



MINISTRY OF REGIONAL DEVELOPMENT  
AND PUBLIC ADMINISTRATION



MINISTRY OF REGIONAL  
DEVELOPMENT AND  
PUBLIC WORKS



DECISION no. *15*  
of *2nd* of May 2018

Regarding the complaints lodged against the Monitoring Committee Decision no. 72 of 22<sup>nd</sup> of March 2018, approving the List of approved and rejected projects submitted under the third call for proposals for the Interreg V-A Romania-Bulgaria Programme - deadline 23<sup>rd</sup> of October 2017

Having regard to the following:

- Monitoring Committee Decision no. 51 of 2<sup>nd</sup> of August 2017 approving the Complaint Panel for the Eols and full applications submitted under the 3<sup>rd</sup> call for proposals, priority axes 1-3, Interreg V-A Romania-Bulgaria Programme, step 1 and 2,
- The Complaint Procedure of Interreg V-A Romania-Bulgaria,

the Complaint Panel of Interreg V-A Romania-Bulgaria Programme has adopted this:

#### DECISION

**Article 1.** The present document rejects the complaint lodged by Territorial Administrative Unit Mangalia Municipality, lead beneficiary of the project *"Improving the connection of tertiary nodes Mangalia and Balchik to TEN-T infrastructure"* - code 510, selected for financing, without financial allocation available and registered by CBC ROC with the number 6427/3.04.2018, appealing budgetary reductions and the received score.

#### Article 2.

Lead Beneficiary complaints against the budget reduction applied by the assessor and the project score that had a major influence in declaring as ineligible the rehabilitation works for 5 out of 22 streets proposed by LB for rehabilitation works.

The reason of complaint is based on the fact that notification for the refusal of the five streets for financing consists in the suspicion that the technical solution proposed for these streets of the financing is represented by the maintenance works and no by the construction or modernization works and the notification does not present the legal basis, since it was not invoked, specifically, the legal provision that was infringed. The only reference is connected to the "provisions of the Programme documents", a vague mention as is it vast.

Even if within the AWG Notification no 2056/26.03.2018 was not detailed the AWG decision, within the grids it was duly justified the reason of non-eligibility for the respective streets, as follows:

*"Regarding the technical documentation submitted by Municipality Mangalia for the investment proposed and considering the provisions of the legislation HG 907/2016, there were requested several documents which were not included or had to be completed, according to the Romanian*

external expert's report :

- a) The topographical study according with the framework contest of D.A.L.I - write and drawing;
- b) Inventory for goods belonging public domain;
- c) General layout with Office of Cadaster and Real Estate Publicity (O.C.P.I) stamp/approval, cadastral plans, must be presented
- d) Land registry file received for information from Office of Cadaster and Real Estate Publicity (O.C.P.I) must be presented; proof that infrastructure is the property of LB;
- e) The design solution for streets rehabilitation pavement structure mentioned in DALI it was not 100% in line with conclusion and recommendations of technical expertise for 5 streets (Rozelor, Matei Basarab, Stefan cel Mare, Constantei, 1 Decembrie 1918).

As per technical expertise, the recommended solution is:

Rehabilitation of Road Pavement Structure for existing concrete structure: \* Milling (3-5) cm and profiling; \* Anti-crack geocomposite; \* Binder layer from asphalt mixture BAD20 - 5cm thick, where the road structure shows a high level of surface degradation; \* wearing layer from asphalt mixture BA 16-4 cm thick;

Rehabilitation of Road Pavement Structure for existing asphalt structure: \* Milling (3-5) cm and profiling; \* Anti-crack geocomposite; \* Binder layer from asphalt mixture BAD20 - 5cm thick, where the road structure shows a high level of surface degradation; \* wearing layer from asphalt mixture BA 16-4 cm thick;

Therefore, having in view that the DALI rehabilitation pavement road structure solution is different for the above mentioned streets, it was required to complete the Technical Expertise with nominated solution for each street as was presented at chapter 2.1. Also, it was required to the Municipality to mention if the following norms and standards was observed when the solution it was detailed in DALI:

- Provision of NP 111, chapter IV, section 1, art.18 - regarding the number of asphalt layer (minimum) when it is the case for reinforcement of the rigid system;
- Provisions of AND 550, chapter 2, pct.2.2 - regarding the minimum thickness of the asphalt layer when it is the case for reinforcement of the existing road pavement;
- Provisions of AND 592, art.29, pct.3, sub-pct (3) - regarding the installation of geosynthetics;
- Provisions of AND 591, art.30, regarding the recommended minimum thickness of the asphalt layer and number of the asphalt layer which are part of the reinforcement works;
- Provisions of AND 571 - typical reinforcement structure solution for flexible and semirigid road structure;

Moreover, the Municipality had to clarified if the rehabilitation solution for above mentioned streets it was not the subject of the following norm/standards:

- Provisions of AND 550, chapter 2, pct. 2.3 - what kind of work, if the total thickness of asphalt layers is less than 8 cm;
- NE 033, chapter 7, section 2, art.42, point 7- typical current repairs.

