



Summary
**of the Audit on the Motorway Development Projects Completed in
2009 and 2010 and Their Financial Processes (1118)**

Objectives and scope of the audit

In accordance with its annual audit plan, the State Audit Office of Hungary (SAO) carried out the audit on the motorway development projects completed in 2009 and 2010 and their financial processes.

Hungary has a transport policy for the period 2003-2015. According thereto, the expansion of the pan-European road network in Hungary and the development of the clearway network extending from one border to another are among the transport policy elements to be primarily implemented.

The objective of the audit was to evaluate whether the investments were realised in harmony with the objectives set and the legal regulations; whether the contractual agreements, concession contracts and other contracts concluded for the investments facilitated the compliance with the deadline, the fulfilment of quality requirements and cost efficiency. It was also an audit objective to evaluate whether the payment of availability fee related to the operation of motorways, to be effected by the state in the case of the investments realised in the framework of PPP projects, was substantiated. In the framework of the audit it was also assessed whether the financing constructions ensured the timely availability of the resources necessary for the investments, whether the financial resources ensured the efficient implementation of investments, and whether former SAO audit recommendations were utilised.

Act CXXVIII of 2003 on the Public Usefulness and Development of the Clearway Network (hereinafter: clearway network act) contained a medium-term plan on the development of a clearway network for the period until 30 June 2007, in the framework of which altogether 206 km of clearway was planned to be opened in the years 2009 and 2010. Between April 2009 and April 2011 a section of 188.5 km was opened for the public, which included the sections of the M6/M60 motorway between Dunaújváros-Szekszárd-Bóly-Pécs, the M31 motorway at Gödöllő (i.e. the cross-connection between M0 and M3), as well as three sections of the M43 motorway. The motorways M6 and M60 were built in a PPP construction. The Government decided to grant concession for these projects on 1 June 2005. The construction of the motorways M43 and M31 was supported by

the EU. The on-site audit of the motorway sections began on 3 January 2011 and finished on 28 February.

Main findings

1. According to the current legislation, the interests in the efficient utilisation of public funds related to the implementation of motorway projects are pushed into the background in the absence of a legal regulation ensuring the protection of the priority of motorway constructions and stipulating the public efficiency thereof, in the course of the local government and regulatory decisions and archaeological excavations. Upon making environmental decisions, the cost impact thereof was neither quantified, nor evaluated. When the local government gave the contributions and authorisations necessary for the motorway investments, the interests of the local government prevailed (e.g. junction exits on the motorway M31 to Gödöllő, Kerepes, Kistarcsa, Nagytarcsa, Mogyoród, and on the motorway M43 to Szeged, Makó and the junction exit on the road 4519) without taking into account the cost impacts thereof (e.g. frequency of junctions, bicycle paths). The investor was obliged to conclude a contract with the competent county museum for the preliminary archaeological excavation. Thus, museums calculated with transport infrastructure investments as possible revenues, no legal regulation obliged them to take into consideration partially the investors' considerations.
2. In the course of the construction of the motorway M31, the set cost and time targets were not met. The net contractual price of the implementation amounted to HUF 21.8 billion, which was determined as a fixed flat rate. As a result of the contract amendments, the actual construction cost of the investment exceeded the contractual price by 10.21%. This circumstance did not justify the risk division and the application of flat rate accounting. The implementation period of 18 months planned for the construction was prolonged by 7 months. Regarding the opening of the sections, the deadline was exceeded by 4 months.

In the course of the construction of the M43 motorway sections, amendments to the contracts were necessary in the case of all three sections due to unforeseeable reasons (extreme weather) and legal aspects (the principle of legal indivisibility, enforced by the contractor). During the construction of the motorway M43, the contractual prices of the sections I-III – as a result of the contract amendments initiated by the contractor – increased altogether from HUF 57 billion to HUF 62 billion, which meant an increase of the costs by 9%. The contractual deadlines were not met, as section I was opened with a 17-months delay, while sections II and III with a 8-months delay due to the shortcomings in land acquisition and

the continuously changing development objectives. The actual sanctioning of the delays was made possible by the contractual conditions only partly, and it was applied only at one part of section I. The compliance with the deadline was not achieved by setting a daily indemnity of 2%, projected to the total value of the project. The delayed opening of the sections – according to the contract amendments – was a result of the extreme weather and unforeseeable individual hindrances on the construction site. In the contract amendments, the contractors retained their eligibility to have their overtime costs reimbursed and they made a claim for that. This constitutes a financing risk together with the contractors' requests for changes, which do not contain price and have not been evaluated yet.

