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Б е л г р а д е

REPORT ON NON-TRANSPARENCY CONTRACTING

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1. LEGAL FRAMEWORK OF THE PUBLIC

The Constitution provides for that everyone has the right to be accurately, completely and timely informed about issues of public importance. Also, everyone has the right to access data held by state authorities and organizations entrusted with public authority, in accordance with the law.[1] Information of public importance means any information at the disposal of an authority or organization exercising public authority or a legal entity founded or financed by a public authority in whole or in the major part, and relating to what the public has a legitimate interest in knowing.[2] The right to access to such information may be extremely restricted only exceptionally, if it is indispensable in a democratic society for the protection of serious violation of a prevailing interest based on the Constitution or the Law. Namely, access to information shall be prevented if it would endanger the life or safety of a person, impede prosecution and other types of court proceedings, jeopardize the defense of the country or the security of the country, significantly impede or significantly impair the state's ability to manage economic processes in the country. One of the reasons for denying access to information of public importance is the classification of information, business or other secret, due to which disclosure could result in grave legal or other consequences for legally protected interests that outweigh the interest in access to information.[3]

1.1. Determination of Legally Provided Secrecy Measures

The Law on the Protection of Trade Secrets regulates the existence of trade secrets, and the Law on Data Secrecy provides that data of interest for national and public security, defense, internal and external affairs of the Republic of Serbia shall be protected.[4]

The trade secret is considered to be any information which has commercial value because it has not been generally known or available to third parties who could realize economic benefit by using it or communicating it, and which has been protected by its holder by appropriate measures in compliance with the law, the business policy, the contracting obligations or the appropriate standards for the sake of keeping its secrecy, which communication to the third person could cause damage to the holder of the trade secret.[5]

Trade secret is regulated by law with a very precise aim - protection against all acts of unfair competition.[6] However, where a trade secret contains information of interest to the

[1] Article 51 of the Constitution of the Republic of Serbia
[2] Articles 2 and 3 of the Law on Free Access to Information of Public Importance
[3] Articles 8 and 9 of the Law on Free Access to Information of Public Importance
[4] Article 1 of the Law on Data Secrecy
[5] Article 4 of the Law on the Protection of Trade Secrets
[6] Article 1 of the Law on the Protection of trade secrets. Article 50 in conjunction with Article 2 of the Law on Trade stipulates that unfair competition, is an act of the trader (legal or natural person who fulfills the conditions prescribed by the Law on Trade in selling goods or services) directed against other trader, or competitor, that violates codes of business ethics and good business practices, and which causes or may cause damage to other trader (competitor), and in particular: 1) By presenting false and offensive statements about the other trader; 2) By presenting information about the other trader or his goods or services which are aimed at damaging the reputation

Republic of Serbia, such information shall be considered classified information and shall be protected in accordance with the provisions of the law governing the confidentiality of the information.[7] In other words, the provisions on trade secrecy do not apply when one of the contracting parties is the Republic of Serbia; The rationale is very clear and logical - when the Republic of Serbia is one of the contracting parties, it follows that the contract contains certain elements of particular interest to the Republic of Serbia.

However, the assignment of one of four possible levels of secrecy classification of data (Top Secret, Secret, Confidential, and Restricted)[8] can be carried out only if they meet certain legal requirements. To be classified as secret, a data must refer to territorial integrity and sovereignty, protection of the constitutional order, human and minority rights and freedoms, national security and public safety, defense, internal affairs and foreign affairs. Such information is referred to as "data of interest for the Republic of Serbia".[9] In addition, it is necessary to meet the additional requirement, which is that disclosure of such information would result in damage and it is more important to prevent such damage than to ensure free access to information of public importance.[10] Given that the right of citizens to the public is a very serious right that belongs to all citizens, this means that the potential damage must also be very large in order to determine the degree of secrecy, that is, to strike a fair balance and proportionality between the public interest of citizens to have certain information and the amount of damage. This applies in particular to data relating to the national security of Serbia, public security, defense, foreign policy, security and intelligence affairs of public authorities, international relations, and more.[11] In this way, the law establishes a legal standard, which is also represented in the European Convention on Human Rights and Fundamental Freedoms[12] that any violation of any right, including the right of secrecy, must be considered in terms of establishing a fair balance and proportionality between the breach of secrecy and the consequences of such breach, and and on the basis of this relationship is assessed whether the data can be declared secret. In each of these cases, the data must be of great importance for the stability of the Republic of Serbia. However, even in the case of information of extreme importance, it cannot be marked as classified with a view to concealing crime, exceeding authority or abusing office, or with a view to concealing some other illegal act or proceedings of a public authority.[13]

1.2. Determination of "Secrecy" by the Commission for Protection of Competition

All of the above should be distinguished by the determination of the data protection measure by the Commission for Protection of Competition (hereinafter: the Commission) in the competition infringement procedure. Specifically, the Commission may, at the request of the

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and business of that trader; 3) By selling goods with labels, data or shape which creates justifiable confusion among consumers regarding the origin, quality and other characteristics of that goods; 4) By acquiring, using and disclosing trade secret without the consent of its holder, in order to aggravate his position on the market; 5) A promise of, or giving gifts of greater value, property or other benefits to other traders, in order to ensure that their giver secures an advantage over competitors.

[7] Article 4 of the Law on the Protection of Trade Secrets

[8] Article 14 of the Law on Data Secrecy

[9] Article 2 Item 1 of the Law on Data Secrecy

[10] Article 8 paragraph 1 of the Law on Data Secrecy

[11] Article 8 paragraph 2 of the Law on Data Secrecy

[12] Official Gazette of SCG - International Treaties, no. 9/2003

[13] Article 3 of the Law on Data Secrecy

party or the person who provided the information in the procedure, determine the data protection measure if it considers that the applicant's interest is justified and substantially more important than the public interest in terms of the subject of the request. Such a measure would enable the Commission to assess fair balance and proportionality while meeting certain criteria[14] The criterion for assessing the justification is that the applicant has made it probable that substantial damage will occur due to the disclosure of the data, and therefore, on fair balance, the occurrence of substantial damage may cause a breach of confidentiality of the data. If a measure of protection is determined, it applies only to the Commission, as the public will not receive from the Commission the information available to it in the proceedings. The measure of protection does not apply to any other participant in the proceeding, or to other persons, and this information may have the character of information of public importance, which means that the Law on Free Access to Information of Public Importance out of Procedure is also applicable in cases where the Commission pronounced the measure. conducted by the Commission.

However, in practice, it is common for the Commission, when adopting the measure above, to extend the effect of that measure to all requests for access to information, meaning that the measure is interpreted extensively. The Council considers that such an interpretation attempts to derogate the Law on Free Access to Information of Public Importance, which is the umbrella law for information accessibility issues.

1.3. EU Directives

The fourth EU Directive (78/660 / EEC) stipulates that the annual financial statements which have been duly authorized, as well as the annual report on the business, together with the opinion submitted by the person responsible for auditing the report, are published in accordance with the law[15]. The Republic of Serbia, as a candidate for EU membership, has a harmonized regulation on this issue. All legal entities are required to submit financial statements [16] and supporting documentation [17] to the Business Registers Agency (hereinafter: BRA) for public disclosure, and data from complete and computationally accurate financial statements and said documentation are required to be published by the BRA on its website.[18] If the legal entity does not provide the above information, it has committed an economic offense.[19]

Legal entities are required to submit to the BRA a Balance Sheet, Income Statement and other financial statements for the financial year equal to the calendar year. The publicity gained through registering these reports through the business register is very important as it enables each interested person to obtain basic information about the firm's business, solvency and other relevant information about the financial operations of the firm.

