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Integrity Compliance in the EU Connectivity Agenda

Investment in public (or publicly funded) infrastructure is a driver for sustainable growth and development; is essential for the provision of basic services such as transport, electricity, water, and sanitation; and constitutes a requisite for the delivery of public services like health, education, and security.

The **Connectivity Agenda (CA)** has become one of the main components of EU assistance to the Western Balkans (WB6) aimed at region's infrastructure. The total engaged amount of the WB6 Connectivity Agenda from 2014 to 2020 is estimated at EUR 4.2bn, while the total allocation of the Instrument for Pre-Accession (IPA) II (connectivity funds excluded) for the Western Balkans region is estimated at EUR 6bn¹. Initially focused on transport and energy, CA has gradually enlarged its scope to include green energy, and water and waste sectors as part of the 2020 Economic and Investment plan and of the 10 Flagship Projects (EIP).

EIP identifies poor **governance** as a major limiting factor in the WB6, and in particular, the limited progress in addressing shortcomings in the rule of law and in tackling corruption. Alignment with the EU public procurement rules and enhanced transparency and oversight have been defined as key for the sound financial management and prevention of corruption in the major public investments, including the 10 Flagship Projects.

Integrity compliance is formally recognized as being part of what makes an economy well governed, and is widely accepted as permeating into other key qualities such as competitiveness, resilience, and sustainability. Low integrity compliance leads to waste of public resources, damages credibility and trust in public institutions, and lowers the efficiency of investment in infrastructure. In the Chair Conclusions of the Western Balkans Summit (WBS) in 2020, integrity compliance was

mentioned as a required feature to ensure the value for money of the EU spending in the WB6.

The main **factors** that make infrastructure projects particularly vulnerable to integrity risks are many. One can mention the extent of public officials' discretion over the investment decision, the large sums of money involved in a single project, multiple project stages and the respective stakeholders involved, weak governance capacity, poor expertise of managing public institutions, and political incentives aligned to such investments, etc. Corruption in the different phases of infrastructure projects can involve a wide range of **actors**, including elected and non-elected public officials, lobbyists, non-profit organizations, trade unions, contractors, engineers, consultancy firms providing technical assistance, and suppliers.

A review of the Western Balkans Investment Framework (WBIF) Steering Committee minutes, annual reports, monitoring reports, and evaluation reports² reveals frequent references to challenges posed by WB6 administrations in different phases of infrastructure project cycle management, with the most frequent being "transparency," "procurement," and "corruption". International Financial Institutions (IFI) involved in the WBIF have set in place comprehensive and detailed **mechanisms** for integrity compliance in the infrastructure projects that they finance.

However, given the widely accepted "state capture" phenomena, a comprehensive policy framework from the project identification phase to operations, as well as accompanying mechanisms to address the project integrity risks must be developed and become an integral part of any infrastructure project in WB6. As expertise providers and direct beneficiaries of CA infrastructure, **WB6 civil society** organizations have a special role to play.

¹ CDI's own estimation of Connectivity Agenda in the WB6 region as the total of EUR 1bn in grants and 3.2bn in loans; with the total IPA II 2014–2020 indicative allocation for Albania, B&H, Kosovo, Montenegro, North Macedonia and Serbia, minus Turkey and minus

the Connectivity Agenda allocation of EUR 1bn. Extracted from: https://ec.europa.eu/neighbourhood-enlargement/-/instruments/overview_en.

² <https://wbif.eu>

Impact of WB6 Structural Weaknesses on Infrastructure Project Integrity

The EU Commission mentioned “**state capture**” for the first time in the 2016 EU Enlargement Strategy to explain the rule of law and economies in WB6. State capture, the lack of political will to speed up the reforms, and poor governance are the main components of “structural weaknesses” that currently affect WB6 institutions.

