

## **Memorandum to the European Anti-Fraud Office (OLAF)**

**Concerns over alleged corruption in EIB-backed Italian companies involved in the construction of the motorway bypass in Mestre, Italy (“Passante di Mestre”)**

**by  
Opzione Zero  
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### **Summary**

This memo focuses on the case of the public company CAV, a company participated by the region Veneto and by ANAS S.p.A. that has been set up in 2008 for the management and maintenance of the Mestre highway bypass, and to take up the debt generated by ANAS S.p.A for the construction of this complex infrastructure and complementary works known as “Passante di Mestre”. The EIB has invested in CAV regardless the ongoing investigation by Italian magistrates for alleged corruption on several companies part of the consortium “Passante di Mestre S.C. p. A.” that led to the arrest of four people in February 2013 and more during the following months.

**The reconstruction of facts provided in this memo raises significant and well-grounded concerns that the EIB loan to CAV through Cassa Depositi e Prestiti (CDP) of 350 million euro, approved on June 9th 2011 and disbursed in April 2013, might have been used to refinance a debt generated by contracts paid to companies which have been under investigation by the Italian magistrates for alleged criminal conspiracy aimed at fiscal fraud before funding disbursement and as widely reported in Italian media since February 2013.**

Furthermore, the EIB have ignored the detailed report about the Passante di Mestre by the Italian Court of Auditors (“Corte dei Conti”) published in March 2011 and raising a serious concerns about several questionable aspects of the construction and management of the project, including lack of public supervision and control leading to unjustified increase of costs, risk of infiltration of organised crime organizations in the subcontracting of construction works.

**We call on OLAF to open an investigation on the anti-fraud and anti-corruption due diligence and monitoring carried out by the EIB of the 350 million euro loan disbursed in April 2013 as well as any other EC and EIB funding provided to ANAS SpA since 2003.**

## The case of “Passante di Mestre”

In February 2003, the public company in charge of construction and road maintenance in Italy, ANAS S.p.A.<sup>1</sup>, has approved the project for the construction of a motorway bypass around the city of Mestre, for the amount of 750 million euro. The project has been designed by Autostrade per l'Italia S.p.A., Autovie Venete S.p.A. and Società per le Autostrade di Venezia e Padova S.p.A., three companies also in charge for the maintenance of the internal road ring around Mestre until 2009. In November 2003, the project has been approved by the Italian Ministry of Infrastructure, as a public-private partnership (PPP) with the following financial structure: a public contribution of 113.4 million by the Ministry of Infrastructure, while the remaining 636.6 million euro was to be anticipated by ANAS S.p.A. during the construction phase, and then repaid by the private companies in charge of the maintenance of the bypass. ANAS S.p.A. would have provided the needed liquidity through its own resources<sup>2</sup>. The repayment of the construction costs would have happened through the transit fees charged onto the bypass users in the following twenty-five years<sup>3</sup>.

In April 2004, the contract for the construction of the bypass has been assigned through an open tender process to the general contractor “Passante di Mestre S.C.p.A.”. An ad hoc project consortium has been registered on June 30 2004, as a limited responsibility company participated by several private companies: Impregilo S.p.a., Grandi Lavori - Fincosit S.p.a., F.I.P. Industriale S.P.A., Cooperativa Muratori & Cementisti – C.M.C. Di Ravenna Soc. Coop. A R.L., Consorzio Cooperative Costruzioni, Consorzio Veneto Cooperativo, Serenissima Costruzioni S.p.A.<sup>4</sup>.

In January 2007, the government through the Inter-ministerial Committee of Economic Planning (CIPE) defined the “new modalities for the construction and management of the infrastructure, identifying ANAS as the single manager and constructor of the Mestre bypass<sup>5</sup> and de facto changing the structure of the PPP.

The CIPE also decided that the management of the bypass and of the highway originally assigned to Società delle autostrade di Venezia e Padova had to be newly assigned within three months to an *ad hoc company* participated by the Veneto Region and by ANAS. ANAS will have to use the revenues generated by the “Passante di Mestre” *above the repayment of loans and maintenance costs* (through the management of the Mestre bypass, and of the other sections of highways assigned) for the financing of infrastructure investment defined by the Veneto Region and Ministry of Transport. ANAS will have to keep a separate management for all the above, starting from November 2009, when the concession to the consortium Passante di Mestre S.C.p.A. expired and passed formally back to ANAS.