Since the above mentioned directive provides for the public submission of a report to BRA, even the opinion of the person responsible for auditing the report, it is not clear what financial information is secret, or what is hidden, what is unavailable, why it is not available. All the more so, none of the cases in which the Council has had an insight has made clear what information causes harm and to whom by its disclosure.

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[14] Article 45 of the Law on Protection of Competition
[15] Article 47 of the Fourth Directive
[16] Article 33 of the Law on Accounting
[17] Article 34 of the Law on Accounting
[18] Article 36 of the Law on Accounting
[19] Article 46 paragraph 1 item 20 of the Law on Accounting and Auditing

2. ANALYSIS OF SECRECY

When analyzing secrecy, it must first be determined who is the initiator of the secrecy, that is, who is the contractual initiator of the adoption of data protection measures. This is especially important when it comes to public-private partnership contracts that the public is very interested in, because these are very serious decisions regarding the disposal of high-value public property.

2.1. When an Investor Seeks Contract Secrecy

The government often states that it is a request of a foreign investor, without any justification for secrecy. The Council considers that the government, if foreign investors are seeking secrecy, must determine the reasons why it is requested and determine whether certain documents are secret in the investor's home country. The reason for the investor's request for the secrecy of the contract may lie in the great possibility of making dirty money, that is, through such contracts, money laundering or tax evasion is carried out in the home country, which is a criminal offense.

That is why the state has to check whether it is about tax evasion, money laundering or other crimes. Although domicile regulations are likely to be difficult to find (through the Ministry of Foreign Affairs only), the state must take care not to engage with the investor in the commission of criminal offenses when concluding a contract, as there is no deterrent to the public when it comes to concealing the commission of criminal offenses.

Our state, as a public partner, is obliged to find out the facts why the foreign partner requires the secrecy of the contract or certain provisions of the contract, which has not been done before and for which the Council has had very bad experience in privatization processes regarding money laundering. Sale in privatization procedures was often performed without any investor’s control, so that the Council could not find out who the buyers or owners of “offshore” companies were, although those companies, after the purchase, were very actively involved in the destruction of the subjects of privatization. Therefore, the government cannot act passively on these contracts, but must actively determine why a foreign investor seeks secrecy of the contract. It must also determine, in accordance with the Law on Protection of Trade Secrets, whether the determination of secrecy is necessary to prevent unfair competition. This further means that the public should know how the Government behaves when concluding a public-private partnership agreement, that is, what the Government does to prevent the conclusion of the contract and the hiding of the contract provisions do not in any way serve to conceal the commission of criminal offenses.

2.2. When the Republic of Serbia insists on the secrecy of the contract

When the Government, without the request of a foreign investor, requests the secrecy of the contract or certain provisions of the contract, it is obliged, at the request of the public, to explain why it seeks secrecy. When seeking secrecy, there may be an intention to hide something, which is, as a rule, a violation of legal regulations or regulations, or by-laws, both in respect of

substantive law and procedural provisions. Any violation of laws or by-laws indicates possible corruption, as violations of the provisions of the procedure, as well as of substantive regulations, represent a powerful use of their position, in which they may allow investors to seize public property illegally, which is a serious systemic corruption. Therefore, in order to clarify whether a trade secret is unlawfully determined in contracts in which it disposes of public property, or whether by defining a trade secret it is concealed a corrupt crime, exceeding of authority, or misused official position, or other act, it is necessary to check, first of all, whether the provisions of the Law on Public Property have been complied with, as well as the provisions of other regulations governing the disposal of public property.

As a rule, the disposal of movable property from public property is carried out in the process of public advertising, that is, by collecting written offers, and only exceptionally by a direct bargain. Disposals of movable property may also be carried out below the market price or free of charge, if there is a special interest such as the elimination of the consequences of natural disasters and in other cases stipulated by a Government decree. The proposal for an act for the alienation of movable property must contain a statement of reasons for determining the existence of a special interest.[20] The Council notes that no such Government decree has been enacted, only that there is a decree[21] stipulating that movable property of public property may be disposed of by direct bargain if not disposed of in the first attempt to sell in the process of public advertising or by collecting written offers. In the process of sale by direct bargain, the purchase price may not be less than the lowest, that is, the initial price established in the process of public advertising or the collection of written offers.[22]

In addition to this set of rules, the Law on Privatization prescribes the conditions and procedures for change of ownership over socially owned and public capital and assets. Therefore, a state may sell its assets in a particular process, including shares and stakes in legal entities.

So investments of the Republic of Serbia in economic entities in the form of gifts are not allowed, that is, any investment of public property must be reflected by an additional share in the ownership structure, that is, an increase in the number of shares owned by the Republic of Serbia.

Real estate can be alienated from public property at market value in the public tendering process, that is, by collecting written offers. Only exceptionally can real estate be alienated by a direct bargain, but not below its estimated market value, and that if this is the only possible solution.[23] The only way to dispose of the property below the market price, that is, without compensation, is if there is a special interest, such as elimination of consequences of natural disasters or establishment of good relations with other states or international organizations, or in other cases provided for by a special law. Such a disposal must have a detailed justification for the existence of a special interest[24], since in the disposal of public property there must be an opportunity of the assessment of the public with regard to a fair balance and the proportionality between the disposal of the property and the special interest where the special interest in the disposal must be more important than the interest in retaining the property. In any concluded contract in which a special interest is placed above the market value of the public property before

[20] Article 33 of the Law on Public Property

[21] Decree on the determination of equipment of higher value and on the determination of cases and conditions under which movable property of public ownership may be disposed of by direct bargain (Official Gazette of the RS, No. 53/2012)

[22] Article 2 of the Decree on the determination of equipment of higher value and on the determination of cases and conditions under which movable property of public ownership may be disposed of by direct bargain

[23] Article 29 of the Law on Public Property

[24] Article 31 of the Law on Public Property

such a contract is concluded, the public should be made aware of the elements of why it is done, that is, the significance of the special interest that goes beyond the market price of the public property.

2.3. Non-transparency in the conclusion of public-private partnerships

One of the principles of public-private partnerships is the principle of transparency, which includes the obligation to advertise the intention to dispose of public property with or without concession elements. Failure to respect the principle of transparency also threatens the other legally prescribed principles: protection of the public interest, efficiency, equal and fair treatment, free market competition, equality of contracting parties, etc. Although all bidders should receive equal and fair treatment, there is often discrimination in the form of finding partners by direct bargaining, which is not the most effective method, and such contracts are most often concluded at the expense of the state, thereby undermining free competition, equality of contracting parties and jeopardizing public interest. When there is no transparency, it is not possible to achieve the best price for public property. Namely, the procedure for selecting a private partner is either a procedure determined by the law governing public procurement or the procedure for granting a concession determined by the Law on Public-Private Partnership and Concessions, which implies a public invitation and selection of the most favorable offers.[25]

When looking at the contracts in which the Republic of Serbia is one of the contracting parties, it is clear that the process of selecting companies was completely non-transparent, which is why the public has no opportunity to inspect the concluded contracts and documentation, which prevents the public from determining whether the Government violates the laws of our country, that is, the public is prevented from performing its function of controller of the Government.

