



**TRANSPARENCY  
INTERNATIONAL**

MAGYARORSZÁG

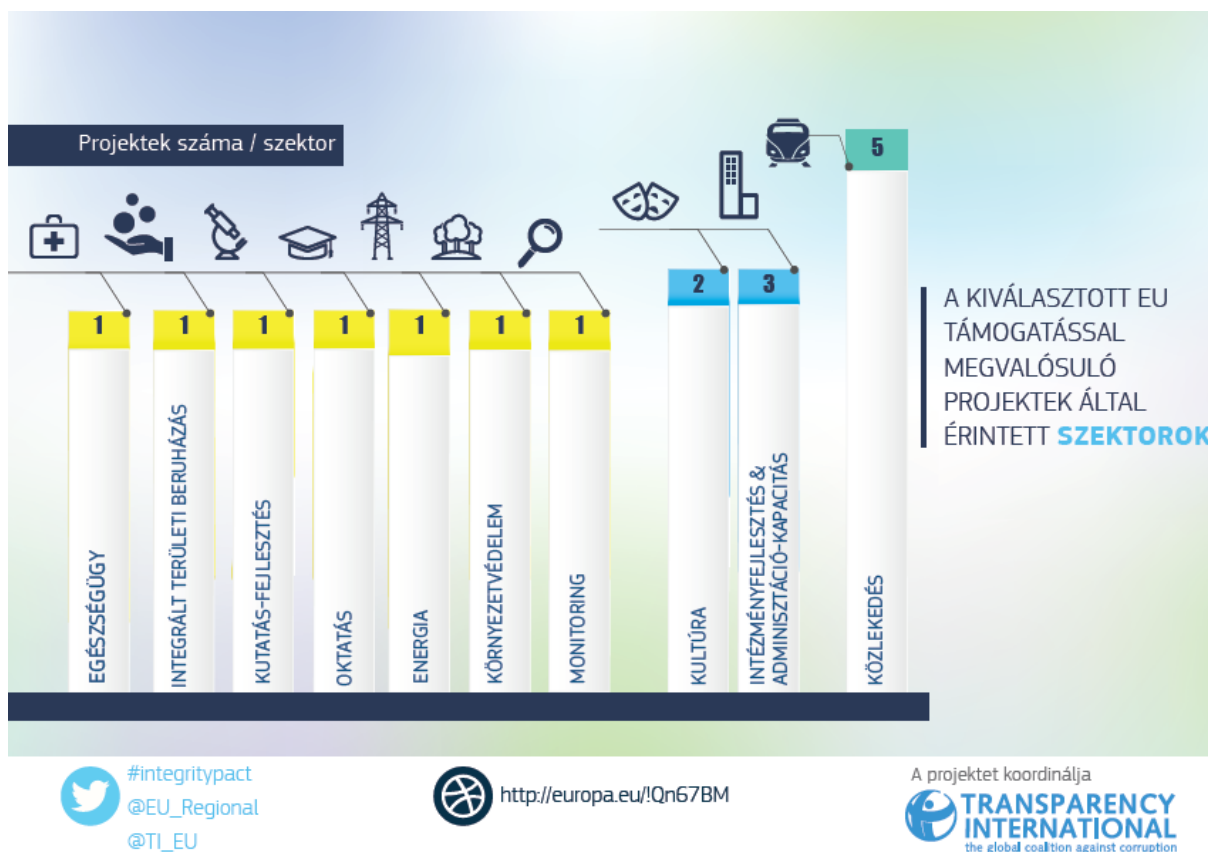


**NEMZETI  
INFRASTRUKTÚRA  
FEJLESZTŐ ZRT.**

**Joint report of Transparency International Hungary and  
NIF National Infrastructure Development Plc. on the  
public procurement procedure of NIF National  
Infrastructure Development Plc. titled *“Design contract on  
the preparation of construction and permit plans, and the  
acquisition of a binding construction permit, for the section  
of the M6 motorway between Bóly – Ivándárda”***

The European Commission launched a pilot project in January 2016 to explore the opportunities in using Integrity Pacts with regard to investments financed by the European Structural and Cohesion Funds. Integrity Pacts are agreements signed pertaining to specific tenders by the contracting authority, the bidders, and an independent monitor organization. Under the voluntary agreement, the parties vow to abstain from all forms of corrupt practices during the public procurement procedure, and to make public all information possible. An independent expert or organization is commissioned to monitor the process. The Integrity Pact covers the entire project cycle, from the preparation of the tender documentation to the last phase of implementation, thus the role of the independent monitor is not limited to merely the process of selecting the winning bidder.