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1 ANAS S.p.A. is a public limited company, 100% controlled by the Italian Ministry of Economy and under the scrutiny and supervision of the Ministry of Infrastructure and Transport.

[http://www.stradeanas.it/index.php?/content/index/arg/attivita\\_internazionali/lang/en/page/1](http://www.stradeanas.it/index.php?/content/index/arg/attivita_internazionali/lang/en/page/1)

2 Initially, the plan was for ANAS to take a loan from Infrastrutture S.p.A., without additional costs for ANAS. The consortium should have repaid the loan from 2011, when the operationalization of the project was expected.

<http://silos.cresme.it/admin/scheda.aspx?id=681>

3 <http://silos.cresme.it/admin/scheda.aspx?id=681>

4 Serenissima Costruzioni has grown into A4 Holding S.p.A. in 2011, a public-private company with 33% shares with local authorities and 66% of shares with private companies and banks.

<http://serenissimacostruzioni.it/en/p/8/Gruppo%20A4%20Holding.html>

5 CIPE, delibera n.3, 26 January 2007.

**On March 1st 2008, ANAS and the Veneto Region constituted the company "Concessioni Autostradali Venete - CAV S.p.A."** for the management, ordinary and extraordinary maintenance of the highway A4 junction Trieste-Venice, complementary infrastructure, and Venice-Padua highway<sup>6</sup>. CAV would enter the concession for the Mestre bypass on November 30 2009, with a financial plan approved and valid until December 31 2032<sup>7</sup>. With the setting up of CAV, the constructing consortium has been lifted from the duty of paying back the investment, that ANAS and the Veneto Region have transferred into a new and fully public company, CAV, that has absorbed the debt generated by the construction of the Mestre bypass.

However the consortium has not been closed with the creation of CAV. As of today, the Passante di Mestre S.C.p.A. consortium is still a registered entity at the Chamber of Commerce and it is undertaking the acquisition of land for the construction of accessory infrastructure to the main bypass<sup>8</sup>.

An inter-ministerial decree (n.408) approved the Convention signed by ANAS and CAV in 2009 and 2010 that defines the activities of CAV and its financial obligations for covering all costs generated by Passante di Mestre and highway management, complementary infrastructure, borders of highways assigned and modality of their management<sup>9</sup>.

### **The report by the Italian Court of Auditors ("Corte dei Conti"):**

Allegations of lack of public supervision, unjustified derogation from Italian law, risk of infiltration of organised crime.

The complex set of motorway infrastructure referred to as "Passante di Mestre" has been under scrutiny by the Italian Court of Auditors (known as "Corte dei Conti") that published an extensive report on March 22nd 2011 highlighting serious concerns on several aspects of the project.

In particular, the Court of Auditors raises a red flag for what is defined as a "peculiar" legal situation for the Veneto Region, where since 2003 mobility and traffic in Mestre and in the Region was recognised "in state of emergency"<sup>10</sup>. Then a Commissioner with extraordinary powers has been nominated with a decree by the Prime Minister, but as noticed by the auditor:

- The figure of the Commissioner was still in place in 2011, when the examination of the Court of Auditors took place (and stayed in place until December 2013<sup>11</sup>). This leads to the questioning by the Court of Auditors of the concept of "state of emergency" when it lasts for over a decade, *de facto* allowing a derogation from

6 Art. 2, comma 290, della Legge 24.12.2007 n. 244

7 <http://silos.cresme.it/admin/scheda.aspx?id=681>

8 <http://bur.regione.veneto.it/BurVServices/Pubblica/DettaglioAttoEntiVari.aspx?id=259881>

9 Convention between ANAS SpA and CAV SpA signed on 23/10/2010, validating the convention signed on 30/01/2009. Corte dei Conti, Deliberazione n. 4/2011/G, pag 58.

