR 13 469 995 + EUR 1 977 314.94 (amendment No. 2)

Amount paid: HUF 4 084 600 000 (HUF 3 577 573 567 + HUF 507 026 433)

Financing method: Complementary funding (Member State + capital city)

Further to Commission Decision No. B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for Metro line 4.

Facts: According to the National Development Agency's Irregularity Committee and Annex 4 to report No 32-18/18/2010 of the Government Control Office, the contracting authority carried out a negotiated procedure without prior publication of a contract notice, which was not justifiable from a technical point of view.

According to the NFÜ's Irregularity Committee, the argument that selecting this type of procedure had been justified by extreme urgency could not be accepted, because it shortened the process of designing and building the metro stations covered by the procedure by only one month. After the conclusion of the contracts, the parties amended the contracts on the basis of the exchange risk relating to the currency used for payments. The amendments placed the tenderers in a more favourable situation.

2.3.9. CONTRACT Co-04/B, SWO METRO 4 ÉPÍTŐ KKT: - AN INVALID BID.

Contract No, date: Co-04/B, 1/3/2006

Subject matter: Structural works for the metro station at Bocskai Street

Contracting party: SWO Metro 4 Építő Kkt. Members: Swietelsky Építő Kft. (company registration number 01-09-720396, tax number 10572795-2-44); Obayashi Corporation

(company registration number 1299-01-077383, Shinagawa Intercity Tower B, 2-15-2, Konan, Minato-ku, Tokyo 10-8502, Japan).

Value of the contract under the financing agreement: EUR 32 200 000

Amount paid: HUF 8 822 400 000

Financing method: Complementary funding (Member State + Budapest Municipality)

Further to Commission Decision No. B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for Metro line 4.

Facts: According to the NFÜ's Irregularity Committee and Annex 4 to report No 32-18/18/2010 of the Government Control Office, the contracting authority carried out a negotiated procedure without prior publication of a contract notice, which was not justifiable from a technical point of view. According to the Irregularity Committee, the argument that selecting this type of procedure was justified by extreme urgency could not be accepted, because it shortened the process of designing and building the metro stations covered by the procedure by only one month. After the conclusion of the contracts, the parties amended the contracts on the basis of the exchange risk relating to the currency used for payments. The amendments placed the tenderers in a more favourable situation. Having regard to Section 225(1)(b) of the Public Procurement Act, this was a breach of Sections 1(1) and 303 of the Public Procurement Act.

At the time of the State Court of Auditors' report, the claims of SWO Metro 4 Építő Kkt. amounted to 5.7 million EUR, of which 2.1 were already accepted by the Public Procurement Arbitration Board.

2.3.10. CONTRACT Co-04/C, STRABAG ZRT: - AN IRREGULAR CONTRACT.

Contract No, date: Co-04/C, 1/3/2006

Subject matter: Structure of the metro station at Móricz Zsigmond roundabout

Contracting party: Strabag Zrt. (company registration number 01-10-044850, tax number 12927012-2-44).

Value of the contract under the financing agreement: EUR 28 579 200

Amount paid: HUF 7 456 934 275

Financing method: Complementary funding (Member State + Budapest Municipality).

Further to Commission Decision No B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for metro line 4.

Facts: According to the National Development Agency's Irregularity Committee and Annex 4 to report No 32-18/18/2010 of the Government Control Office, the contracting authority carried out a negotiated procedure without prior publication of a contract notice, which was not justifiable from a technical point of view.

According to the NFÜ's Irregularity Committee, the argument that selecting this type of procedure had been justified by extreme urgency could not be accepted, because it shortened the process of designing and building the metro stations covered by the procedure by only one month. After the conclusion of the contracts, the parties amended the contracts on the basis of the exchange risk relating to the currency used for payments. The amendments placed the tenderers in a more favourable situation. Having regard to Section 225(1)(b) of the Public Procurement Act, this was a breach of Sections 1(1) and 303 of the Public Procurement Act.

2.3.11. CONTRACT Co-05/A, HÍDÉPÍTŐ ZRT: - AN IRREGULARITY DESIGNED BID PROCEDURE.**Contract No, date:** Co-05/A, 3/7/2006**Subject matter:** Structure of the metro station at Fővám Square**Contracting party:** Hídépítő Zrt. (company registration number 01-10-043037, tax number 10845462-2-44)**Value of the contract under the financing agreement:** EUR 39 377 659**Amount paid:** HUF 10 118 300 000**Financing method:** Complementary funding (Member State + Budapest Municipality).

Further to Commission Decision No B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for metro line 4.

Facts: According to the National Development Agency's 's Irregularity Committee and Annex 4 to report No. 32-18/18/2010 of the Government Control Office, at the start of the procedure the contracting authority did not provide for the possibility to divide the bids into lots. It provided for this only in the tender phase, by amending the contract notice. The contracting authority announced several winners. Any such amendment to the rules of procedure goes against the principle of equal opportunities and distorts competition.

The contracting party declared a request to participate invalid due to the absence of references, even though it had not invited the tenderer to submit rectifications.

2.3.12. CONTRACT Co-05/B, SWO METRO 4 'KÁLVIN TÉR' ÉPÍTŐ KKT: - AN IRREGULARLY DESIGNED BID PROCEDURE.**Contract No, date:** Co-05/B, 3/7/2006**Subject matter:** Structure of the metro station at Kálvin Square**Contracting party:** SWO Metro 4 'Kálvin tér' Építő Kkt. (Swietelsky Építő Kft., Obayashi Corporation)**Value of the contract under the financing agreement:** EUR 34 967 227**Amount paid:** HUF 9 816 900 000**Financing method:** Complementary funding (Member State + Budapest Municipality).

Further to Commission Decision No. B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for metro line 4.

Facts: According to Annex 4 to report No 32-18/18/2010 of the Government Control Office, at the start of the procedure the contracting authority did not provide for the possibility to divide the bids into lots. It provided for this only in the tender phase, by amending the contract notice. The contracting authority announced several winners. Any such amendment to the rules of procedure goes against the principle of equal opportunities and affects competition.

The contracting party declared a request to participate invalid due to the absence of references, even though it had not invited the tenderer to submit rectifications.

2.3.13. CONTRACT Co-06/A, SWO METRO 4 "RÁKÓCZI TÉR" ÉPÍTŐ KKT: - AN IRREGULARLY DESIGNED BID PROCEDURE.**Contract No, date:** Co-06/A, 21/9/2006**Subject matter:** Structure of the metro station at Rákóczi Square

Contracting party: SWO Metro 4 'Rákóczi tér' Építő Kkt. (Swietelsky Építő Kft., Obayashi Corporation)

Value of the contract under the financing agreement: HUF 6 349 000 001

Amount paid: HUF 6 510 000 000

Financing method: Complementary funding (Member State + Budapest Municipality).

Further to Commission Decision No B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for metro line 4.

Facts: According to Annex 4 to report No 32-18/18/2010 of the Government Control Office, at the start of the procedure the contracting authority did not provide for the possibility to divide the bids into lots. It provided for this only in the tender phase, by amending the contract notice. The contracting authority announced several winners. The eligibility requirements were laid down for the entire public procurement operation. The contracting authority announced several winners. Any such amendment to the rules of procedure goes against the principle of equal opportunities and affects competition.

2.3.14. CONTRACT Co-04/C, STRABAG ZRT: - AN IRREGULARLY DESIGNED BID PROCEDURE.

Contract No, date: Co-06/B, 21/9/2006

Subject matter: Structure of the metro station at Népszínház Street

Contracting parties: BPV Metro 4 'NeKe' Építési Kkt. (Vegyépszert Zrt., Allgemeine Baugesellschaft - A. Porr Aktiengesellschaft; Bilfinger Berger)

Value of the contract under the financing agreement: HUF 6 027 742 595

Amount paid: HUF 5 937 000 000

Financing method: Complementary funding (Member State + Budapest Municipality).

Further to Commission Decision No. B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for metro line 4.

Facts: According to Annex 4 to report No 32-18/18/2010 of the Government Control Office, at the start of the procedure the contracting authority did not provide for the possibility to divide the bids into lots. It provided for this only in the tender phase, by amending the contract notice. The contracting authority announced several winners. The eligibility requirements were laid down for the entire public procurement operation. The contracting authority announced several winners. Any such amendment to the rules of procedure goes against the principle of equal opportunities and distorts competition.

2.3.15. CONTRACT Co-06/C, BPV METRO 4 "NEKE" ÉPÍTÉSI KKT: - AN IRREGULARLY DESIGNED BID PROCEDURE.

Contract No, date: Co-06/C, 21/9/2006

Subject matter: Structure of the metro station at Keleti Railway Station

Contracting party BPV Metro 4 "NeKe" Építési Kkt. (Vegyépszert Zrt., Allgemeine Baugesellschaft - A. Porr Aktiengesellschaft; Bilfinger Berger)

Value of the contract under the financing agreement: HUF 13 789 175 633

Amount paid: HUF 13 184 952 729

Financing method:

- KÖZOP: HUF 12 969 152 729

- Complementary funding (Member State + Budapest Municipality): HUF 215 800 000

Facts: According to Annex 4 to report No. 32-18/18/2010 of the Government Control Office, at the start of the procedure the contracting authority did not provide for the possibility to divide the bids into lots. It provided for this only in the tender phase, by amending the contract notice. The contracting authority announced several winners. The eligibility requirements were laid down for the entire public procurement operation. The contracting authority announced several winners. Any such amendment to the rules of procedure goes against the principle of equal opportunities and distorts competition.

Comments of the Beneficiary:

During the irregularity procedure conducted in 2010, the National Development Agency audited contract no Co-06/C, entered into with BPV Metro 4 "Neke" Építési Kkt, ascertaining that the full net amount of HUF 58 358 521 024 of that contract was eligible for financing.

Remarks following the comments of the Beneficiary:

According to data provided by the Beneficiary on the total amounts paid under the project, the total amount paid for contract Co-06/C was HUF 13 184 952 729. It is therefore unclear why in the letter of comments, the Beneficiary mentioned the amount of HUF 58 358 521 024.

2.3.16. CONTRACT CO-07, SWIETELSKY MAGYAROSZÁG KFT: - AN IRREGULAR CONTRACT AND POSSIBLE CORRUPTION.

Contract No, date: Co-07, 26/11/2007

Subject matter: Building the interior of the metro stations

Contracting party: Swietelsky Magyarország Kft.

Value of the contract under the financing agreement: HUF 39 580 594 950 + HUF 3 992 405 050 (amendment)

Amount paid: HUF 43 573 000 000

Financing method:

- KÖZOP: HUF 39 529 000 000
- Complementary funding (Member State + Budapest Municipality) - basic contract: HUF 51 594 950
- Complementary funding (Member State + Budapest Municipality) - amendment: HUF 3 992 405 050

Facts: According to Annex 4 to report No. 32-18/18/2010 of the Government Control Office, the contracting authority acted inconsistently and unlawfully in respect of rectifications in several cases, including that of the successful tenderer.

1.) In the course of the rectification procedure the successful tenderer withdrew one of the subcontractors that had exceeded the 10 % threshold in the preselection phase. This was an unlawful amendment to the request to participate.

2.) In the case of other applications, the Beneficiary noticed that information was missing in the applications and the applications should be considered as non-compliant. The Beneficiary sent out an invitation to submit rectifications, but even in the cases when no answer was received, it declared all requests as valid and invited the companies to tender. The Beneficiary collected most of the reasons for non-compliance in the document called "summary of evaluation", which was sent to all applicants. The competitors were thus aware, but no appeal was lodged.

According to the testimony given on 18 February 2010 in the course of the criminal proceedings, by Mr AA, former managing director of BKV Zrt., the Deputy Mayor indirectly requested that 5 % of the value of the contract to be concluded be "put on the table" in order to receive inside BKV information that would help the company win the tender procedure. They informed the managing director of Swietelsky Kft. that the tender procedure for the interior building works on metro line 4 could be won only by a bid under the set maximum amount of HUF 39.6 billion.

This was important information because, in practice, during the works all the tenderers submitted bids that were higher than the set tender amount. Subsequently, since none of the bids met the criteria in the tender notice, the contract was concluded with BKV for the higher amount. Everybody did the same also in the case of the tender procedure for the interior works, except Swietelsky Kft. They submitted a bid just below the price threshold and were awarded the contract as the only tenderer that qualified.

Later, Mr AA was not willing to make any other statements, invoking his right to avoid self-incrimination.

An investigation was initiated in connection with the public procurement procedure in question, but it was terminated on the basis of Article 190. (1) of the Criminal Procedure Code (Be.): The prosecutor terminate the investigation decision, [...] b) if it cannot be based on the data in the investigation of an offence, and not expected to result in the continuation of the process.²³

Comments of the Beneficiary (see also letter of comments):

While an appeal procedure was started in connection with the Co-07 public procurement procedure, the Public Procurement Arbitration Board did not adopt a decision condemning the Contracting Entity. The unsuccessful applicants did not initiate any additional civil-law appeal procedure. The Report contains references to the statements and testimonies of persons referred to by their initials. Such testimonies are not known by or available to the Municipal Government and DBR MPI, the Project Implementer, considering that, in our opinion, they were recorded during criminal proceedings against persons in tangential relationship with the Project.

In our opinion, the testimonies of persons heard in the criminal proceedings as witnesses or suspects cannot be treated as facts, considering that a testimony is only relevant to the procedure concerned.

2.3.17. CONTRACT Co-08, TÓTH T.D. FŐVÁLLALKOZÓ ÉS MÉRNÖKIRODA KFT.

Contract No, date: Co-08, 29/10/2008

Subject matter: Track construction

Contracting party: Tóth T.D. Fővállalkozó és Mérnökiroda Kft.

Value of the contract under the financing agreement: HUF 13 460 000 000 + HUF 290 904 914 (amendment No 1) + HUF 990 400 000 (amendment No 2)

Amount paid HUF 14 741 304 914

Financing method:

- KÖZOP: HUF 11 958 400 000 + HUF 290 904 914 + HUF 990 400 000
- Complementary funding (Member State + Budapest Municipality): HUF 1 501 600 000

²³ 190. szakasz (1) Az ügyész a nyomozást határozattal megszünteti, [...] b) ha a nyomozás adatai alapján nem állapítható meg bűncselekmény elkövetése, és az eljárás folytatásáról sem várható eredmény,

Facts: According to Annex 4 to report No 32-18/18/2010 of the Government Control Office, the contracting authority laid down different eligibility requirements for sole bidders and consortia.

Comments of the Beneficiary:

While an appeal procedure was started in connection with the Co-08 public procurement procedure, the Public Procurement Arbitration Board did not adopt a decision condemning the Contracting Authority. The unsuccessful applicants did not initiate any additional civil-law appeal procedure.

During the irregularity procedure conducted in 2010, the NFÜ audited contract no Co-08, entered into with Tóth T. D. Kft, ascertaining that the full net amount of HUF 13 460 000 000 of that contract was eligible for financing.

2.3.18. CONTRACT CO-09, SIEMENS M4 BUDAPEST CONSORTIUM: - CONFLICT OF INTEREST AND OTHER POSSIBLE IRREGULARITIES/OFFENCES.

Contract No, date: Co-09, 26/7/2006

Subject matter: Systems, power supply

Contracting party: Siemens M4 Budapest Consortium. Consortium leader: Siemens AG (company registration number HRB 12300, tax number 99003257-07362300 DE), Siemens Zrt. (company registration number 01-10-041548, tax number 10495892-2-44), Siemens Transportation System sas (company registration number 38405570468, tax number 920 92 0145 046 001 011 FR).

Value of the contract under the financing agreement: EUR 108 850 000 + the total amount of amendments Nos 1 and 2: EUR 32 050 000 (risk provisioning)

Amount paid: HUF 31 730 013 972

Financing method:

- KÖZOP: HUF 28 031 000 000
- Complementary funding (Member State + Budapest Municipality): HUF 1 744 991 588 + HUF 751 608 412 + HUF 1 202 413 972

Facts: According to Annex 4 to report No. 32-18/18/2010 of the Government Control Office, some of the eligibility requirements were used excessively (turnover, and the length of 20 kilometres of track requested as a reference compared with the length of 7.34 kilometres required to be constructed).

The documents available to OLAF show that **in the evaluation phase the successful tenderer acquired inside information**. Siemens received regular information relating to the other tenderers and to the procedure in general. Siemens AG already knew what the award decision contained on 29 June 2006, but the decision was published only on 7 December 2006. The last meeting of the tender committee took place only on 7 July 2006.

The claims of Siemens AG as in September 2010 (audit report of the State Court of Auditors) amounted to 37,2 million EUR, out of which 8 million were already accepted by the FIDIC Engineer (at that moment the FIDIC Engineer was also the project management consulting company, Eurometro Kft.). The Engineer was in conflict of interests situation as it was described above.

Siemens AG and Siemens Rt. paid the amounts listed below to the following companies linked to various **decision makers** within Budapest Municipality , members of the BKV's DBR Metro Directorate, and Eurometro Kft. (project manager + FIDIC Engineer):

- Media Magnet Kft.²⁴: HUF 331 200 000 (EUR 1 265 056), between 14.09.2006 and 06.08.2007;

²⁴ Media Magnet Médiaügynökség Kft., 1141 Budapest, Gödöllői utca 78., company registration

- Szemi-Soft B 91 Bt.²⁵: EUR 79 686. The owner and managing director of Szemi-Soft B 91 Bt. was Mr Sz L, who also carried out project management consulting activities and supervising engineer tasks on behalf of Eurometro Kft. for the DBR Metro Directorate, which he also represented in person;
- Gantan Kft.: HUF 16 250 000 (EUR 64 656). The payment made to this company was made into the same account as the payments for Szemi-Soft B 91 Bt.;
- Merito Consulting Kft.: HUF 37 875 000 (EUR 150 150). The owner was TI, who was Deputy Managing Director of MÁV Start when Siemens made the payments. Merito Consulting Kft. was at the same time MÁV Zrt.'s consultant on strategic projects, and in that position it was also providing advice in relation to metro line 4. MÁV Zrt. was one of the co-owners of Eurometro Kft., which carried out project management consulting activities and supervising engineer tasks.
- Budapest Investment Zrt.: HUF 14 000 000 (EUR 56 000). The owner was PJ, who was MÁV Zrt.'s deputy managing director in charge of strategy when the payments were made.

There is conflict of interests situation between Siemens (a tenderer and later the builder) and the companies involved in the payments (companies linked to decision makers playing a role in the public procurement procedure, and later responsible for the control).

With regard to Média Magnet Kft., in the course of the criminal proceedings H E stated that "*Média Magnet Kft. is clearly P L's company²⁶, even though on paper the majority owner is W J and the managing director is M M. P L is the one who gives instructions. The party funding is channelled via this company. The public utility companies in Budapest and the state-owned companies had to advertise through Média Magnet, and about half of the amount received was used for purposes decided by P L via Média Magnet.*"

An investigation was launched in connection with Siemens AG in Germany. It ended following an out-of-court settlement.

An investigation was launched in connection with public procurement procedure Co-09 in Hungary. It was terminated due to lack of evidence.

An investigation was launched by the European Investment Bank in connection with public procurement procedure Co-09. It was terminated on the basis of Article 190. (1) of the Criminal Procedure Code (Be.) "*The prosecutor terminates the investigation decision, [...] b) if it cannot be based on the data in the investigation of an offense, and not expected to result in the continuation of the process.*"

Comments of the Beneficiary (see also letter of comments):

"In our opinion, the testimonies of persons heard in the criminal proceedings as witnesses or suspects cannot be treated as facts, considering that a testimony is only relevant to the procedure concerned.

It should be noted that, in the Hungarian legal system, there is no out-of-court settlement in criminal cases. According to the Report, the fact that a criminal act had been committed was not included in the judgment of the German court."

number 01 09 697205, tax number 12151024-2-42. Between December 2004 and October 2006, it was owned by Opt Ügynök Kft., 1037 Budapest, Bojtár utca 64-66, company registration number 01 09 732344, tax number 13381585-2-41.

²⁵ Szemi-Soft-91 Műszaki Tervező és Számítástechnika Bt., 1164 Budapest, Lakatos u 4., company registration number 01 06 114326, tax number 28220503-1-42, bank account number OTP 11705008-20424332-00000000 - under liquidation.

²⁶ Since 1998, the treasurer of the Hungarian Socialist Party (MSzP)

2.3.19. CONTRACT K2C, SWO METRO-4 RÁKÓCZI TÉR ÉPÍTÉSI KKT: - AN IRREGULAR NEGOTIATED PROCEDURE.**Contract No, date:** K2C, 10/8/2007**Subject matter:** Implementation of related surface works projects at Rákóczi Square**Contracting party:** SwO Metro-4 Rákóczi tér Építési Kkt. The project company's owners: Kabushiki Kaisha Obayashi-Gumi JP (Osakashi, Kitahama-Higashi Chuo-ku 4-33) and SWIETELSKY Építő Kft. (company registration number 01 09 720396, tax number 10572795-2-43).**Value of the contract under the financing agreement:** HUF 994 800 000 + HUF 224 000 000 (amendment No 1)

Amount paid: HUF 1 218 800 000

Financing method: Budapest Municipality's own funds

Further to Commission Decision No. B(2009)6793 of 2 September 2009 (Annex 1), the value of this contract was removed from the eligible project costs for Metro line 4.

Facts: Further to the irregularity procedure carried out in connection with the Transport Operational Programme by the Managing Authority, the contract was declared to be affected by irregularities and was removed from the eligible costs. The decision was based on the fact that the contracting authority awarded the contract in question using the negotiated procedure without prior publication of a contract notice, pursuant to Article 255(2) of the Public Procurement Act (complementary building investment). The contracting authority invited only one bidder to tender, and the bidding process was not competitive. The type of procedure chosen was justified neither by the emergence of unforeseeable circumstances nor by indivisibility from the public procurement under the initial investment project.*Comments of the Beneficiary (see also letter of comments):**The Contracting Entity conducted a negotiated procedure without the publication of a notice. It notified the Arbitration Committee of its reasons, without the latter raising any objections. Its reasons were complex:*

- (1) the construction of an underground parking lot was not included in the earlier contract*
- (2) it was an unforeseeable reason for the supplementary construction project that its financing was allowed by the General Assembly of Budapest Municipality in 2007 only (Resolution No 366/2007)*
- (3) technical inseparability: the joint construction of the station's cabinet structure and the reinforced concrete structure of the underground parking lot is justified by economy and guarantee reasons; the joint relocation of public utility lines also enables significant savings; the experts and machinery are on the site; their realignment would involve additional costs and time.*

*The Contracting Authority requested a bid from the Rákóczi square structural construction project company.***2.3.20. CONTRACT Co-10, ALSTOM TRANSPORT SA: - ONGOING CRIMINAL PROCEDURE.****Contract No, date:** Co-10, 30/5/2006**Subject matter:** Acquiring rolling stock: metro train units**Contracting party:** Alstom Transport SA**Value of the contract under the financing agreement:** EUR 76 444 919

Amount paid: HUF 22 905 000 000

Financing method: KÖZOP

2.3.20.1. THE PUBLIC PROCUREMENT PROCEDURE

The contracting authority published the call for participations notice TED 2005/S-115-114012 on 16 June 2005²⁷. The subject of the public procurement was the supply of 22 metro carriages for Budapest Metro line 2 and 15 (+7 optional) metro carriages for Budapest Metro line 4.

This type of procedure, a negotiated procedure with prior publication of a contract notice is foreseen in Article 30 of Directive 2004/18/EC, Article 124-130 of the Hungarian Public Procurement Act. It includes two phases: a first "participation" or "pre-selection" phase, and an "application phase".

The deadline for participation was set to be 16. August 2005 at 10:00 a.m.

In the tender participation-pre-selection phase the contracting authority received eight requests to participate from the following; (i) Metrowagonmash Rt., (ii) Siemens, (iii) CAF SA, (iv) Hanwha-Rotem Vegyesvállalat, (v) Budapest Metropolis Konzorcium, (vi) Bombardier Budapest Metró Konzorcium, (vii) AnsaldoBreda SPA, and (viii) CSR Co.

In the pre-selection stage the bids of AnsaldoBreda SPA and CSR Co were excluded by the Contracting Authority. The reasons given for these exclusions were later declared to be "invalid" by the NFÜ's Irregularity Committee. Despite the "invalid" exclusion of these two bids, the Contracting Authority continued with the tender procedure and the EU funding of the contract.

Also in this pre-selection stage although the application of the company CAF SA met all the formal requirements of a valid application the contracting authority did not invite CAF SA to bid in the second phase and it continued with only 5 candidates out of the 6 remaining "valid" applications. Upon appeal, this action by the contracting authority to exclude CAF SA was found to be irregular by the Hungarian Public Procurement Arbitration Board, but again the NFÜ's Irregularity Committee and the Contracting Authority concluded that this should not prevent the continuation of the tender procedure and the EU funding of the contract.

The second phase, the application phase, of the public procurement procedure was composed of a written phase and a negotiation phase.

According to the official documentation received by OLAF²⁸, the initial bid of Budapest Metropolis Konzorcium (led by Alstom Transport SA) ranked in last place because its tender bids for both supply and maintenance of the carriages were very high and, in addition, certain technical solutions proposed by it were less favourable when compared to the other bids.

During the negotiated procedure phase the bids of Siemens and Hanwha-Rotem Vegyesvállalat were excluded for "formal reasons" and the bid of Bombardier was also stated to be non-compliant and excluded for several formal reasons and also for another legally questionable reason.

Thus the two remaining bids were those received from Budapest Metropolis Konzorcium and Metrowagonmash Rt. The best price, both for the supply and the maintenance costs, was that initially offered by Metrowagonmash Rt.

²⁷ OJ 16.6.2005 (European Official Journal) and 24.6.2005 KÉ 71. 8862/2005 (Hungarian Official Journal for tender procedures).

²⁸ Minutes of meeting of the Opening Committee, 27.01.2006.

The contracting authority then asked both bidders to "clarify" their figures in relation to the numbers of persons to be transported by the metro.

In this clarification phase Alstom Transport SA, acting on information received, then significantly altered its bid figures in relation to the number of persons that the metro line was projected to carry. The exact nature of this detailed information, how it was obtained, and the crucial difference it made to the final outcome of the bidding process has been communicated to the UK Serious Fraud Office (SFO) which in turn has already shared it with the court case defendants (under UK procedural rights rules) in its ongoing case in the matter. The judicial processes in these matters are still ongoing in both the UK and in Hungary covering this and an other related matters.

The project contract was signed on 30 May 2006 with Budapest Metropolis Konzorcium, led by Alstom Transport SA. The total contract amount was set at EUR 263 634 793 divided as follows:

- Budapest Metro line 2, 22 metro carriages: EUR 149 840 452 EUR (EUR 139 281 956 for the carriages and EUR 10 558 496 for the maintenance);
- Budapest Metro line 4, 15+7 optional metro carriages: EUR 113 794 341 EUR (EUR 108 288 934 for the carriages and EUR 5 505 407 for the maintenance).

Several serious problems then arose during the contract implementation. For example, Alstom could not obtain in time the necessary authorisations for the manufacturing and the set-up of the new carriages from the Hungarian authorities. This caused a dispute between Alstom and the contracting authority, which resulted in an agreement on new deadlines.

2.3.20.2 ONGOING UK AND HUNGARIAN CRIMINAL INVESTIGATIONS:

There are on-going criminal procedures in relation to this contract in Hungary and in the UK.

In its investigation OLAF has established that Alstom SA signed consultancy contracts with two Hungarian firms in order to provide services, including "lobbying" for the successful bid of Alstom SA, for the supply of rolling stock for Budapest Metro Lines 2 and 4. These companies were AssistConsult Kft. and another named consultancy company, the details of which are already known to both the Hungarian Judiciary and the investigative authorities of the United Kingdom respectively. The general details of their activities, which are already in the public domain, are as follows:

(i) AssistConsult Kft.²⁹ (previously known as Medgyessy Tanácsadó Kft.) was a "consultant" to the Alstom group from at least 2002 onwards. AssistConsult Kft. signed three consultancy contracts with Alstom Power Hungária Zrt. (the Hungarian subsidiary of Alstom Transport SA) between 2002 and 2007. The stated tasks of AssistConsult Kft. were to provide consultancy services, including lobbying for the interests of Alstom in public procurement issues in Hungary. AssistConsult Kft. was paid on a monthly basis.

On **20 October 2005**, after the publication of the call for tender for Budapest Metro Lines 2 and 4, eight months before the signature of the contract for the supply of rolling stock, AssistConsult Kft. signed a consultancy contract with Alstom International Ltd. and Alstom Transport SA. for "lobbying" in the interests of the principal in the tender for the supply of rolling stock. The contract was based on a success fee, i.e. AssistConsult Kft. would only be paid if Alstom Transport SA was successful in winning.

For its various services to Alstom International SA in the years 2007 and 2008, AssistConsult Kft. received almost € 600 000 in payments.

²⁹ Company Registry No. 01 09 674759, tax number 11753513-2-43.

From 13.07.1998 to 14.05.2002 the owners of Medgyessy Tanácsadó Kft., the predecessor company of the company AssistConsult Kft. were a Mr and Ms Medgyessy. On 15.05.2002 the company Medgyessy Tanácsadó Kft. was transformed into the company AssistConsult Kft. and was sold for 20.000.000 HUF to a third named person, who was also manager of the company.

On 15.08.2006 a company called M.P. Europa Kft. bought 50% of the ownership of AssistConsult Kft. The owners of the company M.P.Europa Kft were listed as a Mr and Mrs Medgyessy and through this arrangement Mr and Mrs Medgyessy again became owners of AssistConsult Kft.

OLAF notes that this Mr Medgyessy is the person who was the Prime Minister of Hungary from 27.5.2002 to 25.08.2004, and that he was acting Prime Minister until 29.09.2004. From October 2004 to May 2008 Mr Medgyessy became a traveling "business ambassador" for Hungary. He also continued to be a member of the Hungarian Parliament from October 2004 to October 2006.

In correspondence with OLAF about his role in these matters Mr Medgyessy has stated that his functions as a traveling ambassador for Hungary, included the building of political international relationships ("politikai nemzetközi kapcsolatfelépítés"), but that these functions "did not include dealing with the investments of specific foreign companies".

(ii) The second named Hungarian consultancy company to the Alstom group had a general "Representation Agreement" with Alstom Power Hungária Zrt. from at least 2004 onwards and payment to it was based on an annual fee. On **15 February 2007** this second named consultancy company also signed a specific "contract" in relation to the **tender for the supply of rolling stock** with Alstom International Ltd. and Alstom Transport SA (i.e. eight months after the contract for the supply of the rolling stock, etc. was signed between Alstom Transport SA and the Municipality of Budapest). OLAF notes that over € 1,25 m was transferred to the bank account of this named consultancy company for services rendered.

As stated above, the details of the nature of the business relationships between Alstom and the consultancy companies mentioned is the subject of confidential correspondence between OLAF and the UK and Hungarian judicial authorities respectively. Given that judicial processes in relation to these matters are on-going in both jurisdictions the detailed nature of this information is not given in this Final Report.

(iii) Lastly in this regard OLAF notes that two other very high value, and highly questionable, consultancy contracts were signed with two other non-Hungarian companies just 9 days after the metro project contract was signed. Very large payments were made to these companies purportedly for services rendered in relation to the metro project (even though the metro project contract was already signed). These contracts are also the subject of ongoing investigation by the UK and the Hungarian judicial authorities.

2.3.21. CONTRACT K1/A-2, FŐMTERV-UNITEF CONSORTIUM: - AN IRREGULAR BID PROCEDURE.

Contract No, date: K1/A-2, 3/8/2007

Subject matter: Designing related surface works projects for the metro stations in Buda

Contracting party: Főmterv-Unitef Consortium. Members: Főmterv'TT Fővárosi Mérnöki Tervező és Tanácsadó Zrt. (company registration number 01 10 041867, tax number 10751257-2-41), UNITEF-83 Műszaki Tervező és Fejlesztő Zrt. (company registration number 01 10 043022; tax number 12108129-2-43)

Value of the contract under the financing agreement: HUF 519 200 000 + HUF 119 715 200 (non-deductible VAT)

Amount paid: HUF 638 915 200

Financing method: KÖZOP

Facts: The basis for using the public procurement procedure selected was extreme urgency (the contract with the winner of the earlier procedure had been terminated due to breach of contract). According to the NFÜ's Irregularity Committee and Annex 4 to report No 32-18/18/2010 of the Government Control Office, the public procurement operation in question did not meet all the conditions to justify a procedure based on exceptional urgency. For example, some elements had to be implemented only within 20 months from the conclusion of the contract.

The report issued by the Government Control Office concluded that there had been no effective competition in the case of the procedure in question, because only one bid was received, even though the invitation was sent to both consortia that had submitted valid price bids under the earlier procedure.

Comments of the Beneficiary:

No irregularities were established in connection with the contract by the NFÜ audit commenced in 2010 or any subsequent investigations.

2.3.22. CONTRACT P16, CEPD BEFEKTETÉSI ÉS INGATLANFEJLESZTÉSI KFT: - AN IRREGULAR BID PROCEDURE.

Contract No, date: P16, 19/7/2006

Subject matter: Rental of office space

Contracting party: CEPD Befektetési és Ingatlanfejlesztési Kft. (company registration number 01 09 660928; tax number 12274259-2-41)

Value of the contract under the financing agreement: HUF 330 000 000

Amount paid: HUF 556 506 000

Financing method:

- KÖZOP: HUF 531 286 000
- Complementary funding: HUF 25 220 000

Facts: According to Annex 4 to report No 32-18/18/2010 of the Government Control Office, the bid declared the winner by the contracting authority did not meet the financial and economic requirements stated in the call for tender.

Comments of the Beneficiary:

During the irregularity procedure conducted in 2010, the NFÜ audited contract no. P16, entered into with CEPD Befektetési és Ingatlanfejlesztési Kft., ascertaining that the full net amount of that contract was eligible for financing.

*In 2015, the Ministry of National Development started an irregularity procedure in connection with the amendment of the contract in question. The procedure was closed with an **order to reimburse HUF 1 371 270**, which amount has not been repaid to date, considering that the Ministry has failed to serve a payment notice.*

2.3.23. CONTRACT P7, AON KFT: - AN IRREGULAR BID PROCEDURE.

Contract No, date: P7, 13/09/2005

Subject matter: Insurance consulting services

Contracting parties: AON Magyarország Biztosítási Alkusz, Kockázatkezelési és Humán Tanácsadó Kft (company registration number: 01 09 073672; tax number: 10481143-2-41).

Value of the contract under the financing agreement: HUF 77 380 000
+ HUF 53 270 000 (contract amendment No. 1)

Amount paid: HUF 130 650 000

Financing method:

- KÖZOP: HUF 90 000 000
- Complementary funding: HUF 40 650 000

Facts: According to the NFÜ's Irregularity Committee and Annex 4 of Government Control Office report No. 32-18/18/2010, the Public Procurement Arbitration Board declared invalid the last column "weighting" of the table "breakdown of tender price" in Annex 1 of the tender documentation. The Public Procurement Arbitration Board found that the part of the contracting authority's table concerning the weightings for the tender price breakdown was unlawful, because in using it the contracting authority was not assessing the actual consideration as set out in the tenders, but instead the weighted consideration as calculated by the contracting authority.

The winning tenderer was selected on the basis of the tender documents declared unlawful by the Public Procurement Arbitration Board.

Comments of the Beneficiary:

The contract was not subject to the irregularity procedure carried out by the Ministry of National Development in 2010. Following that procedure, another irregularity procedure was started in connection with the invoices 100056888 and 100065757 only. That procedure was closed with the decision that no irregularity had taken place.

2.3.24. CONTRACT P1, MÉLYÉPTERV KULTÚRMÉRNÖKI KFT : - AN IRREGULAR BID PROCEDURE.

Contract No, date: P1, 13/03/2006

Subject matter: Monitoring system for karst water, ground water and aquifer water

Contracting parties: Mélyépterv Kultúrmérnöki Kft. (company registration number: 01 09 165925 tax number: 10753390-2-1) — Mecsekérc Környezetvédelmi Zrt (company registration number: 02 10 060233, tax number: 11563192-2-02), Sol data SA (company registration number: 388 672 339, tax number: FR 11388672339)

Value of the contract under the financing agreement: HUF 486 491 390

Amount paid: HUF 486 491 390

Financing method:

- KÖZOP: HUF 279 157 072
- Complementary funding: HUF 207 334 318

Facts: According to Annex 4 of Government Control Office report No. 32-18/18/2010, the contracting authority declared the lowest bid invalid without asking for further information from the tenderer. The contracting authority made unlawful changes to the prices of the two valid bids using its own adjustment mechanism.

Comments of the Beneficiary:

The contract was not subject to the irregularity procedure carried out by the Ministry of National Development in 2010.

2.3.25. CONTRACTS P10 AND P10/B, SOL DATA SA: - AN IRREGULAR BID PROCEDURE.

Contract No, date: P10 and P10/B, 01/03/2006 (contract amendment No. 1 05/10/2009, supplementary contract 12/03/2010)

Subject matter: Building movement, noise and vibration monitoring system

Contracting parties: SOL data SA (company registration number: 388 672 339, tax number: FR 11388672339) Hungeod Kft. (company registration number: 01-09-069983, tax number: 1041895-2-43) consortium.

Value of the contract under the financing agreement: HUF 1 826 501 050 HUF + HUF 572 622 600 (contract amendment No 1) + HUF 642 097 346 (supplementary contract)

Amount paid: HUF 3 041 220 996

Financing method:

- KÖZOP: HUF 1 777 709 106 (HUF 1 826 501 050 + HUF 642 097 346)
- Complementary funding: HUF 1 263 511 890 (HUF 690 889 290 + HUF 572 622 600)

Facts:

The contract notice launching the procurement procedure was published in TED under reference 2005/S 189-186480. The reference number of the preselection notice was TED 2005/S 84-08197.

According to Annex 4 of Government Control Office report No. 32-18/18/2010:

1. The contracting authority changed the tender documentation while the tenderers were in the process of replying to the questions asked pursuant to Article 56 of the Public Procurement Act. Under Article 76(1) of the Public Procurement Act, a new notice must be published before the end of the original deadline for submitting tenders, announcing the changed criteria and setting a new deadline. However, the contracting authority failed to do this.

2. The public procurement tender documentation stipulated that monitoring must be carried out by an "independent" body.

The main task of the monitoring system is to monitor the tunnelling works. Under contract CO-02, the tunnelling works were to be carried out by the BAMCO consortium. The BAMCO consortium is led by the Vinci Construction Grand Project, which is a member of the VINCI group.

The Vinci group has owned Sol Data SA since 2007.

Comments of the Beneficiary:

*Tunnelling supervision was not the main subject-matter of the P10 contract. In addition to the supervision of the effects of tunnelling on the movement of and damages to buildings in the areas affected, the system monitoring the movement of buildings also monitored the damaging effects of structural construction at the station, but **it was not responsible for supervising the construction.***

2.3.26. CONTRACT B SZ-01/2004, GÁRDOS, FÜREDI, MOSONYI, TOMORI ÜGYVÉDI IRODA: - AN IRREGULAR BID PROCEDURE.

Contract No, date: bsz-01/2004, 15/01/2004

Subject matter: Legal consultancy — general consultancy

Contracting party: Gárdos, Füredi, Mosonyi, Tomori Ügyvédi Iroda (law firms)

Value of the contract under the financing agreement: HUF 295 808 550 + HUF 2 787 989 (non-deductible VAT)

Amount paid: HUF 298 596 494

Financing method:

- KÖZOP: HUF 284 745 213
- Complementary funding: HUF 13 851 326

Facts: Annex 4 of Government Control Office report No 32-18/18/2010 states that the contract covers only lawyers' activities, therefore it is exempted from the public procurement requirement. However, the contract also contains certain activities (e.g. 3.2(c)-(d): preparing and conducting tender procedures) which, according to practice under the new Public Procurement Act, can also be performed by persons other than lawyers.

Under the aggregation rules, the contract should have been cumulated with other consultancy contracts and, consequently, a public tender procedure conducted.

Comments of the Beneficiary:

*During the irregularity procedure conducted in 2010, the NFÜ audited contract no. BSZ-01/2004. As a result of the audit, it was ordered that **the full amount of HUF 103 427 287 of the contract had to be reimbursed**. With regard to financing that had already been settled, in the letter no 48/586/1/2010, the NFÜ instructed the Municipal Government to reimburse the amounts concerned, which were then settled by KIKSZ Zrt. by a set-off transaction on the payment of aid application no. 81 in accordance with the letters no. KIKSZ-K-2742/2011 and 4060/2011.*

2.3.27. CONTRACT BSZ-49/2007, VARGA DÓRA ÜGYVÉDI IRODA: - AN IRREGULAR BID PROCEDURE AND CONTRACT IMPLEMENTATION.

Contract No, date: bsz-49/2007, 12/11/2007

Subject matter: Legal consultancy – Eurometró, office rental, project consultant tendering procedure

Contracting party: Varga Dóra Ügyvédi Iroda (law firm)

Value of the contract under the financing agreement: Hourly rate, up to a maximum of HUF 30 000 000.

Amount paid: HUF 50 000 000

Financing method: Complementary funding

Facts: According to Annex 4 of Government Control Office report No 32-18/18/2010:

1. According to its wording, the contract refers only to lawyers' activities. At the same time, certain tasks (e.g. functions related to public procurement for the M4 project consultancy work) also include public procurement administration. Under the aggregation rules, the contract should have been cumulated with other consultancy contracts.
2. HUF 30 million was paid in fees and HUF 20 million in bonuses. There was no mention of bonuses in the contract. Furthermore, the net maximum payable in fees under the contract was HUF 30 million and the contract had been carried out only partially.
3. It is not clear from the contract exactly which tendering procedure for the consultancy activities for the M4 project the selection, preparation, legal report on implementation, etc. related to.

Comments of the Beneficiary:

*During the irregularity procedure conducted in 2010, the NFÜ audited contract no. BSZ-49-2007. As a result of the audit, **the irregularity of procurement was established with regard to the full contract amount of HUF 50 000 000**. Considering that HUF 405 379 had been settled under the contract up to that date, in the letter no. 48/586/1/2010, the NFÜ instructed Budapest Municipality to reimburse the amounts concerned, which were settled by KIKSZ Zrt. by a set-off transaction on the payment of*

aid application no. 81 in accordance with the letters no. KIKSZ-K-2742/2011 and 4060/2011.

2.3.28. CONTRACT BSZ-38/2006, PROFIL PÉNZÜGYI SZOLGÁLTATÁSOK KFT: - AN IRREGULAR SIMPLIFIED PROCEDURE.

Contract No, date: bsz-38/2006 (17/07/2006), bsz-17/2007 (09/05/2007)

Subject matter: Extraordinary management consulting services

Contracting party: Profil Pénzügyi Szolgáltatások Kft. (company registration number: 01 09 061166; tax number: 10225314-2-42)

Value of the contract under the financing agreement: Hourly rate (budget: HUF 25 000 000, which was raised to HUF 49 000 000 in 2007)

Amount paid: HUF 49 000 000

Financing method: Complementary funding

Facts: According to Annex 4 of Government Control Office report No. 32-18/18/2010 the contracting authority, acting as government purchasing agent, invoked the exception clause allowing the simplified procedure on grounds of extreme urgency and concluded the contract directly with the contractor for HUF 25 million in 2006.

In 2007, the value of the contract was raised to HUF 49 million.

According to the Government Control Office report, the 2007 increase was unlawful, since the value of the procurement exceeded the national threshold (HUF 30 million) beyond which imperative grounds of urgency cannot be used to justify the complete omission of a public procurement procedure.

Comments of the Beneficiary:

*During the irregularity procedure conducted in 2010, the NFÜ audited contract no. BSZ-38/2006. As a result of the audit, **the irregularity of procurement was established with regard to the full contract amount of HUF 49 000 000.** Considering that no aid had been charged under the contract to that date, no reimbursement obligation arose.*

2.3.29. CONTRACT BSZ-04/2008, PROFIL PÉNZÜGYI SZOLGÁLTATÁSOK KFT: - AN IRREGULAR PROCEDURE AND CONTRACT.

Contract No, date: bsz-04/2008, 15/01/2008

Subject matter: Financial consulting services

Contracting party: Profil Pénzügyi Szolgáltatások Kft.

Value of the contract under the financing agreement: HUF 49 000 000

Amount paid: HUF 49 000 000

Financing method: Complementary funding

Facts: According to Annex 4 of Government Control Office report No 32-18/18/2010:

1. The contracting authority concluded the contract directly with the contractor, invoking the exception clause allowing the simplified procedure on grounds of extreme urgency.

The contracting authority was clearly in error regarding its status (government purchasing agent or public utility service) (reference to Article 296(c) of the Public Procurement Act). If it concluded the contract in the capacity of public utility service it was not under an obligation to conduct a public procurement procedure if the contract value was below the

national threshold, so the reference to extreme urgency was incorrect. If it was acting in the capacity of government purchasing agent, the procurement exceeded the national threshold (HUF 30 million) for which, under the procedural rules, extreme urgency could justify only a negotiated procedure without prior publication of a contract notice, and not the avoidance of a public procurement procedure altogether.

2. Under the aggregation rules, the contract should have been cumulated with other financial consultancy contracts, such as bsz-24/08. In view of the aggregation requirement the planned contract amount exceeded the threshold of HUF 50 million and a public procurement procedure should have been conducted.

Comments of the Beneficiary:

*During the irregularity procedure conducted in 2010, the NFÜ audited contract no. BSZ-04/2008. As a result of the audit, **the irregularity of procurement was established with regard to the full contract amount of HUF 49 000 000.** With regard to the fact that HUF 1 145 575 had been settled under the contract up to that date, in the letter no 48/586/1/2010, the NFÜ instructed Budapest Municipality to reimburse the amounts concerned, which were then settled by KIKSZ Zrt. by a set-off transaction on the payment of aid application no. 81 in accordance with the letters no. KIKSZ-K-2742/2011 and 4060/2011.*

2.3.30. CONTRACT BSZ-24/2008, UNIV-PLUS BT : - AN IRREGULAR CONTRACT.

Contract No, date: bsz-24/2008, 01/06/2008

Subject matter: Business consulting services for the purpose of obtaining EU funding for the project

Contracting parties: Univ-Plus Tudományos és Üzleti Tanácsadó Bt (company registration number: 01 06 739569; tax number: 20950512-2-41).

Value of the contract under the financing agreement: HUF 8 000 000

Amount paid: HUF 8 000 000

Financing method: Complementary funding

Facts: Under the aggregation rules, the contract should have been cumulated with other financial consultancy contracts, such as bsz-04/2008. In view of the aggregation requirement the planned contract amount exceeded the threshold of HUF 50 million and a public procurement procedure should have been conducted.

Comments of the Beneficiary:

*During the irregularity procedure conducted in 2010, the NFÜ audited contract no. BSZ-24/2008. As a result of the audit, **the irregularity of procurement was established with regard to the full contract amount of HUF 8 000 000.** With regard to financing that had already been settled, in the letter n. 48/586/1/2010, the NFÜ instructed Budapest Municipality to reimburse the amounts concerned, which were then settled by KIKSZ Zrt. by a set-off transaction on the payment of aid application no 81 in accordance with the letters no. KIKSZ-K-2742/2011 and 4060/2011.*

2.3.31. CONTRACTS BSZ-26/2007, BSZ-28/2007, BSZ-34/2007, BSZ-37/2007, BSZ-44/2007, BSZ-50/2007, BSZ-51/2007, BSZ-55/2007: - ALL IRREGULAR CONTRACTS.

In 2007, BKV Zrt. concluded each of the consultancy contracts listed below **without applying any form of public procurement procedure.**

Decision No D.453/13/2008 of the Public Procurement Arbitration Board established an infringement of the aggregation rules.

Date, number and subject of the contract; contractor; amount paid:

- Contract No. **bsz-26/2007** dated 01/08/2007; subject: "Organisational, structural and information system audits" Contracting party: AAM Vezetői Informatikai Tanácsadó Zrt (company registration number: 01 10 044908, tax number: 13012252-2-41) Amount paid: HUF 7 994 000.
- Contract No. **bsz-28/2007** dated 12/07/2007; subject: "IT tools and operational support for the project's management structure". Contracting party: AAM Vezetői Informatikai Tanácsadó Zrt. Amount paid: HUF 49 000 000.
- Contract No. **bsz-34/2007** dated 07/2007; subject: "Environmental monitoring of project works" Contracting party: ÖKO-FITT Környezetvédelmi Kft. (company registration number: 01 09 467417; tax number: 12123593-2-41). Amount paid: HUF 2 540 000.
- Contract No. **bsz-37/2007** dated 28/09/2007; subject: "Preparation of procedural rules for public procurement". Contracting party: MultiContact Consulting Szolgáltató Kft (company registration number: 01 09 712312; tax number: 12965580-2-43). Amount paid: HUF 8 550 000.
- Contract No. **bsz-44/2007** dated 19/10/2007; subject: "Risk management consulting services". Contracting party: MultiContact Consulting Szolgáltató Kft. Amount paid: HUF 5 880 000.
- Contract No. **bsz-50/2007** dated 20/11/2007; subject: "Constituent documents for the project, operations manual, progress report". Contracting party: AAM Vezetői Informatikai Tanácsadó Zrt. Amount paid: HUF 49 500 000.
- Contract No. **bsz-51/2007** dated November 2007; subject: "Environmental protection action plan". Contracting party: ÖKO-FITT Környezetvédelmi Kft. Amount paid: HUF 800 000.
- Contract No. **bsz-55/2007** of 28/12/2007; subject: "Environmental reporting system, monitoring, voluntary performance assessment system". Contracting party: ÖKO-FITT Környezetvédelmi Kft. Amount paid: HUF 10 350 000.
- Contract No. **bsz-56/07** of 27/12/2007; subject: "Study for the development of public land for the new metro stations" (**not included** in the list of contracts for Metro line 4 sent to OLAF. It is probably listed under "project management costs". Also Annex 4 of the Government Control Office report). Contracting party: Profound Invest Ingatlanfejlesztő és Tanácsadó Kft. Amount of the contract: HUF 33 500 000.
- Contract of 24/01/2007 of unknown reference number (not included in the list of contracts for Metro line 4 sent to OLAF); subject: "Coordination support, advisory and consulting services for the Metro 4 project." Contracting party: AAM Vezetői Informatikai Tanácsadó Zrt. Amount of the contract: HUF 50 000 000.

Total amount paid: HUF 218 114 000.

Comments of the Beneficiary:

During the irregularity procedure conducted in 2010, the NFÜ audited contracts bsz-26, 28, 34, 37, 44, 50, 55 and 56/2007, notifying Budapest Municipality of the results of its audit in its letter no. 48/344/11/2010.

*The NFÜ removed those contracts from the scope of the investigation with regard to the fact that, on the basis of Resolution No. D.453/13/2008 of the Public Procurement Arbitration Board, in its letter no. KIKSZ-K-7938/2010, KIKSZ Zrt. had declared that **the full contracts amounts were ineligible for financing.***

2.3.32. CONTRACTS BSZ-01/2008, BSZ-15/2008, BSZ-29/2008, BSZ-32/2008, BSZ-33/2008, BSZ-36/2008, BSZ-16/2008: - ALL IRREGULAR CONTRACTS.

In 2008, BKV Zrt. concluded each of the consultancy contracts listed below **without applying any form of public procurement procedure.**

According to Annex 4 of Government Control Office report No. 32-18/18/2010, the services should have been cumulated for accounting purposes, or the total estimated contract value, or at least the total estimated value of all the consultancy contracts of similar type, taken as the basis.

Date, reference number and subject of the contract; contractor; amount paid:

- Contract No. **bsz-01/2008** of 21/01/2008; subject: "Certain project management services (cost reduction, critical route alignment, interface problems, reports)". Contracting party: Metró Közlekedésfejlesztési, Beruházási és Mérnöki Szolgáltató Kft. (Metrober Kft., company registration number: 01 09 361269; tax number: 10940385-2-42). Amount contracted: HUF 47 500 000. Amount paid (on the basis of the summary table sent to OLAF): HUF 400 000. Financing method: KÖZOP.
- Contract No. **bsz-15/2008** of 01/08/2008; subject: "Quality Control of Grant Application for Cohesion Funds". Contracting party: Consulgal Hungaria Kft. (current name : HunGal Mérnöki és Vezető Tanácsadó Kft., company registration number: 01 09 861367, tax number: 13555139-2-41). Contract amount: HUF 4.600.000. Financing method: KÖZOP.
- Contract No. **bsz-29/2008** of 01/08/2008; subject: "Comparative study of 12 metro and the Budapest Metro line 4 project". Contracting party: EGIS rail (11, avenue du Centre, 78208 Guyancourt, France). Contract amount: EUR 85 000. Amount paid: HUF 24 525 900. Financing method: KÖZOP.
- Contract No. **bsz-32/2008** dated 01/09/2008; subject: "Advisory services for decision preparation" Contracting party: BLAN Kereskedelmi és Szolgáltató Bt (company registration number: 01 06 767683; tax number: 22126676-3-41). Amount paid: HUF 17 600 000. Financing method: Complementary funding.
- Contract No. **bsz-33/2008** dated 30/08/2008; subject: "Updating of risk register, project scheduling". Contracting party: MATRICS Consult Ltd (UK, Priestley Rd, Embury Park, Bournemouth, BH10, 4 AP Dorset). Contract amount: EUR 33 280 Amount paid: HUF 9 412 759. Financing method: KÖZOP.
- Contract No. **bsz-36/2008** of 11/08/2008; subject: "The role of Budapest Metro line 4 in reducing climate change". Contracting party: Mélyépterv kultúrmérnöki Kft. (company registration number: 01 09 165925; tax number: 10753390-2-41). Amount paid: HUF 4 600 000. Financing method: KÖZOP.
- Contract No. **bsz-16/2008** dated 01/04/2008 and amendment No 1 to the latter, ref. **bsz-16/002/2008** dated 01/05/2008. Subject: 'Technical and financial services relating to the financing of Phase I of the project'. Contracting party: MetroConsult Tanácsadó, Tervező és Vállalkozó Mérnöki Iroda Kft (company registration number: 01 09 065845; tax number: 10328802-2-43). Amount paid: HUF 40 396 000 (HUF 9 960 000 basic contract + HUF 30 436 000 amendment No 1). Financing method: Complementary funding.

The total amount paid was at least HUF 96 934 659.

According to Annex 4 of Government Control Office report no. 32-18/18/2010, in the case of contracts bsz-16/2008 and bsz-32/2008, irrespective of the application or otherwise of the aggregation rules, in the absence of any information it cannot be established whether or not the reason given by the contracting authority (extreme urgency) had been well-founded. The contracting authority was clearly in error regarding its status (government purchasing agent or public utility service) (erroneous reference to Article 296(c) of the Public Procurement Act). If it concluded the contract in the capacity of public utility

service, there was no public procurement obligation if the value of the services was below the basic national threshold, so the claim of extreme urgency is invalid. If it concluded the contract in the capacity of government purchasing agency, it should have applied the simplified procedure provided for in the Public Procurement Act.

Comments of the Beneficiary:

During the irregularity procedure conducted in 2010, the NFÜ audited the following contracts, notifying the Municipal Government of the results of its audit in its letter no 48/344/11/2010:

- *Contract no. bsz-01/2008 of a value of HUF 47 500 000. The contract was declared by the audit to be in conformity with the rules.*
- *Contract no. bsz-15/2008 of a value of HUF 4 650 000. The contract was declared by the audit to be in conformity with the rules.*
- *Contract no. bsz-29/2008 of a value of EUR 85 000, HUF 23 915 600 (technical exchange rate between 11.10.2010 - 7.1.2011: 281.36 HUF/EUR). The contract was declared by the audit to be in conformity with the rules.*
- *Contract no. bsz-32/2008. As a result of the audit, **the irregularity and ineligibility of procurement were established with regard to the full contract amount of HUF 17 600 000.** With regard to the fact that HUF 3 920 148 had been settled under the contract up to that date, in the letter no 48/586/1/2010, the NFÜ instructed the Municipal Government to reimburse the amounts concerned, which were then settled by KIKSZ Zrt. by a set-off transaction on the payment of aid application no 81 in accordance with the letters no KIKSZ-K-2742/2011 and 4060/2011.*
- *Contract no. bsz-33/2008 of a value of EUR 33 280, HUF 9 363 661 (technical exchange rate between 11.10.2010 - 7.1.2011: 281.36 HUF/EUR). The contract was declared by the audit to be in conformity with the rules.*
- *Contract no. bsz-36/2008 of a value of HUF 4 600 000. The contract was declared by the audit to be in conformity with the rules.*
- *Contract no. bsz-16/2008. As a result of the audit, **the irregularity and ineligibility of procurement were established with regard to the full contract amount of HUF 10 000 000.** With regard to the fact that HUF 8 146 783 had been settled under the contract up to that date, in the letter no. 48/586/1/2010, the NFÜ instructed Budapest Municipality to reimburse the amounts concerned, which were then settled by KIKSZ Zrt. by a set-off transaction on the payment of aid application no. 81 in accordance with the letters no KIKSZ-K-2742/2011 and 4060/2011. The 1st amendment of the contract was concluded under no. bsz -16/002/2008. As a result of the audit, **the irregularity of procurement was established with regard to the full contract amount of HUF 35 000 000.** Considering that no aid had been paid under the contract to that date, Budapest Municipality had no reimbursement obligation with regard to the amount referred to above.*

2.3.33. CONTRACTS BSZ-2/2009, BSZ-3/2009, BSZ-4/2009, BSZ-5/2009, BSZ-6/2009 AND BSZ-10/2009: - ALL IRREGULAR CONTRACTS.

In 2009, BKV Zrt. concluded each of the consultancy contracts listed below **without any form of public procurement procedure.**

The estimated amounts for the various services were not combined; nor were the amounts aggregated with the estimated values of other, similar, consultancy contracts concluded following a public procurement procedure (e.g. P20/3, P20/5, P20/6, P20/7).

- Contract No. **bsz-2/2009** dated 02/02/2009; subject: "Financial consulting services". Contracting party: Profil Kft. Contract amount: hourly rate (budget: HUF 25 000 000). Amount paid: HUF 12 221 850. Financing method: KÖZOP.
- Contract No. **bsz-3/2009** dated 02/02/2009 and amendment No 1 thereto dated 31/03/2009. Subject: "technical and economic calculations". Contracting party: MetroConsult Kft. Amount contracted and paid: HUF 24 500 000 + HUF 6 582 000.
- Contract No. **bsz-4/2009** dated 19/02/2009; subject: "Updated traffic and impact assessment for Metro line 4". Contracting party: Transman Közlekedési Rendszergazdálkodási Tanácsadó Kft. (company registration number: 01 09 066614; tax number: 10351675-2-41, owned by MJ, who was also chief engineer of Főmterv Zrt transport design office). Amount contracted and paid: HUF 25 000 000.
- Contract No. **bsz-5/2009** dated 09/02/2009; subject: "Feasibility study, MÁV test track". Contracting party: Főmterv Zrt. Amount contracted and paid: HUF 4 080 000.
- Contract No. **bsz-6/2009** dated 09/03/2009; subject: "Provision of pool from which to select independent experts for public procurement award procedures". Contracting party: Deloitte Zrt. Amount contracted and paid: HUF 4 000 000.
- Contract No **bsz-10/2009** dated 20/03/2009; subject: "Technical consulting services relating to contract CO-02, claim No 70". Contracting party: MATRICS Consult Ltd. Contract amount: EUR 45 000. Amount paid: HUF 12 221 850.

Total amount paid: HUF 88 605 700. The funding came from KÖZOP in all cases.

Comments of the Beneficiary:

The regularity check of contracts referred to in this point not part of the irregularity investigation in 2010, considering that its scope was restricted to payments between May 2007 and December 2008, whereas the Fact concerns contracts concluded in 2009.

These contracts were subsequently reviewed by the Managing Authority, as a result of which the financing involved has been recovered or their recovery is currently in progress.

2.3.34. CONTRACTS BSZ-45/2006 AND BSZ-9/2007, TETTHELY KFT: - IRREGULAR CONTRACTS.

Contract No, date: bsz-45/2006 (18/09/2006) + bsz-9/2007 (14/03/2007).

Subject matter: Planning of related surface works – Buda metro stations and amendment No 1 (arbitration tribunal decision to be claimed against the risk reserve).

Contracting party: Tetthely Kft.

Value of the contract under the financing agreement: HUF 550 000 000 + HUF 4 300 000 (non-deductible VAT) + HUF 781 786 021

Amount paid: HUF 807 586 021

Financing method:

- KÖZOP: HUF 25 800 000
- Complementary funding: HUF 781 786 021

Facts:

On 26 June 2007, BKV Zrt. terminated the contract with immediate effect on ground of breach of contract by Tetthely Kft. The arbitration tribunal and subsequently the Budapest

Capital Regional Court (Fővárosi Törvényszék, Judgment 15.G.40.106/2012/28) ordered BKV Zrt. to pay the contracted amount.

In investigation No. 11/2010, BKV Zrt's Internal Audit Unit established that, for reasons attributable to BKV Zrt., "work was late and various problems had to be remedied because of a poorly prepared contract and obstructive or inadequate data provision (...) it emerged that there was no design proposal; only a study carried out in 2004 (...). As a result, Tetthely Kft. was not aware of the precise task and was therefore not able to perform it in accordance with expectations". According to the investigation report, BKV Zrt. had acted unlawfully in respect of the contract, in that "BKV Zrt. 's employees in charge had failed to meet the principles of sound financial management in terminating the contract immediately without properly weighing up the circumstances". This had caused BKV Zrt. loss of HUF 761 776 021, as a result of which the BKV Zrt's managing director filed charges against unidentified persons for suspected financial misappropriation.

The Budapest Police Corruption and Economic Crime Department rejected the charges (01000-1200/2013 bü.) on the grounds that "the actions did not constitute a criminal offence. The element of uncertainty arising from the judicial procedure eliminates any causal link between the decision and the failure of the lawsuit. There is no evidence that the management decisions were taken with the intent to cause loss."

Comments of the Beneficiary:

The contract concluded with Tetthely Kft. was terminated by BKV Zrt. on 26 June 2007. While the Fővárosi Törvényszék (Budapest Capital Regional Court) ordered BKV Zrt. to pay the contract amount, it must be pointed out that the amount was not paid from the Project budget but from BKV Zrt.'s own budget. In its letter of 2 February 2012, Budapest Municipality dismissed BKV Zrt.'s request to make available to BKV Zrt. the amount payable under the judgment of the Arbitration Court. (A claim put forward against such judgment had been dismissed by judgment 15.G.40.106/2012/28 of the Fővárosi Törvényszék.)

Moreover, in 2015, the Ministry of National Development conducted an irregularity procedure in connection with the contract. During the procedure, Budapest Municipality stated that it had not applied for and did not intend to apply for KÖZOP financing for the performance of the contract.

2.3.35. CONTRACTS P20/1, P20/2, P20/3, P20/4, P20/5, P20/6 AND P20/7: VARIOUS ISSUES AS DETAILED BELOW.

The contracting authority launched an open public tendering procedure with a view to concluding various consultancy contracts. The call for tenders was published in **December 2009 under reference TED 2009/S 1-001163**. It was possible for an individual company to bid for several lots. The following contracts were signed on 14/05/2009.

Number of contract, subject, contractor, amount paid:

- **P20/1** (Lot No. 2) 'geotechnical consultant'. Number of tenders received: 2. Contracting party: Dr Spang GmbH (Westfalenstr. 5-9, 58455 Witten, Germany). Contract amount: HUF 50 000 000. Amount paid: Unknown, not indicated in the final accounting table.
- **P20/2** (Lot No. 4) 'ventilation consultant'. Number of tenders received: 2. Contracting party: HBI Haerter AG (Stockerstrasse 12, 8002 Zürich, Switzerland). Contract amount: HUF 80 000 000. Amount paid: Unknown, not indicated in the final accounting table.
- **P20/3** (Lot No. 5) 'FIDIC claims settlement consultant'. Contracting party: **Mátrics Consult Ltd.** Contract amount: daily rate, HUF 375 000/day. Amount paid: HUF 90 750 000. Financing method: Originally KÖZOP, transfer in progress.

- **P20/4** (Lot No. 6) 'technical costing consultant'. Contracting party: **MetróConsult** Tanácsadó, Tervező és Vállalkozó Mérnöki Iroda Kft (company registration number: 01 09 065845; tax number: 10328802-2-43). Contract amount: daily rate, HUF 24 000/day **budget: HUF 90 000 000. Amount paid: HUF 1 681 776 000** Financing method: KÖZOP: HUF 1 148 896 000, complementary funding: HUF 532 880 000.
- **P20/5** (Lot No. 7) 'risk management consultant'. Contracting party: **Mátrics Consult Ltd.** Contracted daily rate: HUF 375 000/day for max. 400 person-days, **maximum: HUF 90 000 000. Amount paid: HUF 561 375 000.** Financing method: Originally KÖZOP, transfer in progress.
- **P20/6** (Lot No. 8) 'project scheduling consultant'. Contracting party: **Mátrics Consult Ltd.** Contracted daily rate: HUF 375 000/day, maximum: HUF 90 000 000. Amount paid: HUF 55 875 000. Financing method: Originally KÖZOP, transfer in progress.
- **P20/7** (Lot No. 9) 'financial consultant'. Contracting party: **Profil Kft.** Contracted daily rate: HUF 375.000/day. Amount paid: HUF 90 750 000. Financing method: KÖZOP.

Contract P20/5 – FINDINGS OF EUROPEAN COURT OF AUDITORS (ECA).

The audit conducted by the **ECA** on 11-15 July 2011 for the DAS 2011 established the following findings:

The ceiling originally planned for contract No. P20/5 was HUF 90 000 000 for 400 person-days. Date of contract 14/05/2009.

On 04/06/2009, Mátrics Consult Ltd. proposed including 10 further consultants in addition to the two indicated in the tender. BKV Zrt. accepted this proposal on 15/06/2009.

Mátrics Consult Ltd also proposed increasing the number of person-days according to the following schedule: 2009: 527 person-days (HUF 197 625 000), 2010: 870 person-days (HUF 326 250 000), 2011-2013: 499 person-days (HUF 187 125 000).

BKV Zrt. stated during the audit that raising the ceiling had been made necessary by the "construction permit for the Kelenföld depot area and the installation of safety equipment and an automatic train management system" issued by the National Transport Authority on 23/08/2009. BKV Zrt. submitted the application for the permit in April 2009.

The report by the European Court of Auditors stated that the amendment to the contract is qualified as major amendment (it increased the contract amount more than eight-fold), which meant that the Intermediate Body also had to be involved. The report also stated that the need for additional works had not arisen from unforeseeable circumstances, but as a consequence of the way the project had been managed by the contracting authority: the contracting authority had published the tender notice (December 2008) before it applied for the permit (April 2009). The facts of the case constituted a breach of Article 2 (equal treatment principle) and Article 31 of Directive 18/2004.

The person providing the reference attesting to Mátrics Consult Ltd's compliance with the minimum requirements (Kuala Lumpur, Gamuda project) was Mr Gusztáv Kladós, who at the time of the public procurement was the manager of the Metro line 4 project.

The following findings can also be established from OLAF's further investigations. Mr Gusztáv Kladós also provided reference for several of Mátrics Consult Ltd's experts: LJA, FIDIC claims consultant, professional experience acquired in Kuala Lumpur and on the Budapest Metro line 4 project (certified by Mr Gusztáv Kladós). LC, risk management consultant, professional experience acquired on the Budapest Airport line project (certified by Mr Gusztáv Kladós).

Mr MS, manager and co-owner of Mátrics Consult Ltd, worked for Eurometro Kft between 1998 and 2006 (project management consultant and supervising engineer for the Metro line 4 project).

Although this is incorrectly stated in Matrics Consult Ltd.'s tender, Mr MS was not in charge of risk assessment for the whole of the Gamuda project (Kuala Lumpur); but was responsible only for risk assessment for a tunnel's waterproof sealing. The reference to the experience of assessment and processing of subcontractors' claims was also erroneous.

Five experts from Matrics Consult Ltd. were employed on the project (see timesheet 2010 Q4), in respect of whom Matrics Consult Ltd. neither submitted an application nor received a permit. The five experts in question came from Matrics Consult Ltd.'s subcontractors (AON Kft. and ÖKÖ-FITT Kft.).

Several of the invoices were submitted to and received by the project management board without the mandatory documents (timesheet, specifications, tax certificate, etc.).

HBI Haeter AG, Dr. Spang GmbH, Business Solutions and Matrics Consult Ltd. had originally planned to submit a joint tender under procedure No. TED 2009/S 1-001163, since the works were interdependent, but this was opposed by the DBR, so tenders were submitted separately for certain parts of the work. The tenders were translated together into Hungarian, and MS arranged for their submission. This explains the Deloitte auditor's finding that the tenders submitted by the four companies were drafted by the same author (see on-the-spot check report on Matrics Consult Ltd).

Business Solutions tendered for lot 1 (vehicle systems expert), but did not meet the eligibility criteria because it had inadequate insurance. Since Matrics Consult Ltd. did have the necessary insurance, and the project was behind schedule, the content of lot 1 was incorporated into Matrics Ltd's contract (**lot 7, P20/5**) on the initiative of the project's management (AB and TV). Mr MS, accepted this, knowing that it would be possible later to subcontract the work to Business Solutions (which had been excluded).

LC, although appearing in the original tender, was not involved in the implementation of the contract. Matrics Consult Ltd. did not formally inform the DBR of this.

Contracts P20/3, P20/5 and P20/6: CONTRACT IMPLEMENTATION BY MATRICS CONSULT LTD.

The subject of these contracts was implemented until 2009 by Eurometro Kft., The Project Management Consultancy and FIDIC Engineer. In 2009 BKV Zrt. management decided to sign separate contracts for those tasks, while the contract with Eurometro Kft. was still covering those subjects.

The major expert of Matrics Consult Ltd., Mr MS, stated that he started to work for Louis Berger SA in September 2006, and then for Eurometro Kft., he was already providing risk management expertise for the Metro 4 Project but under the Project Management Consultancy contract with Eurometro Kft.

Comments of the Beneficiary:

*The list of contracts in the Annex to the Grant Contract is the detailed table of the project budget, showing **projected blanket sums** rather than actual payments.*

The table below provides a summary of the main data of P20 contracts, including information concerning financing and irregularity procedures.

Contract partner	No.	amount (HUF) paid to 31.12.2015	financing	irregularity procedures	contract status
Dr Spang GmbH	P20/1	20 625 000	KÖZOP	no irregularity (KÖZOPHÁT/20814-1/2015-NFM)	CLOSED 31.12.2011
HBI Haeter AG	P20/2	34 875 000	KÖZOP	no irregularity (KÖZOPHÁT/17216-1/2015-NFM)	not closed yet no further payments being planned

Matrics Consult Ltd.	P20/3	90 750 000	KÖZOP	an irregularity procedure is pending	CLOSED 31.12.2010
MetroConsult Kft.	P20/4	1 129 632 000	KÖZOP HUF 270 000 000	an irregularity occurred (KÖZOPHÁT/1391-5/2016-NFM), aid amounting to HUF 398 864 000 + correction amounting to HUF 60 257 397 were reclaimed; the amounts have not been paid to date	in progress
Matrics Consult Ltd.	P20/5	561 000 000	KÖZOP HUF 90 000 000	an irregularity occurred (KÖZOPHÁT/4984-5/2015), aid amounting to HUF 420 666 584 was reclaimed; amount repaid by: 2.6.2015	CLOSED 31.12.2011
Matrics Consult Ltd.	P20/6	55 875 000	KÖZOP	no irregularity (KÖZOPHÁT/16887-5/2015-NFM)	CLOSED 31.12.2010
Profil Kft.	P20/7	86 025 000	KÖZOP	no irregularity (KÖZOPHÁT/9792-5/2015-NFM)	CLOSED 2.92.2012

The signature of Mr Gusztáv Kladós is not included in the reference statement attached to the submitted bid. The reference statement specifies him as the "person providing information on the reference", the DBR project management at the time of the tender and, therefore, DBR's address was specified among the contact details. During the period affected by the reference (October 2005 to December 2007) Mr Kladós did not work as project manager for DBR.

2.3.36. CONTRACT BSZ-12/2008, HORVÁTH, DÓCZI ÉS LEHMAN ÜGYVÉDI IRODA (LAW FIRM) – NON-PERFORMANCE OF CONTRACT.

Contract No, date: bsz-12/2008, 01/03/2008

Subject matter: Legal advice, Fővám Square, claims

Contracting party: Horváth, Dóczy és Lehman Ügyvédi Iroda (Law Firm)

Amount paid: HUF 2 760 000

Value of the contract under the financing agreement: Hourly rate

Financing method: KÖZOP

Facts: Mr Gusztáv Kladós, Project Director, stated in its witness statement dated 5/11/2010: "We terminated the contract in 2009 in view of the Hagyó scandal³⁰, because they never did any work for us; it was just a contract, that we would have used as a basis. As far as I know we never paid them anything either".

Comments of the Beneficiary:

In our opinion, the testimonies of persons heard in the criminal proceedings as witnesses or suspects cannot be treated as facts, considering that a testimony is only relevant to the procedure concerned.

Also please note that the law office submitted 12 invoices under contract no BSz-12/2008. The total amount paid was HUF 2 760 000, which amount was charged in full to the KÖZOP.

The contract was terminated on 11 December 2009 in the discretion of the company's management.

3. LEGAL EVALUATION**3.1. LIST OF MAIN LEGAL BASES REFERRED**European law

1. Former Financial Regulation: Regulation (EC) 1605/2002³¹.
2. 'New' Financial Regulation: Regulation (EU, Euratom) No 966/2012³² and its implementing rules³³.
3. The project was financed by the European Cohesion Fund (ERDF) during the 2007-2013 programming period. The applicable general provisions are laid down in Regulation (EC) 1083/2006³⁴ (General rules), Regulation (EC) No 1084/2006³⁵ (Cohesion Fund), and Commission Regulation (EC) No 1828/2006³⁶ (implementing rules).
4. Regulation No 2988/95³⁷, containing the definition, general rules and sanctions of irregularities.
5. Directive 2004/18/EC³⁸ (Public Procurement Directive)

³⁰ The former deputy mayor of Budapest Municipality allegedly received HUF 15 million as bribery from the Chief Executive Officer of BKV Zrt. The first instance judgment (March 2016) cleared Mr Hagyó under these allegations, in lack of evidence.

³¹ Replaced by Regulation (EU, Euratom) 966/2012, OJ L298 of 26.10.2012, p.1.

³² Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

³³ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union

³⁴ Council Regulation (EC) 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L210 of 31.7.2006, p.25-78.

³⁵ Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94, OJ L210 of 31.7.2006, p.79.

³⁶ Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund, OJ L 371, 27.12.2006, p. 1–163.

³⁷ Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests. (OJ No. L312, page 1, of 31.12.1995)

³⁸ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of

6. Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds or the Cohesion Fund for non-compliance with the rules on public procurement, COCOF 07/0037/03 (so called 'COCOF Guidelines'). Commission Decision of 19.12.2013, C(2013)9527 final, on the setting out and approval of the Guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement ('new COCOF Guidelines').
7. Article 1.1.a) of the Convention on the protection of the Communities financial interests³⁹ (definition of fraud to the Communities financial interests). Article 2 of the same Convention states that Member States should take the necessary measures in order that effective, proportionate and dissuasive sanctions will be provided

Hungarian law

1. Specific provisions under Hungarian law for ERDF 2007-2013: Government Decree 255/2006 (XII.8),⁴⁰ Government Decree 4/2011 (I.28)⁴¹.
2. Act LXXXI of 1996⁴², annex 3, stating that costs which do not comply with the requirements of rational economic activity cannot be considered eligible under tax law.
3. National Rules on Eligible Costs for the Programming Period 2007-2013⁴³
4. Public Procurement Act (Közbeszerzési Törvény): Law CXXIX of 2003 (2003. évi CXXIX. törvény a közbeszerzésekről), than Law CVIII of 2011 (2011. évi CVIII. törvény, a közbeszerzésekről).
5. Criminal Code, Act IV of 1978: Budget fraud (Article 310),⁴⁴ Breach of accountancy rules (Article 289), Fraudulent bankruptcy (Article 290), Falsification of document/forgery (Article 276), Misappropriation of Funds (Article 319), Bribery and acceptance of Bribery (Article 251, 252 and 254).
6. Criminal Code, Act C of 2012: Budget fraud (Article 396), Breach of accountancy rules (Article 403), Fraudulent bankruptcy (Article 404), Falsification of document/forgery (Article 345), Misappropriation of Funds (Article 376), Bribery and acceptance of Bribery (Articles 290 and 291).

3.2. DETAILED LEGAL EVALUATION BY FACTS

3.2.1. THE ABSENCE OF A 'GENERAL WORKS CONTRACTOR'

Facts: see under point 2.3.1.

Legal basis

According to Article 14 of Regulation (EC) 1083/2006, the principle of sound financial management shall be applied to the Cohesion Fund in accordance with Article 48(2) of Regulation 1605/2002 (Financial Regulation).

procedures for the award of public works contracts, public supply contracts and public service contracts OJ, L 134 , 30/04/2004 P. 0114 - 0240

³⁹ Convention of 26 July 1995 drawn up on the basis of Article K.3 of the Treaty on the European Union on the protection of the Communities' financial interests, OJ C316 of 27.11.95 p.49.

⁴⁰ 255/2006. (XII.8.) Korm. rendelet a 2007-2013 programozási időszakban az Európai Regionális Fejlesztési alapról, az Európai Szociális Alapról és a Kohéziós Alapról származó támogatások felhasználásának alapvető szabályairól és felelős intézményeiről.

⁴¹ 4/2011. (I.28.) Korm. rendelet a 2007-2013 programozási időszakban az Európai Regionális Fejlesztési alapról, az Európai Szociális Alapról és a Kohéziós Alapról származó támogatások felhasználásának rendjéről.

⁴² 1996. évi LXXXI. törvény a társasági adóról és az osztalékadóról.

⁴³ "Nemzeti Szabályzás az Elszámolható Költségekről, 2007-2013 programozási időszak", dated 19 June 2008.

⁴⁴ Since 01 January 2012 the Hungarian Criminal Code this new article penalises, among other things, the tax evasion and the offence against the financial interest of the Europe Union.

Article 48(2) of the Financial Regulation obligates the Member States to cooperate with the Commission "so that the appropriations are used in accordance with the principle of sound financial management".

According to Article 27(1) of Regulation No 1605/2002, the budget appropriations shall be used in accordance with the principle of sound financial management, "in accordance with the principles of economy, efficiency and effectiveness".

"The principle of economy requires that the resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price".(Article 27(2)).

According to Article 9.1. g) of the General Terms of the Grant Agreement, it is considered as a violation of the grant Agreement if the project fails or suffers from a long-term obstruction because a fact attributable to the Beneficiary.⁴⁵

Legal evaluation

The Beneficiary took the decision to enter into 20 independent construction contracts all drafted on the basis of the FIDIC Yellow Book standards.

Such choice would not constitute an irregularity *per se*, if the Beneficiary could have guaranteed the correct coordination of the works.

However, the Beneficiary did not take the necessary measures in order to have the adequate capacity to coordinate the works (see also points 3.2.2. and 3.2.3):

- The Project Directorate did not have the sufficient professional capacity and staff.
- The Project Management, which was also the FIDIC Engineer until 2012, which had an irregular contract itself, did not respect the public procurement rules while assisting the Beneficiary in choosing the works contractors and put itself repeatedly in situation of conflict of interest with different works contractors.
- The role of Independent Verification Engineer was ensured only on a temporary basis until 2012.

The Beneficiary did not guarantee that the project would take place in due time, in appropriate quantity and quality and at the best price.

The Beneficiary did not provide for the correct financial and technical preparation of the project, and an adequate coordination of the different works contracts.

This had a negative effect on the whole project, such as serious delays and increase of costs. The claims (already accepted or still under litigation in Hungary), estimated to be EUR 260 969 000 at the date of the Consolidated Grant Agreement were also caused by the choice of the type of works contracts and the inadequate coordination of them.

Such mismanagement constitutes a breach to the contract and it is not in line with the principle of sound financial management. It is therefore qualified as an **irregularity affecting the whole project.**

3.2.2. THE PROJECT DIRECTORATE AND THE PROJECT MANAGEMENT

Facts: see under point 2.3.2.

Legal basis:

In addition to the legal basis listed in point 3.2.1. in relation to the principle of sound financial management, the following legal bases are also relevant.

Article 2 of Directive 18/2004 (Principles of awarding contracts): Contracting authorities shall treat economic operators equally and non- discriminatorily and shall act in a transparent way.

⁴⁵ g) A Kedvezményezettnek felróhatóan következik be a Projekt megghiúsulását, tartós akadályoztatását előidéző körülmény.

Hungarian Public Procurement Act (Közbeszerzési Törvény): Law CXXIX of 2003 (2003. évi CXXIX. törvény a közbeszerzésekről), Article 10 on conflict of interest provides that a consultant cannot participate in a public procurement procedure on the side of the contracting authority if it has an interest in one of the potential bidders.⁴⁶

On the conflict of interests of public servants in Hungary, as applicable in 2006 and 2007: Law XXIII. of 1992 on public servants,⁴⁷ in particular Articles 21: a public servant cannot have an activity or a behavior which would be unworthy for its office, or which would compromise his/her impartiality⁴⁸.

Contract P17 (bsz-29), signed between BKV Zrt. and Eurometró Kft. on 27.06.2006. In particular, Article 38 on conflict of interests: During the period of contract implementation, the Project Management Consultant cannot enter into any activity which would be in conflict with the interests of the Contracting Authority according to the Contract (i.e. the works contract).⁴⁹

The Hungarian provisions applicable to conflict of interests at the time of the facts are set out in Article 10 of the Public Procurement Act (Közbeszerzési Törvény): Law CXXIX of 2003 (2003. évi CXXIX. törvény a közbeszerzésekről). According to this article, the only restriction was that a person representing the Contracting authority, as well as a person participating to the procedure cannot participate as bidder or sub-contractor of the bidder foreseen for more than 10% of the contract amount.⁵⁰

However, this provision should be interpreted in the light of the EU provisions applicable to conflict of interests at the time of the facts: Article 2 of Directive 18/2004 and Article 52⁵¹ of Regulation (EC) 1605/2002 (Financial Regulation): '1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities. Should such a case arise, the person in question must refrain from such action and refer the matter to the competent authority. 2. There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interests with the beneficiary.'

⁴⁶ 10. § (1) A közbeszerzési eljárás előkészítése, a felhívás és a dokumentáció elkészítése során vagy az eljárás más szakaszában az ajánlatkérő nevében nem járhat el, illetőleg az eljárásba nem vonható be a közbeszerzés tárgyával kapcsolatos gazdasági tevékenységet végző gazdálkodó szervezet (a továbbiakban: érdekelt gazdálkodó szervezet), illetőleg az olyan személy vagy szervezet, aki, illetőleg amely a) az érdekelt gazdálkodó szervezettel munkaviszonyban vagy munkavégzésre irányuló egyéb jogviszonyban áll; b) az érdekelt gazdálkodó szervezet vezető tisztségviselője vagy felügyelőbizottságának tagja; c) az érdekelt gazdálkodó szervezetben tulajdoni részesedéssel rendelkezik; d) az a)-c) pont szerinti személy hozzátartozója.

⁴⁷ 1992. évi XXIII. törvény a köztisztviselők jogállásáról.

⁴⁸ 21.szakasz (6) A köztisztviselő a) 121 nem folytathat olyan tevékenységet, nem tanúsíthat olyan magatartást, amely hivatalához méltatlan, vagy amely pártatlan, befolyástól mentes tevékenységét veszélyeztetné.

⁴⁹ A Szerződés teljesítésének időtartama alatt a Projektvezetési Tanácsadó nem kapcsolódhat be semmilyen olyan tevékenységbe, ami a Szerződés szerint a Megrendelő érdekével ütközhetne.

⁵⁰ 10.szakasz (7) Az ajánlatkérő nevében eljáró, illetőleg az eljárásba bevonni kívánt személy vagy szervezet írásban köteles nyilatkozni arról, hogy vele szemben fennáll-e az e § szerinti összeférhetetlenség. Az összeférhetetlenséggel kapcsolatos nyilatkozathoz - a (2) vagy (4) bekezdés szerinti esetben - csatolni kell az érintett érdekelt gazdálkodó szervezet nyilatkozatát arról, hogy az eljárásban nem vesz részt ajánlattevőként vagy alvállalkozóként (távoimaradási nyilatkozat).

⁵¹ As amended by Regulation (EC, Euratom) 1995/2006, OJ L390 of 30.12.2006, p.1, version applicable from 1.1.2007. "1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities. Should such a case arise, the person in question must refrain from such action and refer the matter to the competent authority. 2. There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interests with the beneficiary".

Legal analysis**a) DBR Metro Projects Directorate did not have the professional capacity and the staff needed to implement correctly its tasks.**

This constitutes a violation of Article 9.1. g) of the General Terms of the Grant Agreement. Due to this this mistake, which is attributable to the Beneficiary, the project implementation suffered a long-term delay.

b) Some members of DBR Metro Projects Directorate or their hierarchical superiors had common interests with contractors.

Several payments took place between works contractors (Siemens AG, Alstom SA) to companies owned by members of DBR Metro Projects Directorate, their hierarchical superiors and/or political decision makers.

Such payments, made between 2005-2007, constitute a breach with the Law on Public servants because place those public servants in a situation of conflict of interests.

c) The owners of Eurometro Kft. (Project Management and FIDIC Engineer) had common interests with several contractors.

The contract 'P17' for Project Management consultancy of Eurometro Kft. was affected by numerous irregularities (see for example Report No. 1023 of the State Audit Office of September 2010). Therefore the contract excluded from EU financing by the Commission decision on the major project. The Hungarian State accepted to co-finance this contract under 'additional' financing.

The financial consequences of the irregularities evidenced in relation to the contract of Eurometro Kft. go far beyond the amount paid under that contract.

Eurometro Kft. participated in the Evaluation Committee meetings for the selection of Strabag Bridge Construction, Consortium, Strabag Zrt., BPV-Metro 4 Kkt., Siemens AG, and then became sub-contractor of those companies (or the keys experts of Eurometro Kft. received payments from those companies). This constitutes conflict of interests, which constitutes a formal breach of Article 38 of contract P17. This constitutes also a **serious tender irregularity, which affected the regularity of all works contracts signed following those procedures.**

It is noted that not only there was a formal conflict of interests, but also in all public procurement procedures concerned, more or less serious tender irregularities took place.