So far a total of 17 Integrity Pacts have been signed in the EU, including 5 in the area of transport<sup>1</sup>

Under the framework of the “*Integrity Pacts – Civil Control Mechanism for Safeguarding EU Funds*” pilot project, NIF National Infrastructure Development Plc. (NIF Plc.) and Transparency International Hungary (TI) signed an Integrity Pact on 28 October 2016, countersigned by the Ministry of National Development Deputy State Secretary responsible for Transport Operational Programmes, with regard to the monitoring of the investment on the implementation of the sector of the M6 motorway between Bóly and Ivándárda, the national border.<sup>2</sup> The goal of the project as defined by NIF Plc. was for the M6 motorway to reach the national border and thus establish an expressway link with the region. The implementation of the Project is provided financial support by the Cohesion Fund, under the framework of the Integrated Transport Development Operational Programme (IKOP). Government Decree 1247/2016 (V.18.) established a development budget for IKOP, which provides HUF 48.7 billion for the project, with aid intensity of 100%. NIF Plc. signed the Grant Contract on 8 December 2017 for an amount of HUF 4,788,241,418, which in the Grant Contract currently in force stands at HUF 6,054,548,000.

<sup>1</sup> In 2019, the project was expanded to include an 18th Integrity Pact, while the pilot project originally scheduled to run until 31 December 2019 was extended by the European Commission by an additional two years, until 31 December 2021.

<sup>2</sup> The signed Integrity Pact can be downloaded here (in Hungarian): <https://transparency.hu/wp-content/uploads/2016/09/TI-Magyarország-Integritási-Megállapodás-M6-autópalya-befejező-szakasza.pdf>  
Additional information on the European Commission pilot project (in Hungarian):

<https://transparency.hu/kozszektor/kozbeszerzes/integritasi-megallapodas/eu-s-finanszirozasi-projektek/>

Additional information on Integrity Pacts in general:

<https://transparency.hu/en/kozszektor/kozbeszerzes/integritasi-megallapodas/>

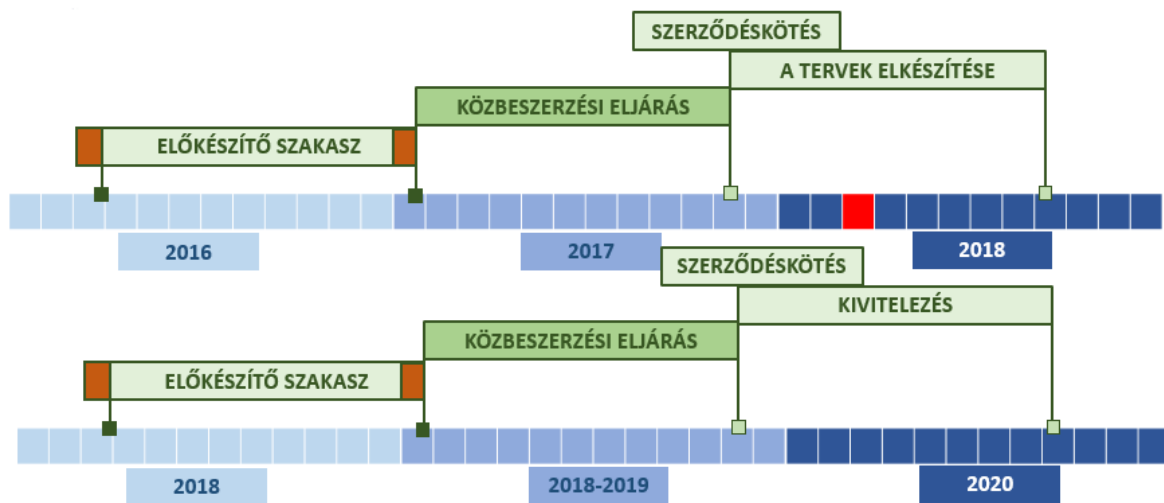


*Bóly and Ivándárda on a map of Hungary*

The first phase of the project's implementation started on 23 December 2016 with the initiation of public procurement procedures for the preparation of permit and design plans, and the acquisition of a binding construction permit. In the course of the public procurement procedure, TI reviewed the documents and specific procedural acts of the process from the perspective of transparency, legality and the ensuring of fair competition.