3. Determining the route of the motorway sections was decisive in terms of the technical content of projects (bridges, tunnels, earthworks) and depending thereon, the construction costs. The route was determined at levels and with time requirements different at each section.

On the motorway M6/M60 – although the route was determined between 1981 and 2008 – the construction of tunnels on the section between Bátaszék and Véménd was still doubtful in 2007. The authorisation plans contained the construction of tunnels for the first time in June 2004 and this route received the environmental permit in 2004. Three years later, the National Infrastructure Developing Private Co. Ltd. (hereinafter: NID Ltd.) announced a public procurement tender for the elaboration of a technical solution replacing the tunnel section. The versions for the route were not completely elaborated and compared with each other. Exploitation models of national economy level (e.g. by means of the recultivation of landfills) were not applied. The necessity of building tunnels was not completely proved, particularly by means of searching for route versions taking into consideration the construction technology and costs, as well as cost comparisons.

The process of determining the route of the motorway M31 took 4 years from the preparation of the Preliminary Environmental Impact Assessment to the issue of the environmental permit. From the 1993 elaboration of the first versions of the motorway M43 to the opening of the motorway 18 years passed. The decision was made on the motorway route bypassing Szeged and Makó from the north on the basis of the needs of international traffic and local governments.

4. In the technical-economic preparatory phase of the motorway M31 the change of the development concept was shown by the fact that the contract was amended seven times between 2002 and 2007 in relation to the preparation of construction plans. In the course of the authorisation processes, the permits of the administrative departments were not

available completely and in due time. Due to the shortcomings of the technical preparation and the tender documents as well as unforeseeable reasons, the project implementation activities did not have a reserve time at the beginning thereof.

In the course of the technical-economic preparation of the M43 motorway sections, the conditions for the handover of the construction work sites were not ensured in due time and they were not completely established. The planning processes and authorisation procedures were repeated several times due to the changes in the concepts (semi-motorway, motorway, the Móra Ferenc Bridge over River Tisza).

5. The audit of the M6/M60 motorway sections – in terms of serving the interests of the State – included the analysis of choosing the PPP construction and of the contractual conditions of the concession, as well as the evaluation of the practical application thereof. According to the concession contracts, the construction management was the obligation of the concessionaire in the course of the construction of the motorway M6/M60. The tasks of NID Ltd. included the technical-economic preparation and the performance of technical representation tasks. The preconditions necessary for the handover of the construction work sites (land acquisition, archaeology, removal of ammunition) were not entirely ensured. Land acquisition was not completed by the time when tenders on the concession contract were announced. In the case of M6 motorway section between Dunaújváros and Szekszárd, 60% of the total area was available, while in the case of the other two sections (the section between Szekszárd and Bóly, as well as the M60 motorway section between Bóly and Pécs), this percentage reached 90%. Due to the delay in the land acquisition activity, the concessionaire submitted requests on the discharge of responsibility (discharge events) and announced cost claims which they did not quantify.

In the course of the construction of the M6/M60 motorway, approved plans were available in all three sections, and there were also examples of employment without the permit to continue the construction, issued by the Independent Engineer. Security requirements are seriously violated by the fact that on the M6 motorway section between Dunaújváros and Szekszárd, Tubosider road barriers and bridge parapets were constructed – on 52 bridges, in the length of 3440 metres – without approvals (of the Engineer and of the administrative departments). The construction of barriers was not suspended by the Independent Engineer. In its decision of 31 March 2010 on the temporary opening, the National Transport Authority (NTA) stipulated the reconstruction of the barriers already built with the deadline of 30 June 2010. This was not implemented and

the NTA set an other deadline of 31 December 2011 as a condition of the final opening. This decision was contrary to the provisions of the relevant regulation, as traffic safety requirements should have already been completely enforced by the time the road sections were temporarily opened.