Finally, the solution for sidewalk mentioned in DALI, had to be confirmed by technical expert - if it was the case for intervention.

- f) The traffic study, according to the framework contest of DALI - write and drawing parts;
- g) It was needed to clarify the discrepancy mentioned in the technical expertise regarding traffic class mentioned at chapter 2.2.2 and traffic class mentioned at chapter loaded capacity - pg.9;
- h) In order to confirm that the adopted road structure satisfied the traffic load volume along of perspective period, as per NP 111 (chapter 1, section 1, art.4), AND 592 (section 4, art.27, point 6), AND 550, etc., it was required the calculus note for rehabilitation road pavement structure and prove that the adopted road structure pavement satisfied the action of freeze-thaw.

Following the verification of the beneficiary's reply, the Romanian external expert stated that the requested documents have been submitted.

In regard to clarifications requested at point e), the Romanian external expert states in his report, sent on 05.02.2018: « The Municipality answers, including designer answer, it is not in line with the provisions and recommendation of AND 550 - chapter 2, pct. 2.2, AND 592 - art. 29, pct. 3, sub-pct (3), AND 571. As a conclusion, the proposed reinforcement pavement structure for Rozelor, Matei Basarab, Stefan cel Mare, Constantei, 1 Decembrie 1918 streets, don't represent solution for rehabilitation / modernization, this represent current maintenance and repair activity", which are part of Technical regulation "Normative for the maintenance and repair of streets", indicative NE-033-05 OF 30.11.2005".

Roads / streets maintenance and repair activities are defined in accordance with the provisions of the Road Maintenance and Repair Norms, indicative NE-033-05 of 30.11.2005. The normative has the following objectives:

- classification of road maintenance and repair works on streets;
- regulating the periodicity of the execution of these works;
- highlighting the categories of operations required to increase traffic safety.

According to this normative, Section 4 - Definitions:

(3) "Maintenance work" means all activities that are carried out throughout the year due to the wear and tear of streets under normal operating conditions, activities aimed at ensuring the technical conditions necessary for the safe road movement and the maintenance of the public street patrimony in a permanent state of cleanliness and aesthetic aspect.

(4) "Repair works" means all physical interventions intended to compensate, in whole or in part, for the physical and moral wear of the street caused by normal operation or the action of environmental agents.

Basef on:

- provisions of NE 033, ch. 7 - Current repair works, Sec. 2 - Current repair of road ways, art. 44 (7), Current Circulation Repairs mean the execution of low-thickness asphalt carpets (max. 4 cm) on road sections where the application of bituminous surface treatments does not provide for wear compensation;
- provisions of the 550 AND - Normative concerning the dimensioning of bituminous reinforcement layers of flexible and semi-rigid road systems, ch. 2, art. 2.3 stipulates that works in which the required thickness of reinforcement bituminous layers is less than 8 cm, are part of the activity of maintenance of public roads or streets and shall be treated in accordance with the provisions of the Norm regarding the administration, exploitation, maintenance and repairing the streets.

According to the technical documentation analyzed (ET and DALI), the following streets provided for the execution of current repair works consisting in one layer of asphalt mix in thickness of 4 cm - BA 16, as follows:

- Rosele Street - 1.109 m
- Matei Basarab Street - 280 m
- Stefan cel Mare Street - 540 m
- Constanta Road - 499 m;
- Street 1 Decembrie 1918 - 832 m

According to the provisions of the Applicant Guide for 3rd call, ii.Eligibility of Actions, for Priority axis 1, under Indicative actions, it is stipulated: "Improving the cross-border secondary and tertiary nodes connections to TENT-T infrastructure (e.g...construction and modernization of road infrastructure".

Having in mind the above mentioned and also according to the "THEMATIC GUIDANCE FICHE FOR DESK OFFICERS - TRANSPORT, VERSION 3 - 14/05/2014" (guidance document Issued by European Commission laying at the basis of the programming document and principles in the investment works) (following AWG request for clarifications), where it is stated "Investment in pure maintenance of existing infrastructure is not eligible", it is proposed to exclude from the financing the afferent current works for the following streets: Rozelor, Matei Basarab, Stefan cel Mare, Constantei, 1 Decembrie 1918."

Following the analysis of the submitted Complaint, the External Consultant present the following point of view:

"In accordance with the provisions of AND 550, Chap. 2 - Technical conditions, section 2.3, it is mentioned that the works in which the thickness of the bituminous reinforcement layers is less than 8 cm, are part of the maintenance of public roads or streets;

In DALI, for Rozelor, Matei Basarab, Stefan cel Mare, Constanța, 1 December 1918, streets, the designed

works it was as following:

- Milling the asphalt layers on (2-3-4-5) cm;
- Geosynthetic layer;
- 4 cm wearing layer - BA16;

As it can above, the works included in DALI are considered as maintenance works according to AND 550, and repair works according to NE 033/2005: Section 2 - Current repairs on carriageways, art. 44: Current repairs related to carriageways consist in: (7) Execution of low-thickness asphalt layer (max. 4 cm) on streets where the application of bituminous surface treatments does not ensure the compensation of wear.

As we can see, by carrying out the above works (milling of the existing asphalt layer up to 5 cm and the execution on the new asphalt layers with 4 cm thickness), no additional load capacity is added to the existing road system.

Also, it is important to mention that the organization and functioning of the local public roads management services, as part of the public domain of local interest, is regulated by:

- GO no. 71/2002 regarding the organization and functioning of the public and private domain management services of local interest, with the subsequent modifications and completions;
- GD no. 955/2004 for the approval of the framework regulations for the application of GO no. 71/2002.

According to OG no. 71/2002 on the organization and functioning of the public and private domain management services of local interest, with the subsequent modifications and completions,

- Article 3 para. (1) - "The public and private domain management services are intended to meet the needs of local communities, contribute to the enhancement of their civilization and comfort, and group household and community activities and local public interest and actions having as object:

- (a) the construction, upgrading, exploitation and maintenance of streets, roads, bridges, viaducts, road and pedestrian passages, subterranean and aboveground roads;

...

- Article 10 (1) - "Management of the public and private domain management services can be organized in the following ways:

a) direct management;

b) indirect management or delegated management. "

The management of the public and private domain management service of Mangalia Municipality is carried out through direct management, through specialized departments, organized within the own apparatus of the local council of Mangalia Municipality.

The public service of the public and private domain is organized and functions as a specialized service subordinated to the Local Council of Mangalia Municipality. The service operates on the basis of an Organization and Functioning Regulation, which has as its object of activity, other printer, and:

□ ....

□ capital repairs, the development of asphaltic carpets, the performance of the works related to the public infrastructure;

□ ...

□ Execution of works for the construction, upgrading and maintenance of streets and roads only on the basis of urban planning plans and documentation, traffic and traffic studies, observing the technical execution procedures for:

- ...

- maintaining and repairing public roads;

- execution of cylindrical bituminous layers from asphalt mixtures;

- ...

The maintenance and repair of the public streets and roads in Mangalia Municipality is delegated, as can be seen in the Regulation of Organization and Functioning of the Public Administration of the Public and Private Domain of Mangalia, respectively SECTION 2 Road Administration and the streets. <http://adpp.mangalia.ro>."

Having in mind the abovementioned, the provisions of Applicant Guide for 3rd call, ii. Eligibility of Actions, for Priority axis 1, under Indicative actions, where it is stipulated: "Improving the cross-border secondary and tertiary nodes connections to TEN-T infrastructure (e.g...construction and modernization of road infrastructure" and also the provisions of "THEMATIC GUIDANCE FICHE FOR DESK OFFICERS - TRANSPORT, VERSION 3 - 14/05/2014" (following AWG request for clarifications), where it is stated "Investment in pure maintenance of existing infrastructure is not eligible" it was concluded that financing for the five streets are not eligible under INTERREG V-A Romania-Bulgaria Programme.

Considering the above arguments, the Complaint Panel rejects the appeal.

Article 3. The decision of the Complaint Panel is final, binding to all parties and not subject of any further complaint proceedings within the Programme.

Member 1 of Complaint Panel - Managing Authority representative, Ministry of Regional Development and Public Administration, Romania

Signature



Member 2 of Complaint Panel - National Authority representative, Ministry of Regional Administration and Public Works, Bulgaria

Signature



Member 3 of Complaint Panel - External expert (from the Evaluation Unit), Ministry of Regional Development and Public Administration, Romania

Signature