As seen on the figure below, TI is monitoring two public procurement procedures related to the project. The first public procurement procedure was announced by NIF Plc. for preparing the design plans for the motorway; this phase concluded in September 2017 with the signing of a contract. The announcement of the public procurement procedure for the construction of the motorway was possible only subsequent to the completion of these plans.<sup>3</sup>

<sup>3</sup> The conditional works procedure was announced by NIF Plc. on 12 February 2020.



*The phases of the public procurement procedure*

*Opinion on the preparation of the public procurement procedure, the contract notice, and other public procurement documents*

The Contracting Authority (NIF Plc.) prepared by the end of 2016 the documents for the public procurement procedure, based on the then applicable Public Procurement Act (PPA) and relevant legislation. Due to the change in the legal environment (the modification of the PPA) as of 1 January 2017, the Contracting Authority initiated the public procurement procedure earlier than planned, as modifying the prepared public procurement documents to adhere to the new regulations would have resulted in a significant loss of time. TI had the opportunity to monitor the preparation of the public procurement procedure, and review the contract notice and other public procurement documents, as a monitoring organization involved in the process. Following the posting of the contract notice on 23 December 2016, the notice was published in the Official Journal of the European Union on 28 December 2016.

Documents reviewed:

- Contract Notice (CN) – published on TED under number 2016/S250-461116 on 28.12.2016
- KFF Quality assurance certificate (KFF certificate)
- Contract Notice Documentation, Volume I
- General substantive and formal requirements of permit plan documentation
- General substantive and formal requirements of construction plan documentation
- Design Contract (DC)

The Contracting Authority addressed the comments of TI – as well as those made by the Public Procurement Oversight Department of the Prime Minister’s Office overseeing EU-funded public procurements – in a corrigendum published on 3 February 2017, also making the prescribed conditions a part of the public procurement procedure with this corrigendum.

TI – via its right of opinion – made recommendations and comments in the bidding phase of the public procurement procedure, primarily with the intention of making it possible for as many bidders as possible to take part in the process, thus widening competition. The



Contracting Authority accepted some of TI's recommendations, and in the case of recommendations that it did not take into account, it provided an explanation. As a result, in addition to modifying the estimated value of the public procurement, the Contracting Authority also eased eligibility requirements in the notice. We found the above measures to be important in order to make possible that as many as possible potential bidders are able to participate in the public procurement procedure, thus increasing competition and consequently potentially reducing the value of the bids.

The corrigendum published on 3 February 2017 was followed by three more corrigenda (24/02/2017, 04/03/2017, 23/03/2017), with the modifications made necessary partly by changing legislation, and partly to save time answering a question posed by an interested bidder. TI also reviewed and formed an opinion on these documents.

**We were able to monitor the preparations for the public procurement procedure following the signing of the Integrity Pact and the submitting of the conflict of interest declarations, as provided for by the Pact. In TI's view, the contract notice initiating the procedure, as well as other documents, were in compliance with relevant legislation. The method and form of sending the notices to interested economic players were in line with the provisions of the PPA<sup>4</sup>. At the same time, due to the often-changing and thus uncertain legal environment, as well as uncertainties regarding the continuation of the motorway on the Croatian side, in line with Paragraph 55 of the PPA, the modification of the contract notice's content was necessary on several occasions.**

#### *Monitoring in the phase from the evaluation of bids to the signing of the contract*

The deadline for bids, which was extended multiple times, expired at 11 a.m. on 2 May 2017. A representative of TI was also present for the opening of the bids, which took place in accordance with relevant legislation. Subsequently, requests for corrections and additional information were sent out to bidders, with regard to which meetings of the Evaluation Committee were called on five occasions, where the representative of TI took part as an observer.

Documents reviewed:

- the complete tender documentation; minutes of the bid opening, minutes of Evaluation Committee meetings, minutes on decision planning,
- the requests for corrections and additional information sent out by the contracting authority, and the information submitted in response by bidders,
- submitted bids

**This phase of the public procurement procedure – also accepting the preventive awareness-raising notice of TI – was, according to the information available to us, conducted in accordance with public procurement laws. TI actively participated in providing opinions regarding the requests for corrections and additional information sent out by the contracting authority. At the end of this phase of the procedure, TI made proposals aimed at making the internal processes of the Contracting Authority simpler and more transparent.**

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<sup>4</sup> Act CXLIII of 2015 on Public Procurement

After examining the bidding companies, their owners and management using company registration data, TI determined that it is likely there are no personal links with the Contracting Authority.