6. The resource planning of the projects was not harmonised with the annual budgetary planning, the multiannual subsidy contracts of EU projects and the ex-post financing nature of EU subsidies. As a result, the contractors' invoices were paid with a delay. The transit time of the payment of invoices became longer due to the general government rules of drawing budgetary and EU resources, the time scheduling thereof and the complexity of the account regulation. Moreover, the lack of resources also contributed to the delayed payments, and the regulation of the payment procedure was not complete, as it did not determine the time limits for the internal attestations of performance. The total of the default interests paid by NID Ltd. changed between HUF 66.5 million and HUF 1,176.8 million between 2005-2010. The maximum amount of 2008 (HUF 1176.8. million) was related to the issue of invoices of a larger amount and the high number of land acquisitions.
7. At the audited sections, the development policy changing in relation to the schedule of the construction and the road category (main road, semi-motorway, motorway), appearing in the clearway network act and in the related government decisions did not facilitate the observance of the cost and deadline targets. Until its amendment of 3 July 2007, the clearway network act did not contain the construction of the M6 motorway section between Dunaújváros and Szekszárd. According to the act, the completion deadline for the other audited clearway sections was the end of 2007. The clearway network act specified the M43 motorway section between Maroslele and Makó as a semi-motorway of 2x1 lanes. A technical solution different from this legal regulation was realised on the section between Maroslele and Makó with the construction of a motorway of 2x2 lanes, based on the directive of the state secretary responsible for infrastructure matters of the Ministry of Economics and Transport, issued on 5 November 2007.
8. In the preparatory phase of the motorway M31, the method and reliability of cost estimates were not acceptable. In the proposal on the initiation of the public procurement procedure submitted for the Ministry of Economics and Transport (in February 2008), NID Ltd. estimated HUF 16.1 billion as the net value of procurement. On this basis, the Ministry of Economics and Transport considered the source of financing the procurement ensured. This estimated amount was by HUF 5.7 billion lower than the price

included in the contract concluded with the contractor (HUF 21.8 billion) and by HUF 7.9 billion lower than the actual cost (HUF 24.0 billion) (under-planning). The price calculated by the engineer was not a substantiated calculation for the determination of the preliminary, actual costs of implementation.

In the course of the technical-economic preparation of the M43 motorway sections, the cost estimations made for the cost management were prepared with a different level of detail and reliability in the different phases of the project. There were differences of 4%-91% between the cost estimations made by the three competent persons/entities (the technical designer, the engineer, NID Ltd.) in the three sections. The cost expert activity of the technical designer and the Engineers was not of an acceptable accuracy and the contractual conditions did not contain provisions in this respect. This circumstance resulted in underestimated or overestimated values in the course of the planning and utilisation of EU subsidies, as well as the annual planning of the state budget. The efficient allocation of funds constituted high risks also in terms of the detection of unrealistically low prices.

Based on the audit findings, the SAO recommended the Minister of National Development among others to initiate the amendment of the clearway network act in order to ensure the coordination of the vested interests of those concerned with motorway investments in terms of the efficient utilisation of public funds. It was also recommended to arrange for the review of the contractual conditions applied by NID Ltd. as well as for the elimination of the transport safety risks related to the road barriers and bridge parapets in the M6 motorway section between Dunaújváros and Szekszárd. Furthermore, the SAO recommended the Minister of National Development to initiate the investigation of the circumstances of the infringement of traffic safety rules in the course of the opening of the motorway M6, as well as the circumstances of the decisions on the construction of a motorway of 2x2 lanes instead of one of 2x1 lanes, as stipulated by law, in the section II of motorway M43 (between Maroslele and Makó) and to determine – if necessary – personal liability on the basis of the investigations.