The main problems that appear during infrastructure project implementation result from:

- “**poor governance**,” as expressed by the weak administrative capacity of national institutions to design, implement, and operate such projects; and,
- “**political will**” as expressed by the policy capture mostly during the: i) design of long-term strategic vision for infrastructure, ii) assessment of their impact on fiscal sustainability, affordability, and value for money; iii) enforcement of a transparent, systematic, and effective stakeholder participation; iv) promotion of a coherent, predictable, and efficient regulatory framework, and: v) implementation of a unified government approach to manage threats to integrity.

We have brought together some illustrations of poor governance in the WB6 that impacts planning, implementation, and operations of infrastructure projects.

Transparency in Project Identification and Prioritization

The success of infrastructure investment depends on the maturity of the national projects that submitted for IFI financing. The better and more complete the quality of a submitted dossier is, the higher the probability it will acquire funding.

In each country, it is the “National IPA Coordinators” (NIPACs) who are responsible for coordinating that preparation. NIPACs and National Investment Committees (NICs) oversee the prioritization of projects, and the

project dossiers submitted to WBIF and other financing mechanism for co-financing. In this list, the projects are ranked by their maturity and the strategic importance that they have for the WB6 country that submits them.

However, at the time of this paper, there was no publicly available data about the updated list of priority projects in any of the WB6 countries – called otherwise the Single Project Pipeline (SPP). This raises the issue of **transparency** and **representation** in the project prioritization process.

Infrastructure Project Accountability Reviewed

Large Infrastructure Project (LIP) **stakeholders** include the WB6 governments as represented by their different national administrative bodies (including the NIPAC, NIC, Ministry of Infrastructure, Ministry of Finance, local government units (LGU), and program management units), publicly owned companies, private sector actors, foreign donors, and the five WBIF partner banks (IFI). Recently, new actors have entered the fray with the most important being Chinese companies and development banks, as well as UAE companies and development funds.

In the case of the EU Connectivity Agenda, this complex institutional structure has not incorporated any mechanism for the direct involvement of CSOs or other NGOs in the LIP project cycle. In theory, both stakeholder groups – CSO and LGU – are requested by law to be consulted during the: (i) preparation of the National Single Project Pipeline (NSPP) and other different national consultation mechanisms regarding the identification and prioritization of infrastructure projects; and, (ii) phase of pre-feasibility and feasibility study through the Environmental and Social Impact Assessment (ESIA). But **citizen and even LGUs are absent** from the preparation of NSPP, while ESIA consultations are marred with problems.

As a result, in reality Connectivity Agenda LIPs in Western Balkans are identified, designed, financed, implemented, and operated mainly within the **institutional triangle** of: (i) Government (PMO, Ministry of Finance and

Ministry of Transport), (ii) EU Commission (on projects that receive IPA grant support, WBIF technical assistance and extension of the Trans-European Transport Network / TEN-T); and of, (iii) IFI (for loan modalities).

Moreover, WB6 governments have recently passed **special laws** that allow for the direct procurement of large projects based only on bilateral agreements. As expected, those projects suffer from a lack of transparency, problems during implementation, and often produce negative impacts on the environment and the fiscal sustainability of the country.

WB6 Public Administration Capacity in Preparing Mature Projects

The International Monetary Fund (IMF) has identified the management of public investment in the WB6 region as exhibiting significant **weaknesses**, an issue also recognized by the Directorate-General for Neighborhood and Enlargement Negotiations (DG NEAR) and regularly mentioned by the EU Multi Country Action Programs for Connectivity for the years 2019 and 2020³.

One of the solutions adopted to cope with weak local institutional performance in the region has been to back up those institutions with externally contracted **expertise**. Two large technical assistance programs have complemented WBIF support: JASPERS⁴ aimed at quality review for project documentation and development of strategies and CONNECTA⁵ targeting the preparation of infrastructure projects and the implementation of connectivity reforms measures.

But while those solutions address short-term handicaps by securing a timely, steady, and high-quality flow of documents needed for completing mature project dossiers, they cannot solve the deep-rooted problems of weak institutional governance and political will in the WB6. Even if **Technical Assistance** (TA) contracts almost always include a capacity building component for the local beneficiary,

their contracts tend to be regularly renewed, becoming a virtual component of the local WB6 administration. Moreover, the capacity-building component is very often replaced by technical assistance where it is the trainer that more often than not performs the tasks of the intended trainee.

