

Republic of Macedonia
CONSTRUCTION OF NEW MOTORWAY SECTION DEMIR KAPIJA –
SMOKVICA, PART OF THE PAN EUROPEAN CORRIDOR X

LAND ACQUISITION AND COMPENSATION PLAN

November 2010

Background

The Corridor X is the most important element of the core transport network, linking SEE countries. Road infrastructure has great importance for economic growth, for labor force mobility and also for competitiveness within international distribution of transport operations. It is one of the key factors that considerably affects economic development and spatial structure of the country (regions).

The transport priority axis will focus on the continuation of the Development of the South East Europe Core Regional Transport Network. This is in line with the main part of road Corridor X linking Salzburg and Thessaloniki through Ljubljana, Zagreb, Belgrade and Skopje is 1,451.4 km long and consists of multilane motorways at a percentage of 80% of its length. The percentage of the multilane motorways is foreseen to reach 90% of the Axis by 2008, with construction of all the Slovenian and Croatian sections to full motorway profile. The remaining sections of the main part of Corridor X that need upgrading are the Leskovac (Grabovnica) in Serbia and Tabanovce-Kumanovo – currently under construction and Demir Kapija-Smokvica in Macedonia.

The financial construction (IFI financing)

The National Public contribution for construction of this four lane motorway section in length of 28.2km will be provided through loans from EIB and EBRD. The EIB informed the national authorities on its willingness to provide a loan in amount up to 50% of the total project costs. Also EBRD informed the national authorities on its preparedness to participate in the financing of the project with loan up to 100MEUR. The IPA Contribution to the project as per OPRD 2007-2009 is in amount of 27.4 MEUR. With the revision of the OPRD for the period 2010-2011 National authorities requested additional 17.6 MEUR for this project, in total 45 MEUR.

Specific objectives to be achieved through the construction of this section:

- To facilitate international and transit movements of people and goods with the EU and its regional neighbors by completion of the national components of the Corridor X to the level of motorway
- To facilitate the effective movement of persons and goods that supports improved living standards and socio-economic environment in the regions through completion of the national components of the Corridor X
- To promote sustainable development especially through minimizing the adverse effects of transport on the environment and through improving transport safety and etc.

Institutional framework

Operating Structure for the Operational Program for Regional Development, as per Article 15 of the Governmental Decree on DIS, shall comprise of CFCD and the respective structures for IPA implementation established within the Ministry of Transport and Communications and the Ministry of Environment and Physical Planning, as well as the Project Implementation Unit within the Agency for State Roads, acting as Specific Body within the Operating Structure in accordance with Article 31 of IPA IR, Article 6(2) of the FwA and Article 18 of the Governmental Decree on DIS. The Operating Structure shall be responsible for managing and implementing OPRD in accordance with the principle of sound financial management, as per Article 28 of IPA IR, point 6 of Annex A of the FwA and Article 9 of the Governmental Decree on DIS.

Central Financing and Contracting Department is a department within the Ministry of Finance, acting as Head of the Operating Structure for the Operational Programme for Regional Development Component in charge of the functions and responsibilities, as described in Article 28 of the IPA IR and Point 6 of Annex A of the FwA.

Competent Accrediting Officer is the Minister of Finance, responsible for issuing, monitoring and suspending or withdrawing the accreditation of NAO and NF, in accordance with Article 24 of IPA IR, point 1 of Annex A of the FwA and Article 4 of the Governmental Decree on DIS.

Head of Operating Structure is an official of the Ministry of Finance, heading the CFCD, being responsible for the functions and responsibilities assigned to the

Operating Structure as per Article 28 of the IPA IR and Point 6 of Annex A of the FwA and Article 9 of the Governmental Decree on DIS.

IPA Coordinator for Regional Development Component (part Transport) is an official of the Ministry of Transport and Communications, responsible for the IPA structure established within the Ministry of Transport and Communications, ensuring that the technical aspects of the preparation and the implementation of OPRD are carried out in an effective and timely manner, having the responsibilities pertaining to Article 11 of the Governmental Decree on DIS.