Any disposal of public property or an investment that has not been made in accordance with the laws governing the disposal procedure constitutes the commission of the criminal offense of abuse of office for which imprisonment is up to twelve years. Contracts that contain provisions that are contrary to statutory imperative provisions also constitute contracts by which the offense has been committed, so the existence of a trade secret is of no significance because no one can invoke trade or other secrets in the offense.

3. CAPITAL CONTRACTS AS EXAMPLES OF SECRET

The public of Serbia has been denied the full information and availability of contracts and documentation relating to the following legal entities: FIJAT Kragujevac, Zelezara Smederevo, "Air Serbia", "Belgrade Waterfront", as well as documentation related to the disposal of state agricultural land, concession for Nikola Tesla Airport, sale of Galenika, PKB, Strategic Partnership Agreement for RTB Bor between the Government of Serbia and Sijajuang, etc. In this Report, the Council will analyze some of the entities mentioned, bearing in mind that a minimum of documentation was available for their analysis and not as much for others.

[25] Article 20 paragraph 1, Article 35 and Article 39 of the Law on Public-Private Partnership and Concessions

3.1. "Zelezara Smederevo"

The Council dealt with the privatization of "Zelezara Smederevo" d.o.o. (hereinafter: Zelezara), after the sale in the bankruptcy proceeding. In its May 2004 Report, the Council found that bankruptcy privatization had been carried out unlawfully. The privatization of Sartid is within the scope of "24 disputed privatizations" and according to the reply of the Republic Public Prosecutor's Office dated 21.03.2019., there is still an investigation procedure in this case.

"US Steel", the buyer at the time, operated in Zelezara as long as there were large quantities of iron (old, perhaps outdated military, as well as new) and while the price was good for them, and then, when the global economic crisis began, the "US Steel" suddenly, without any responsibility for the enormous incurred losses, gave Zelezara to the state with all the losses.

The state, as the owner, continued to operate at a loss, which it tried to prevent by entering into six contracts with "HPK Management" doo Belgrade to change its management method. The six contracts, as well as the documentation on the basis of which the contracts were concluded, were not made available to the public, although from the very conclusion of the contract, the public was interested in determining whether the new management had been contracted to fulfill its obligations under the contract, or what were the guarantees that the state would not continue to pay enormous losses after introducing a new management method.

The state avoided the publicity of data from these contracts, in the way that the then Minister of Economy demanded that all data from these six contracts be declared information that was not information of public importance, or not be made available to the public. The Minister requested data protection from the Commission for Protection of Competition forty days after the Commission had stated that there were no grounds for submitting a notification of a concentration because the business relationship between the relevant parties did not constitute any of the cases of a concentration in terms of Article 17 of the Law on Protection of Competition and after the public sought a contract for insight. The Commission accepted such a request two months after giving its opinion.[26]

The Commission for the Protection of Competition unlawfully assumed the competence of the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: the Commissioner), who is solely responsible for assessing what information is considered to be public information and to provide adequate protection if it is public information. Accordingly, the Commission was not competent to decide that something was not considered to be public information in terms of the Law on Free Access to Information of Public Importance. On the contrary, the Commission could only decide in its own procedure and refuse, at the request of third parties, the request for information in its proceedings, but such a refusal does not mean that third parties were not entitled to obtain information in accordance with the provisions of the umbrella law on the availability of information, even through the Commissioner in charge.

3.2. "Air Serbia"

Unlike the contracts regarding Zelezara, with Air Serbia, the Framework Transaction Agreement and the Investment Agreement were published, so the Council from that Agreement

[26] Opinion of the Commission for Protection of Competition no. 6/0-02-315/2015-5 dated 06.04.2015. Ministry of Economy Letter no. 3-00-49/2015-02 from 04.06.2015.

stated that Article 12 stipulated the obligation to conclude eight more contracts and that the Agreement would enter into force only when these contracts were concluded.

The Council tried to reach the aforementioned contracts, however, Air Serbia did not comply with the Council's request because the Commission for Protection of Competition had decided that the information provided was not information of public importance. The Council reiterates that the authorities cannot hide behind the decisions of the Commission, since these decisions only relate to proceedings before the Commission and these decisions do not prevent third parties from exercising their right of availability in terms of the Law on Free Access to Information of Public Importance.

Unlike Zelezara, here the Council has some information from the published contracts, but not the essential answers to the very contentious questions concerning the manner of disposal of public property.

First of all, it is a question of how the contract establishes the ownership structure of capital, where the state share in the company is 51% and private 49%. It is unknown whether all of JAT's assets were owned by Air Serbia and whether, on the day of the recapitalization, all of JAT's assets remained owned by the company and whether prior to the recapitalization those assets were valued together with licenses and good will, who made the assessment and by what method, what investments were made by a foreign investor (a loan returned by a firm cannot be counted as a foreign investor's share). It is also interesting how much JAT's total debt is being fully repaid by the Republic of Serbia.

The Republic of Serbia's contract for the provision of Air Serbia, the Training Agreement and the Travel Services Agreement are non-transparent and it is clear that the legal rules on public procurement, public tenders, or other procedure have not been respected, although these rules have been created for the benefit of the Republic of Serbia. Instead, the ratified Cooperation Agreement between the Government of the Republic of Serbia and the Government of the United Arab Emirates was applied, restricting competition and discriminating against all other market participants, except those covered by the said agreement.

Non-transparent and incomplete documentation shows that there are numerous contractual provisions that are not in accordance with the applicable regulations of the Republic of Serbia.

The most obvious illogicalities in this non-transparent legal transaction are that the financing by the Republic of Serbia is not in the capacity of a shareholder and does not increase capital, that is, it does not affect the ownership structure.[27] In doing so, virtually any financing is treated as State aid, which causes distortions and threats to distort competition in the market. The Republic of Serbia is obliged to repair all the debts of the company, so Etihad has entered into the ownership structure of the company without losses.[28] Nikola Tesla Airport (hereinafter referred to as "Airport") had to waive any liabilities in an amount at least equal to US$13 million, otherwise Serbia is obliged to loan up to US$40 million to Air Serbia.[29] Serbia pledged that in the period 2014-2016 it would fund Air Serbia 's working capital requirements/cash shortfall of US$14 million annually.[30] In addition, Serbia was obliged to fund by giving or by reducing the operating cash expenses of an additional US$22 million in 2014 and US$18 million in 2015, and Etihad undertook to fund by way of shareholder's loan matching amounts, and the equality of giving is

