

REPORT

of the Temporary Investigation Committee for examination of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria

With a Decision of 21 July 2004, the National Assembly based on Art. 86, para 1 of **the Constitution** of the Republic of Bulgaria established a Temporary Investigation Committee for examination of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria.

During the period from 21 July 2004 to 10 November 2004 the Temporary Investigation Committee held 15 meetings and took respective decisions. In the course of work of the Temporary Investigation Committee on the grounds of Art. 80 of **the Constitution** of the Republic of Bulgaria, Art. 94, Art. 95 and Art. 97 of the Rules of Procedure of the National Assembly materials were requested and questions were put to the Council of Ministers and to 9 ministries, bodies, institutions and business companies - the Ministry of Health, the Ministry of Finance, the Budget and Finances Commission, the Capital Large Municipality, the Medical University – Sofia, the Military Medical Academy (MMA) – Sofia, Multiprofile Active Treatment Hospital – Alexandrovska EAD, Specialized Active Treatment Paediatric Hospital – Sofia, ADA Architecture and Design Agency.

Written questions were put to the Minister of Health, Mr. Slavcho Bogoev concerning the state of child healthcare in Bulgaria, the available resources in the paediatric hospital network and the percentage of their utilization, the possibilities for completion of the unfinished building of the paediatric institute on the territory of the Medical University – Sofia and the availability of respective expert opinions; who has submitted the proposal for the building of a new paediatric hospital, who is the author of the Project for construction of a new paediatric hospital, submitted to the parliament Healthcare Committee members, the stand of the Ministry of Health concerning the moving of the Infectious Diseases Hospital into the MMA, the stand of the Ministry of Health about the possibility for common use of a laundry, kitchen and other service units by both hospitals, correspondence between the Ministry of Health and the Ministry of Finance regarding the Project, correspondence representing preliminary negotiations with Austria Creditanstalt Bank for credit line request, the eventual availability of payments related with the concluded contracts or with the activity realized in their implementation, the availability or lack of terms of reference for the Project for construction of a new paediatric hospital, quantity-value accounts, technical specifications, permission for the design and the situation related to the cadastral basis, the availability of legal analysis of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria, personalization of the team, which negotiated with Vamed Engineering, the source from which eventual penalty interests would be paid in the case of delay of the Contract ratification, as well as why and by whom 30.06.2004 was set as a deadline for entering the Contract into effect.

Written questions were put to the Finance Minister Milen Velchev concerning the criteria for choosing of Austria Creditanstalt Bank, and he was asked to submit to the Commission the list of all projects applying for funding through state loans or state

guarantee for the year 2004.

An application was made to the Council of Ministers for submission to the Commission of the shorthand records from the Council of Ministers meetings at which the decision was taken for signing of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank, for the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria, the decision for making proposal to the

Parliament for ratification of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and for the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria and the decision for conducting of the negotiations and signing of the Addendum to the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria and the Addendum to the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank, as well as the accompanying documentation.

The Commission served a written invitation to the Management of Vamed Engineering Company, Vienna, Austria for a meeting in connection with the discussed issues to which an answer was received by the Administrative Director of Vamed Engineering, Mr. Wolfgang Nolscher, who expressed his regret that due to the fact that in the period fixed by the Commission (the month of October) the Management of Vamed Engineering is not able to visit Bulgaria due to other commitments and expressed willingness to answer any asked questions in writing.

On the grounds of Art. 80 of the Constitution of the Republic of Bulgaria the Minister of Health, Mr. Slavcho Bogoev, the Minister of Finances, Mr. Milen Velchev, the Minister of Health for the period from July 2001 to July 2003, Assoc. Prof. Bozhidar Finkov, the Vice-Minister of Health for the period from September 2001 to March 2003, Assoc. Prof. Petar Tenchev, the Chancellor of the Medical University – Sofia Prof. Vladimir Ovcharov, the Vice-Chancellor on Economic Issues of the Medical University – Sofia Mr. Hristo Anachkov, the National Consultant of Paediatrics Prof. Vladimir Pilosof, the Director of the Specialized Active Treatment Paediatric Hospital (SATPH) Dr. Nikolay Drenski, the Director of the National Centre of Child Onco-Haematology Prof. Dragan Bobev, the Director of Multiprofile Active Treatment Hospital Alexandrovska EAD Dr. Silvi Kirilov, the Director of the Specialized Active Treatment Hospital of Contagious and Parasitic Diseases Dr. Kostadin Kostov, the Director of the Specialized Active Treatment Hospital of Infectious Diseases, Parasitology and Tropical Medicine Assoc. Prof. Mayda Tiholova, the Chief of the Intensive Care Ward at the Specialized Active Treatment Paediatric Hospital Assoc. Prof. Anadoliyska, the team of the ADA Architecture and Design Agency took part in the meetings of the Temporary Investigation Committee and answered to the asked questions.

The work of the Temporary Investigation Committee was hindered by the Commission Chairperson Mrs. Nina Radeva, who refused to submit to the Commission the shorthand reports of the Budget and Finances Commission meetings at which the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria were discussed; by the Minister of Finances, Mr. Milen Velchev, who did not answer to any of the letters sent to him, with the subsequent explanation that it was not possible to find them in the office of the registrar at the Ministry of Finance; by the Vice Prime Minister of the Republic of Bulgaria Mrs. Lidia Shuleva, who till the end of the work of the Temporary Investigation Committee did not submit the minutes of the meetings of the Economic Reform Council

(known then as Structural Policy Council, headed by Mr. Nikolay Vasilev), at which the investment projects applying for funding with state guarantee for 2004 were discussed; and by the Minister of Health Mr. Slavcho Bogoev, who till the end of the work of the Temporary Investigation Committee did not answer to two of the letters sent to him.

The Temporary Investigation Committee performed a study based on:

I. THE SUBMITTED DOCUMENTS:

1. Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria, concluded on 19.03.2004.
2. Project of the Ministry of Health from March 2003 for restructuring of Specialized Active Treatment Paediatric Hospital EAD Sofia – construction of a new paediatric university hospital.
3. Excerpt of Minutes No. 7 of the Council of Ministers meeting held on 19 February 2004, containing decision for approval of the Project for the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and the project of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria, a copy of the documentation with which the draft decision is submitted to the Council of Ministers and a copy of the shorthand report on this item of the meeting.

4. A copy of shorthand report on items 13 and 14 of the Council of Ministers meeting of 29.04.2004, at which a decision was taken for approval of the draft decision for proposal to the Parliament for ratification of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria and the draft decision for proposal to the Parliament for ratification of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank.

5. The financial argumentation to the draft decision of the Council of Ministers for the draft decision for proposal to the Parliament for ratification of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria

6. Decision No. 384 of the Council of Ministers of 04.05.2004 for proposal to the Parliament for ratification of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria and a copy of the documentation with which the draft decision is submitted to the Council of Ministers, including the stands of the ministries obtained during the coordination procedure.

7. Letter No. 02.01-75/04 05.2004 to the Chairman of the National Assembly with which the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria, approved with Decision No. 384 of the Council of

Ministers of 04.05.2004 and the draft law for ratification thereof were sent.

8. Draft law for ratification of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria.
9. Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank, concluded on 10. 03. 2004.
10. Decision No. 385 of the Council of Ministers of 04. 05. 2004 for approval of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and approval of a proposal for ratification thereof by the National Assembly.
11. Letter No. 02. 01 – 76/ 04. 05. 2004 to the Chairman of the National Assembly, with which the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and the draft law for ratification thereof, approved with Decision No. 385 of the Council of Ministers of 04. 05. 2004 was sent.
12. Draft law for ratification of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank.
13. Letter by the Ministry of Finances with ref. No. 91-00-189/21. 02. 2003 to all

ministries in connection with the budget procedure for the year 2004.

14. Letter by the Ministry of Health to the Ministry of Finance with ref. No. 04-20-75/31.03.2003 containing the propositions of the Ministry of Health for investment projects, applying for funding through state loans and projects applying for funding based on state guarantee for the year 2004.
15. Investment project proposal – New Paediatric Hospital, Sofia, of the Ministry of Health, of March 2003.
16. The list of investment projects applying for funding through state loans and projects applying for funding based on state guarantee for the year 2004, proposed by all ministries.
17. Report of the Minister of Finances Milen Velchev concerning the taking of decision by the Council of Ministers for approval of the list of projects for 2004, which are to be funded through state loans and through loans for which issuance of state guarantee is envisaged, as well as the documentation enclosed thereto.
18. Decision of the Council of Ministers No. 513 of 18 July 2003 for approval of a project for the year 2004, which is to be funded through a loan for which issuance of state guarantee is envisaged.
19. The expertise of the Project of the Ministry of Health of March 2003 for restructuring of SATPH EAD Sofia – Construction of a new paediatric university

hospital of April 2004 prepared by ADA Architecture and Design Agency OOD.

20. Order No. ПД-17-271/02.04.2003 of the Minister of Health for undertaking actions for realization of a small-scale public order through direct contracting (expertise concerning an offer of Vamed Engineering Company, Austria) with Annex No. 1 to it – Implementation task.

21. Order No. ПД-17-278/07.04.2003 of the Minister of Health for announcement ADA OOD as public order contractor.

22. Letters of the Ministry of Health to the Ministry of Finance with ref. Nos. 04-20-86/05.04.2004, 04-20-86/20.04.2004 and 04-20-86/05.04.2004, containing requests for budget update of the Ministry of Health with the amount of co-funding on the Bulgarian part of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria.

23. The Hospital Restructuring Strategy, adopted with decision No. 762 of the Council of Ministers of 19 November 2002.

24. Excerpt from Minutes No. 41 from the meeting of the Council of Ministers of 28 October 2004, containing decision for approval of the project of the Addendum to the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and the project of the Addendum to the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering

Company, Vienna, Austria, as well as a copy of the enclosed documentation.

II. OTHERS:

1. The written replies received from the Council of Ministers, the ministries, bodies, institutions and business companies to the questions asked by the Temporary Investigation Committee.
2. The verbal answers of the officials, who took part in the meetings of the Temporary Investigation Committee.
3. Analysis of the state of child healthcare in Bulgaria, submitted by the Ministry of Health.
4. A table containing the number of hospital paediatric beds in Sofia and the percentage of their utilization for the period 2002 – 2003, submitted by the Ministry of Health.
5. Information for the utilization of beds in the paediatric units of Alexandrovska Hospital for the year 2003 and in the child therapeutic wards within the structure of Alexandrovska Hospital.
6. Information about the number and utilization of beds in the paediatric units of the municipally owned health care establishments in the city of Sofia.
7. A letter by the Chief of the Military Medical Academy, Brigadier-General Assoc. Prof. Stoyan Tonev concerning the terrain for the construction of the Specialized Active Treatment Hospital (SATH) of Infectious and Parasitic Diseases “Prof. Ivan Kirov”.
8. A letter by the Chancellor of the Medical University Prof. Vladimir Ovcharov concerning the unfinished building of the Institute of Paediatrics.
9. The stand of the Head of the Chair of Infectious Diseases, Parasitology and Tropical Medicine Assoc. Prof. Mayda Tiholova concerning the moving of the

Infectious Diseases Hospital into the MMA.

10. The quality indicators of the SATH of Child Diseases – Sofia.
11. Preliminary design for construction of a SATH of Infectious, Parasitic and Tropical Diseases – Sofia.
12. The technical expertise of Discont Real Estate and Industrial Property Evaluation Office.
13. DECISION of the National Assembly of 24.10.1996 for giving consent for conclusion by the Council of Ministers of a loan contract with the Social Development Fund at the European Council (promulgated in the State Gazette, issue 93 of 1.11.1996).
14. DECISION of the National Assembly of 13.06.1996 for giving consent for conclusion by the Council of Ministers of commodity credit contract with Siemens Company (promulgated in the State Gazette, issue 52 of 18.06.1996).
15. DECISION of the National Assembly of 30.07.1997 for giving consent for conclusion by the Council of Ministers of a credit agreement with AB SVENSK EXPORTCREDIT – Stockholm, Sweden, duly guaranteed by the Kingdom of Sweden, for a loan within the group of the 24 industrially developed countries for stabilization of the balance of payment (promulgated in the State Gazette, issue 62 of 5.08.1997).
16. DECISION of the National Assembly of 25.02.2004 for giving consent for conducting negotiations for concluding of a warrantee agreement between the Government of the Republic of Bulgaria and the Japan Bank for International Cooperation in connection with a loan contract for rehabilitation of blocks 1-4 of Maritza Iztok 2 TEPS - EAD between the Japan Bank for International Cooperation and Maritza Iztok 2 TEPS – EAD (promulgated in the State Gazette, issue 19 of 9.03.2004).
17. DECISION of the National Assembly of 18.09.2004 for giving consent for conducting negotiations and concluding of a framework credit agreement between the Development Bank at the European Council and “Nasarchitelna Banka” AD and the Republic of Bulgaria (promulgated in the State Gazette, issue 90 of 24.09.2002).

18. DECISION of the National Assembly of 16.01.1997 r. for giving consent for the Council of Ministers to issue guarantee to the Commodity Credit Corporation, authorised by the USA Government for realization of the bank transactions and fulfilment of the obligations under the export credit program GSM-102 for supply of bread wheat (promulgated in the State Gazette, issue 6 of 21.01.1997).
19. DECISION of the National Assembly of 31.07.1997 for giving consent for conclusion by the Council of Ministers of loan contracts with the European Investment Bank and with the Kuwait Fund for Arab and Economic Development (promulgated in the State Gazette, issue 62 of 5.08.1997).

I. FACTS

On the basis of the submitted documents the following facts are established:

The idea for construction of a new paediatric hospital dates back to 2002 according to Assoc. Prof Bozhidar Finkov, who was Minister of Health at that period and according to the present Minister Slavcho Bogoev. It becomes clear from their replies that the idea was not preceded by analysis of the child healthcare, the available resources in hospital paediatric care and the future needs.

According to Assoc. Prof Finkov no political decision had been taken on that issue; Slavcho Bogoev, who was vice-minister at that time asserts the contrary.

According to Assoc. Prof Finkov, one of the many investors appearing during that period is Vamed Engineering. They proposed to implement a project for a new paediatric hospital. It does not become clear whether the company Vamed Engineering came independently and accidentally to Bulgaria, its appearance coinciding with the emergence of the idea for construction of a paediatric hospital, which it proposes to realize, or the events follow a different scenario. Again according to Assoc. Prof Finkov, after the meeting with Vamed Engineering the Ministry of Health asked for a letter of intentions from them and a preliminary design for what they could do. Such a design was

presented and subsequently served as a basis of the Project of the Ministry of Health of March 2003 for Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a new Paediatric University Hospital. Vamed Engineering presented a miniature model of the future hospital as well which was promoted at the end of 2002 in Hilton Hotel in the presence of the Prime Minister of the Republic of Bulgaria Simeon Saxe-Coburg Gotha, the Minister of Health for that period Assoc. Prof Bozhidar Finkov, the Minister of Finances Milen Velchev, the Minister of Transport Mr. Plamen Petrov, the vice-ministers of health, the Director of the SATH of Infectious and Parasitic Diseases Dr. Kostadin Kostov and representatives from Austria. According to Dr. Kostov construction of two hospitals was mentioned at that time – of a paediatric hospital and subsequently – of infectious diseases hospital. In the project presented by Vamed Engineering it was cursorily mentioned that the construction of the new infectious diseases hospital would as well be realized by Vamed Engineering.

According to Assoc. Prof Finkov during that time the funding of the project was not discussed, neither the price parameters were discussed, with the exception of the verbal stand of Vamed Engineering, the figure is about 40 million Euros. According to the ministers Milen Velchev, Bozhidar Finkov and Slavcho Bogoev, it was Vamed Engineering that recommended Austria Creditanstalt Bank as a funding institution.

At the discussion of the draft laws for ratification of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria the Project for Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a new Paediatric University Hospital was presented to the National Assembly. According to the text on the front page, that project originates from the Ministry of Health and is of March 2003.

The project itself is not signed, due to which it is not possible to establish who its author is, whether the project was really made in March 2003 and who has ordered its working out.

The Project parameters are as follows:

Phase 1: Construction to full completion and equipping of a new Paediatric University Hospital – Sofia, located on the territory of the existing Infectious Diseases Hospital with the following main parameters:

Number of beds:	a total of 150
Number of hospital wards:	a total of 6
Number of ambulatory care units:	a total of 17
Image Diagnostics Sector	General radiology equipment and CT
Education Sector	Lecture hall and workshop premise
Site area	About 60,000 sq. meters

Phase 2: Construction to full completion and equipping of a new Infectious Diseases University Hospital – Sofia, located nearby.

Both hospitals shall avail of the services rendered by the laboratory, pharmacy, kitchen, laundry and material management.

The project concentrates only on phase 1 and phase 2 is not mentioned at all.

The budget of the Project for construction of a new Paediatric University Hospital is as follows:

1. Project design and management	7,259,000 Euros
2. Construction works	12,810,000 Euros
3. Mechanic and electric installations	6,405,000 Euros
4. Medical equipment and furnishing	11,956,000 Euros
5. Hospital information system	4,270,000 Euros
<hr/> TOTAL	<hr/> 42,700,000 Euros

Project implementer: Vamed Engineering, Vienna,
Austria

Project funding 85% of the amount shall be
submitted under the form of
export credit by Austria
Creditanstalt Bank
15% - co-funding from the
Bulgarian party

The term set for implementation of phase 1 is thirty months and at the same time it is specified as a total of 20 months.

- 6 months for designing;
- 8 months for construction works, mechanic and electric systems;
- 6 months for medical equipment, furniture, information system and training.

An internal project control scheme is envisaged and at the same time the necessary amount of financial resources is missing, and no respective fund sources are envisaged.

The amount envisaged for project design and management is disproportionately large. It is equal to 7,259,000 Euros. If referred to the total investment amount it represents about 17% thereof, and referred to the construction amount - nearly 40%. To make a comparison, the price of all phases of investment design under Ordinance No. 1 of the chamber of Architects in Bulgaria amount from 3.5 to 10% of the construction value of the building, and for the particular type of building it is 5.5%. For investment project management, supervision and investor's control approximately 2% more are due, which makes a total of 7.5%.

Under these circumstances the expenses for designing should be calculated as follows: $19,315,000 \times 5.5\% = 1,100,000$ Euros. For project management: $42,700,000 \times 2.00\% = 860,000$ Euros. Or the total amount of the expenses for project design and

management should amount to 1,960,000 Euros instead of the proposed 7,259,000 Euros.

From the project thus presented it is not clear how the final project price was calculated, as it does not contain any information about the volume of construction works, the envisaged materials, equipment and furnishing, as well as about the information system parameters.

From the explanatory documents it becomes clear that the six wards envisaged for the new hospital will have therapeutic functions.

It is not clear how the structure of this hospital was defined, provided that the leading Bulgarian paediatricians – the National Paediatric Consultant Prof. Vladimir Pilosof, the former National Paediatric Consultant Prof. Dragan Bobev, etc. did not participate in the elaboration of the project, neither was their stand asked for.

The opinion of Prof. Pilosof, shared at a meeting of the Temporary Investigation Committee, is that the project does not involve all structures necessary for a contemporary paediatric hospital, built on the basis of a European model, i.e. a polyvalent hospital where all basic fields of paediatrics are present: paediatric surgery, child neurology, nephrology, onco-haematology, child urology etc.

The argument for the construction of such hospital, representing grounds for the project is the higher child mortality in Bulgaria. We fully agree with the necessity to undertake urgent measures for the improvement of such indicator, but are surprised by the lack of wards for paediatric surgery, paediatric onco-haematology and traumatology where the mortality rate is the highest, and at the same time child mortality for the existing SATPH for the year 2003 is about 0,6%, and for Bulgaria the year 2000 it was 13 %.

Due to the lack of a concept for the development of paediatrics in Bulgaria the Ministry of Health has not elaborated specific terms of reference for the structure of the paediatric hospital. The Ministry has let it go at verbal assignment for elaboration of the structure of a paediatric hospital with 150 beds and 6 therapeutic wards, entrusted to the Director of the SATH of Infectious and Parasitic Diseases Dr. Kostadin Kostov.

According to leading specialists – paediatricians (Prof. Bobev, Assoc Prof. Anadoliyska) joint use of the auxiliary units by both hospitals is inadmissible from a medical point of view.

The expertise of the project of 11.04.2004 is also available. From its content it is evident that it is prepared by ADA OOD. The elaboration of the expertise was entrusted to ADA OOD by the Ministry of Health with Order of the Minister of Health No. ПД-17-278 and the following tasks were assigned:

- Analysis and evaluation of the town-planning environment;
- Opinion as to whether the submitted project solution complies with the requirements of Art. 15 para 2 of Ordinance No. 4 of the Ministry of Regional Development and Town Planning;
- Analysis and evaluation of the functional elements and the connections between them in line with the current Healthcare Establishment Design Norms in the Republic of Bulgaria, as well as the sanitary and fire prevention requirements;
- Evaluation of the employed construction technologies, the construction materials and products envisaged to be used.

From the content of such expertise it is evident that the experts have reviewed a project prepared and proposed by Vamed Engineering, containing a particular architectural design with plans of all floors, façade – cross-section, cadastral basis location, 3D visualization (perspective views of the proposed building, as well as preliminary technical specifications (text) of the architectural and constructional part, OVK part, water supply and sewerage and electric installations.

It is evident from the expertise that the project is a standard one and does not comply in the form, in which it is presented with the requirements of the Bulgarian legislation (pages 3 and 4), the building is not well situated, the functional solution is not clear, the hospital structuring will cause difficulties for the functioning of the separate units (page 9), and in architectural volume aspect there is an impression of implementation of a familiar hospital building scheme is not conformed to the surrounding territory.

In line with the architectural design with all floor-plans the total built-up area of the site amounts to 11,807.41 sq. m., and according to the parameters of the project, submitted to ADA OOD it should be 60,000 sq. m. According to the experts of ADA OOD this is probably an absurd mistake, and according to the Commission, this is possible to be purposeful delusion.

With § 16 of the Transitional and Conclusive Stipulations of the Law for the State Budget of the Republic of Bulgaria for the year 2004 within the frame of the fiscal year state investment loans and state guarantees for external credit agreements are proposed for approval under the lawful order on the basis of a list of projects approved by the Council of Ministers, in line with Annex No. 7.

Annex No. 7 envisages for a state investment loan amounting to 36,295,000.00 EUR, with creditor Austria Creditanstalt Bank and credit receiver - the Ministry of Health. The loan is envisaged for the Project of "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a New Paediatric University Hospital".

Law for the State Budget of the Republic of Bulgaria is in force as of 01.01.2004.

In line with the documentation, submitted by Minister Velchev concerning the project approval procedure for projects which are to be funded through state loans and loans under which issuance of a state guarantee is envisaged for the year 2004, the projects, submitted to the Ministry of Finance for funding are 17, including 2, submitted by the Ministry of Health – the Project of "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a New Paediatric University Hospital" with creditor Austria Creditanstalt Bank and the Project "Hospital Care Restructuring" with creditor Fund for Economic Development Partnership of the Republic of Korea.

The Ministry of Health submitted to the Temporary Investigation Committee the "Proposal for Investment Projects. New paediatric hospital Sofia", submitted to the Ministry of Finance and dated March 2003. That document is almost literal repetition of the above mentioned Project of "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a New Paediatric University Hospital" and contains all shortcomings mentioned by ADA. Besides as it is the Project does not comply with the requirements of Ordinance No. 4 of 21.05.2004 for the scope and content of the

investment projects and only formally complies with the Ordinance of 07.02.2003 for the conditions to which investment projects funded with state loans and projects, applying for funding with state guarantee should comply.

With letter No. 03-00-0492 of 16.07.2003 the Minister of Finances Milen Velchev submitted for review by the Council of Ministers a report and a draft decision of the Council of Ministers for approval of the list of projects for the year 2004, which are to be funded with state loans and loans, for which issuance of state guarantee is envisaged. With his report Minister Velchev proposes to the Council of Ministers that state guarantee to be issued only for the Project "Rehabilitation of blocks 1-4 of Maritza Iztok 2 TEPS EAD".

On 18.07.2004 Decision No. 513 of the Council of Ministers is issued for approval of a project for the year 2004, which is to be funded with a loan for which issuance of a state guarantee is envisaged with which Decision only the Project "Rehabilitation of blocks 1-4 of Maritza Iztok 2 TEPS EAD", funded by the Japan Bank for International Cooperation is approved.

Subsequently Minister Velchev signs the Draft Law for the State Budget of the Republic of Bulgaria for the year 2004 Annex No. 7 of which includes as well the Project of "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a New Paediatric University Hospital" and the envisaged investment loan for it without there being any data for the respective decision of the Council of Ministers.

With the stated above actions the executive power authorities have misled the National Assembly for the adoption of the budget for the year 2004 concerning the procedure and the real nature of the paediatric hospital project.

In a letter with ref. No. 04-00-12/10.02.2004 the Secretary General of the Ministry of Health, Assoc. Prof. Krasimir Gigov has sent to the Secretary General of the Council of Ministers Mr. Sevdalin Mavrov the joint report of the Minister of Health Slavcho Bogoev and the Minister of Finances Milen Velchev concerning the draft decision of the Council of Ministers for approval of the Project of Export Credit Line Agreement for an investment project "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a New Paediatric University Hospital".

The report points out that this project is proposed for approval in

implementation of the Hospital Care Restructuring Strategy, adopted with Decision No. 762 of the Council of Ministers of 19 November 2002. In the Investment Policy section, however, this Strategy envisages as a first step elaboration of Investment Strategy and Investment Program in healthcare. Provided that the latter is missing as at particular moment in time it does not become clear how the abovementioned project has been defined to be in line with the Strategy priorities.

The report for compliance of the Agreement with the Constitution, legislation and international liabilities of the Republic of Bulgaria and with the European Union Law, and consent of the National Assembly under Art. 84, item 9 of the Constitution, required under Art. 4, para 1 and Art. 6, para 2 of the Act on International Contracts are not enclosed with the letter, nor are listed as enclosures.

In spite of that, the Council of Ministers has approved with Written Statement No. 7 of 19.02 2004 the Project for Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank as a basis for conducting negotiations and has authorized the Minister of Health and the Minister of Finances to conduct the negotiations and to sign said Agreement on behalf of the Republic of Bulgaria under the condition of subsequent ratification and has approved the Project of a Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria, authorizing the Minister of Health to sign it on behalf of the Republic of Bulgaria under the condition of subsequent ratification.

The only thing which becomes evident from the shorthand report from the meeting of the Council of Ministers is that the project was only approved because the Prime Minister has said "we support". How and whether the other members of the Council of Ministers has voted remains unknown.

From the conversations with Minister Bogoev it becomes clear that no order was issued authorizing a team which was to conduct the negotiations with Vamed Engineering. Again according to him at the different stages different experts have participated in the negotiations and no written notes were made. From such explanation it does not become clear in what way and abiding by what procedure did they arrive to the Contract for Design, Construction and Equipment of a New Paediatric University

Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria and who prepared that Contract.

The Agreement and the Contract were concluded by the Minister of Health and by the Minister of Finances thus violating the mandate given to them by the Council of Ministers, since neither of the two documents envisages as a condition for their enactment their ratification under the order of Art. 85, para 1, items 4 and 5 of the Constitution.

On 04.05.2004 the Council of Ministers has adopted Decision No. 384, with which it has approved a Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria and has submitted to the National Assembly the draft law for ratification of said Contract, with motives enclosed therewith. In the coordination letter to the Minister of Health concerning the draft decision for proposal to the National Assembly for ratification of a Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, the Minister of Finances Milen Velchev points out that it is not clarified in the Contract on whose account the envisaged in item 5.3 and item 5.4 increase of the amount of the Project would be in case of non-observation of the term of enactment of the Contract, all the more that the signed Export Credit Line Agreement does not envisage conditions for increase of the Project amount. Besides, Minister Velchev explicitly pointed out that irrespectively of the envisaged clauses for advance payment within 30 days of signing of the Contract, such payment should not be effected prior to the ratification by the National Assembly, from which conclusions could be drawn that the lack of explicit wording in the Contract about the necessity of ratification enables interpretation with respect to the date of enactment of the Contract. It does not become clear why such substantial omissions were not pointed out by Minister Velchev during the reviewing of a decision for approval of the Project of the Export Credit Line Agreement for an investment project "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a New Paediatric Hospital" by the Council of Ministers, being one of the persons who have submitted such proposal; why they

were not considered in the course of the negotiations prior to the signing of the Contract, and why having got acquainted with them the Council of Ministers did not make decision for the elimination of such omissions.

On 04 05.2004 the Council of Ministers has adopted Decision No. 385, with which it has approved the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank and has submitted to the National Assembly a draft law for ratification thereof with respective motives.

From the conversations with Minister Velchev it becomes clear that no order was issued authorizing a team which was to conduct the negotiations with Austria Creditanstalt Bank. Again according to him at the different stages different experts have participated in the negotiations and no written notes were made. From such explanation it does not become clear in what way and abiding by what procedure did they arrive to the Agreement in question and who prepared that Agreement.

As at the day of preparing of this report no decision of the National Assembly exists for giving consent for conclusion of the Agreement for the mentioned loan under the order of Art. 84, item 9 of the Constitution of the Republic of Bulgaria.

On 28.10.2004 the Council of Ministers has approved the Project for the Addendum to the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria and has authorized the Minister of Health to conduct the negotiations and to sign the Addendum on behalf of the Republic of Bulgaria with the condition of subsequent ratification.

On that same day the Council of Ministers has as well approved the Project for the Addendum to the Export Credit Line Agreement for an investment project "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a New Paediatric Hospital" between the Republic of Bulgaria and Austria Creditanstalt Bank and has authorized the Minister of Health and the Minister of Finances to conduct the negotiations and to sign the Addendum on behalf of the Republic of Bulgaria with the condition of subsequent ratification.

In the addendums an attempt was made amend part of the offences pointed out

by the Temporary Investigation Committee thus the Council of Ministers indirectly acknowledges that there are significant omissions in the signed contracts, which infringe the interests of Bulgaria, and the omissions, pointed out by the Commission are essential.

We believe that the proposed amendments are partial and do not remedy the basic breaches of the law made at the signing of the contracts. The purpose is to slightly improve the parameters of the contracts and to change the time of enactment of the contracts from 30.06.2004 to 4 months after their ratification with view to avoidance of the envisaged punitive sanctions.

The decision of the Council of Ministers for amendment of the parameters of the two contracts during the period when they were examined by the Temporary Investigation Committee established with a decision of the National Assembly is surprising. We believe that such measures should have been taken after acquaintance with the report of the Temporary Investigation Committee for the purpose of taking into consideration all recommendations of the Commission.

II. The Temporary Investigation Committee made the following conclusions with respect to the terms of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria and the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank

:

1. Concerning the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria.

1.1 Engineering construction and structural works and activities.

In the Contract signed on 18.0.1. 2004 between the Ministry of Health (MoH) and Vamed Engineering, Vienna, Austria there are significant omissions, inaccuracy and vagueness, namely:

1. The drawings were dated 23.01.2003.

The total built-up area amounts to 11,807.41 sq.m. At the same time in the Proposal for an investment project - new paediatric hospital /prepared in March 2003 and submitted to the Council of Ministers in the execution of the budget procedure for the year 2004/ and in the Project "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a New Paediatric Hospital" the total built-up area is 60 000 sq.m., the final price for the Project implementation being the same – 42,700,000 Euros.

2. The notes and conclusions presented in the expertise of ADA OOD are essential and they should have been fully reflected.

3. The requirement of "Construction to full completion" is not included anywhere in the Contract, whereas in the draft proposal of the Ministry of Health it is explicitly specified (p. 5, 1.5);

4. In line with Annex No. 9 to the Contract and the definitions of the foreign and local share of the contract value all building materials, mechanical and electric systems should be produced outside Bulgaria and imported to Bulgaria on the name of the Employer, which means that according to clauses 4.3.1 and 4.3.2. no VAT will be due for them. According to Minister Bogoev part of the building materials, such as sand, gravel, etc. shall be of local origin. In order to avoid the possibility to claim their exemption from VAT an explicit clause is necessary to the effect that for materials, equipment and services supplied from Bulgaria the Contractor should pay VAT.

5. In line with clause 7 of the Contract, the Contractor is entitled to employ local persons as **subcontractors**. In such case the Contractor should pay VAT for the amount of works, equipment and services.

6. Clause 9 of the Contract "Obstacles, delays and discontinuation of the works done" should not stipulate prolongation of the term for completion in the cases under

a) clause 9.2.1 "...unfavourable weather conditions"

б) clause 9.2.2 "...not provided workforce amount, equipment or materials by the Contractor".

The usual practice in such cases is not that the Employer should prolong the

term for completion, but on the contrary, **the Contractor** should pay forfeits for delay, which are not envisaged in this Contract.

7. In clause 11 "Termination of the Contract" no punitive sanctions are envisaged for termination of the Contract by the fault of the Contractor with respect to losses, damages, forfeits, as well as expenses incurred by the Employer under the Credit Contract for construction of the site, but on the contrary, "compensations" are mentioned (clause 11.4.3.1);

8. Clause 12 "Submission/acceptance and risk liability transfer"

No obligation of the Contractor is envisaged for work force insurance.

9. Clause "Guarantees"

Instead of mentioning "compensations" in the case of correction of defects by the fault of the Contractor (clauses 13.4.1 and 13.6) punitive sanctions should be envisaged for the Contractor in the cases of delay or non-correction of the defects within the term set.

10. Annex No. 4- schedule.

The discrepancies between the payment for the types of works done (Annex No. 5) and annexes Nos. 4 and 9 should be eliminated.

11. Annex No. 5 (payment schedule).

Payments are envisaged for the first 5 months of a total amount of 5% of the Contract amount plus advance payment of 15%.

This in fact means advance payment of a total of 20%.

The normal practice for contracts "for construction to full completion" is that the advance payment should amount to 10-15%, including the mobilization period (Annex No. 4).

In conclusion, on the basis of the submitted materials and documents the following conclusions might be drawn:

1. In the signed construction contract there are many significant omissions, vagueness and unpunctuality, that might discredit the implementation of the contract for

construction of the site, and show its economic inexpediency.

2. The conditions imposed with the contract for the implementation of the envisaged types of work as well as the non-specified obligations of the parties to the contract are disadvantageous for the Bulgarian party.

3. The set parameters with respect to the contract price are groundlessly high. Due to the schematic nature of the project it does not become clear how its final price is calculated.

All this as a whole will lead to serious discrediting or difficulties in the eventual future construction of the "New Paediatric University Hospital" site.

1.2 Equipment.

Due to the descriptive nature of the Paediatric Hospital equipment specifications it is impossible such equipment to be precisely evaluated and therefore it remains unclear whether the requested amount for the equipment is realistic.

1.3 Hospital information system.

Several approaches are available for the development of the hospital information system

1. Development based on client's terms of reference. This is the most expensive option and the price depends on who will hold the ownership and distribution rights.

2. Purchasing of a ready-made solution. Such approach is frequently applied when a built-up structure is missing and the information system determines the organization of the technological process of a particular site.

3. Purchasing of a user platform. This method offers a core of an information system, which, after the necessary additional parameters are set, is adjusted to a particular site.

From the presented documents and the conversations held by the Commission with officials it become clear that there were no terms of reference for an information system. In such case it is clear that we are talking about the second or the third option – purchasing of a ready-made project or a user platform, for which parameters will additionally be set by the Bulgarian subcontractor (Annex No. 9 item 8 –

Implementation services)

The basic question asked when developing an information system is "Whom will it serve?". It is understood from the specification that the product is a model one for general hospital servicing, it is not unique for a specific structure and respectively it might be applied to a specialized paediatric hospital as well. In order to increase the scope of the system additional standardized systems are incorporated (of other manufacturers – page 21 of Annex 2.4 with no rights included) integrated through a communication server with healthcare data transfer standard (HL7).

We shall consider both options – a ready-made solution and a user platform. The nature of the specification made in Annex 2.4 (pages from 4 to 50) is of a specification under framework contract for implementation of a ready-made solution or a platform. It is seen from the Annex that installation of hardware and software is envisaged, its adaptation to the customer and training of users. In this contract Vamed Engineering is representative of the hospital software developer. At the same time it negotiates the supply terms.

As seen from Annex 5 – Payment Schedule, in months 26 and 27 payments for software and hardware are made and the envisaged percentage of the total amount is 36%, which is 1,690,524 ~ 1,7 million out of a total of 4,695,900 Euros.

Therefore the remaining part – 3 million (payments for months 20 and 21) is envisaged for a computer network, consisting of cables, sockets, routers, etc. which in practice may not cost more than 100 thousand Euros.

From the Annex one could assume that the payments in months 26 and 27 is for software and for hardware and is the envisaged price (36 % of the whole) or 1,700,000 Euros.

If the price of hardware and basic software is subtracted from this price, including:

Workstations Windows + MS Office – 100 p.	100 000 Euros
Server – 1 p. (2 p.)	10 000 Euros

Operation systems (NT, UNIX)		10 000 Euros
Database management system ORACLE for 100 users		50 000 Euros
Peripherals and archiving system		100 000 Euros
TOTAL	not more than	300 000 Euros

all prices being approximate and raised (for example the project includes PROGRES database management system (p. 23), which is considerably cheaper than ORACLE).

This calculation shows that the price of the application software amounts to 1,400,000 Euros.

Even taking into account the fact that the price of the application software includes adaptation of the product to the Bulgarian legislation (pages 8 and 9 of Annex 2.4), the price is unreasonably high, bearing in mind the following considerations:

- the project is parameter-based and model – the software is model
- the scope of the system is enlarged and includes additional standardized systems;
- licenses are bought (page 23 of Annex 2.4) for the current version of the product, which means purchasing of the right to use, and not to distribution;
- a separate maintenance contract is concluded (page 15 of Annex 2.4);
- the term for use of the licenses is 9 years (page 15 of Annex 2.4), and it is not clear what will happen with the hospital information system afterwards;
- new versions of the product shall be paid for (page 23 of Annex 2.4),
- in the case of illegal use penalty follows – payment for the source code (page 15 of Annex 2.4)

In such case we are not speaking of buying software, but of the rights to use the product. The price in this case could not exceed 500 thousand Euros. A product of a similar scope and at such a price could as well be developed in Bulgaria and submitted for use by all hospitals.

Taking into account the fact that in the price of the Contract a certain amount is envisaged to guarantee the implementation (training of operator employees) the price

could be increased maximum to 1,000,000 Euros.