National Authorizing Officer is a high ranking official of the Ministry of Finance, heading NF and being entrusted the overall responsibility for the financial management of IPA funds and effective functioning of the management and control systems, that shall have the responsibilities pertaining to Article 25 of IPA IR, point 4 of Annex A of the FwA and Article 7 of the Governmental Decree on DIS.

PIU Coordinator is an official of the Agency for State Roads, responsible for the Project Implementation Unit established within the Agency for State Roads, who shall ensure that the technical aspects of the implementation of Project under the Priority Axis 1 of the OPRD are carried out in an effective and timely manner.

Specific Body is the Project Implementation Unit within the Agency for State Roads as a body established within the Operating Structure for Regional Development Component of IPA in accordance with Article 31 of the IPA IR, Article 6(2) of the Framework Agreement and Article 18 of the Governmental Decree on DIS.

Strategic Coordinator is the Deputy Prime Minister in charge of economic affairs in the Republic of Macedonia who shall ensure the coordination of the Regional Development Component and Human Resources Development Component of IPA under the responsibility of NIPAC, as per Article 23 of IPA IR, point 3 of Annex A of FwA and Article 6 of the Governmental Decree on DIS.

The Republic of Macedonia Expropriation Law

The Law on expropriation ("Official Gazette of Republic of Macedonia" No. 33/95, 20/98, 40/99, 31/03, 46/05, 10/08, 106/08, 76/10) regulates the procedure for expropriation of property and the rights that arise from it for real estates (immovable properties) for projects that are of public interest.

According to this Law the procedure for Land expropriation ¹initiates (starts) with a proposal for expropriation. The proposal is submitted by the Beneficiary of Expropriation (the Agency for state roads) to the Property and legal affairs office (expropriation body).

The proposal for Expropriation contains data for the proposer of the Land Expropriation, the real estate for which the Land Expropriation is proposed, the owner of the real estate and the structure i.e. performance of the work for which the Land Expropriation is proposed. As enclosure to the proposal shall be submitted: statement from the act for planning of the space, numerical data for the real estate for which the Land Expropriation is proposed, offer for the type and height of the compensation for the real estate, evidence for assets secured for compensation of the expropriated immovable property, (Annual program for construction, reconstruction, maintenance and protection of the state roads in Republic of Macedonia) and evidence for ownership that is offered in compensation, if such offer exist.

In a procedure that precedes, in the frames of the Agency for state roads, a commission for Land Expropriation is established in composition of three members. The commission is established through a Decision enacted by the Director of ASR. Commission members based on the letter of attorney issued by the Director of the Agency are authorized in the name and on behalf of ASR to undertake the activities for carrying out the Expropriation procedure i.e. to prepare, sign and submit the proposals for expropriation, to participate on the discussions in front of the property and legal affairs office and to sign the minutes and the settlements concluded in front of the expropriation body.

For the needs of the expropriation procedure, previously are prepared the Surveying elaborates for expropriation according to the procedure and manner provided in the regulations for surveying works. The Surveying companies are selected in manner and in procedure in accordance with the Law on public procurement.

With aim to determine the market value of the real estates (structures) which are subject on expropriation, as well as the compensation on the crops (fertile parcels) the Beneficiary of Expropriation engages experts from the relevant area. The

¹ Land expropriation has the same meaning with Land Acquisition

procedure for their selection is conducted in accordance with the legal regulations for public procurement. The prepared expert findings and opinions are submitted to the expropriation body together with the proposals for expropriation.

Since the proposals for expropriation will be submitted to the authorized department in the property and legal affairs office, the expropriation body (property and legal affairs office) submits the proposals with all enclosures to the real estate owners and to the authorized body for managing the public books (Agency for real estate cadastre), for noting the expropriation. Afterwards the expropriation body appoints a discussion on which the real estate owner and the Beneficiary of Expropriation are invited (ASR).