Moreover, Eurometro Kft. as Project Management consultant had to verify the payment requests of those works companies, and certify them before payment. Eurometro Kft., as sub-contractor of those company, had not the necessary independence to fulfill these tasks. In some cases, it even occurred that the same engineer, natural person, signed the certification of performance on behalf of subcontractor Eurometro Kft. to Strabag Zrt., and then signed the certification of the bill of Strabag Zrt. to BKV Zrt. on behalf of Project Management Consultant Eurometro Kft. This constitutes conflict of interests, which means a breach of Article 38 of contract P17. This also considered as serious irregularity in the project implementation, because the contracting authority choose to implement the works according to the FIDIC standards, which foresees the obligation to engage an independent supervisor engineer, while Eurometro Kft. was not independent (see also below, point 3.2.3).

OLAF remarks that not only there was a formal conflict of interests, but also several irregularities were noted on the payment requests certified by Eurometro Kft., such as error in the EUR exchange rate (favourable for the contractors), lack of supporting documents, missing signatures, etc.

3.2.3. THE RULE OF THE 'ENGINEER' IN THE PROJECT.

Facts: See facts in details under point 2.3.3.

The Contracting Authority had a contractual obligation to engage an 'Engineer' on the basis of different contracts:

- the 'FIDIC Engineer', or 'the Engineer'. The Contracting Authority choose to conclude contracts according to the FIDIC Yellow Book standards, which provides for the supervision of works by an Engineer (Article 3 of the standards)
- the Independent Verification Engineer (IVE), foreseen in the Loan Agreements with the EIB and in the Grant Agreement (Consolidated Grant Agreement).

The view of the International Federation of Consulting Engineers (FIDIC), contacted by OLAF, is that the role of the FIDIC Engineer and the Independent Verification Engineer can be filled in both by one Engineer or two different Engineer, it is up to the Contracting Authority to choose between the two solutions.⁵²

In the case of Metro 4 Project, the choice of the Contracting Authority was to engage two different Engineers in two different roles.

The problem arises with the way in which those contracts were concluded and implemented.

a) The FIDIC Engineer

Legal basis:

Hungarian Public Procurement Act (Közbeszerzési Törvény): Law CXXIX of 2003 (2003. évi CXXIX. törvény a közbeszerzésekről), Article 10 on conflict of interest provides that a consultant cannot participate in the public procurement procedure on the side of the contracting authority if it has an interest in one of the potential bidders.⁵³

According to Article 3 of the FIDIC 'Yellow Book' standards ('Conditions of Contract for Plant & Design-Build'), "The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract."

According to the FIDIC policy statement on conflict of interest⁵⁴ "FIDIC's policy on conflict of interest requires that consultants provide professional, objective and impartial advice, and at all times hold the client's interests paramount, without any consideration for future work and strictly avoiding conflicts with other assignments or their own corporate interests." "A firm engaged to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services resulting from or directly related to the firm's earlier consulting services, unless the potential conflict arising from this situation has been identified and resolved in a manner acceptable to the client throughout the selection process and the execution of the contract."

Contract P17 (bsz-29), signed between BKV Zrt. and Eurometró Kft. on 27.06.2006. In particular, Article 38 on conflict of interests (see point 3.2.2).

The role of the Engineer in the period from June 2006 to 30 December 2012

⁵² THOR(2016)14845.

⁵³ 10. § (1) A közbeszerzési eljárás előkészítése, a felhívás és a dokumentáció elkészítése során vagy az eljárás más szakaszában az ajánlatkérő nevében nem járhat el, illetőleg az eljárásba nem vonható be a közbeszerzés tárgyával kapcsolatos gazdasági tevékenységet végző gazdálkodó szervezet (a továbbiakban: érdekelt gazdálkodó szervezet), illetőleg az olyan személy vagy szervezet, aki, illetőleg amely a) az érdekelt gazdálkodó szervezettel munkaviszonyban vagy munkavégzésre irányuló egyéb jogviszonyban áll; b) az érdekelt gazdálkodó szervezet vezető tisztségviselője vagy felügyelőbizottságának tagja; c) az érdekelt gazdálkodó szervezetben tulajdoni részesedéssel rendelkezik; d) az a)-c) pont szerinti személy hozzátartozója.

⁵⁴ The FIDIC Policy Statement Conflict of Interest was approved by the FIDIC Executive Committee in May 2004: http://fidic.org/sites/default/files/fidic_policy_coi.pdf

Initially, the role of the FIDIC Engineer was included into the tasks of the Project Manager under the second consultancy contract. Eurometro Kft. was the FIDIC Engineer from June 2006 to 30 December 2012. In relation to this contract, numerous irregularities occurred (see above, Project Management). The irregularities were already established in previous procedures, so the contract was not included under the EU financing, and therefore no further legal analysis is made in relation to the contract itself.

Even if excluded from EU financing, the implementation of the contract with Eurometro Kft. had serious consequences on the EU financing. It is the Engineer who should supervise the technical quality of the works. The FIDIC Engineer should be the guarantor that the Project is implemented according to the principle of sound financial management. It is the Engineer who should verify if the requests for payments issued by the works contractors were in accordance with the works done. This is why the FIDIC standards, and the contract of Eurometro Kft. foresaw strict rules on conflict of interests. Because the breach of those rules, **all payments made under the supervision of Eurometró Kft. to the works contractors concerned, from June 2006 to 30 December 2012 should be considered affected by this irregularity.**

Some of those works contracts were co-financed by the European Cohesion Funds and others were co-financed by the EIB loans.

The role of the Engineer in the period from 31 December 2012 until the Project closure

In June 2012 BKV Zrt. launched an open procedure to enter into a FIDIC Engineer's Contract, but this was unsuccessful.

In September 2012, BKV Zrt. initiated an open public procurement procedure again. This time, three companies submitted valid bids: Eurout Kft., the M4 Engineering Consortium and Metróber Kft. The lowest-cost bid was that of Metróber Kft., but the decision awarding the contract was contested before the Public Procurement Arbitration Board by Eurout Kft.

BKV Zrt., referring to the interest of the national security (security in the Metro should be supervised by a competent FIDIC Engineer) and the national economy (the risk to lose the EU financing), asked the Public Procurement Arbitration Board for permission to sign the contract with Metróber Kft., but this was rejected by the Public Procurement Arbitration Board.

Finally, on the basis of a Government Decision, BKV Zrt. entered into a contract (bsz-13/2013) with BKK Közút Zrt. owned by Budapest Municipality out of the interest of the national economy on 21 December 2012.

According to Article 14 of Directive 18/2004, when the protection of the essential interests of that Member State so requires, the Directive does not apply. According to the Government, there was an interest of the national economy which justifies the non-respect of public procurement rules in this specific case.

Invoking the risk of losing Cohesion Fund financing as a circumstance which justifies the not application of Directive 18/2004 in order to protect the "essential interests of that Member State" is not acceptable.

The projects co-financed by EU Funds are eligible if the projects are implemented in accordance with the applicable EU and national law, including public procurement law. Respecting the public procurement law is one of the requirements for eligibility of EU funds. Neglecting these rules, just because there is a risk of losing EU funds cannot be considered as justified.

Furthermore, it must be laid down that under no circumstances should the adoption of a Government decision be sufficient to circumvent public procurement rules in any major project, where the EU financed amount reaches a level which is relevant to the national budget and therefore it can be considered as 'national economy interest' matter.

However, while the data collected by OLAF demonstrates that the supervision of works was totally irregular until December 2012, since the FIDIC Engineer was in conflict of

interests with several works contractors, OLAF's investigation also established that after December 2012 this was no longer the case.

Such a positive change has been taken into account by OLAF when calculating the financial correction for the irregularity due to the absence of public procurement for the selection of BKK-Közút Kft.

b) Legal evaluation of the role of Independent Verification Engineer

According to Clause 6.09 of the Loan Agreement between Budapest Municipality and EIB and Clause 6.10 of the loan agreement between the Hungarian State and the EIB, the borrowing parties agreed that an independent and internationally experienced Engineer (a so-called Independent Verification Engineer, IVE, in Hungarian *Független Ellenőrző Mérnök* (FEM)) will support the work of the projects directorate and will oversee the implementation of the project.

The Grant Agreement, as well as the Consolidated Grant Agreement (Point 10 of Annex 4, Amended Implementation Agreement) provide that the BKV Zrt. is obliged to engage an Independent Verification Engineer.

Legal analysis

In June 2012 BKV Zrt. launched an open procedure to conclude a FIDIC Engineer's Contract, but this was unsuccessful, because the amount of the only valid bid was HUF 5.5 billion, while the budget for it was HUF 1.7 billion.

In September 2012, BKV Zrt. initiated an open public procurement procedure again. This time, three companies submitted valid bids: Eurout Kft., the M4 Engineering Consortium and Metrőber Kft. The lowest-cost bid was that of Metrőber Kft., but the decision awarding the contract was contested by Eurout Kft. before the Public Procurement Arbitration Board.

Meanwhile, BKV Zrt. extended the contract of Eurometro Kft. (Eurout Kft. is a co-owner of the company).

At this time, BKV Zrt., referring to the interest of the national economy, requested for permission to sign the contract with Metrőber Kft., but this was rejected by the Public Procurement Arbitration Board.

Finally, on the basis of a Government Decision, BKV Zrt. entered into a contract (bsz-13/2013) with BKK Közút Zrt. owned by Budapest Municipality out of the interest of the national economy on 21 December 2012.

Having announced an open public procurement tender on 4 April 2012, on 1 October 2012, BKV Zrt's DBR Project Directorate entered into contract with the successful bidder VIA Pontis Kft. Mérnöki Tanácsadó Kft. for the performance of the IVE's duties.

3.2.4. LEGAL EVALUATION OF CONTRACT CO-00A, STRABAG RT. - HÍDÉPÍTŐ RT.

Facts: see facts under point 2.3.4.

Legal basis:

Article 2 of Directive 18/2004 (Principles of awarding contracts): Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

Hungarian Public Procurement Act (Közbeszerzési Törvény): Law CXXIX of 2003 (2003. évi CXXIX. törvény a közbeszerzésekről), Article 10 on conflict of interest.

Legal analysis:

While this contract was not formally excluded from EU co-financing by the Commission Decision, it was not included by the Beneficiary into the list of contracts to be EU financed. Therefore no additional legal analysis is necessary. However the total financial amount of the contract will be shown as irregular in the financial corrections summary table.

3.2.5. LEGAL EVALUATION OF CONTRACT Co-00B, HÍDÉPÍTŐ ZRT.

Facts: See facts under point 2.3.5.

Legal basis:

Article 2 of Directive 18/2004 (Principles of awarding contracts): Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

Article 9 of Directive 18/2004 (Methods for calculating the estimated value).

Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 10 on conflict of interest, and Article 35-40 rules on threshold calculation for international tender publication.

Legal analysis:

The irregularities were already established in previous procedures (irregular calculation of estimated value, conflict of interests). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made. However, the total amount of the contract will be shown as irregular in the corrections summary table.

3.2.6. LEGAL EVALUATION OF CONTRACT Co-02, BAMCO CONSORTIUM

Facts: (for detailed description see facts under point 2.3.6).

a) The Public Procurement Arbitration Board decided (decision No. 11973/2007) that the reasons given by the Beneficiary for the use of negotiated procedure with prior publication of contract notice for contract CO-02 did not justify the application of such procedure.

b) Taisei Corporation's bid was excluded from the last round, because it had indicated Betonút Zrt. as a subcontractor it intended to use for more than 10 % of the contract value. In the preselection phase, Betonút Zrt. was also present as a member of another participating consortium that was not invited by the contracting authority to the tender phase. Taisei Corporation's bid (initial price: HUF 41.3 billion; alternative bid: HUF 39.9 billion) was less expensive by 10 billion HUF (approximately 35 million EUR) compared to the winner BAMCO bid (HUF 51.8 billion).

c) The deadlines and costs foreseen for the tunnel drilling were largely exceeded. The tunnel drilling suffered of a total delay of 126 weeks. Out of the 126 weeks, at least 35 weeks (approximately 9 months) were due to the fault of the Investor as acknowledged by the Investor itself. BAMCO Consortium did not receive the pre-design plans until nine months after the signing of the contract. In the absence of those plans, the procedure could not continue. Because this 35 weeks delays the Investor accepted the claim of BAMCO, responsible for the tunnel drilling, for 17.4 Million EUR.

Legal basis:

See legal basis under point 3.2.1. on the principle of sound financial management. In addition, see also:

Article 30 of Directive 18/2004 (Public Procurement Directive) on the use of negotiated procedure with prior publication of contract notice.

Article 124 of Law CXXIX of 2003 (Public Procurement Act) on the use of negotiated procedure with prior publication of contract notice.

Article 70 (3) of Law CXXIX of 2003: a bidder cannot participate in a tender together in consortium with another bidder, and cannot participate as a sub-contractor for more than 10% of another bidder.⁵⁵

Legal evaluation

a) The Beneficiary argued (see letter of comments) that the Public Procurement Arbitration Board did not condemn the Beneficiary for a penalty and did not cancel the procedure, and the unsuccessful applicants did not initial any additional civil-law appeal procedure.

Such argument is not sufficient. It is, indeed, up to the Public Procurement Arbitration Board and the Hungarian civil courts to decide if the Beneficiary should pay a penalty to the unsuccessful applicants in case of public procurement irregularity.

However, the fact that such civil penalty is not decided by the Public Procurement Arbitration Board does not mean that there was no irregularity.

The Beneficiary used negotiated procedure with prior publication of a contract notice without appropriate justification. This constitutes a violation of public procurement rules, and caused a potential distortion of the market and therefore an increase of price of the contract co-financed with EU funds.

b) Betonút Zrt. was an 'applicant' at the first phase of the procedure but was not invited to bid. Article 70 (3) only applies to 'bidders', who cannot become sub-contractors of an other bidder. Betonút Zrt. never became a 'bidder' because it was not invited to bid. Therefore the exclusion of Taisei Corporation's bid is irregular, it breached EU and national rules on public procurement. This caused a damage of approximately 35 million EUR to the Project's budget (the difference between the excluded most economical bid and the more expensive winner bid).

c) The delay of 9 months was imputable to the inadequate preparation and professionalism of the Project Directorate and the Project management (see also point 3.2.1, 3.2.2). This caused a prejudice of at least 17,4 Million EUR to the project budget.

This is contrary with the principle of sound financial management, and constitutes a violation of Article 9.1. g) of the General Terms of the Grant Agreement: it is considered as violation of the Grant Agreement if the project fails or suffers from a long-term obstruction because a fact attributable to the Beneficiary.

3.2.7. LEGAL EVALUATION OF CONTRACT CO-03, HÍDÉPÍTŐ ZRT.

Facts: See facts under point 2.3.7.

Legal basis:

Article 2 of Directive 18/2004 (Principles of awarding contracts): Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

Article 44 and 53 of Directive 18/2004: evaluation and contract award procedure.

Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 1 (principle of equal and non-discriminatory treatment) and Article 81 (tender evaluation procedure).

⁵⁵ (3) Az ajánlattevő ugyanabban a közbeszerzési eljárásban nem tehet közös ajánlatot más ajánlattevővel, illetőleg abban más ajánlattevő - a közbeszerzés értékének tíz százalékát meghaladó mértékben igénybe venni kívánt - alvállalkozójaként sem vehet részt.

Legal analysis:

The irregularities were already established in previous procedures (irregular calculation of estimated value, conflict of interests). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made. However, the total amount of the contract will be shown as irregular in the financial corrections summary table.

3.2.8. LEGAL EVALUTATION OF CONTRACT Co-04/A, BPV METRO 4 ÉPÍTÉSI KKT.

Facts: See facts under point 2.3.8.

Legal basis:

Article 2 of Directive 18/2004: Principle of equal and non-discriminatory treatment of bidders.

Article 30 of Directive 18/2004 (Public Procurement Directive) on the use of negotiated procedure with prior publication of contract notice.

Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 1 (principle of equal and non-discriminatory treatment) and Article 124 (on the use of negotiated procedure with prior publication of contract notice).

Legal analysis: the irregularities were already established in previous procedures (non-justified use of negotiated procedure). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made. However, the total amount of the contract is shown as irregular in the financial corrections summary table.

3.2.9. LEGAL EVALUTATION OF CONTRACT Co-04/B, SWO METRO 4 ÉPÍTŐ KKT.

Facts: See facts under point 2.3.9.

Legal basis: same legal basis as listed in 3.2.8.

Legal analysis: the irregularities were already established in previous procedures (non-justified use of negotiated procedure). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made. However, the total amount of the contract is shown as irregular in the financial corrections summary table.

3.2.10. LEGAL EVALUTATION OF CONTRACT Co-04/C, STRABAG ZRT.

Facts: See facts under point 2.3.10.

Legal basis: same legal basis as listed in 3.2.8.

Legal analysis: the irregularities were already established in previous procedures (non-justified use of negotiated procedure). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made. However, the total amount of the contract is shown as irregular in the financial corrections summary table.

3.2.11. LEGAL EVALUTATION OF CONTRACT Co-05/A, HÍDÉPÍTŐ ZRT.

Facts: See facts under point 2.3.11.

Legal basis:

Article 2 of Directive 18/2004: Principle of equal and non-discriminatory treatment of bidders.

Article 44 of Directive 18/2004: evaluation and contract award procedure.

Law CXXIX of 2003 (Hungarian Public Procurement Act), §1 (principle of equal and non-discriminatory treatment) and Article 81 (tender evaluation procedure).

Legal evaluation: the irregularities were already established in previous procedures (modification of selection criteria after opening of tenders). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made, the total amount of the contract is shown as irregular in the financial corrections summary table.

3.2.12. LEGAL EVALUTATION OF CONTRACT Co-05/B, SWO METRO 4 'KÁLVIN TÉR' ÉPÍTŐ KKT.

Facts: See facts under point 2.3.12.

Legal basis: same as point 3.2.11.

Legal evaluation: the irregularities were already established in previous procedures (modification of selection criteria after opening of tenders). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made. However, the total amount of the contract will be shown as irregular in the financial corrections summary table.

3.2.13. LEGAL EVALUTATION OF CONTRACT Co-06/A, SWO METRO 4 'RÁKÓCZI TÉR' ÉPÍTŐ KKT.

Facts: See facts under point 2.3.13.

Legal basis: same as point 3.2.11.

Legal evaluation: the irregularities were already established in previous procedures (modification of selection criteria after opening of tenders). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made. However, the total amount of the contract will be shown as irregular in the financial corrections summary table.

3.2.14. LEGAL EVALUTATION OF CONTRACT Co-04/C, STRABAG ZRT.

Facts: See facts under point 2.3.14.

Legal basis: same as point 3.2.11.

Legal evaluation: the irregularities were already established in previous procedures (modification of selection criteria after opening of tenders). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made. However, the total amount of the contract will be shown as irregular in the financial corrections summary table.

3.2.15. LEGAL EVALUTATION OF CONTRACT Co-06/C, BPV METRO 4 'NEKE' ÉPÍTÉSI KKT.

Facts: See facts under point 2.3.15.

Legal basis: same as point 3.2.11.

Legal evaluation: The Beneficiary argued (see letter of comments) that the NFÜ audited the contract but did not find it irregular.

In OLAF's view such an argument is not sufficient. The fact that an audit authority did not find a public procurement procedure irregular does not mean *per se* that the contract is necessarily regular.

It goes against the principle of equal opportunities and distorts competition the fact that the contracting authority did not provide for the possibility to divide the bids into lots, but it provided for this possibility later on, in the tender phase, by amending the contract notice, and the contracting authority announced several winners. The public procurement procedure was irregular.

3.2.16. LEGAL EVALUTATION OF CONTRACT Co-07, SWIETELSKY MAGYAROSZÁG KFT.

Facts: See facts under point 2.3.16.

Legal basis:

Article 2 of Directive 18/2004: Principle of equal and non-discriminatory treatment of bidders.

Article 44 of Directive 18/2004: evaluation and contract award procedure.

Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 1 (principle of equal and non-discriminatory treatment) and Article 81 (tender evaluation procedure).

Legal evaluation:

The Beneficiary argued (see letter of comments) that the Public Procurement Arbitration Board did not condemn the Beneficiary for a penalty and did not cancel the procedure, and the unsuccessful applicants did not initial any additional civil-law appeal procedure.

Such argument is not sufficient. It is, indeed, up to the Public Procurement Arbitration Board and the Hungarian civil courts to decide if the Beneficiary should pay a penalty to the unsuccessful applicants in case of public procurement irregularity.

However, the fact that such civil penalty is not decided by the Public Procurement Arbitration Board does not mean that there was no irregularity.

1. The Contracting Authority accepted that the successful tenderer withdrew one of the subcontractors that had exceeded 10% threshold in the preselection phase. The acceptance of such withdrawal was unlawful, it constitutes a modification of selection criteria after opening of tenders, resulting in incorrect acceptance of tender. This constitutes a breach of national public procurement rules. Nevertheless, the irregularity is purely formal, because the bid complied with the selection criteria even without the sub-contractor.

2. In the case of other applications, the Contracting Authority did not send out an invitation to submit rectifications, but it still regarded those applications as valid, despite the missing information. It declared all applications as valid and invited the companies to tender.

The acceptance of non-compliant bid constitutes a modification of selection criteria after opening of tenders, resulting in incorrect acceptance of tender. This constitutes a breach of national public procurement rules. The Contracting Authority collected most of the reasons for non-compliance in a summary, which was sent to all applicants. The other applicants were thus aware, but no appeal was lodged.

However, it should be taken into account that selection criteria automatically and necessary limit the number of potential bidders, therefore any unnecessary selection criteria should be avoided, in view to guarantee the respect of principles of free competition, equal and non-discriminatory treatment of bidders. The fact that the Beneficiary accepted some non-compliant applications is an indication that some of the required selection criteria may be unnecessary/ disproportionate.

While it is true that the other applicants were aware of the non-compliance of certain applications and did not lodged any appeal, the potential applicants, who did not apply because some of the selection criteria, could possibly apply if they knew that the selection criteria will not be verified.

The behavior of the Contracting Authority constitutes therefore a breach to the principle of equal and non-discriminatory treatment of bidders.

The fact that several irregularities occurred constitutes "aggravating circumstances" in relation to this contract Co-07.

3.2.17. LEGAL EVALUATION OF CONTRACT Co-08, TÓTH T.D. FŐVÁLLALKOZÓ ÉS MÉRNÖKIRODA KFT.

Facts: See facts under point 2.3.17. The contracting authority laid down different eligibility requirements for sole bidders and consortia.

Legal basis:

Article 2 of Directive 18/2004: Principle of equal and non-discriminatory treatment of bidders.

Article 44 of Directive 18/2004: evaluation and contract award procedure.

Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 1 (principle of equal and non-discriminatory treatment) and Article 81 (tender evaluation procedure).

Legal evaluation:

The Beneficiary argued (see letter of comments) that the Public Procurement Arbitration Board did not condemn the Beneficiary for a penalty and did not cancel the procedure, and the unsuccessful applicants did not initial any additional civil-law appeal procedure.

Such argument is not sufficient. It is, indeed, up to the Public Procurement Arbitration Board and the Hungarian civil courts to decide if the Beneficiary should pay a penalty to the unsuccessful applicants in case of public procurement irregularity.

However, the fact that such civil penalty is not decided by the Public Procurement Arbitration Board does not mean that there was no irregularity.

Also, the Beneficiary argued that the NFÜ audited the contract and did not find it irregular. Such argument is not sufficient. The fact that an audit authority did not find a public procurement procedure irregular does not mean *per se* that the contract is necessarily regular.

The fact that the contracting authority laid down different eligibility requirements for sole bidders and consortia goes against the principle of equal opportunities, because the tender evaluation was based on different criteria. Discriminatory selection criteria laid down in the tender documents constitutes an irregularity.

However, it should be noted that the actual financial impact of this irregularity cannot be determined precisely. Accordingly a financial correction of only 5 % should be applied in respect of it.

3.2.18. LEGAL EVALUATION OF CONTRACT Co-09, SIEMENS M4 BUDAPEST CONSORTIUM

Facts: See facts under point 2.3.18. and 1.3.2.

Legal basis:

Article 14 of Regulation (EC) 1083/2006, the principle of sound financial management shall be applied to the Cohesion Fund in accordance with Article 48(2) of Regulation 1605/2002 (Financial Regulation).

Article 48(2) of the Financial Regulation obligates the Member States to cooperate with the Commission 'so that the appropriations are used in accordance with the principle of sound financial management'.

Article 2 of Directive 18/2004: Principle of equal and non-discriminatory treatment of bidders.

Article 44 of Directive 18/2004: evaluation and contract award procedure.

Article 52⁵⁶ of Regulation (EC) 1605/2002 (Financial Regulation): '1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities. Should such a case arise, the person in question must refrain from such action and refer the matter to the competent authority. 2. There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interests with the beneficiary'.

This Article, not directly applicable for shared management funds, should be however used for the interpretation of Hungarian law on conflict of interests, because according to Article 53(6) of the Financial Regulation, Member States should take appropriate measures to prevent and deal with irregularities and fraud. Conflict of interests being considered as an irregularity, Member States are responsible to foresee the definition of conflict of interests in national law. The Member State could be even held responsible for insufficient fulfillment of this task. However, this does not mean that the conflict of interests has become an area of complete legislative discretion of Member States. The definition of conflict of interests may start from the definition under national law but will need to be in line with the standards of Community law which is the only way to ensure an effective implementation of the budget (by the Commission).

On the conflict of interests during public procurement procedures: Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 1 (principle of equal and non-discriminatory treatment), Article 10 (conflict of interest) and Article 81 (tender evaluation procedure).

On the conflict of interests during the project implementation: Financing Agreement and Project Management Consultancy contract (Contract P17/bsz-29)

On the conflict of interests of public servants in Hungary, as applicable in 2006 and 2007: Law XXIII. of 1992 on public servants,⁵⁷ in particular Articles 21: a public servant cannot have an activity or a behavior which would be unworthy for its office, or which would compromise its impartiality⁵⁸.

Legal evaluation:

1. Unlawful selection criteria. Selection criteria automatically and necessary limit the number of potential bidders, therefore any unnecessary selection criteria should be avoided, in view to guarantee the respect of principles of free competition, equal and non-discriminatory treatment of bidders. Some of the eligibility requirements in the call for tender were used excessively, such as turnover, and the length of 20 kilometers of track requested as a reference compared with the length of 7.34 kilometers required to be constructed.

Unlawful selection criteria laid down in the tender documents, such unnecessary excessive selection criteria, constitutes an irregularity.

2. Conflict of interests.

⁵⁶ As amended by Regulation (EC, Euratom) 1995/2006, OJ L390 of 30.12.2006, p.1, version applicable from 1.1.2007. "1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities. Should such a case arise, the person in question must refrain from such action and refer the matter to the competent authority. 2. There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interests with the beneficiary".

⁵⁷ 1992. évi XXIII. törvény a köztisztviselők jogállásáról.

⁵⁸ 21§ (6) A köztisztviselő a) 121 nem folytathat olyan tevékenységet, nem tanúsíthat olyan magatartást, amely hivatalához méltatlan, vagy amely pártatlan, befolyástól mentes tevékenységét veszélyeztetné.

As preliminary remark, it is noted that the Hungarian judicial authorities investigated the payments between Siemens AG and several decision makers or persons who had an influence on the tender procedure, and the verification of the regularity of the contract implementation (see point 1.3.2.).

The investigation was closed because 'on the basis of the data in the investigation the commission of criminal action cannot be evidenced and results cannot be expected from the continuation of the procedure.'

However, the closure of the judicial investigation does not mean that the facts are regular. According to the analysis, the payments identified constitutes conflict of interests affecting the whole public procurement procedure and contract implementation.

According to the Hungarian law, a consultant cannot participate to the public procurement procedure on the side of the contracting authority if it has an interest in one of the potential bidders. Such participation constitutes a conflict of interests according to the Public Procurement Act.

The same applies for a public servant: a public servant cannot have an activity or a behavior which would be unworthy for its office, or which would compromise its impartiality. Such activity or behaviour constitutes a conflict of interests according to the Law on public servants.

The following natural or legal persons received payments from Siemens AG while they took part in the decisions in relation to Project Metro 4 in general, or more specifically in relation to the public procurement procedure for contract Co-09:

- Szemi-Soft B 91 Bt.: The owner and managing director of Szemi-Soft B 91 Bt. was SzL, who also carried out project management consulting activities and supervising engineer tasks on behalf of Eurometro Kft. for the DBR Metro Directorate, which he also represented in person; Eurometro Kft. participated to the public procurement procedure following which the contract was signed with Siemens AG. Because those payments, Eurometro Kft. was in formal conflict of interests and should not have participated in the tender evaluation procedure, neither to the supervision of the contract implementation (as project manager and supervisor engineer).
- Gantan Kft.: HUF 16 250 000 (EUR 64 656). The payment made to this company was made into the same bank Metrob account as the payments for Szemi-Soft B 91 Bt. This shows that there was a link between those payments and SzL, owner and manager of Szemi-Soft B 91 Bt. but also expert of Eurometro Kft. Because those payments, Eurometro Kft. was in formal conflict of interests.
- Merito Consulting Kft.: HUF 37 875 000 (EUR 150 150). The owner was TI, who was Deputy Managing Director of MÁV Start when Siemens made the payments. Merito Consulting Kft. was at the same time MÁV Zrt.'s consultant on strategic projects, and in that position it was also providing advice in relation to metro line 4. MÁV Zrt. was one of the co-owners of Eurometro Kft., which carried out project management consulting activities and supervising engineer tasks. Such activity and behaviour constitutes a formal conflict of interests of a public servant.
- Budapest Investment Zrt.: HUF 14 000 000 (EUR 56 000). The owner was PJ, who was MÁV Zrt.'s deputy managing director in charge of strategy when the payments were made. Such activity and behaviour constitutes a formal conflict of interests of a public servant.

Any violation of rules on conflict of interests should be sanctioned with rigour, even in case of purely formal irregularity without the evidence of an additional violation of public procurement rules, because it is one of the main tools used to avoid corruption. It is noted in addition that Media Magnet Kft. received HUF 331 200 000 (EUR 1 265 056), between 14/09/2006 and 06/08/2007. This company was also the company used for the political campaign of the political party which decided the implementation of Project Metro 4. OLAF did not investigate the use of the money paid by Siemens AG to Media Magnet Kft., and formally there is no conflict of interests in relation to this company.

3. Lack of transparency and equal treatment during evaluation. There was a lack of confidential information during the tender procedure. The successful tenderer was irregularly informed several times during the evaluation phase of inside information. This constitutes an irregularity.

3.2.19. LEGAL EVALUTATION OF CONTRACT K2C, SWO METRO-4 RÁKÓCZI TÉR ÉPÍTÉSI KKT.

Facts: See facts under point 2.3.19.

Legal basis:

Article 2 of Directive 18/2004: Principle of equal and non-discriminatory treatment of bidders.

Article 31 of Directive 18/2004 (Public Procurement Directive) on the use of negotiated procedure without prior publication of contract notice.

Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 1 (principle of equal and non-discriminatory treatment) and Article 255 (on the use of negotiated procedure without prior publication of contract notice).

Legal evaluation: the irregularity was already established in previous procedures (unlawful use of negotiated procedure without prior publication of contract notice). The contract was formally excluded by EU co-financing by the Commission Decision. Therefore no additional legal analysis is made. However, the total amount of the contract will be shown as irregular in the financial corrections summary table.

3.2.20. LEGAL EVALUTATION OF CONTRACT Co-10, ALSTOM TRANSPORT SA

3.2.20.1 EU AND NATIONAL LEGAL FRAMEWORK

In the course of its investigation OLAF has uncovered information which suggests that there may have been breaches of the following:

- EU and national as applicable, legal provisions. This finding is without prejudice to the judicial processes currently ongoing in the UK and Hungary in relation to these matters.
- Council Act of 26 May 1997 drawing up the Convention made on the basis of Article K.3 (2)(c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union.⁵⁹
- Convention on the protection of the European Communities' financial interests⁶⁰, in particular Article 1 on fraud affecting the financial interests of the European Community.
- The Hungarian Criminal Code as applicable at the operative dates and times of the facts uncovered, i.e. Law No. IV of 1978 ("old" Btk.), and Hungarian Criminal Code as applicable at the date of this Report, Law No. C of 2012 ("new" Btk.). In particular §250-254 of the "old" Btk. and §290-296 of the "new" Btk. (passive and active corruption, *vesztegetés*), §256 of the "old" Btk. and §299 of the "new" Btk. (illegal trade of influence, *befolyással üzérkedés*), §314 of the "old" Btk. (EU fraud,

⁵⁹ Official Journal C 195 of 25 June 1997.

⁶⁰ Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests (OJ No. C316, page 49 of 27.11.1995).

Európai Közösségek pénzügyi érdekeinek megsértése) and §396 of the "new" Btk. (Budgetary fraud, *költségvetési csalás*).

- The Bribery Act 2010 (c.23) of the United Kingdom, and prior related statutory and common law provisions.
- Regulation (EC) 1605/2002⁶¹ ("Financial Regulation") as applicable at the date of the beginning of the tender procedure, in particular Article 89 thereof which requires, inter-alia that all public contracts financed in whole or in part by the budget shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination."
- Directive 2004/18/EC⁶², "Public Procurement Directive", hereafter "the Directive" as applicable at the date of the beginning of the tender procedure, in particular Article 2 of the Directive (principles of awarding contracts) "Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way."
- Law CXXIX of 2003 (Hungarian Public Procurement Act). In particular Article 1 (principle of equal and non-discriminatory treatment of bidders), Article 77 (the bid cannot be modified after the deadline to bid, even with the agreement of the contracting authority).
- Laws on the conflict of interest of public servants in Hungary, as applicable in 2006 and 2007: Law XXIII. of 1992 on public servants, in particular Article 21 (6) a) which stipulations that a public servant cannot have activity or behaviour which would be unworthy for office, or which would compromise impartiality.

3.2.20.2. LEGAL EVALUATION

(i) During the pre-selection procedure, the rules set down in the call for proposal notice were not followed, resulting in the irregular exclusion of valid bidders. The exclusion of the applications of AnsaldoBreda SPA, CSR Co and CAF SA are noted in this regard. These actions constituted breaches of the principle of the equal and the non-discriminatory treatment of bidders.

(ii) According to Article §77 of the Hungarian Public Procurement Act, following setting of a deadline for a tender bid, a bid cannot be modified thereafter, even with the agreement of the contracting authority. Alstom Transport SA significantly altered the content of its bid after the fixed deadline.

However, the bids of Siemens AG and Bombardier were excluded for this reason on the basis of §77, even though prima-facie, the alterations were much less significant and did not concern those parts of bids relating to the crucial question of passenger capacity. Again these exclusions constituted a breach of the principle of the equal and non-discriminatory treatment of bidders.

(iii) According to Article 21 (6) a) of Law XXIII. of 1992 on public servants: a public servant cannot engage in activity or behaviour which would be unworthy of his/her office, or which would compromise his/her impartiality. AssistConsult Kft. signed a consultancy contract with Alstom Transport SA and Alstom International Ltd., and received almost 600 000 EUR. At the time of the payments one of its owners was a 'traveling ambassador' for

⁶¹ Replaced by Regulation (EU, Euratom) 966/2012, OJ L298 of 26.10.2012, p.1.

⁶² Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts OJ. L 134, 30/04/2004 P. 0114 - 0240.

Hungary, whose role was to act to promote investment by foreign companies in Hungary. Even if his role was to build political international relationships ("politikai nemzetközi kapcsolatfelépítés"), but did not include dealing with the investments of specific foreign companies as stated by him (see answer to the opportunity to provide comments on facts), this constitutes a breach of the rules on conflict of interest of public servants in Hungary.

(iv) OLAF notes that what should have been confidential information was obtained in the course of the bidding process and that this was done in a way which may have constituted breaches of Hungarian law with particular reference to §.256 "old" Btk., §299 "new" Btk., (*befolyással üzérkedés*) and also of §.250 to 254 "old" Btk. and §290-296 "new" Btk., active and passive corruption (*vesztegetés*), as well as the provisions on bribery under UK law. It is for the judicial authorities of Hungary and the UK to consider and decide on these particular aspects.

(v) OLAF notes that in the cases of two particular companies providing "consultancy" services, there was no material "service" provided, as the companies were located outside of Hungary. Prima-facie these companies had not the staff or infrastructure needed to provide the consultancy services which might justify the payments received and the contracts involved were signed after Alstom had actually won the tender. Again it is for the judicial authorities to examine such facts, under the provisions of §.250 to 254 "old" Btk., §290-296 "new" Btk., active and passive corruption (*vesztegetés*) in Hungary and under the provisions of the UK laws on bribery.

(vi) The irregular exclusion of valid bids and the other irregular actions that were taken in the course of the tender process and during the implementation phase of the project resulted in very serious damage to the EU budget. It is for the judicial authorities in Hungary to examine whether such actions can be qualified as EU fraud (§ 314 "old" Btk.) or Budgetary fraud (§ 396 "new" Btk.).

3.2.21. LEGAL EVALUATION OF CONTRACT K1/A-2, FÖMTERV-UNITEF CONSORTIUM

Facts: See facts under point 2.3.21.

Legal basis:

Article 31 of Directive 18/2004 (Public Procurement Directive) on the use of negotiated procedure without prior publication of contract notice: ' (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the open, restricted or negotiated procedures with publication of a contract notice as referred to in Article 30 cannot be complied with.'

Law CXXIX of 2003, Article 125 on the use of negotiated procedure without prior publication of contract notice in case of extreme urgency.

Legal evaluation:

The Beneficiary argued (see letter of comments) that the NFÜ audited the contract but did not find it irregular.

Such argument is not sufficient. The fact that an audit authority did not find a public procurement procedure irregular does not mean *per se* that the contract is necessarily regular.

It is maintained that if the extreme urgency applied only for a smaller part of the contract, it was irregular to sign a contract following a negotiated procedure without prior publication of contract notice initiated because 'extreme urgency'.

3.2.22. LEGAL EVALUTATION OF CONTRACT P16, CEPD BEFEKTETÉSI ÉS INGATLANFEJLESZTÉSI KFT.

Facts: See facts under point 2.3.22.

Legal basis:

Article 2 of Directive 18/2004 (Principles of awarding contracts): Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

Article 44 and 53 of Directive 18/2004: evaluation and contract award procedure.

Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 1 (principle of equal and non-discriminatory treatment) and Article 81 (tender evaluation procedure).

Legal evaluation:

The Beneficiary argued (see letter of comments) that the NFÜ audited the contract but did not find it irregular.

Such argument is not sufficient. The fact that an audit authority did not find a public procurement procedure irregular does not mean *per se* that the contract is necessarily regular.

On the substance: the Contracting Authority accepted that CEPD provides a statement on the basis of the 10 months report for the year 2005, because it could not provide a whole year report for 2005 as the tender procedure took place in the first half of 2006. The 10 months income of CEPD related to property leasing for the first 10 months of 2005 was HUF 430 500 000 was higher than the required HUF 100 000 000/year. CEPD fulfilled with the selection criteria, only formal irregularity occurred (the evidence of fulfillment was provided via a different type of document), which had no impact on the EU's financial interests.

It is noted that the audit of the Ministry of National Development established that the contract amendment was also irregular, and ordered a recovery of HUF 1 371 270 .

3.2.23. LEGAL EVALUTATION OF CONTRACT P7, AON KFT.

Facts: See facts under point 2.3.23.

Legal basis:

Article 44 and 53 of Directive 18/2004: evaluation and contract award procedure.

Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 81 (tender evaluation procedure).

Legal evaluation:

The Beneficiary argued (see letter of comments) that the NFÜ audited the contract but did not find it irregular.

Such argument is not sufficient. The fact that an audit authority did not find a public procurement procedure irregular does not mean *per se* that the contract is necessarily regular.

The winning tenderer was selected on the basis of the tender documents declared unlawful by the Public Procurement Arbitration Board. This constituted an irregularity.

3.2.24. LEGAL EVALUTATION OF CONTRACT P1, MÉLYÉPTERV KULTÚRMÉRNÖKI KFT.

Facts: See facts under point 2.3.24.

Legal basis:

Article 51 of Directive 18/2004 (Additional documentation and information): The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 45 to 50.

Law CXXIX of 2003, 83. Article (1) : in case of public procurement procedures conducted under EU financed projects, the Contracting Authority shall give the possibility to supplement or clarify the certificates and documents at least once during the procedure.⁶³

Legal evaluation:

The Contracting Authority excluded one of the bidders without providing the possibility to supplement or clarify the certificates and documents. This constituted a breach of the principle of equal treatment during evaluation. It is noted that the excluded bid was the lowest bid, therefore there was a potential consequence on the EU's financial interests, in case the bid was valid following the clarification procedure.

3.2.25. LEGAL EVALUTATION OF CONTRACTS P10 AND P10/B, SOL DATA SA

Facts: See facts under point 2.3.25.

Legal basis:

Article 2 of Directive 18/2004: Principle of equal and non-discriminatory treatment of bidders.

Article 30 of Directive 18/2004 (Public Procurement Directive) on the use of negotiated procedure with prior publication of contract notice.

Law CXXIX of 2003 (Hungarian Public Procurement Act), Article 1 (principle of equal and non-discriminatory treatment), Article 56. (4) complementary information can be given following question of the potential bidders, this cannot have as consequence the modification of the content of the call for tender⁶⁴ and Article 76: the Contracting Authority may modify the contracting notice until the deadline to bid, but a new contract notice should be published⁶⁵

Legal evaluation:

According to Annex 4 of the report of the Audit Authority, the Contracting Authority modified the content of the tender specifications without publishing a new contract notice.

The Managing Authority conducted an irregularity procedure and concluded that 'since all tenderers submitted their tenders by the time limit and all tenders were valid, failure to extend the time limit did not distort the principle of fair competition and breach the principle of equal treatment.'

This argument cannot be accepted, because the obligation to publish a new contract notice with a new deadline is not only addressed to the bidders who already bought the tender documentation, but also to the potential bidders which did not apply yet, because they were not interested under the old tender conditions, but could be interested under the new conditions.

The lack of publication of modified tender conditions constitutes a distortion to the fair competition and a discriminatory treatment of (potential) bidders.

3.2.26. LEGAL EVALUTATION OF CONTRACT BSZ-01/2004, GÁRDOS, FÜREDI, MOSONYI, TOMORI ÜGYVÉDI IRODA

Facts: See facts under point 2.3.26.

⁶³ Az ajánlatkérőnek az ajánlati felhívásban rendelkeznie kell arról, hogy a közbeszerzési eljárásban a hiánypótlás lehetőségét biztosítja-e, továbbá milyen körben biztosítja azt. Az Európai Unióból származó forrásból támogatott közbeszerzésekre irányuló eljárások esetében az ajánlatkérő legalább egy alkalommal köteles biztosítani a hiánypótlás lehetőségét.