[27] Clause 1.18 of the Transaction Framework Agreement
[28] Clauses 2.5 of the Transaction Framework Agreement and 6.5 of the Investment Agreement
[29] Items 2.5.2 and 2.5.3 of the Framework Transaction Agreement
[30] Item 2.5.4. Of the Framework Transaction Agreement

lacking here.[31] Serbia also provides a loan for funding regular reserved times of arrivals and departures abroad.[32] It is a very interesting formulation whereby the Republic of Serbia virtually funds and assumes all liability for the cost of all employment-related liabilities, relating to former and/or current employees that have arisen both before and after the arrival of Etihad, which casts doubt on Serbia's continued payment of workers.[33] Serbia has committed to providing the entire terminal to the Airport for the needs of Air Serbia and to finance half of the reconstruction costs, as well as providing the Airport with all necessary Air Serbia licenses for operations at the Airport. The airport must treat Air Serbia as the most privileged airline and provide conditions at least equal to those of the most privileged airline, granting it an additional 50% discount on taxis, or any discount ever granted to anyone.[34] The Republic of Serbia is obliged to provide Air Serbia with the NIS's most favorable conditions for the purchase of jet fuel, or as favorable as for other customers. If Serbia fails to do so, it is obliged to financially support Air Serbia.[35]

Etihad is committed to providing up to US$100 million in financing to Air Serbia through a combination of equity, loans and other financing and/or financing arrangements, and this represents the total amount of Etihad's investment. In addition, Etihad also provides joint ticket sales (code sharing), a travel rewards program, know-how and a brand.[36] From the contracts made public, the estimated value of Etihad's non-monetary contractual obligations, if any, is unknown, so it is virtually impossible to see how much Etihad is actually investing. Etihad's investment involves a practical recapitalization through the issuance of shares by Air Serbia. The US$100 million loan also includes a loan to JAT of up to US$40 million, where non-repayment of the principal enters into an investment and the interest repayment obligation remains.[37]

Based on the available documentation that is only available to the Council in 2019, and these are the financial statements of Air Serbia published on the APR, it is evident that from the budget of the Republic of Serbia, in the period 2014-2017, Air Serbia received premiums, subsidies, grants, donations, and the like from the budget of the Republic of Serbia amounted to RSD 21.7 billion or around EUR 178 million. During the same period, Air Serbia reported net profit in its business in the amount of 2.8 billion dinars or about 23 million euros. Considering each year individually, Air Serbia would show a loss in its operations if it did not include state aid, ie subsidies, grants, etc. in the revenues.

All the arrears of JAT obligations assumed and settled by the Republic of Serbia, as well as all subsidies given and provided by the Republic of Serbia, did not affect the change of ownership structure in Air Serbia, which was determined in a completely non-transparent manner.

The Council has no information on the position of Air Serbia regarding the benefits of using the Nikola Tesla Airport after its concession, given that the General Secretariat of the Government of Serbia did not want to submit a concession contract with the French company Vinci Airports. In explaining the Decision rejecting the request for information, the General Secretariat stated that it was a state secret, although the authorities promised to the public that the Concession Agreement would be published by the end of 2018.

[31] Item 2.5.5. of the Framework Transaction Agreement
[32] Item 7.5. of the Framework Transaction Agreement
[33] Item 2.5.9. of the Framework Transaction Agreement
[34] Item 7.2. of the Framework Transaction Agreement
[35] Item 7.4. of the Framework Transaction Agreement
[36] Items 1.4, 1.5, 1.6, 1.9 of the Framework Transaction Agreement
[37] Item B in the introduction of the Investment Agreement, Items 3.1, 3.2 of the Investment Agreement

3.3. Belgrade Waterfront Project

3.3.1. Factual situation

On February 17, 2013, the Government of the Republic of Serbia and the Government of the United Arab Emirates concluded a bilateral agreement on mutual cooperation in various fields. It is a very general agreement without specific areas of activity, but also without the mention of interested persons, so it cannot be the basis for the conclusion of any commercial agreement between companies registered in the UAE or Serbia. For these reasons, it is wrong to refer to this bilateral agreement between the two countries as the basis for concluding a Belgrade Waterfront joint venture agreement.

Therefore, the conclusion of the Belgrade Waterfront Joint Venture Agreement is not an interstate project under a bilateral agreement, but a commercial project of companies from different countries, to which international law does not apply. Without grounds, in the aforementioned bilateral agreement, at the proposal of the Ministry of Construction, Transport and Infrastructure, in May 2014, the RS Government adopted Conclusion no. 350-3536/2014-1, according to which the Belgrade Waterfront Project was proclaimed a project of national importance.

It remained unclear on the basis of which it was proposed that the urban development project of one part of Belgrade and the construction of primarily commercial buildings at that location be declared a project of national importance for the country and when that land development and construction at all urban sites became a significant state job.

At the moment when the Government proclaims the Belgrade Waterfront Project a national project important for the state, there is no such project before the public, because there is no Spatial Plan that foresees the purpose of the site for construction of Belgrade Waterfront. It is not clear why the Ministry of Construction, Transport and Infrastructure opposed the Spatial Plan, which, by law of its kind (sui generis), called for the designation of an unknown project for a project of national interest, even though it was only a project to build a residential and commercial space in one part of Belgrade.

The public and many experts and organizations persistently raise the question of what national interest is protected by this Project. The Government's explanation that the Project would regulate the abandoned Sava riverbank and create employment growth opportunities and increase the tourism potential of the City of Belgrade does not give the Project a "national" status, which limits the sovereignty of the state in its territory.

Namely, by this Project the state undertakes to seek the approval of a strategic partner for the adoption of certain laws; adopts and changes laws by emergency procedure; adopts a new spatial plan, modeled on the Belgrade Waterfront Project; Budget funds are earmarked for the financing of this Project, and all this is mostly done in a non-transparent manner to the public. However, what matters most to the Council is whether the decision on the national importance of the project and its implementation has created non-transparent conditions, which always lead to enormous corruption.

After the proclamation of the project Belgrade Waterfront Project as a project of importance for the state, very soon, after two months, on 3 June 2014, the Government adopted Decision No.35-3536/2014-1 for the development of the Spatial Plan for the Special Purpose Areas, which amended the previously adopted Spatial Plan. The new Spatial Plan was adopted on

December 31, 2014, which means seven months after the Government's decision, although in our country it is customary to change the use of one room for years, while the change of the Spatial plan was made in seven months.

After the decision to change the Spatial Plan from June 3, 2014, on June 26, 2014, a decision was made to establish a Belgrade Waterfront Company d.o.o., registered in BRA on July 8, 2014. The founding capital of the Company by the Republic of Serbia amounted to one million dinars.

At the same time, in 2014, the firm Belgrade Waterfront Capital Investment LLC was established in Abu Dhabi, represented by Mohamed Ali Rashed Alabar, as its legal representative. The Council has no insight into the documentation of the registration and the founding capital of that company in Abu Dhabi, and whether the agent of that company is also its owner. On August 15, 2014, Belgrade Waterfront Capital Investment LLC established in Belgrade a company with an initial capital of RSD100 under the name Eagle Hills Properties d.o.o. Beograd, 18 Simina Street. In public, this company declares itself an investor, although the company does not appear in any of the available documents as an investor.

At the proposal of the Government, the RS National Assembly adopted the "lex specialis" Law establishing the public interest and special procedures of expropriation and issuance of the construction permit for realization of the project "Belgrade Waterfront" in April 2015, by urgent procedure, which means without any public debate by citizens, experts, professional organizations and institutions. This law solves expropriation contrary to the Law on Expropriation.

According to the Law on Expropriation, the Government may establish a public interest in expropriation if the expropriation of real estate is necessary for the construction of facilities in the field of education, health, social care, culture, water management, sports, transport, energy, communal infrastructure, facilities for the defense of the country, and construction of apartments for socially disadvantaged persons, which is not the case in the project "Belgrade Waterfront".

The allocation of funds from the budget of the Republic of Serbia to pay the costs of expropriation for the construction of residential and commercial buildings, whose sale will bring 68% of the profits to a foreign partner, is not primarily a public interest but a private one.

The press reported that some persons had initiated a request to review the constitutionality of the *lex specialis*, but even after four years, the Constitutional Court had not ruled on the case. The failure of the Constitutional Court enables the implementation of unconstitutional laws, since making the decision even after four or more years does not constitute a legal protection of citizens against the arbitrariness of the authorities.

Only after the passing of this law, which gives the Government the right to carry out expropriation without any criteria and any control, which gives very large powers enabling enormous corruption, the Joint Venture Agreement was concluded on April 26, 2015. Following the conclusion of this Agreement, the share capital of Belgrade Waterfront Company was increased by a stake by a new member of Belgrade Waterfront Capital Investment LLC in the amount of RSD 2,644,173.00, or approximately EUR 22 000, and this change was recorded in BRA on October 8, 2015.

The above text clearly shows what the public wants to know about the Belgrade Waterfront Project and what it has been denied, because the Council could not obtain from the competent state institutions any requested information regarding the national Belgrade Waterfront Project.

3.3.2. What the public does not know about the Belgrade Waterfront Project, but it needs to know

Not only does the public not know why this Project has been declared a project of national importance, that is, what is the national interest that the implementation of our laws is conditioned by the consent of a foreign partner, the public does not know any procedure in which a foreign partner has been chosen, because it is clear that this is not a procedure provided for the alienation of public property under the Law on Public Property. The public does not know why a foreigner has been given so much power that he can prevent the implementation of our laws, and from the past five years of activities it is not clear what benefit the state has had from the transfer of its property and its sovereignty in part of its territory.

However, only the Joint Venture Agreement is available to the public, however, the analysis of the joint venture establishes that the Agreement is not a construction contract, nor is it a joint construction contract or a joint venture contract. This kind of contract does not provide important facts, but there are other contracts that are secret, which has become commonplace with us.

When a joint venture contract is concluded for the construction of facilities and infrastructure, it must first and foremost have the basic elements of a construction contract, which is to regulate the business in which it is jointly invested, what is being built, what is the price of that work, who is investing and in what period each facility will be completed individually, as well as the planned infrastructure and public areas.

This Agreement does not have these elements, there is no one who is the contracting authority and above all who is the investor who pays the price of the works and other construction costs, there is no one who is the contractor.

The contract lists the parties as follows:

Republic of Serbia, without specifying what is the function of the State in this Agreement. The obligations of the Republic of Serbia stated in the Agreement are not clear and are not stated in value to transparently determine the ownership share of the Republic of Serbia.

The second party, a strategic partner of Abu Dhabi-based Belgrade Waterfront Capital Investment LLC, whose legal representative is Mohamed Alabar, in addition to not knowing by what criteria it was selected, it is also unknown what it has invested in the Project so far, since the business and the financial plan are not available to the public.

The next contracting party is the Belgrade Waterfront Company Ltd., designated as “the Company”. In some places, it is the Company referred to as the main contractor, so it is not known what that function is in relation to the Agreement.

The fourth party is a contractor “Al Maabar International Investment LLC, Abu Dhabi” represented by Mohamed Alabar and this company is designated as a “guarantor”.

Therefore, Mr. Alabar acts both as a strategic partner and as a guarantor, which means that the state has no guarantee of performance of the Agreement by the strategic partner.

In fact, from this Agreement it can only be concluded that this is not a joint construction or joint investment in Belgrade Waterfront facilities, but rather a joint arrangement of the ownership relations of the Republic of Serbia and a foreign strategic partner.

When looking at the ownership structure of this company, 68% of the capital of Belgrade Water Company d.o.o. is the private capital of the foreigner and 32% of the Republic of Serbia, which implies that in this percentage the profit made is decided and shared. With this kind of ownership structure, which is not established on the basis of the invested funds of the contracting

parties, there is a serious doubt that this is not a matter of national interest of the state. When it comes to national interests, then the state disposes of an attractively urbanized and good location in a public procedure at a market price, not by giving away in a vague procedure, using blurs through the newly founded Belgrade Water Company Ltd., through which financial transactions are carried out without knowing on whose orders they are being made.

It is also unknown how the Belgrade Water Company d.o.o. was found in the role of investor, not Eagle Hills Properties through which the strategic partner was supposed to place the contracted funds in the amount of 300 million euros.

3.3.3. Documentation available

When looking at the available documents, there is a very obvious disproportion in the obligations of the parties:

The Republic of Serbia is committed to the following:

- adaptation of the legal system to the Project;
- leasing the land free of charge and then the property free of charge;
- physical clearing of the area covered by the Project, except for negligible smaller underground structures;
- remediation of the environment and deadly explosive devices left behind from the past;
- legal clearing (expropriation);
- The Republic of Serbia shall ensure, solely on its own account, the construction of municipal infrastructure and the provision of utilities (including water, electricity, gas, roads, sewage and telecommunications) up to the Project boundaries according to the quantity, quality and capacity detailed in the Regulatory Plan, including all external transport solutions, connections with subway and tram lines;
- in the event that 50% of the plan is not realized in the first 20 years, ("Provisional Threshold of Realization") the Republic of Serbia has the right to sell the rest of the land at market price, and Belgrade Waterfront d.o.o. gets a part of the sales equal to the degree of realization planned in the first 20 years. That is, 68% of the proceeds from the sale of regulated urban land belongs to the "strategic partner" and to the Republic of Serbia only 32% in proportion to the non-transparently established initial capital. If the sale of land is done in phases, this principle applies to each individual alienation;
- The investor has the exclusive right to provide the design, construction and management, sales and marketing, customer relations, information technology services and other related services for the needs of the Project. In practice, it has been shown that these services are provided by Eagle Hills and invoiced to Belgrade Waterfront Company d.o.o.

The strategic partner commits to the following:

- providing additional capital of €150 million and more interest-bearing lending. The Council does not have information on when a strategic partner provides additional capital and interest-bearing lending and in what individual amounts,

given that the business plan, and therefore financial plan, is not available to the public.

Belgrade Waterfront Company d.o.o. Belgrade commits to the following:

- to bear the costs of arranging public spaces at the Project level, which will be owned by the City of Belgrade;
- the cost of designing a zero-state study that estimates the costs of environmental remediation and the dynamic plan.

It is not clear from the obligations of the contracting parties, as already stated, who is the investor in the project "Belgrade Waterfront", whether it is a Belgrade Waterfront d.o.o., 48 Karadjordjeva street, in which the Republic of Serbia has a initial capital of 32%, or Eagle Hills Properties d.o.o., 18 Simina street, Belgrade, founded by a strategic partner.

Both Belgrade Waterfront d.o.o. and Eagle Hills Properties d.o.o. have the same activity code 4110 in BRA - development of construction projects.