The discussion can be concluded with settlement for compensation.

This kind of settlement has force of effective act and the procedure for land expropriation and for determination of the compensation is considered as completed. The settlements shall be signed by the commission members and the payments are immediately executed from the Beneficiary of expropriation (ASR's budget) to the former owners.

If a settlement hasn't been reached under the expropriation proposal, the expropriation body brings a decision by which the expropriation proposal is adopted. Upon the effectiveness of the decision for expropriation, ex officio or with proposal of the former owner a procedure for determination of the compensation for the expropriated real estate is initiated in front of the authorized court. The effective decision of the authorized court presents a basis for execution of payment of the monetary compensation to the former owners.

Expropriation body is responsible to submit the concluded agreements, as well as the effective decisions to the authorized body responsible for managing the public books, for the reason of entering the changes of the ownership of the expropriated real estates.

An analysis of potential gaps against IFI requirements (compensation amounts, dispute resolution mechanisms).

The fair value that the Beneficiary of Expropriation is offering for the expropriated land is determined by Tax administration of the municipalities, on the basis of comparable sales transaction in the area in the recent past, on prior request by the Beneficiary of Expropriation.

The Decisions of the Court of Appeals for determining the amount of compensation are mandatory and executive. When these Decisions are completed, the payments

are immediately executed from the Beneficiary of expropriation (ASR's budget) to the former owners.

The practice has shown that the former owners are more willing to make the compensation of properties in cash.

According to the Law on Expropriation article 23 and 24, compensation for expropriated property is settled by providing corresponding property or cash unless former proprietors or possessors of other property rights and expropriation beneficiaries come to a different agreement.

In cases when expropriation beneficiaries are unable to provide suitable land or due to other circumstances (massive expropriations, expropriation of small lot portions), the compensation shall be settled in cash (in accordance with article 23 and 24 of Macedonian Law of expropriation).

The Law on expropriation of Republic of Macedonia, articles 23 and 24 are providing an opportunity to perform a compensation of land with other land from same type, size and similar, in order the Beneficiary of Expropriation to perform the planed Land expropriation. In a case of massive expropriation i.e. providing a large number of cadastre parcels, as a difficulty can be considered the performance of the overall procedure for providing a suitable property that in size, quality and location represent a suitable compensation for the expropriated property.

Suitable compensation of property means – providing property that has equal elements as the expropriated property such as: cadastre class, climate and economic conditions, construction suitability, locality, surroundings etc.

Also, as a difficulty can be considered the performance of the overall procedure for providing a suitable property which the Beneficiary of expropriation shall have on disposal.

Prior to the procedure of expropriation, the Beneficiary of expropriation needs to have on disposal properties that will be offered as a compensation for the expropriated properties. This is a long term procedure, which takes at least 5 months to be completed.

This procedure is performing in several phases and other state institutions are involved for their execution.

The Beneficiary of expropriation submits a request for compensation of properties to the Ministry of transport and communications – for the building land, or to the Ministry of agriculture – for the agricultural land. The competent ministry checks if there is a suitable state properties on disposal and requires a prior consent for compensation of land from the State Attorney, after which the Government of Republic of Macedonia adopts a decision for compensation.

The advantage of compensation for expropriated property in cash is that, an additional prolongation due to the extensive procedure for suitable property compensation will be avoided.

An estimate of land acquisition needs in hectares broken down by land use and of the number of the affected landowners

According to the Elaborates for Land expropriation submitted by the Designers on 01 February 2009 and certified in the Cadastre of R.M, it has been presented that the construction of the new motorway section requires approximately **211,966.628** (ha) in total to be expropriated. From the total surface of the land that should be expropriated, calculated in percentage, an 85% of the total is land in State property or 197.736 (ha). The other land that should be expropriated broken down in hectares are as follows: Construction land is equal to 0.016 (ha); Agricultural land (fields) is equal to 14.225.48 (ha); Pastures land is equal to 4.84 (ha); Forests land is equal to 0.27 (ha) and Orchard land is equal to 0.022 (ha).