At the same time, after reviewing the bids submitted in the present procedure and other public procurement procedures that were held concurrently, it can be determined that the market of engineering design companies participating in the design of public roads – and particularly expressways and motorways – is quite limited in Hungary. Despite the fact that the Contracting Authority announced an open, EU public procurement procedure, no foreign companies submitted bids in the public procurement procedure in question. The Contracting Authority did not hinder in any way throughout the public procurement procedure the submitting of bids by foreign entities. In the course of its activities, it did not make it more difficult in any manner for any new market player, either from Hungary or from another European Union country, to enter the competition.

TI – based on the assumption that, in its view, it cannot be ruled out that the bidding Hungarian companies illegally coordinated their economic activities – turned to the Hungarian Competition Authority (GVH), requesting that an investigation be made into whether there was potential collusion in the public procurement procedure. In TI's view, this did not result in unrealistically high prices in the current procedure compared to the estimated value. In its ruling dated 11 April 2019, the GVH stated that the circumstances objected to by TI were not in themselves sufficient to determine the likelihood of breaches of competition, therefore it did not initiate a competition probe.

Following the evaluation of bids, the Contracting Authority sent the following documents to TI:

- the Evaluation Committee's professional opinion and decision proposal, in writing;
- KFF certificate;
- summary of the evaluation of bids, as well as documents supporting that they were sent;
- draft contract;
- signed contract and its annexes;
- notice on the result of the procedure.

**Following the review of the documents it was provided, TI determined that the phase of the public procurement procedure concerning the announcement of results and the signing of the contract was conducted in a lawful manner, and met the conditions of transparency and procedural fairness.**

**The offer with the best price-to-quality ratio was submitted by the consortium comprised of UNITEF-83 Műszaki Tervező és Fejlesztő Zrt. and FŐMTERV Mérnöki Tervező Zrt.** The final value of the public procurement (excluding VAT) is close to HUF 1.3 billion (HUF 1,288,800,000). The contract was signed by the parties on 28 September 2017.

Official information on the procedure can be found in the database of the Public Procurement Authority at the following website (in Hungarian):

[http://www.kozbeszerzes.hu/adatbazis/megtekint/hirdetmeny/portal\\_14424\\_2017/](http://www.kozbeszerzes.hu/adatbazis/megtekint/hirdetmeny/portal_14424_2017/)

Additional information can be found at the following corruption risk analysis website developed by TI and K-Monitor:

<http://www.redflags.eu/notice/401194-2017>

On 6 December 2018, the winning Contractor completed the performance of the tasks specified in the contract; the contract was modified in November 2018 due to weather conditions. TI reviewed the completed design plans from the viewpoint of determining whether they meet the conditions specified in the contract signed as a result of the public procurement procedure – in our view, the Contractor performed its tasks in accordance with the contract.

#### *Meetings of the Transparency Advisory Board*

The Integrity Pact signed with NIF Plc. set up a Transparency Advisory Board (TAB), which is comprised of one representative each from the Contracting Authority (NIF Plc.), the Managing Authority – i.e. the Ministry for Innovation and Technology – and the Monitor (TI). The TAB meets at least once every three months, where members report on their activities of the preceding period and inform each other about future project-related actions to be undertaken in the subsequent three months. The TAB is also the forum for settling disputes. The TAB has held seven meetings so far.

#### *Other events*

Representatives of NIF Plc. and TI took part in the annual evaluations of the European project in Bucharest in December 2017 and in Brussels in November 2018.

TI held an event presenting the project in Bóly on 17 November 2018, with the participation of the mayor and local citizens; a video of the event is available here:

<https://www.facebook.com/TransparencyInternationalMagyarország/videos/1788979211210711/>

NIF Plc. agreed with the content of the present report and its publication.

Should TI acquire new information with regard to the public procurement procedure in question, it will submit a request for additional information to NIF Plc. and review its report based on the received notification.

Should you have any questions, or would like to submit information with regard to the project, you can contact us by phone at +36 1 269 9534 or by email at [info@transparency.hu](mailto:info@transparency.hu).

Budapest, 30 March 2020



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