10 Decree of February 28th 2003, published on March 10th 2003 and law order March 19th 2003 n. 3273

11 [http://ricerca.gelocal.it/nuovavenezia/archivio/nuovavenezia/2014/01/02/NZ\\_15\\_33.html?ref=search](http://ricerca.gelocal.it/nuovavenezia/archivio/nuovavenezia/2014/01/02/NZ_15_33.html?ref=search)

national legislation regulating infrastructure construction, public procurement, environmental and social impact assessment procedures and many other aspects of transport infrastructure construction<sup>12</sup>;

- The person nominated as “Commissioner for the socio-economic-environmental emergency in the area of traffic and mobility” is Silvano Vernizzi, also Regional secretary for infrastructure and mobility at Veneto Region administration, President of the EIA/ESIA Commission of Veneto Region and CEO of Veneto Strade<sup>13</sup>.

The report of the Court of Auditors also noted that:

- The construction costs of the bypass increased through time by over 80% (from 750 million euro to 1.34 billion euro in 2010<sup>14</sup>);
- The difficulty to find new financial resources resulted in the signature of a new convention between CAV and ANAS on March 23 2010, that includes the construction of new infrastructure for 279 million euro directly by CAV, to be repaid by the company through tolls, with an economic and financial plan similar to project finance, that has been questioned by the Italian Ministry of Transport at the State Council<sup>15</sup>;
- Discrepancies have emerged on the accounting data from the public administration and those of the government accounting office (Ragioneria Generale dello Stato e Corte dei Conti) in relation to the budget line 7060 (Passante di Mestre)<sup>16</sup> that has been adjusted after the publication of the report of the Court of Auditors, but that confirms the inaccuracy in reporting of payments and costs of the project;
- The lack of transparency regarding the costs of compensation projects, that the Court of Auditors has pinned down as incorporated in the budget lines related to costs of “expropriation, project design and construction of core infrastructure”. According to the Court of Auditors this enforces the request of separate accounting for the compensation projects, and a more specific *ex ante* evaluation of costs, in order to avoid an unjustified increase of costs during construction<sup>17</sup>;
- CAV is a unique example of a joint company between the public company ANAS and an Italian regional administration, that is performing as general contractor as well as executor of construction works of “compensation projects” to the bypass, incorporating the role of controller and controlled. To be noted that a Convention has been signed with the representative of the State (Prefetto) in Venice and Treviso and the *ad hoc* Commissioner to ensure collaboration given the recognised

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12 Corte dei Conti, Deliberazione n. 4/2011/G, pag 27.

13 In January 2014, Mr. Vernizzi have been removed from his position in the public administration and nominated General Director of Veneto Strade.  
[http://ricerca.gelocal.it/nuovavenezia/archivio/nuovavenezia/2013/12/20/NZ\\_10\\_E-15-110-A.html](http://ricerca.gelocal.it/nuovavenezia/archivio/nuovavenezia/2013/12/20/NZ_10_E-15-110-A.html)

14 Bilancio CAV 2011, pag 24.

15 Corte dei Conti, Deliberazione n. 4/2011/G, pag 59.

16 Corte dei Conti, Deliberazione n. 4/2011/G, pag 80.

17 Corte dei Conti, Deliberazione n. 4/2011/G, pag 93.

risk of infiltration of criminal organisations, including mafia groups, within the realisation of works for the Mestre bypass<sup>18</sup>. The report of the Court of Auditors is highlighting the lack of public control on the construction of the Mestre bypass.

In this regard, it should be noted that in October 2013, the CEO of F.I.P. Industriale (one of the companies investing in the Passante di Mestre consortium) Mauro Scaramuzza, has been arrested by the anti-mafia authorities in Catania for alleged criminal organisation, false registration of assets and external participation to mafia organising<sup>19</sup>. According to the magistrate, Scaramuzza would have *consciously operated* to facilitate the participation in construction works by companies controlled by the mafia clan “La Rocca”. Among the arrested people, also some employees of ANAS S.p.A. FIP Industriale was employed for the construction of a highway in Caltagirone (Sicily) commissioned by ANAS<sup>20</sup>.