Detail calculation on the total Surface in hectares and Number of owners Is presented in the table bellow:

| Land exp. broken down by land use | Construction land | Agricultural land (fields) | Pastures | Forests | Orchard | State property land | Total |
|--|--------------------------|-----------------------------------|-----------------|----------------|----------------|----------------------------|--------------------|
| Surface in hectares | 0.016 | 14,225.48 | 4.84 | 0.27 | 0,022 | 197,736 | 211,966.628 |
| Number of owners | 2 | 145 | 50 | 8 | 1 | / | 206 |

- As positive side can be considered the fact that along the section Demir Kapija – Smokvica 28 km, as part of the Pan – European Corridor X , on the total surface of this section there are not affected any structures that should be demolished (households, buildings and etc) in order this new motorway to be constructed.

Description of past and current land expropriation activities

For the needs of expropriation the Agency for State Roads in February 2010 submitted 186 proposals for expropriation to the authorized bodies for property and legal affairs - department for administrative procedures within the Ministry of finance. During the period of March 2010, discussions were appointed and held, from which 22 were concluded with a settlement for compensation that were paid to the former owners.

For the proposals that did not result in settlements with the former owners, 177 decisions for expropriation were brought.

Sixty (60) decisions are effective, 26 are in appeal procedure in front of the secondary commission within the Government of Republic Macedonia, out of which 18 are completed and for 6 law suits were submitted to the Administrative court and for 2 of them runs the time limit for taking legal suit to the Administrative court.

In the Primary court in Gevgelija and Negotino there are 88 procedures for determining the amount of the compensation for the expropriated land, and 3 appeals were submitted to the Court of appeals in Skopje.

Program, budget and time frame for completion of the land expropriation

The ASR is carrying out land expropriation at its own expenses. In this stage ASR has only a rough estimation for the expropriation cost, given by the designer which is equal to 1.2 MEUR, needed for completion of the Land expropriation.

These assets are secured through the ASR's Annual program for construction, reconstruction, maintenance and protection of public roads in the Republic of Macedonia ("Official gazette of the Republic of Macedonia" no. 06/10, 38/10, 121/10). Significant amount is provided for the expropriation in order ASR to be on the safe side. The precise amount will be known when all the procedures in Appeal court will be completed.

Time Frame - It is considered the land expropriation procedures to be completed prior to the signature of the works contract.

Description of the grievance mechanisms available to the affected people.

According to the Law on expropriation (“Official gazette of the Republic of Macedonia” no. 33/95, 20/98, 40/99, 31/03, 46/05, 10/08, 106/08, 76/10), the Law on general administrative procedure (“Official gazette of the Republic of Macedonia” no. 38/05, 110/08, 118,08) Law of administrative disputes (“Official gazette of the Republic of Macedonia” no. 62/06,27/08,117/09), the unsatisfied side has the right to appeal to the secondary commission of the Government of R. Macedonia, against the decision brought by the expropriation body, in a time limit of eight (8) days from the receipt of the decision.

Against the decision of the secondary commission of the Government of R. Macedonia a law suit can be submitted to the Administrative court. The decision of the Administrative court is mandatory and executive.

In the judicial procedures for determining the amount of the compensation, the unsatisfied side has the right to appeal against the Decision of the Primary Court to the Court of Appeals.

In addition the overall grievance mechanism put in place for the Corridor 10 project (see Stakeholder Engagement Plan) will be available to the affected people.

Non - titled land users

It is currently estimated that the Project does not affect any non-titled land users (informal or “illegal” land users. However, if such impacts were identified, they would be addressed in compliance with EBRD PR5, including the following steps:

- Identification of affected interests and impacts,
- Discussion of relocation and assistance measures with the affected parties on a case by case basis, in accordance with the principle that the affected person should not lose his/her source of livelihood and should not be worse-off after the displacement.