The only document that clearly identifies who is the investor in the Belgrade Waterfront Project is the Decision on Land Development and the manner and procedure for calculating and paying contribution for land development under the Belgrade Waterfront Project[38].

Specifically, Eagle Hills Properties d.o.o. Belgrade, which was presented to the media as an investor of the Belgrade Waterfront Project according to the aforementioned Decision, is not even mentioned, that is, it has no obligation, but the company Belgrade Waterfront d.o.o. in which the Republic of Serbia holds a share of 32%, because it is designated as Investor by that Decision.

The Council does not have information on all the obligations of the Republic of Serbia, in the circumstances when Belgrade Waterfront is the Investor, that is, whether in all other obligations, which are not stated in the Joint Venture Agreement as the obligations of the Republic of Serbia, the state participates in expenses in proportion to the percentage of the initial capital.

The obligations assumed by the Republic of Serbia in the part of construction of communal infrastructure and provision of public utilities should be compensated by the contribution for the land development paid by the Investor, not by a foreign strategic partner.

As the available documentation shows, the Republic of Serbia leases the land for free, then donates the same to the strategic partner, completely prepares the land for its costs (legal and physical clearing), and shall compensate the costs of equipping the land (construction of infrastructure) with contributions for the land development paid by the Investor, in which its shareholding is 32%, and therefore in that percentage payment of all liabilities.

It is difficult to asses whether the implementation of compensation procedures over a period of thirty years, as foreseen for the completion of the Project, will be regular, given that from the outset the whole Project is opaque and beyond the control of the State Audit Institution of the Republic of Serbia.

Three months after the signing of the Joint Venture Agreement, the Ministry of Economy, by letter number 420-00-805/2015-01 dated 16 July 2015, submitted to the Commission for State Aid Control a Joint Venture Agreement on the project "Belgrade Waterfront" for approval.

Based on the submitted Agreement, the Commission for State Aid Control at its 24th session, held on July 22, 2015, issued a Decision[39], according to which the Joint Venture

[38] Official Gazette of the City of Belgrade No.82/2015

Agreement on the Belgrade Waterfront Project does not refer to state aid pursuant to the Article 2 Item 1 of the Law on State Aid Control. According to this article, state aid is any actual or potential public expenditure or reduction of public revenue that makes a beneficiary of a state aid more favorable to the market than its competitors, thereby distorting or threatening to distort competition on the market.

In addition, the Commission stated in its Decision that the Joint Venture Agreement did not refer to State aid, in accordance with the above provision of the Law, nevertheless it made the decision that the leasing of construction land without charge was one of the instruments of State aid, thereby placing other potential investors at a disadvantage.

In its Decision, the Commission confirmed the correctness of the Agreement in which the parties decided not to invest the right of land use in the capital of Belgrade Water Company doo, but to acquire the right of land use through leasing. Regardless of the fact that the right to the land use was not included in the capital, the transfer of the right to the land use by way of lease was valued when determining the share of the Republic of Serbia in the Company in the amount of 32%.

The Commission further stated that the Belgrade Waterfront Project represented an extremely specific, that is, unique segment of a highly illiquid real estate market in the Republic of Serbia, that is, the possibility to market the Project on the open market is negligible.

Considering that the Project was highly illiquid, the Commission considered that there was no objective transaction price, nor was it possible to determine it, that is, it was not possible to determine the percentages of participation in Belgrade Waterfront Company d.o.o based on the investment of the parties to the Agreement.

After such a decision of the Commission, the question again arises how then the Government of the Republic of Serbia proclaimed the project "Belgrade Waterfront" as a Project of national importance, since the participation of the Republic of Serbia is only 32%, the commitments of the Republic are incomprehensible, and that the possibility of marketing the Project in the open market is weak.

According to the Report[40] of the Working Group for the Construction of the First Phase "Belgrade Waterfront" established by the Belgrade Land Development Public Agency, the market value of the land at this location is 111.544,73 dinars per square meter, which would amount to over one billion euros for the total planned area of the Project.

Regarding the developed land of enormous value, the Republic of Serbia has entered into a joint venture and acquired only 32% of ownership, without the possibility to sell or lease it on market terms.

Bearing in mind this fact, the question arises from which sources the Republic of Serbia finances all obligations assumed from the Joint Venture Agreement in the project "Belgrade Waterfront", since the investor does not pay contributions, it has no income even from the lease and sale of land, which all constitute sources[41] of financing for the land development. If there are no such sources of financing for the Republic of Serbia, it remains possible to finance the costs of preparing and equipping construction land for the Belgrade Waterfront Project with interest-bearing loans.

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[39] website presentation of the Commission for State Aid Control

[40] Report of the Working Group for the Phase I List "Belgrade on Water" document no.47263 96000-VI-5 dated 17 September 2014;

[41] The Law on Planning and Construction

For the amount of costs related to the preparation and arrangement of land development, which were reported as of February 2019, the Council addressed the Belgrade Land Development Public Agency, in accordance with the Law on Free Access to Information of Public Importance. In addition to the amount of costs, the Council requested the Directorate to provide information on the sources of financing for these costs.

The Council also requested from the City of Belgrade an Agreement between the City of Belgrade and the Republic of Serbia on the mutual regulation of obligations related to the costs of land development on the site covered by the planning document, but it has not yet been submitted to the Council, which is why the complaint to the Commissioner for Public Information was filed. On May 9, 2015, the Commissioner passed the Decision no. 071-01-2880/2019-03 ordering the Mayor of Belgrade to submit to the Council the required Contract within three days without delay. However, the Mayor has not yet implemented the Commissioner's Decision, which is why the Commissioner addressed the public.

Namely, Article 12 of the Decision[42] on Land Development and the Method and Procedure for Calculating and Paying Contributions for Land Development within the Project "Belgrade Waterfront" stated that the costs of the City of Belgrade, arising from the recognition to the Project Investor of the payment of contributions through equipping the land with jurisdiction of the Republic of Serbia, that is, the construction, reconstruction and rehabilitation of objects of public use in the public ownership of the Republic of Serbia, or in the ownership of the holder of public authorization, to whom this authorization was granted by the Republic of Serbia, shall be regulated by special agreement between the city of Belgrade and Serbia. If such a Contract regulating the cost of contributions is not available to either the Council or the Commissioner, the question arises as to whether it has been concluded at all and whose interests it protects: the state, the interests of the city of Belgrade, or the private ones.

A complete analysis of data related to the "Belgrade Waterfront" is prevented not only through non-transparent contracting, but also because the competent state institutions do not want to provide data on financing the costs that accompany the construction of infrastructure and facilities in the area of "Belgrade Waterfront".

Thus, the Council received from the Belgrade Land Development Public Agency, upon request to provide it with information on all costs incurred so far by the Republic of Serbia and the City of Belgrade, which are serviced through the Directorate, incomplete and unusable data for any analysis.