F.I.P. Industriale S.p.A. is 100% owned by Serenissima Holding S.p.A., a company owned by the Chiarotto family, that also holds 18.845.063 shares (out of 20.000.000) of Mantovani S.p.A. Thus through the same ownership of Chiarotto family – through its Serenissima Holding SpA – Mantovani SpA and FIP Industriale SPA, operating in the same sector and type of projects, are closely related.

**The report by the Italian Court of Auditors is a public document since March 2011**, that the EIB should have acquired soon in its due diligence on the refinancing of the debt generated by the consortium Passante di Mestre and incorporated by CAV, even before project approval in June 2011.

In particular, the complainants raise these precise questions to be investigated:

- **Has the EIB acquired the report and what is the due diligence performed in relation to the red flags raised by the Court of Auditors?**
- **With reference to the abuse of emergency measures, that led to “normalisation of a state of emergency” aimed at bypassing the rule of law and internal rules for good and efficient management of public companies: What assessment and justification for such derogation from the law has been given by the EIB in its due diligence?**
- **What has been the assessment of the EIB in its due diligence and the justification for the absence of adequate public control by the local authorities in Italy, as reported by the Court of Auditors and identified as the main reason for the astonishing increase of costs and generation of the debt absorbed by CAV that the EIB is refinancing through its intermediated loan?**
- **Has the EIB performed an enhanced due diligence of the project and**

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18 Corte dei Conti, Deliberazione n. 4/2011/G, pag 57.

19 <http://www.ediliziaeterritorio.ilsole24ore.com/art/infrastrutture24/2013-10-11/industriale-arrestato-mafia-amministratore-120859.php?uuid=Ab419lsI>; <http://www.opzionezero.org/2013/10/10/nuova-venezia-mafia-e-appalti-arrestato/>

20 <http://www.ediliziaeterritorio.ilsole24ore.com/art/infrastrutture24/2013-10-11/industriale-arrestato-mafia-amministratore-120859.php?uuid=Ab419lsI>

companies involved, according to provision under anti-money laundering law, in order to address serious concerns publicly raised by a national supervisor, such as Corte dei Conti, about the risk of infiltration of organised crime organisations in the realisation of works?

- In particular looking into the high discretionality in the assignment of works, to the complex structure of sub-contracting regarding the construction of the Mestre bypass, and in particular in the case of compensation projects that CAV should build directly:
- What has been the additional due diligence, if any, that the EIB has performed on FIP Industriale – one of the members of the consortium Passante di Mestre, directly linked to Mantovani SPA through the same ownership of Serenissima Holding SpA - after the arrest of its CEO Mauro Scaramuzza in October 2013 for alleged criminal organisation, false registration of assets and external participation to mafia organising – to ensure that the EIB loan disbursed to CAV will not contribute to the payment of companies related to criminal organizations?
- Has the EIB opened any internal investigation on the corruption allegation tainting companies involved in the CAV project?
- Has the EIB reported to OLAF allegations of corruption tainting companies involved in this CAV project, and if yes, when? Is the EIB cooperating with magistrates in Italy on the case?

### **Alleged corruption tainting EIB-backed companies operating in Veneto region and linked with the CAV project**

At least two of the main projects financed by the EIB in Veneto, MOSE and Passante di Mestre, are part of the major investigation by Italian magistrate Stefano Ancilotto and the judge for preliminary investigation (Gip) Alberto Scaramuzza.

**In February 2013, such investigation brought to the arrest of Piergiorgio Baita, CEO of the company Mantovani S.p.A. (one of the main subcontractors of the consortium Passante di Mestre), Claudia Minutillo, CEO of the company Adria Infrastrutture, Nicolò Buson, General Director of Mantovani S.p.A. and their consultant William Alfonso Colombelli<sup>21</sup>. The accusation is of criminal conspiracy aimed at fiscal fraud.**

According to the magistrate, Mantovani S.p.A. - which is directly linked, through the same ownership of the Chiarotto family and its Serenissima Holding SPA , to FIP Industriale SpA which is part of the Passante di Mestre consortium - and Adria Infrastrutture produced false invoices for tens of millions of euro from consulting companies like BMC Brookers (registered in San Marino and owned by Mr. Colombelli). About 15-20% of the invoiced