Bringing in the CSO: From Watchdog to Project Owner

As a result of WB6 state capture phenomena, we are observing a rupture of the accountability mechanism in the infrastructure project cycle. The mechanisms assuring transparency, consultation, and accountability are not properly functioning. As a result the monitoring of the institutions in charge of identifying, preparing, financing, contracting and operating LIPs becomes very difficult to impossible.

Despite such an environment, many local CSO have continued to represent and protect the interest of the citizens and have duly identified cases where the LIP governance has been poor and resulted in increased costs for the WB6 countries. Risks and failures linked to integrity in every project phase are also becoming visible regularly in the media.

Beyond their LIP monitoring role, CSOs are holders of a critical mass of knowledge on many activity sectors, key reforms, and accession negotiations chapters. Their work on the ground is crucial for enriching and complementing the policy-making processes across sectors. Moreover, locally based CSOs have a vested interest in the efficiency and impact of EU financial aid as well as its sustainability. Hence the input of civil society should become a systemic component of the local contribution of infrastructure projects.

Taking into account the project phases, the stakeholders, the actors and the array of integrity compliance risks, we have designed a simple form where IC risks are allocated per each project phase.

Through this form we propose to structure input of CSOs related to the integrity compliance of the infrastructure project cycle, based on OECD

³ see Connectivity Agenda and Structural Weaknesses of Candidate Countries, at: <https://cdinstitute.eu/2020/04/29/connectivity-agenda-and-structural-weaknesses-of-eu-candidate-countries/>

⁴ Joint Assistance to Support Projects in European Regions

⁵ Technical Assistance to Connectivity in the Western Balkans

methodology⁶ and adapted to the WB6's infrastructure project context. Each project phase involves distinct and numerous institutions and stakeholders, which result in

different risk environments and vulnerabilities for different types of fraud and corruption schemes.

The Form allows to:

1. make visible integrity compliance risks affecting each infrastructure project phase;
2. name the actors that are responsible;
3. make public the objectives that should be reached in each phase so that IC risks are minimized;
4. provide examples and/or illustrations of integrity problems identified in each of the WB6 countries and how they've been dealt with by CSOs or other interested parties;
5. suggest possible roles and ways of action for CSOs to impact and minimize the integrity compliance risks

During the working group H "Enhancing Integrity Compliance in Infrastructure Projects" session of Tuesday 14:00 to 15:30hs, participants will focus on the distribution of Integrity Risks per each infrastructure project cycle. Partner CSO will provide real-life illustrations and discuss about their impact in the project, and to the WB6 citizen in general.

In the Wednesday 2nd of June session, "Recommendations", the participants will have the opportunity to share their experience, expertise and propose ways of dealing with infrastructure projects IC risks per each project stage. The second WG H "Enhancing Integrity Compliance in Infrastructure Projects", will conclude with actionable recommendations about a structured, concrete, and feasible range of activities that CSOs can provide with regard to the infrastructure project in WB6, as allies of the EU and representing and defending the interests of WB6 citizens.

Moreover, this endeavor will set the IC standards and the subsequent CSO involvement to be applied in every WB6 LIPs, notwithstanding the funding source.

⁶ Integrity Framework for Public Investment, OECD

Annex

I. NEEDS DEFINITION AND SELECTION PHASE

The infrastructure cycle starts with the definition of the needs and the identification of the best way to respond to this need.

a) Integrity Compliance (IC) risks include: i) policy capture and influence; ii) conflict of interest and nepotism; iii) bribery for access to confidential information.

b) Actors are Line Ministries, National Investment Committee, Prime Minister's Office, Parliament, regulators, consultants, and others (lobbyists, NGOs, and potential contractors)