Namely, the Council requested information from the Agency concerning:

1. the cost of development (preparing and equipping) urban construction land;
2. the costs of physically clearing the areas covered by the Project;
3. costs of environmental remediation and deadly explosive devices left behind from the past;
4. costs of environmental remediation and deadly explosive devices left behind from the past;

In relation to the request under item 1, the Agency did not submit data on the costs of the construction or equipping of urban construction land that the Republic of Serbia had hitherto, relating to the construction of communal infrastructure facilities and the construction and land development of public use areas. Instead of the requested information, the Agency referred the Council to the website https://ceop.apr.gov.rs/ceopweb/sr-curl/home , where data on finally

[42] Official Gazette of the City of Belgrade 82/2015

calculated contributions for the development of building land are available when obtaining a certificate of occupancy for residential towers 1A.01-tower A and tower B in the amount of 1,116,387,713.00 RSD and for other residential and commercial building, which also consists of tower A and tower B for which a building permit has been issued and a contribution in the amount of 1,101,918,337.00 RSD has been calculated. Although this information on accrued contributions does not relate to the request of the Council and does not represent the costs of land development, the Council again contacted the Agency to verify that the contributions in the above amounts were paid. The Agency replied that it did not have such information, referring to the Decision on Land Development and the Method and Procedure for Calculating and Paying Contributions for Land Development within the Project "Belgrade Waterfront" (Official Gazette of the City of Belgrade 82/2015). This practically means that the contributions have not been paid and that pursuant to the aforementioned Decision, some compensation of unknown value and the date of compensation will be made.

Based on the above, it is clear that the Council was completely deprived of the Agency's response to how much the Republic of Serbia had so far incurred in terms of land equipping and from what sources it had financed it.

There is no better situation with the data relating to the cost of land preparation provided to the Council by the Agency. As already mentioned, the costs of land preparation include, among other things, the costs of clearing the ground, for which the Agency provided data in the form of 22 copies of invoices and payment orders in the total amount of 5,277,707.40 dinars or 44 thousand euros submitted to Noris Engineering Company from Belgrade.

For the cost of environmental remediation, the Directorate did not provide any information, and for the cost of removing explosive ordnance left behind from the past, the Council referred the website to the Public Procurement Directorate[43]. Based on the data from the above mentioned address pertaining to Belgrade Waterfront d.o.o., it can be concluded that there was a contract and amendments to the contract on public procurement of pyrotechnic surveillance and magnetometric recording in the total amount of RSD 7,545,598.74.

The Council wishes to note that it also requested from the Ministry of Environment, on June 27, 2019, data on the activities of the Ministry regarding environmental remediation within the project "Belgrade on Water". On this occasion, the Ministry informed the Council that it did not have documentation regarding environmental remediation within the project "Belgrade Waterfront".

As far as the expropriation costs concerned, the Belgrade Land Development Public Agency has submitted to the Council only one copy of the document of the so-called "Compensation Agreement" in which important data have been deleted, except for the amount of RSD 39.8 million or about EUR 332 thousand, which the Agency is obliged to pay to the NN person for the transferred urban construction land of unknown surface and cadastral parcel.

[43] http://portal.ujn.gov.rs/Pretraga.aspx?tab=1

СПОРАЗУМ О НАКНАДИ

1. ОБАВЕЗУЈЕ СЕ Дирекција за грађевинско земљиште и изградњу Београда Ј.П. да на име накнаде за пренете
правноснажним решењем Секретаријата за имовинске и правне послове Градске управе града Београда бр. XXI-04-465-54/2015 од 05.01.2016.године, исплати износ од 100.390,25 дин/м2 према процени Министарства финансија, Пореске управе, Филијале Савски венац бр. 464-08-2/16 од 03.06.2016. године, и то:

износ од 39.854.929,25 динара

2. ОБАВЕЗУЈУ СЕ да даном закључења овог споразума преда
у посед граду Београду преко Дирекције за грађевинско земљиште и
изградњу Београда Ј.П.

3. Исплатом накнаде из овог споразума ранији сукорисник земљишта нема више никаквих потраживања према Дирекцији за грађевинско земљиште и изградњу Београда Ј.П. за пренето грађевинско земљиште.

4. Овај споразум има снагу извршне исправе сходно члану 57. Закона о експропријацији.

5. Споразум је гласно диктиран и странке га потписују без примедби.

за корисника експропријације **за раније корисника**

Дирекција за грађевинско земљиште и изградњу ЈП, по пуномоћју Софија Миловић

Службено лице Секретаријата за имовинске и правне послове градске управе града Београда, Биљана Витторовић потврђује да су странке у присуству надлежног органа потписале овај споразум о висини, облику и роковима за исплату накнаде за експроприсану непокретност, да овај споразум има снагу извршне исправе и да ступа на снагу даном његовог потписивања.

Службено лице

СЕКРЕТАР
Славица Савичић, дипл.правник

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The Council wishes to point out that it is not the first time that the Belgrade Land Development Public Agency has provided incomplete information to the Council, although the Council is very clear in its requests. When the Council, with such information, points to

phenomena that may have elements of corruption and illegality, then the Agency and some city leaders characterize them as inaccurate, thus attempting to discredit the work of the Council.

The information provided by the Agency to the Council does not provide information on how much it cost the Republic of Serbia for these four years to build Belgrade Waterfront and what the strategic partner has invested so far.

If there is no publicly announced Business Plan, and therefore financial plan, then it is not clear how, in addition to the costs of land development that falls on the Republic of Serbia, the construction of facilities on the project "Belgrade Waterfront" is financed. Namely, from the Joint Venture Agreement Art. 10.2.1, facility financing will be secured by the proceeds of the sale paid by the buyers of the apartments and business premises, by borrowing from the banks by mortgaging the selected land, by financing capital and interest-bearing loans by or on behalf of the strategic partner and investments organized by the strategic partner.

As for the strategic partner's capital, only Article 10.2.2./b of the Joint Venture Agreement states that a payment of EUR 20 million will be made in accordance with the business plan and the specific call for additional capital. It is unknown when and whether the payment, as well as the remaining EUR 130 million, was made.

The only data available regarding some business transactions related to the construction of the Belgrade Waterfront Project are the financial statements for 2017, published on the Business Registers Agency website.

Although in the Joint Venture Agreement the Belgrade Water Company d.o.o is not designated as an investor, all monetary transactions, whether construction costs and payments related to the sale of apartments and business premises, are recorded in the Company's balance sheets.

According to the financial statements for 2017, the reported net loss of Belgrade Waterfront d.o.o. amounts to 1.2 billion dinars or about ten million euros, while BW Kula d.o.o. and BW Gallery d.o.o. have a net loss of 180 million dinars or about 1.5 million euros. In the joint company Belgrade Waterfront d.o.o., on September 06, 2017, the status change was made on the separation with the establishment, that is, from the company Beograd Waterfront d.o.o., BW Kula d.o.o. and BW Gallery d.o.o were separated and established as new companies. The newly established companies BW Kula and BW Gallery have transferred part of their assets and liabilities with a decrease in the share capital of the Belgrade Waterfront d.o.o. The Council has no information on why such a status change of Belgrade Waterfront d.o.o. was carried out, except from the media, which speculates that such a status change will hide tracks of the financial transactions that accompany the construction of Belgrade Waterfront.