<sup>21</sup> <http://nuovavenezia.gelocal.it/cronaca/2013/02/28/news/frode-fiscale-arrestato-piergiorgio-baita-presidente-della-mantovani-1.6613542>

amounts stayed with Mr. Colombelli, while the rest was cashed and transferred back to Mantovani and Adria Infrastrutture as black funds. The revenues set aside by the two companies (both controlled de facto by Piergiorgio Baita) were used to bribe public officials to obtain major construction contracts, including within the projects Passante di Mestre and MOSE. **The testimony of Mr. Baita have apparently confirmed that cash drained and set aside through this system have been used also to bribe public officials and politicians for the assignment of construction works.** On the paybook of Mantovani S.p.A were allegedly found also police officials and former agents of secret services, now jailed<sup>22</sup>.

Magistrates have been looking into correspondence between BMC Brookers and about 20 companies including Consorzio Venezia Nuova, Veneto Acque, Passante di Mestre, Veneto Strade, Autorità Portuale di Venezia.

Among others, magistrates have been also screening invoices for an amount of 2,1 million euro that Veneto Strade have invoiced to BMC Brookers.

New investigations opened in July 2013 has led to the arrest of Giovanni Mazzacurati, former president of the “Consorzio Venezia Nuova”, in charge of the safeguard of the city of Venice and the building of the mega infrastructure MOSE. Mantovani S.p.A. is also part of that consortium.

According to media, in November 2013 the investigation involved over 100 people, of which 20 have been arrested. “And this is may only be the tip of the iceberg”<sup>23</sup>.

**This information has been in the public domain since February 2013, before the disbursement of the EIB loan of 350 million euro to CAV through Cassa Depositi e Prestiti in April 2013.**

Despite complainants are seriously concerned about the lack of monitoring and supervision by the EIB of its loans for the MOSE project, which is a flagship and world famous operation in terms of innovative infrastructure intervention within the EU, after corruption allegation tainted this operation, for the merit of the present complaint on the Passante di Mestre/CAV project complainants raises the following precise questions to be investigated:

**What has been the due diligence, if any, that the EIB performed after the widely publicly documented – and with severe political echo within Italy - arrest of the CEO of Mantovani SPA in February 2013, one of the main subcontractors of construction works for the Mestre bypass, before the disbursement of the loan of 350 million euro to CDP, whose final beneficiary is CAV, in April 2013 (that means just two months before funding disbursement)?**

**Did the EIB launch an own investigation, and has there been a joint or crossed evaluation with CDP before the disbursement of the loan? Have OLAF been reported about it?**

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22 L'Espresso 21/11/2013, “C'è una cupola sul MOSE”.

23 L'Espresso 21/11/2013, “C'è una cupola sul MOSE”.

## **Conclusions**

**We ask OLAF to investigate on the EIB loan of 350 million euro to CAV through the financial intermediary Cassa Depositi e Prestiti disbursed in April 2013 on the basis of public allegations moved against companies and local administrations involved in the project by the Italian Court of Auditors and Italian magistrates both before loan approval and loan disbursement.**

**EIB's alleged failure to prevent corruption and money laundering affecting these investments may suggest major problems with the Bank's due diligence process and anti-fraud and money-laundering procedures. Those procedures should have prevented or delayed the disbursement of the loan in April 2013. Instead, EIB's alleged failure led to the opening of an investigation on public allegations because of the serious risk of supporting the violation of EU laws, thus impacting EU financial and other non-financial interests.**

**We strongly request OLAF to acknowledge the formal filing of this complaint and reserve our right to redress OLAF's decision on investigating the case through competent authorities. In the meantime we remain available to cooperate on the case with OLAF in a timely manner and at OLAF request under the condition that OLAF will abide in full and in a verifiable manner to the code of good administrative behaviour applying to all European authorities.**

**CC: European Court of Auditors  
Italian Court of Auditors  
Procura di Venezia, Magistrate Alberto Scaramuzza  
EIB legal office  
CDP legal office**