⁶⁴ A kiegészítő tájékoztatást úgy kell megadni, hogy az ne sértse az ajánlattevők esélyegyenlőségét. A tájékoztatás teljes tartalmát az ajánlattevők számára hozzáférhetővé kell tenni, illetőleg meg kell küldeni. A tájékoztatás nem eredményezheti az ajánlati felhívásban és a dokumentációban foglaltak módosítását.

⁶⁵ 76. § 105 (1) Az ajánlatkérő az ajánlattételi határidő lejártáig módosíthatja az ajánlati felhívásban, illetőleg a dokumentációban meghatározott feltételeket. A módosított feltételekről e határidő lejártáig előtt új hirdetményt kell közzétenni, amelyben új ajánlattételi határidőt kell megállapítani.

Legal basis:

Article 9 of Directive 18/2004 (Methods for calculating the estimated value).

Law CXXIX of 2003 Article 35-40 rules on threshold calculation for international tender publication.

Law CXXIX of 2003 Article 153: in case of legal services performed by advocates, the Contracting Authority is exempted to conduct a public procurement procedure.⁶⁶

Legal evaluation:

The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed Article 40(2) and Article 153 of the Public Procurement Act because it unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures and a financial recovery order for the full contract amount was issued.

3.2.27. LEGAL EVALUTATION OF CONTRACT BSZ-49/2007, VARGA DÓRA ÜGYVÉDI IRODA

Facts: See facts under point 2.3.27.

Legal basis:

Same as point 3.2.26.

Legal evaluation:

The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed Article 40(2) and Article 153 of the Public Procurement Act because it unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures and a financial recovery order for the full contract amount was issued.

3.2.28. LEGAL EVALUTATION OF CONTRACT BSZ-38/2006, PROFIL PÉNZÜGYI SZOLGÁLTATÁSOK KFT.

Facts: See facts under point 2.3.28.

Legal basis:

Article 31 of Directive 18/2004 (Public Procurement Directive) on the use of negotiated procedure without prior publication of contract notice.

Law CXXIX of 2003, Article 296 in case of extreme urgency under the national threshold, the Contracting Authority is exempted to conduct a public procurement procedure.⁶⁷

Law CXXIX of 2003, Article 125 on the possibility to use of negotiated procedure without prior publication of contract notice in case of extreme urgency.

Legal evaluation:

The total contract amount (HUF 49 million + HUF 49 Million) exceeded the national threshold, therefore there was no total exemption to conduct a public procurement

⁶⁶ 153. § (1) Az ügyvédekről szóló 1998. évi XI. törvény 5. §-ának (1)-(2) bekezdésében meghatározott tevékenység mint szolgáltatás megrendelése esetében az ajánlatkérőnek nem kell közbeszerzési eljárást lefolytatnia.

⁶⁷ 296. § E rész szerinti eljárást nem kell alkalmazni [...] c) ha az ajánlatkérő által előre nem látható okból előállt rendkívüli sürgősség miatt nem lehetséges az egyszerű eljárás lefolytatása; a rendkívüli sürgősséget indokoló körülmények azonban nem eredhetnek az ajánlatkérő mulasztásából.

procedure based on extreme urgency, at least a negotiated procedure should have been conducted.

The Contracting Authority infringed Article 125 and Article 296 because it unlawfully failed to conduct any type of public procurement procedure when concluding and amending contract No. Bsz-38/06. The irregularities were already established in previous procedures and a recovery order for the full contract amount was issued.

3.2.29. LEGAL EVALUTATION OF CONTRACT BSZ-04/2008, PROFIL PÉNZÜGYI SZOLGÁLTATÁSOK KFT.

Facts: See facts under point 2.3.29.

Legal basis: same as 3.2.28.

Legal evaluation: same as 3.2.28. The irregularities were already established in previous procedures and a recovery order for the full contract amount was issued.

3.2.30. LEGAL EVALUTATION OF CONTRACT BSZ-24/2008, UNIV-PLUS BT.

Facts: See facts under point 2.3.30.

Legal basis:

Same as point 3.2.26.

Legal evaluation:

The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) and §153 of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures and a recovery order for the full contract amount was issued.

3.2.31. LEGAL EVALUTATION OF CONTRACTS BSZ-26/2007, BSZ-28/2007, BSZ-34/2007, BSZ-37/2007, BSZ-44/2007, BSZ-50/2007, BSZ-11/2007 AND BSZ-55/2007

Facts: See facts under point 2.3.31.

Legal basis:

Article 9 of Directive 18/2004 (Methods for calculating the estimated value).

Law CXXIX of 2003 Article 35-40 rules on threshold calculation for international tender publication.

Legal evaluation:

The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) of the Public Procurement Act because it unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures and a recovery order for the full contract amount was issued.

3.2.32. LEGAL EVALUTATION OF CONTRACTS BSZ-01/2008, BSZ-15/2008, BSZ-29/2008, BSZ-32/2008, BSZ-33/2008, BSZ-36/2008, BSZ-16/2008

Facts: See facts under point 2.3.32.

Legal basis:

Article 9 of Directive 18/2004 (Methods for calculating the estimated value).

Law CXXIX of 2003 Article 35-40 rules on threshold calculation for international tender publication.

Legal evaluation:

Contracts bsz-01/2008, bsz-15/2008, bsz-29/2008, bsz-33/2008 and bsz-36/2008: the Managing Authority audited this contract and established that in regard to Article 40(2) of the Public Procurement Act the subject-matter of those contracts is performance of special tasks, and could not be aggregated with other contracts. The procedure was regular.

This argument cannot be accepted. The subject-matter of contracts was in all cases the preparation of technical studies: cost reduction, critical route alignment, interface problems (bsz-01/2008), Quality Control (bsz-15/2008), Comparison of 12 metro constructions (bsz-29/2008), updating of risk register, project scheduling (bsz-33/2008), 'the role of Budapest Metro line 4 in reducing climate change' (bsz-36/2008), they should have been aggregated between them and with other contracts signed the same year, such as bsz-01/2008 (cost reduction, critical route alignment, interface problems), or bsz-16/2008 (Technical and financial services relating to the financing of Phase I of the project). The Contracting Authority breached Article 40(2) of the Public Procurement Act because it unlawfully failed to conduct a public procurement procedure.

Contracts bsz-32/2008 and bsz-16/2008 and amendment bsz-16/002/2008: The contract has to be aggregated with the values of other contracts for public procurement activities. The irregularities were already established in previous procedures and a recovery order for the full contract amount was issued.

3.2.33. LEGAL EVALUTATION OF CONTRACTS BSZ-2/2009, BSZ-3/2009, BSZ-4/2009, BSZ-5/2009, BSZ-6/2009 AND BSZ-10/2009

Facts: See facts under point 2.3.33.

Legal basis:

Article 9 of Directive 18/2004 (Methods for calculating the estimated value).

Law CXXIX of 2003 Article 35-40 rules on threshold calculation for international tender publication.

Legal evaluation:

The subject-matter of contracts was in all cases the preparation of different technical studies. The Contracting Authority infringed Article 40(2) of the Public Procurement Act because it unlawfully failed to conduct a public procurement procedure. According to the Beneficiary (see letter of comments) a recovery order was issued for some of the contracts, for other contracts the recovery procedure is ongoing.

3.2.34. LEGAL EVALUTATION OF CONTRACTS BSZ-45/2006 AND BSZ-9/2007, TETTHELY KFT.

Facts:

In investigation No 11/2010, BKV Zrt's Internal Audit Unit established that, for reasons attributable to BKV Zrt, 'work was late and various problems had to be remedied because of a poorly prepared contract and obstructive or inadequate data provision (...) it emerged that there was no design proposal; only a study carried out in 2004 (...). As a result, Tetthely Kft. was not aware of the precise task and was therefore not able to perform it in accordance with expectations".

Legal basis:

According to Article 14 of Regulation (EC) 1083/2006, the principle of sound financial management shall be applied to the Cohesion Fund in accordance with Article 48(2) of Regulation 1605/2002 (Financial Regulation).

According to Article 9.1. g) of the General Terms of the Grant Agreement, it is considered as violation of the grant Agreement if the project fails or suffers from a long-term obstruction because a fact attributable to the Beneficiary.⁶⁸

Legal evaluation

According to the investigation report, BKV Zrt. had acted unlawfully in respect of the contract, in that "BKV Zrt.'s employees in charge had failed to meet the principles of sound financial management in terminating the contract immediately without properly weighing up the circumstances". This had caused BKV Zrt. losses to the tune of HUF 761 776 021.

The Contracting Authority breached Article 9.1. g) of the General Terms of the Grant Agreement and violated the principles of sound financial management.

The Contracting Authority stated (see letter of comments to OLAF) that the payments were made from the Municipalities' own budget. However, in the table provided previously to OLAF, those payments are recorded under KÖZOP (EU financing) and the additional financing (State + Municipality). This should be clarified, and if needed financial recovery should be ordered.

3.2.35. LEGAL EVALUATION OF CONTRACTS P20/1, P20/2, P20/3, P20/4, P20/5, P20/6 AND P20/7

Facts: See more in details facts under point 2.3.35.

The European Court of Auditors' Report established that the amount of contract P20/5 (lot No 7) was increased by more than eight-fold while no unforeseen circumstances occurred.

In addition OLAF established that several experts were added to the project implementation without the permission of the Contracting Authority while this was compulsory according to the contract. Several invoices were submitted to and received by the project management board without one or several of the mandatory documents (timesheet, specifications, tax certificate, etc.).

The OLAF investigation established also that four bidders: Matrics Consulting Ltd., HBI Haeter AG, Spang GmbH and Business Solutions agreed between them that they would introduce separate bids and shared the lots for which they will apply. The bids were all drafted in the same way, and they were translated together.

The bidder for lot 1, Business Solutions, was excluded because it did not comply. The content of lot 1 was then added to the content of contract for lot 7 by the contracting authority. The contractor for lot 7, Matrics Consulting Ltd., then sub-contracted that part to Business Solutions, thus circumventing the public procurement rules.

Legal Basis:

Article 101 of the Treaty on the functioning of the European Union⁶⁹ on the prohibition of illegal agreement.

Law CXXIX of 2003 Article 1: the Contracting Authority should ensure, and the bidder should respect the free and transparent competition.⁷⁰

Law CXXIX of 2003 Article 303: the parties can only modify those sections of the contract which are defined in line with the contract notice, the conditions of the tender documentation or the content of the offer if, following the signature of the contract -due

⁶⁸ g) A Kedvezményezettnek felróhatóan következik be a Projekt megkezdését, tartós akadályoztatását előidéző körülmény.

⁶⁹ As amended by the treaty of Lisbon, OJ C306 of 17 December 2007.

⁷⁰ 1. § (1) A közbeszerzési eljárásban - ideértve a szerződés megkötését is - az ajánlatkérő köteles biztosítani, az ajánlattevő pedig tiszteljenben tartani a verseny tisztaságát és nyilvánosságát.

to unforeseen circumstances – the new situation puts one of the parties into a disadvantageous position.⁷¹

Article 7.7. of contract P20/7, the contract may only involve the experts listed in the bid.

Eligibility rules of Metro line 4 project⁷², point 1.2.: costs are eligible only if they are directly related to the project, and are necessary for the initiation and or implementation of the project.⁷³

Legal evaluation

P20/1 and P20/2: the winners, Spang GmbH and HBI Haeter AG, agreed between them and with two other potential bidders on the share of lots, but this did not cause a distortion to the competition because they could have decided to apply as consortium. OLAF did not investigate further this contract as no direct irregularity was evidenced.

P20/3: FIDIC claim settlement consultancy is part of the tasks of the FIDIC Engineer. Such service should have been provided by Eurometro Kft., it was included into its contract. Contract P20/3 contains duplicate tasks and is not eligible.

P20/4: a national audit (KÖZOPHÁT/1391-5/2016/NFM) established that irregularity occurred and issued a financial recovery order and correction for HUF 398 864 000 + HUF 60 257 397.

P20/5: The Contracting Authority violated the rules on eligibility of payment requests, because several invoices were paid while one or several of the mandatory documents were missing. Several experts were added to the project without agreement of the Contracting Authority, in breach with the contract. The Contracting Authority modified the amount of the contract, which increased by more than eight-fold, while no unforeseen circumstances occurred. This constituted a breach of Article 303 of the Public Procurement Act. Following the Court of Auditors' report, a recovery order of HUF 420 666 584 was ordered for the amount of Cohesion Fund. The whole contract amount should be considered as irregular.

A Risk Assessment consultancy was supposed to be part of the tasks of the Project Management Consultancy. Such a service should have been provided by Eurometro Kft. as it was included into its tasks. Contract P20/5 contains duplicate tasks and is not eligible.

P20/6: Project scheduling consultancy was supposed to be part of the tasks of the Project Management Consultancy. Such a service should have been provided by Eurometro Kft., it was included into its tasks. Contract P20/6 contains duplicate tasks and is not eligible.

P20/7: no irregularities are evidenced.

3.2.36. LEGAL EVALUATION OF CONTRACT BSZ-12/2008, HORVÁTH, DÓCZI ÉS LEHMAN ÜGYVÉDI IRODA (LAW FIRM)

Facts:

Mr Gusztáv Klados, Project Director, stated in its witness statement dated 5/11/2010: "We terminated the contract in 2009 in view of the Hagyó scandal, because they never did any work for us; it was just a contract, that we would have used as a basis. As far as I know we never paid them anything either".

Legal basis:

Eligibility rules of Metro line 4 project⁷⁴, point 1.2.: costs are eligible only if they are directly related to the project, and are necessary for the initiation and or implementation of the project.⁷⁵

⁷¹ 303.szakasz A felek csak akkor módosíthatják a szerződésnek a felhívás, a dokumentáció feltételei, illetőleg az ajánlat tartalma alapján meghatározott részét, ha a szerződéskötést követően - a szerződéskötéskor előre nem látható ok következtében - beállott körülmény miatt a szerződés valamelyik fél lényeges jogos érdekét sérti.

⁷² Elszámolható költségek útmutatója, KÖZOP 5. prioritás: Városi és elővárosi közösségi közlekedés fejlesztése, 5.1. sz. „A budapesti 4-es (DBR) metró fejlesztése” konstrukcióra.

⁷³ Közvetlenül kapcsolódnak a támogatott projekthez, nélkülözhetetlenek annak elindításához és/vagy végrehajtásához.

Legal analysis

According to the Beneficiary, the testimonies of persons heard in the criminal proceedings as witnesses or suspects cannot be treated as facts, considering that a testimony is only relevant to the procedure concerned.

While it is true that the testimony of Mr Klados is not sufficient to establish the fact beyond doubt, it raises serious concerns about the reality of the service provided. Given the small amount of the contract, it is left to the beneficiary and/or the national administrative services to check the implementation of this contract.

ESTIMATED FINANCIAL IMPACT OF THE FACTS ESTABLISHED.

on the basis of its findings outlined as above olaf calculates the financial impact of the irregularities and possible fraud and other possible offences uncovered to be as follows:

3.3. AMOUNTS DETAILED BY IRREGULAR CONTRACTS

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
P17 (bsz-29/2006)	Eurometro Kft.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009 (conflict of interests also affecting the contract implementation)		4,952,506,500	781,678,000
P17 (bsz-29/2006)	Eurometro Kft.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009 (conflict of interests also affecting the contract implementation)			172,381,100
P17 (bsz-29/2006)	Eurometro Kft.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009 (conflict of interests also affecting the contract implementation)		1,888,784,000	145,222,000
P17 (bsz-29/2006)	Eurometro Kft.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009 (conflict of interests also affecting the contract implementation)			37,463,900

⁷⁴ Elszámolható költségek útmutatója, KÖZOP 5. prioritás: Városi és elővárosi közösségi közlekedés fejlesztése, 5.1. sz. „A budapesti 4-es (DBR) metró fejlesztése” konstrukcióra.

⁷⁵ Közvetlenül kapcsolódnak a támogatott projekthez, nélkülözhetetlenek annak elindításához és/vagy végrehajtásához.

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
P17 (bsz-29/2006)	Eurometro Kft.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009 (conflict of interests also affecting the contract implementation)		648,328,769	71,887,231
P17 (bsz-29/2006)	Eurometro Kft.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009 (conflict of interests also affecting the contract implementation)			19,409,552
bsz-13/2013	BKK-Közút Zrt.	6. In case of non-justified use if the negotiated procedure with prior publication of a contract notice a financial correction of 25% should apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity (it is proposed to take into account that this irregularity led to the end of another, much more serious irregularity, which was the conflict of interests between several works contractors and Eurometro Kft., supposed to supervise them)	104,874,447	16,125,553	
bsz-13/2013	BKK-Közút Zrt.	idem as above	10,992,182	933,642	
Co-00A	Strabag Rt. - Hídépítő Rt	100% (conflict of interests Eurometro Kft.)		2,970,507,832	
Co-00B	Hídépítő Zrt.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		1,166,621,915 Ft	

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOP Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
Co-02	BAMCO Konzorcium (VINCI Construction Grand Projects; Hidépitő Zrt; STRABAG AG; STRABAG International GmbH; STRABAG Rt.)	6. In case of non-justified use if the negotiated procedure with prior publication of a contract notice a financial correction of 25% should apply. 15. Evaluation of tenderes/candidates using unlawful selection or award criteria should result in a financial correction of 25%. In both cases, the correction can be reduced to 10% of 5% depending on the seriousness of the irregularity (not applicable as two serious irregularities)	10,381,161,139	3,314,388,861	
Co-03	Hidépitő Zrt.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		13,490,000,000	
Co-03	Hidépitő Zrt.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		300,900,000	
Co-04/A	BPV Metro 4 Építési Kkt. (Allgemeine Baugesellschaft-A.PÖRR Aktiengesellschaft; Bilfinger Berger; Vegyépszer Zrt.)	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		3,577,573,567	
Co-04/A	BPV Metro 4 Építési Kkt. (Allgemeine Baugesellschaft-A.PÖRR Aktiengesellschaft; Bilfinger Berger; Vegyépszer Zrt.)	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		507,026,433	
Co-04/B	SWO Metro 4 Építő Kkt. (Swietelsky Építő Kft, Obayashi Corporation)	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		8,822,400,000	
Co-04/C	Strabag Zrt.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		7,456,934,275	

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
Co-05/A	Hídépítő Zrt.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		10,118,300,000	
Co-05/B	SWO Metro 4 "Kálvin tér" Építő Kkt. (Swietelsky Építő Kft, Obayashi Corporation)	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		9,816,900,000	
Co-06/A	SWO Metro 4 "Rákóczi tér" Építő Kkt. (Swietelsky Építő Kft, Obayashi Corporation)	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		6,510,000,000	
Co-06/B	BPV Metro 4 "NeKe" Építési Kkt. (Vegyépszér Zrt, Allgemeine Baugesellschaft-A.PORR Aktiengesellschaft; Bilfinger Berger)	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009		5,937,000,000	
Co-06/C	BPV Metro 4 "NeKe" Építési Kkt. (Vegyépszér Zrt, Allgemeine Baugesellschaft-A.PORR Aktiengesellschaft; Bilfinger Berger)	13. Modification of selection criteria after opening of tenders, resulting in incorrect acceptance of tenders, a financial correction of 25% should apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity.	3,242,288,182	53,950,000	
Co-07	Swietelsky Magyarország Kft.	13. Modification of selection criteria after opening of tenders, resulting in incorrect acceptance of tender, a financial correction of 25% should apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity (in this case reduction is not suggested because several irregularities occurred).	9,882,250,000	12,898,738	
Co-07	Swietelsky Magyarország Kft.	13. Modification of selection criteria after opening of tenders, resulting in incorrect acceptance of tender, a financial correction of 25% should apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity (in this case reduction is not suggested because several irregularities occurred, and possibly the selection criteria were also disproportionate		998,101,263	

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report) compared to the subject of contract).	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
Co-08	Tóth T.D. Fővállalkozói és Mérnökiroda Kft.	9. Discriminatory selection criteria laid down in the tender documents, a financial correction of 25% should apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity.	597,920,000	75,080,000	
Co-08	Tóth T.D. Fővállalkozói és Mérnökiroda Kft.	9. Discriminatory selection criteria laid down in the tender documents, a financial correction of 25% should apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity.	14,646,246		
Co-08	Tóth T.D. Fővállalkozói és Mérnökiroda Kft.	9. Discriminatory selection criteria laid down in the tender documents, a financial correction of 25% should apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity.	49,520,000		
Co-08	Siemens M4 Budapest Konzorcium (Siemens AG, Siemens Zrt, Siemens Transportation System s.a.s.)	21. Multiple situations of conflict of interests are identified by OLAF, with high amounts paid to several decisions makers or persons who had an influence on the tender procedure, and the verification of the regularity of the contract implementation. A financial correction of 100% should apply. 9. Unlawful selection criteria laid down in the tender documents (25%). 16. Lack of transparency and equal treatment during evaluation (25%)	28,031,000,000	1,744,991,588	
Co-08	Siemens M4 Budapest Konzorcium (Siemens AG, Siemens Zrt, Siemens Transportation System s.a.s.)	21. Multiple situations of conflict of interests are identified by OLAF, with high amounts paid to several decisions makers or persons who had an influence on the tender procedure, and the verification of the regularity of the contract implementation. A financial correction of 100% should apply. Other irregularities: 9. Unlawful selection criteria laid down in the tender documents (25%). 16. Lack of transparency and equal treatment during evaluation (25%)		751,608,412	