The Notes to the 2017 Financial Statements have disclosed that revenues from the sale of residential and commercial properties will be recognized at the time of completion and handover of real estate, during 2018 and 2019, respectively. Revenues from the sale of buildings are unknown, while some sources of their financing are mentioned: strategic partner loan and advances from the sale of apartments and business premises. Advances received on the sale of real estate in 2016 amounted to RSD 2.3 billion and in 2017 RSD 7.4 billion, which in the two years amounted to RSD 9.7 billion or about EUR 80 million. Costs of construction works and other services related to construction of real estate in 2017 amounted to RSD 7.1 billion, while in 2016 they amounted to RSD 4.7 billion, which in the total amount for those two years amounted to RSD 11.8 billion or close to one hundred million euros.

The costs of project development, legal, consulting, auditing and professional education services for employees amounted to RSD 398.5 million in 2017, while in 2016 these costs

amounted to RSD 329 million. These costs were paid to an Eagle Hills company founded by a strategic partner.

Interest expenses paid to strategic partner Belgrade Waterfront Capital LLC in 2017 amounted to RSD 69.2 million on an approved loan of RSD 2.9 billion, which is due on December 31, 2021.

According to the Notes to the Financial Statements for 2017, land clearing costs amounte to RSD 1.6 billion in 2017 and RSD 751.3 million in 2016, which for those two years amounted to approximately RSD 2.4 billion or around 20 million euros. In 2018, these costs amounted to EUR 12.5 million, that is, EUR 32.5 million over a three-year period.

According to the data submitted by the Agency to the Council, as of March 2019, these costs amounted to only 440 thousand euros, so the question is the reliability and accuracy of the data from both of these sources, bearing in mind that there is an inconspicuous difference in the data.

Liabilities made on the basis of land development contribution in 2017 in the amount of 7.5 billion dinars or about 63.4 million euros were posted to Belgrade Waterfront d.o.o., although in the Joint Venture Agreement this company is not designated as an investor. Does this mean that in proportion to the share of the Republic of Serbia of 32% its liabilities in proportion to that percentage also amount to about 2.4 billion dinars or about 20 million euros? Once again, the Council notes that the contribution liabilities are not settled towards the city of Belgrade, that is, the Republic of Serbia, but some compensation should be made without information over what time period and for what other specific costs to be paid by the investor, which are subject to compensation. It also raises the question of whether the Republic of Serbia will pay for itself, or compensate the costs of contributions (in proportion to participation in a joint venture) in the amount of EUR 20 million[44], (reported on December 31, 2017) for the land it donated to its strategic partner.

Belgrade Waterfront d.o.o, in addition to loans of RSD 2.9 billion to its strategic partner, also has liabilities to related parties, namely Eagle Hills Properties LLC Abu Dhabi in 2016 of RSD 576.4 million and in 2017 in the amount of RSD 735.6 million. Liabilities to "other" related parties in the amount of RSD 576.8 million in 2017 and RSD 573.9 million in 2016 were also disclosed. This means that Belgrade Waterfront Company Ltd. has liabilities to its strategic partner and to the company that is 100% owned by the strategic partner of over 5.5 billion dinars or over forty five million euros in only two years. If we keep in mind that the Republic of Serbia has a share of 32% in the Belgrade Waterfront d.o.o. company, does this mean that its liabilities to the strategic partner are proportional to that percentage, i.e. around 1.5 billion dinars or over twelve million euros?

Eagle Hills Properties, founded by a strategic partner and registered in Belgrade, presented to the public as an investor, has no operating income in 2017, with the largest depreciation costs of RSD 50 million or around EUR 400 thousand for its expenses in 2016 and 2017 (it is not clear what the costs are, given the activities of that company).

During the preparation of this Report, the financial statements of Belgrade Waterfront d.o.o. were published on the BRA website also for 2018. The information to which the Council wishes to point out, which was published for 2018 in the Notes to the Financial Statements, is that BW Galerija d.o.o, which was founded by the transfer of a portion of assets and liabilities from Belgrade Waterfront d.o.o., has large liabilities to the parent company in the amount of 6.5 billion dinars or about 54 million euros. The Council has no information on the sources from

[44] data from the financial statements for 2016 and 2017.

which Belgrade Waterfront d.o.o. finances the construction costs of BW Gallery in this amount. It is also not known what are the receivables of Belgrade Waterfront d.o.o. and from which entity, in the amount of about four billion dinars or about 33 million euros, related to financing the missing infrastructure.

Belgrade Waterfront d.o.o. revenue reported in the financial statements for 2018 mainly relate to the sale of real estate completed in 2018 and amount to RSD 10.7 billion or about EUR 90 million. The cost of construction works and other real estate services in 2018 is over seven billion dinars, or about 60 million euros.

The estimated contribution for the land development in 2018 amounts to RSD 8.9 billion or about EUR 74 million.

Belgrade Waterfront Capital Investment's Eagle Hills Properties' total liabilities to Belgrade Waterfront company in 2018 amount to RSD 4.7 billion, or around EUR 39 million.

Eagle Hills Company d.o.o. , Belgrade, according to the 2018 financial statements has no employees, no operating income, and has a net loss of about ten thousand euros. On the basis of such business parameters, the question of the purpose of its establishment is raised.

The Council wishes to note that the financial statement data, published on the BRA website and made available to everyone, provides only certain guidelines for analysis, but not the possibility to fully understand business transactions. The credibility and accuracy of this information cannot be claimed by the Council, nor is it within its competence. All information taken by the Council from the Note to the financial statements of the Belgrade Waterfront Company d.o.o. point to the conclusion that the Republic of Serbia has so far incurred extremely high costs (bearing in mind the liabilities of the Joint Venture Agreement), and that the revenues from the sale of the facilities are not fully known (for some facilities, data in 2018 and 2019, respectively).

Therefore, it is still not possible to determine the net financial result and whether the investments made by the Republic of Serbia in the project “Belgrade Waterfront“ have made a profit so far, regardless of the fact that the percentage of the distribution of possible profit has been determined in a completely non-transparent manner.

From the available documents, it is not possible to determine the increased employment rate, given that the Republic of Serbia lacks construction workers, so according to the media, workers from Turkey and the region are hired for the project “Belgrade Waterfront“.

4. CONCLUSION

All of the above examples of contracts that are not available to the public are suspected of concealing information that is not of general national interest, but may be in the interest of certain groups or individuals.

Contracts concluded without publicity without being made available to the public afterwards, although there are no legal restrictions, are subject to a high degree of corruption, not only in the contracting process but also during their implementation.

In justifying the non-disclosure of information by trade secrets, or by the overriding interest in protecting the economic interests of the state over access to information, the authorities in all the above cases avoid the transparency of the disposal of high-value public property. The concealment of such data makes it impossible to control the spending of public funds, and thus seriously jeopardize the economic strength of the state and not protect it. Failure to disclose data weakens trust in institutions and questions the rule of law.

5. RECOMMENDATIONS

1. The Council proposes to the Government of the Republic of Serbia to publish all available contracts on disposal of public property that remain inaccessible to the public, as well as contracts to be concluded in the future, for the publication of which there is no legal impediment, or reasons requiring confidentiality, but justified public interest to know how to dispose of property of great value, which is the property of all citizens of the Republic of Serbia.
2. The Government of the Republic of Serbia should plan projects of national importance in a timely manner, explaining by what norms and criteria these are the projects of national importance and enable public discussion of the expert public with transparent information to all citizens of the Republic of Serbia.

VICE-PRESIDENT

Prof. dr. Miroslav Milicevic