- Objective 1: Public investment decisions are based on the National Strategy for Development and Integration (NSDI), regional or sectorial objectives
- Objective 2: The selection of public investment projects does not favor a particular interest group or individual over the public interest
- Objective 3: Elected officials are prevented from choosing a specific public investment to benefit contractors who contributed to their political campaign
- Objective 4:

c) Examples / Illustrations with real-life cases:

d) Suggested role for CSO

II. APPRAISAL PHASE

This phase serves to evaluate an infrastructure project's feasibility, to give the official approval, and to determine how and by whom it will be financed, including Environmental and Social Impact Assessment and Feasibility Study.

a) IC risks include: i) bribery to undermine merit-based procedures; ii) fraudulent assessments; and iii) promoting high-cost projects.

b) Actors include all government levels linked to the project, companies, consultants, lobbyists, and financial institutions backing the project.

- Objective 1: Social, economic, and environmental feasibility studies are objective, credible, and professional. Any invalidation or eventual bypass of previous studies must be made transparent and thoroughly debated before adoption;
- Objective 2: Limit the influence of a potential private operator of a public-private partnership (PPP) or a concession
- Objective 3:

c) Examples / Illustrations with real-life cases:

d) Suggested role for CSO:

III. PLANNING AND PROJECTION STRUCTURE PHASE

Consists in the transparent and fair development of the bidding documents, including detailed project design, estimated project costs, and terms of reference composed by the details and specifications of the work to be undertaken and evaluation criteria for the bidding process.

a) IC risks include: i) tailoring specifications; ii) budget manipulations; iii) asymmetrical information; iv) vague criteria; and v) contract splitting.

b) Actors are project owners (i.e. road agency, public company, LGU, etc), public officials responsible for issuing planning permits and other approvals, consultants, potential bidders, and contractors.

- Objective 1: Ensure that the design of the tender documents and specifications are not restrictive or tailored
- Objective 2:

c) Examples / Illustrations with real-life cases:

d) Suggested role for CSO:

IV. PROCUREMENT/ TENDERING (P/T)

In the P/T phase, suppliers decide to respond to public needs by submitting an offer. Bids are evaluated and contractors selected based on their technical skills and cost proposal.

a) IC risks include: i) manipulating procedures and rules of the game; ii) bribing to gain an unfair advantage; iii) collusion amongst bidders; iv) undermining evaluation criteria; v) setting unreasonable expectations and timelines; and vi) misrepresenting profiles and fraudulent documents.

b) Actors are bidders, contractors, public officials, and consultants. Here we have different suggestions, such as making obligatory the participation of specialized local CSOs as “observers” in evaluation and selection committees.

- Objective 1: Ensuring that the winning bidder is the most qualified
- Objective 2: Produce real-time monitoring reports on public procurements, flagging potential problems and faulty processes that favor collusion, bid-rigging, and favoring of supplier
- Objective 3: Assuring the integrity of bidding companies independently from the official screening process
- Objective 4: Ensuring that non-competitive procedures are not used without proper justification; assessment of public justification
- Objective 5:

c) Examples / Illustrations with real-life cases:

d) Suggested role for CSO:

V. IMPLEMENTATION AND CONTRACT EXECUTION

Concerns the construction or maintenance work, and operations.

a) IC risks include: i) fraudulent reporting and claims; ii) violating contract conditions; iii) renegotiating terms after contract signature; and iv) faking work and certification process.

b) Actors are project owners (i.e. government, agency, public enterprise, LGU, etc), consultants, contractors, suppliers, and sub-contractors.

- Objective 1: Identify and expose false reporting (invoices, labor hours, materials used, etc), with focus on costs over-runs
- Objective 2: Identify and assess eventual delays in execution that may be unjustified
- Objective 3:

c) Examples / Illustrations with real-life cases:

d) Suggested role for CSO:

VI. EVALUATION AND AUDIT

Ensure that adequate internal controls are applied throughout the project cycle.

a) IC risks include: i) fraudulent documenting results; ii) compromised evaluators and auditors; and iii) undermining evaluation function.

b) Actors are contractors, supervisors, auditors, consultants, and public officials.

- Objective 1:

c) Examples / Illustrations with real-life cases:

d) Suggested role for CSO: