



## **Weekly Briefing**

**North Macedonia political briefing:  
Parliament passes a disputed law enabling the construction of  
highway sections by US company Bechtel**  
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## **Parliament passes a disputed law enabling the construction of highway sections by US company Bechtel**

### **Summary**

*On the 15th of July, in a fast-tracked procedure Parliament passed the contentious Law on Determining the Public Interest Law and Nominating a Strategic Partner for the Implementation of the Project for the Construction of Infrastructure Corridor 8. The law will enable the implementation of the Memorandum signed by the Government with the US company "Bechtel and Enka" as the strategic investor for the construction of the highways Tetovo - Gostivar, Struga - Kafasan, as well as Prilep - Bitola. According to the new Law, the construction will proceed without the announcement of a tender, which is without precedent in the Macedonian legal system. Due to suspicions of corruption, the Law has been criticized by the State Commission for Prevention of Corruption, several political parties and non-governmental organisations. They have argued that the Law will be detrimental to the public interest and will come at a high cost to the national budget.*

On March 31st 2021, the First Deputy Prime Minister and Minister for Political System and Inter-Community Relations, Artan Grubi, on behalf of the Government signed a Memorandum of Understanding with the American company Bechtel Enka for the construction of highway sections along Corridor 8 and 10D. The signing ceremony was also attended by US Ambassador Kate Marie Byrnes, Minister of Transport and Communications Blagoj Bocharovski and the director of the Enterprise for State Roads, Mr. Eyup Rustemi.<sup>1</sup> Several nongovernmental organisations opposed the development. "There is no valid argument to justify this gross circumvention of the Public Procurement Law", Sabina Fakikj from the Center for Citizen Communication has stated.<sup>2</sup> Moreover, she added that "the Government has a

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<sup>1</sup> Press Release by the Ministry for Political System and Relations between the Communities, published on 31.03.2021, available at <https://mpsoz.gov.mk/mk/%D0%B3%D1%80%D1%83%D0%B1%D0%B8-%D0%BF%D0%BE%D1%82%D0%BF%D0%B8%D1%88%D0%B0-%D0%BC%D0%B5%D0%BC%D0%BE%D1%80%D0%B0%D0%BD%D0%B4%D1%83%D0%BC-%D0%B7%D0%B0-%D1%80%D0%B0%D0%B7%D0%B1%D0%B8%D1%80%D0%B0%D1%9A/> accessed on 10.07.2021

<sup>2</sup> 360 Degrees "NGOs raise their alarm for the risk of corruption in the direct contract with Bechtel for the construction of highways" published on 13.04.2021, available at <https://360stepeni.mk/video-nevladini-alarmiraat-za-rizik-od-koruptsija-vo-direktnata-zdelka-so-behtel-enka-za-izgradba-na-avtopati/> accessed on 20.06.2021

responsibility to protect the public interest of the country. Otherwise, there are serious corruption risks, if the process is conducted in this non-transparent way, through direct negotiations, exclusively with only one company.”<sup>3</sup> The Platform of Civic Organization for the Fight against Corruption also expressed concerns over the low levels of transparency in the process by which the Government negotiates the construction of the highway sections.<sup>4</sup> Moreover, they have issued a statement, which outlines their concerns with the project: “From the information available to the public, it is not possible to determine the justification for the announced conclusion of a direct contract for the implementation of infrastructure projects, without applying the Law on Public Procurement. For us, as citizens, it is extremely important that the whole process should be transparent - from the announcement to the conclusion of the contract, in order to enable the participation and the equal treatment of all interested companies, to provide legal protection to all the participants in the procedure and, of course, to enable supervision of the entire procedure by the competent institutions, the interested professional public and the citizens.”<sup>5</sup>

In spite of wide-ranging concerns, several months later on the 15th of July a new Law was passed enabling the implementation of the Memorandum. Its official title is Law on Determining the Public Interest Law and Nominating a Strategic Partner for the Implementation of the Project for the Construction of Infrastructure Corridor 8. The legal solution bypasses the public procurement mechanism, and practically awards the contract for the construction of several highway sections (Tetovo - Gostivar, Struga - Kafasan, as well as Prilep - Bitola) to the US Company Bechtel and their Turkish partner Enka. Bechtel Enka is known in the region as the company responsible for building the Albania-Kosovo Highway (also known as the ‘Patriotic Highway’), the costs of which soared to over 2 billion euros, which is several times beyond the initial agreed upon cost of the contract.<sup>6</sup> According to an investigation by the Balkan

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<sup>3</sup> Ibid

<sup>4</sup> 360 Degrees “Ivanovska - if a new special law for Bechtel and Enka is passed we will challenge it in the Constitutional Court” <https://360stepeni.mk/ivanovska-ako-se-donese-spetsijalen-zakon-za-behtel-i-enka-ke-go-osporime-pred-ustaven-sud/> published on 02.07.2021, accessed on 15.07.2021

<sup>5</sup> 360 Degrees “Ivanovska - if a new special law for Bechtel and Enka is passed we will challenge it in the Constitutional Court” <https://360stepeni.mk/ivanovska-ako-se-donese-spetsijalen-zakon-za-behtel-i-enka-ke-go-osporime-pred-ustaven-sud/> published on 02.07.2021, accessed on 15.07.2021

<sup>6</sup> Balkan Insight “Albania-Kosovo Highway Costs Soar To 2 Billion Euros”, published on 23.04.2014, available at <https://balkaninsight.com/2014/04/23/albania-kosovo-highway-costs-soar-to-2-billion-euro/>, accessed on 15.07.2021

Investigative Reporting Network (BIRN) the contract to build the highway – connecting Tirana with the Kosovo border – was awarded in 2006 in a fast-track procurement process, which the World Bank and others argued was uncompetitive and unlawful.<sup>7</sup> However, it was the intervention and lobbying by the US Ambassadors in Kosovo and Tirana, which “helped override World Bank and IMF concerns over the handling of the tender process.”<sup>8</sup> Particularly telling is the conflict of interests of the then US ambassador to Kosovo, Christopher Dell, who is thought to have influenced the procedure to the benefit of Bechtel. He has since been hired by the company as their country director in Africa.<sup>9</sup> This string of developments in the Bechtel-Enka affair in Kosovo and Albania has been at the center of investigations of corruption and abuse of office, which have pointed to wrongdoings linked to the contract that have resulted in the draining of the budget at the expense of much-needed infrastructure projects.

Instead of shying away from similar misdoings, the Macedonian authorities seem to have copied the detrimental process adopted in the Albania-Kosovo case, and pasted it onto the Macedonian context with the adoption of the Law on Determining the Public Interest Law and Nominating a Strategic Partner for the Implementation of the Project for the Construction of Infrastructure Corridor 8. The law, which was proposed by MPs Jovan Mitrevski, Arbr Ademi, Kastriot Rexhepi and Surija Rashidi, will enable the implementation of the Memorandum signed by the Government with the company "Bechtel and Enka" as a strategic investor for the construction of highway sections Tetovo - Gostivar, Struga - Kafasan as well as Prilep - Bitola. It envisages the constructions to follow a new model for the first time, which does not require the opening of a competitive tender. Although the government gave verbal assurances that the contract will give the fastest and most optimal results in the construction of the road network, its own as well as the track record of the construction company in the area of corruption has raised alarm bells and suspicions. The most concerning aspect has been the absence of any clear details in the Law itself with regards to the financial cost of the project as well as the standards and procedures for its implementation. For instance, the law only states that the project will be realised “in accordance with unique ways of building” and fails to specify what exactly this

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<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Paul Lewis “US ambassador to Kosovo hired by construction firm he lobbied for” published on 14.04.2021 available at

<https://www.theguardian.com/world/2014/apr/14/us-ambassador-kosovo-construction-contract-firm-highway> accessed on 15.07.2021

means. At the same time, the Minister of Transport Bochvarski has provided no information on the financing of the project. He has only given superficial information that the financing could be done through “a bond, credit, domestic and foreign financing”, without providing detail on the origin and the cost of the financing of the overall project.<sup>10</sup>

Prior to the passing of the Law, the President of the State Commission for Prevention of Corruption (DKSK) Biljana Ivanovska has stated that they intend to challenge the law in front of the Constitutional Court. "These are laws with high risks of corruption and we urge the Parliament not to accept it. If such a law is passed, we will challenge it in front of the Constitutional Court. How will that law be in accordance with the Constitution?" Ivanovska has warned. One of the Commission's arguments related to the fact that the Government had not acted as the submitter of the law. Moreover, the Commission suspected the fast-tracked parliamentary procedure. Finally they questioned the reasoning and the absence of an explanation as to why and how the consortium "Bechtel and Enka" was chosen as a strategic partner for the project.<sup>11</sup>

Instead of backing down in the face of mounting concerns with the disputed law, the authorities have shown no sign of backing down. They have attempted to divert the attention away from the contentions process and refocusing it onto the much-needed progress on infrastructural development in the country. The string of events which preceded the signing of the law on July 15th suggests that it will pave the way for yet another one in the series of publicly damaging projects, which are pushed through by the corrupt elites at the expense of the public interests and at the cost of the national budget. The case with the Bechtel-Enka constructed Albania-Kosovo Highway leaves little space for optimism that the Macedonian public will have obtained a beneficial and competitive bargain from the contract signed by its Government. At the same time, the case with the Law enabling the construction of highway sections in an uncompetitive and highly damaging process has once again proven that corruption represents a key organising principle in the governance of the country.

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<sup>10</sup> Ibid

<sup>11</sup> 360 degrees, “The disputed law on the construction of highways without a tender has been passed” available at <https://360stepeni.mk/izglasani-sporni-ot-zakon-za-izgradba-na-avtopati-bez-tender/> published on 15.07.2021