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
Co-09	Siemens M4 Budapest Konzorcium (Siemens AG, Siemens Zrt, Siemens Transportation System s.a.s.)	21. Multiple situations of conflict of interests are identified by OLAF, with high amounts paid to several decisions makers or persons who had an influence on the tender procedure, and the verification of the regularity of the contract implementation. A financial correction of 100% should apply. 9. Unlawful selection criteria laid down in the tender documents (25%). 16. Lack of transparency and equal treatment during evaluation (25%)		1,202,413,972	
K2C	SwO Metro-4 Rákóczi tér Építési Kkt.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009			994,800,000
K2C	SwO Metro-4 Rákóczi tér Építési Kkt.	100% Excluded from KÖZOP, Commission decision B(2009)6793 of 8.9.2009			224,000,000
Co-10	Alstom Transport SA.	21. Conflict of interests . A financial correction of 100% should apply (there is also serious fraud suspected in the on-going criminal investigation). Other irregularities: 16. Lack of transparency and equal treatment during evaluation (25%).	22,905,000,000		
K1/A-2	Főmterv-Unitef Konzorcium (Főmterv'TT Zrt, Unitef'83 Zrt)	6. In case of non-justified use if the negotiated procedure with prior publication of a contract notice a financial correction of 25% should apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity (in this case, because the use of this type of procedure was justified for part of the contract, it is proposed to reduce the correction to 5%)	25,960,000		
P16	CEPD Kft.	13. Modification of selection criteria after opening of tenders, resulting in incorrect acceptance of tender, a financial correction of 25% should apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity, in this case the other irregularity was purely formal and it is suggested to reduce to 0%. However, because the irregular amendment to the contract, a recovery of 1.371.270HUF was ordered.	1,165,580	205,609	

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
P7	AON Magyarország Kft.	Tender irregularity established by the Public procurement Arbitration Board, tender documents cancelled by the Board but disregarded by the Contracting authority. A correction of 25% is suggested.	9,182,500	10,162,500	
P7	AON Magyarország Kft.	Tender irregularity established by the Public procurement Arbitration Board, tender documents cancelled by the Board but disregarded by the Contracting authority. A correction of 25% is suggested.	13,317,500		
P1	Mélyépterv Kultúrmérnöki Kft.- Mecsekérc Környezetvédelmi Zrt- Soldata SA	16. Lack of transparency and/or equal treatment during evaluation, a financial correction of 25% shall apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity. Because the lowest bid was excluded, it is suggested not to reduce in this case.	69,789,268	51,833,580	
P10	Soldata SA- Hungeod Kft. Konzorcium	1. Lack of publication of modified contract notice, a financial correction of 25% shall apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity. Because a first contract notice was published, and only the modifications were not published, it is suggested to reduce the recovery rate to 5%.	56,780,588	34,544,465	
P10	Soldata SA- Hungeod Kft. Konzorcium	1. Lack of publication of modified contract notice, a financial correction of 25% shall apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity. Because a first contract notice was published, and only the modifications were not published, it is suggested to reduce the recovery rate to 5%.		28,631,130	
P10/B	Soldata SA- Hungeod Kft. Konzorcium	1. Lack of publication of modified contract notice, a financial correction of 25% shall apply. The correction can be reduced to 10% of 5% depending on the seriousness of the irregularity. Because a first contract notice was published, and only the modifications were not published, it is suggested to reduce the recovery rate to 5%.	32,104,867		
bsz-01/2004	Gárdos, Füredi, Mosonyi, Tomori Ügyvédi Iroda	The Contracting Authority infringed Article 40(2) and 153 (1) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was		284,745,213	11,063,337

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report) issued.	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
bsz-01/2004	Gárdos, Füredi, Mosonyi, Tomori Ügyvédi Iroda	The Contracting Authority infringed Article 40(2) and 153 (1) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued			2,787,989
bsz-49/2007	Varga Dóra Ügyvédi Iroda	The Contracting Authority infringed Article 40(2) and 153 (1) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued		2,400,000	
bsz-38/2006, bsz-17/2007	Profil Kft.	The Contracting Authority infringed §125 and §296 because it unlawfully failed to conduct any type of public procurement procedure when concluding and amending contract No Bsz-38/06 and Bsz-04/2008. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		49,000,000	
bsz-04/2008	Profil Kft.	The Contracting Authority infringed §125 and §296 because it unlawfully failed to conduct any type of public procurement procedure when concluding and amending contract No Bsz-38/06 and Bsz-04/2008. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		49,000,000	
bsz-24/2008	Univ-Plus Bt.	The Contracting Authority infringed Article 40(2) and 153 (1) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		8,000,000	

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
bsz-26/2007	AAM Zrt.	The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		7,994,000	
bsz-28/2007	AAM Zrt.	The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		49,000,000	
bsz-34/2007	ÖKO-FITT Környezetvédelmi Kft.	The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		2,540,000	
bsz-37/2007	MultiContact Kft.	The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		8,550,000	
bsz-44/2007	MultiContact Kft.	The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		5,880,000	
bsz-50/2007	AAM Zrt.	The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for		49,500,000	

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
		the full contract amount was issued.			
bsz-51/2007	ÖKO-FITT Környezetvédelmi Kft.	The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		800,000	
bsz-55/2007	ÖKO-FITT Környezetvédelmi Kft.	The contract has to be aggregated with the values of other contracts for public procurement activities. The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		10,350,000	
bsz-01/2008	"Metró" Közlekedésfejlesztési, Beruházási és Mérnöki Szolgáltató Kft.	The Contracting Authority infringed §40(2) of the Public Procurement Act because did not aggregate the contract with the value of other contracts and unlawfully failed to conduct a public procurement procedure. A financial correction of 25% is suggested for this irregularity.	100,000		
bsz-15/2008	Consulgal Hungaria Kft.	The Contracting Authority infringed §40(2) of the Public Procurement Act because did not aggregate the contract with the value of other contracts and unlawfully failed to conduct a public procurement procedure. A financial correction of 25% is suggested for this irregularity.	1,150,000		
bsz-29/2008	Egis Rail	The Contracting Authority infringed §40(2) of the Public Procurement Act because did not aggregate the contract with the value of other contracts and unlawfully failed to conduct a public procurement procedure. A financial correction of 25% is suggested for this irregularity.	6,131,475		

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
bsz-32/2008	BLAN Bt.	The Contracting Authority infringed §40(2) of the Public Procurement Act because did not aggregate the contract with the value of other contracts and unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		17,600,000	
bsz-33/2008	MATRICS Consult Ltd	The Contracting Authority infringed §40(2) of the Public Procurement Act because did not aggregate the contract with the value of other contracts and unlawfully failed to conduct a public procurement procedure. A financial correction of 25% is suggested for this irregularity.	2,353,190		
bsz-36/2008	Mélyépterv Kultúrmérnöki Kft.	The Contracting Authority infringed §40(2) of the Public Procurement Act because did not aggregate the contract with the value of other contracts and unlawfully failed to conduct a public procurement procedure. A financial correction of 25% is suggested for this irregularity.	1,150,000		
bsz-16/2008	MetroConsult Kft.	The Contracting Authority infringed §40(2) of the Public Procurement Act because did not aggregate the contract with the value of other contracts and unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		9,960,000	
bsz-16-002/2008	MetroConsult Kft.	The Contracting Authority infringed §40(2) of the Public Procurement Act because did not aggregate the contract with the value of other contracts and unlawfully failed to conduct a public procurement procedure. The irregularities were already established in previous procedures, a recovery order for the full contract amount was issued.		30,436,000	
bsz-2/2009	Profil Kft.	The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. According to the Beneficiary (see letter of comments) recovery order was issued for some of the contracts, for other contracts the recovery is ongoing.	5,630,000		

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
bsz-3/2009	MetroConsult Kft.	The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. According to the Beneficiary (see letter of comments) recovery order was issued for some of the contracts, for other contracts the recovery is ongoing.	24,500,000		
bsz-3-003/2009	MetroConsult Kft.	The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. According to the Beneficiary (see letter of comments) recovery order was issued for some of the contracts, for other contracts the recovery is ongoing.	8,682,000		
bsz-4/2009	Transmann Kft.	The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. According to the Beneficiary (see letter of comments) recovery order was issued for some of the contracts, for other contracts the recovery is ongoing.	25,000,000		
bsz-5/2009	Fömterv Zrt.	The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. According to the Beneficiary (see letter of comments) recovery order was issued for some of the contracts, for other contracts the recovery is ongoing.	4,080,000		
bsz-6/2009	Deloitte Zrt.	The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. According to the Beneficiary (see letter of comments) recovery order was issued for some of the contracts, for other contracts the recovery is ongoing.	4,000,000		
bsz-10/2009	MATRICS Consult Ltd	The Contracting Authority infringed §40(2) of the Public Procurement Act because unlawfully failed to conduct a public procurement procedure. According to the Beneficiary (see letter of comments) recovery order was issued for some of the contracts, for other contracts the recovery is ongoing.	12,221,850		
bsz-45/2006	Tetthely Kft.	The Contracting Authority breached Article 9.1. g) of the General Terms of the Grant Agreement and violated the principles of sound financial management. The Contracting Authority stated (see letter of comments to OLAF) that the payments were made from the Municipalities' own budget.	21,500,000		

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOP Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
		However, in the table provided previously to OLAF, those payments are recorded under KÖZOP (EU financing) and the additional financing (State + Municipality). This should be clarified, and if needed, recovery could be ordered.			
bsz-9/2007	Tetthely Kft.	The Contracting Authority breached Article 9.1. g) of the General Terms of the Grant Agreement and violated the principles of sound financial management. The Contracting Authority stated (see letter of comments to OLAF) that the payments were made from the Municipalities' own budget. However, in the table provided previously to OLAF, those payments are recorded under KÖZOP (EU financing) and the additional financing (State + Municipality). This should be clarified, and if needed, recovery could be ordered.		781,786,021	
P20/3	Matrics Consult Ltd.	FIDIC claim settlement consultancy is part of the tasks of the FIDIC Engineer. Such service should have been provided by Eurometro Kft., it was included into its contract. Contract P20/3 contains duplicate tasks and is 100% not eligible	90,750,000		
P20/4	MetroConsult Kft.	National audit KÖZOPHÁT/1391-5/2016/NFM established that irregularity occurred, a recovery order and correction for HUF 398 864 000 + HUF 60 257 397	398,864,000	60,257,397	
P20/5	Matrics Consult Ltd.	The Contracting Authority violated the rules on eligibility of payment requests, because several invoices were paid while one or several of the mandatory documents were missing. The Contracting Authority modified the amount of the contract, which increased by more than eight-fold, while no unforeseen circumstances occurred. This constituted a breach of § 303 of the Public Procurement Act. Risk assessment consultancy was part of the tasks of the Project Management Consultancy. Such service should have been provided by Eurometro Kft., it was included into its tasks. Contract P20/5 contains duplicate tasks and is 100% not eligible.	561,375,000		

	Contractor	Financial impact of the irregularity (already established and recovered/under recovery, or calculated according to COCOF Guidelines on the basis of the findings of this report)	EU co-financed KÖZOP (Cohesion Fund + State + Own)	Complementary financing (State + Municipality)	100% Municipality
P20/6	Matrics Consult Ltd.	Project scheduling consultancy was part of the tasks of the Project Management Consultancy. Such service should have been provided by Eurometro Kft., it was included into its tasks. Contract P20/6 contains duplicate tasks and is 100% not eligible	65,875,000		
bsz-12/2008	Horváth, Dóczy és Lehman Ügyvédi Iroda	To be verified by the Beneficiary or the Managing Authority			
TOTAL AMOUNT (HUF)			76,651,114,014	87,886,451,233	2,460,693,109
TOTAL AMOUNT (EUR)			€295,950,247 (of which the Cohesion Fund amounts to: €227,881,690)	313,880,183	8,788,190

3.4. TOTAL FINANCIAL IMPACT OF OLAF FINDINGS:

The reference exchange rate used in calculating the financial impact is 1 EUR = 259 HUF.⁷⁶

The total project amount is EUR 1 747 313 606 (HUF 452 554 224 000).

Out of this amount, the total amount of contracts affected by different type of irregularities is EUR 1 053 372 541 (HUF 272 823 488 215). This includes amounts co-financed by the Cohesion Fund under the KÖZOP program and non-EU financed contracts.

For the estimation of the financial impact of irregularities, the following methodology was used: when 100% of the contract was excluded from EU financing based on an irregularity procedure, 100% of the amount is calculated as financial impact.

In the other cases, a calculation - on contract by contract base - is made in accordance of the COCOF Guidelines.

Thus the total financial impact of irregularities found is calculated to be HUF 166 942 383 356 (approximately EUR 644 780 920).

IRREGULARITIES HUF							
	Európai Unió, Kohéziós Alap/ Cohesion Fund		Magyar Állam/ Hungarian State		Főváros/ Municipality of Budapest		Teljes összeg/ Total
KÖZOP	HUF 59,021,357,791	77 %	HUF 9,198,133,682	12 %	HUF 8,431,622,542	11 %	HUF 76,651,114,014
Complementary financing : (State + Municipality)			HUF 68,551,431,962	78 %	HUF 19,335,019,271	22 %	HUF 87,886,451,233
Municipality own part					HUF 2,460,693,109		HUF 2,460,693,109
TOTAL	HUF 59,021,357,791		HUF 77,749,565,643		HUF 30,227,334,922		HUF 166,998,258,356

IRREGULARITIES EUR							
	Európai Unió, Kohéziós Alap/ Cohesion Fund		Magyar Állam/ Hungarian State		Főváros/ Municipality of Budapest		Teljes összeg/ Total
KÖZOP	€227,881,690	77 %	€35,514,030	12 %	€32,554,527	11 %	€295,950,247
Complementary financing (State + Municipality)			€264,677,343	78 %	€74,652,584.06	22 %	€339,329,928
Municipality own part					€9,500,746		€9,500,746
TOTAL	€227,881,690		€300,191,373		€116,707,857		€644,780,920

⁷⁶ Commission Decision No. C(2015)8726 of 4.12.2016, modifying Commission Decision No. B(2009)6793 of 2 September 2009 decreased the EU financing from EUR 728 526 000 to EUR 696 490 000. The total amount paid from the Cohesion Funds was HUF 180 830 600 000, this corresponds to an average exchange rate of 1 EUR = 259 HUF.

Out of the irregular EUR 644 780 920 identified by OLAF some EUR 295 950 247 (HUF 76 651 114 014) were claimed under the EU financed "KÖZOP Operative Program" project. This corresponds to **EUR 227 881 690 (HUF 59 021 357 791) being financed by the Cohesion Fund**, EUR 35 514 030 by the Hungarian State and EUR 32 554 527 by Budapest Municipality.

It is not possible to identify which specific contracts were financed by the EIB, because the EIB loans were allocated to the entire project and not specific contracts. It is therefore important to highlight that:

- Out of the irregular EUR 644 780 920, EUR 300 191 373 is financed by the State Financing which includes also EIB financing.
- Out of the irregular EUR 624 584 653, EUR 116 7707 857 is financed by the Municipality of Budapest only, which also includes EIB financing.

It should also be noted that in relation to the EIB loan to the Hungarian State, the amount of irregularities evidenced exceeds the amount paid from the Hungarian State's own budget after deducting the EIB loan, see calculation below.

In relation to the State loan, it is therefore concluded that the EIB financed at least EUR 20 700 755 worth of an irregular contract, see table below.

EIB Loan to the Hungarian State	
Total Hungarian State financing	€751,490,618
Total financial impact irregularities on Hungarian State Financing	€300,191,373
'No irregularities evidenced' on Hungarian State Financing	€458,721,561
EIB loan received	€472,000,000
Difference (=amount financed by the EIB which is irregular even with the reduction of irregular amount on the basis of COCOF Guidelines)	€20,700,755

In relation to the EIB loan to the Municipality, the amount of irregularities evidenced does not exceed the amount paid from the Municipality's own budget after deduction of the EIB loan, see calculation below. However, it is noted again that the EIB financed the project, and not specific contracts.

EIB Loan to the Municipality of Budapest	
Total Municipality financing	€297,635,344
Total financial impact irregularities on Municipality financing	€116,707,857
'No irregularities evidenced' on Municipality Financing	€180,927,487
EIB loan received	€ 58,500,000
Amount financed by the EIB which is irregular even with the reduction on the basis of COCOF Guidelines	0

Taking into consideration the findings of the OLAF investigation and those of the audits conducted, OLAF ascertains that that **the irregularities may be considered as systemic** - at least up until the end of 2012, when the Project Directorate was reorganised and the Project Management and FIDIC Engineer was changed.

OLAF also bases its overall findings in the following circumstances:

- the **number and amount of irregularities evidenced,**
 - the **serious weaknesses and conflict of interests which affected the Project Direction and the Project Management as a whole and** which had direct consequences on the whole Project(the irregular execution of public procurement procedures possibly even in procedures which were not audited by the different audit services or checked by OLAF; wrong decisions taken affecting the financial interests of the whole Project; the delays due to weaknesses in the technical and financial preparation of the Project which resulted for example in claims against the Beneficiary amounting to approximately EUR 260 969 000.)
- According to Articles 99 of Regulation 1083/2006 also mentioned by the COCOF Guidelines⁷⁷; "2. *The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied.*
3. *The Commission shall, when deciding the amount of a correction, take account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies found in the operational programme concerned."*

4. COMMENTS OF THE PERSONS CONCERNED

By letter THOR (2016)3289 of 29 January 2016, OLAF provided Budapest Municipality (the beneficiary), as a person concerned, the opportunity to comment on the facts concerning it. The response of the beneficiary was received on 15 March 2016, it is registered into the case file under reference THOR (2016)9347. As the Municipality clarified in the cover letter, the BKV Zrt. (BKV DBR Metro Project Directorate) had been consulted before providing the comments to the facts established by OLAF. Therefore its letter reflects the common view of the Municipality and the BKV Zrt.

By letter THOR(2016)31392 of 19 October 2016, OLAF provided to Mr Medgyessy Péter, owner of the company M.P. Europa Kft., one of the owners of AssistConsult Kft., the opportunity to comment on the facts concerning it. The response from Mr Medgyessy was received on 2 November 2016, it is registered into the case file under reference OLAF.C1 (2016)2895. Mr Medgyessy provided some clarifications about the dates of its ownership in different companies, as well as about its functions as ambassador. He did not comment on most of the facts as he considers that it was not his competence as an owner to be aware about the details of the activities of the company, especially in relation to a contract "signed before he became owner".

Moreover, as detailed above, for many of the contracts, the comments of the person concerned were directly taken into account when drafting the final facts established in this Final Report (for example, rectification of data, figures). In other cases, the comments were included into this Report under the facts in relation to which the comments were made (text in italic under each fact).

In relation to the possible criminal aspects of the matters concerning Alstom, the UK SFO requested confidentiality from OLAF in relation to most of the facts because its on-going prosecution. Accordingly the right to comment in this particular instance was deferred

⁷⁷ Commission Decision of 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement.

(THOR(2016)26093). However, it should also be noted that in the course UK judicial prosecution, which is at a well advanced stage, the defendants have already been provided with the full details of the case against them under UK law procedural rights rules.

5. CONCLUSIONS

Project Budapest Metro Line No. 4 is the most expensive EU funded project implemented in Hungary for the period 2007-2013.

The total final cost of the project as declared was 452 554 224 000 HUF (approximately 1.7 billion EUR), of which Cohesion Fund financed 696 490 000 EUR. Two EIB loans also contributed to the project's financing.

More than 100 contracts were signed in the course of the implementation of this project, out of which 20 were considered as large works contracts.

OLAF's investigation has established that the following serious management irregularities and errors and possible fraud and other offences which took place from the beginning of the project and which affected the whole project throughout its implementation:

- DBR Metro Projects Directorate did not have the necessary professional capacity and the staff needed to implement correctly its coordination and management tasks.
- Some members of DBR Metro Projects Directorate or their hierarchical superiors were in the conflict of interests situation with one of the contractors.
- The owners of Eurometro Kft. (Project Management and FIDIC Engineer) were in the conflict of interests situation with several contractors.
- The choice of the "FIDIC Yellow Book standards" was not adapted to the incapacity of the Project Directorate to fulfil the function of coordinator.
- The insufficient financial and technical preparation of the project and the decision of choosing the "FIDIC Yellow Book standards" resulted in serious delays and considerable increase of the projects cost. The total amount of claims introduced by different works contractors (accepted or under litigation) due to the delays was HUF 67 591 200 000 (approximately EUR 260 969 000).

A significant number of public procurement procedures were affected by irregularities, some at the stage of the tender publication, others during the tender evaluation procedure.

The total amount of contracts affected by different type of irregularities is EUR 1 053 372 541 (HUF 272 823 488 215), which is approximately 60% of the total project amount EUR 1 747 313 606 (HUF 452 554 224 000).

The total estimated financial impact of the irregularities is EUR 644 780 920 (HUF 166 942 383 356, calculation by recovery rate recommended by Commission Decision taken into account each type of irregularity).

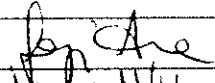


OLAF has found that the estimated financial impact on the EU co-financed "KÖZOP Operative Program" is EUR 295 950 247 (HUF 76 651 114 014). **The total financial impact on the Cohesion Fund (77% of the eligible amount, which corresponds to 85% of the total subvention) is estimated to EUR 227 881 690 (HUF 59 021 357 791).**

Finally, OLAF also notes that the European Investment Bank (EIB) also provided two loans under the project.

- EIB loan to the State of Hungary: EUR 472 000 000. The total amount of Hungarian State financing in this project was EUR 758 912 934, while the total estimated financial impact of the irregularities on the State financing is EUR 300 191 373. This means that the EIB financed at least EUR 20 700 755 under irregular contracts.

- EIB loan to the Municipality of Budapest: EUR 58 500 000. The total amount of Municipality own financing in this project was EUR 297 635 344, while the total estimated financial impact of the irregularities on the Municipality financing is EUR 116 707 857.

All of OLAF's investigative actions into BUDAPEST METRO LINE 4 are now complete.

Signatures		
Investigator	SZONYI Amira	
Investigator	SZAVOV Nora	
Head of Unit	SWEENEY James	
Director	BIANCHI Ernesto	