From the quoted obligation - page 15 of Annex 2.4 - "The source code should be submitted to a third party within two months after the delivery ", it follows that the developing company submits to a third party the rights for maintenance of the product.

A probability exists that such product is of a platform type which could fulfil specific customer tasks. It could be then assumed that such contract is used for obtaining of know-how or the rights from a third party (for legal development of a new product or large-scale distribution of this one). The name of such party is not specified in the Contract, neither does it say who will give such name.

Conclusion:

1. The contract is locked – from the point of view of the Contractor, who is in a position of General Contractor (employs sub-contractors) with respect to the Employer.

2. It does not become clear from the Contract what are the rights and obligations of the third party to the contract for keeping and maintenance of the product source code. At such high price the possibility to contract the rights granted to a third company is inadmissible.

It is necessary to explicitly indicate in the Contract who acquires the rights for eventual distribution and maintenance of the current version of the product and under what conditions.

3. The prices of the information system components are over two times higher than the normal ones.

4.2. Concerning the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank

The terms and conditions of the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank are as follows:

The credit receiver (the Republic of Bulgaria, represented by the Minister of Health) is to open an account with the Austria Creditanstalt Bank (the Creditor), where the credit line funds would go. It is envisaged the loan to be utilized in two instalments within a period of 2 years and 6 months. The loan redemption should be initiated 6 months after the completion of the works under the Contract for construction and should

be made through 20 even instalments for a period of 10 years.

The interest rate to be paid on the loan principal amount is defined on the basis of a six-month Eurobor plus additional 0.95% per year prior to the beginning of the interest period and will subsequently be updated every 6 months on the same basis.

The fee for unutilized loan amount is 0.3% per year. The penalty interest rate for overdue amounts should be calculated for the period of non-fulfilment and amounts to 1% over the additional 0.95% annually plus the applicable Eurobor on a monthly basis.

The management fee is 35,000 Euros.

It is envisaged that the engagement fee, the interest and the penalty interest shall be calculated on the basis of a 360-day year and 30-day month.

From the submitted documents and answers by the officials during the meetings of the Temporary Investigation Committee it did not become clear on the basis of what procedure the Austria Creditanstalt Bank was selected and whether conversations were held with other banks under state guarantee terms.

On the question of the Commission whether Bulgaria could achieve better conditions for loan granting, the Minister of Finances Milen Velchev admitted that banks like the European Investment Bank, the European Bank for Reconstruction and Development, the World Bank, etc. usually offer funding under more advantageous conditions, but the approach for obtaining funding from such institutions is that the projects, applying for funding should be discussed for a long time prior to the conclusion of the contract and this particular project is not like the types of projects funded by such institutions.

Minister Velchev did not give a reasonable explanation why the time resource for the implementation of the project was so limited that more advantageous funding possibilities were not sought.

III. Concerning the lawfulness of the Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria and the Export Credit Line Agreement for an investment project between the Republic of Bulgaria and Austria Creditanstalt Bank, the Temporary Investigation Committee came to the following conclusions:

The Temporary Commission believes that the following illegal actions have been done:

The Minister of Health has not abided by the Public Orders Act (in effect till 01.10.2004).

As seen from the Contract concluded between the Republic of Bulgaria and Vamed Engineering, the subject of this Contract is design, construction, equipment supply and mounting, software provision and personnel training, submission of "know-how" for the site New Paediatric University Hospital in Sofia.

When such activities are assigned by the State (as is the case), these activities, in line with Art. 3 of the Public Orders Act (POA) represent a public order object.

Taking into account the cost of the construction, supplies and services, subject to the Contract (42,700,000 Euros), the abidance by the POA with respect to these activities is mandatory (Art. 7 of the POA).

The Commission does not share the views of the Minister of Health, that the Public Orders Act should not be applied with respect to the Vamed Engineering Project, since in line with Art. 6, item 2 thereof, the Contract with Vamed Engineering has been concluded under an international agreement and based on a procedure envisaged in such agreement.

The agreement with Austria Creditanstalt Bank is not and may not be such international agreement. To assume the contrary means that the executive authorities as well may conclude agreements with private persons, such as Austria Creditanstalt Bank, and thus to ignore the Bulgarian laws.

We as well cannot share the stand that the Vamed Engineering Project is not subject to public order, since this is a matter of state loan management (Art. 3, para 1, item 3, letter "y" of the Public Orders Act).

Art. 5, para 1, item 2 of the State Loan Act explicitly states that state loan may be assumed for funding of investment projects, which are approved by the National Assembly. From such stipulation it is evident that first an investment project, approved by the National Assembly should be available, and only after that the question of assuming a state loan is resolved.

This is envisaged in the Act because it should be decided first what, where and at what price shall be constructed and only afterwards decision is taken for its funding

through a state loan.

In this sense the placement of the state loan before the project might only be treated as justification of the executive authorities for the admitted evasion of the Public Orders Act.

Along with this

Besides, Art. 3, para 1, item 3, letter "y" of the Public Orders Act excludes from public orders only financial services related with state loan management. That means that the Act allows for exceptions only in the case of state loan availability, and not when forming such loan in connection with an investment project.

The above circumstances have evidently been known to the Ministry of Health. With his Order No. ПД-17-271/02.04.2003 г. the Minister of Health for that period, Finkov has opened a procedure for realization of a small public order with subject selection of contractor for preparing an expertise about a Vamed Engineering proposal. With a subsequent order with No. ПД-Ж-278/07.04.2003 Minister Finkov has assigned the public order for implementation to ADA OOD.

Such actions of the Minister indicate that he knew that the Public Orders Act should be applied with respect to the Vamed Engineering Project because he applied that Act with respect to the expertise of the Project.

The Temporary Commission believes that conducting of the procedure under the POA has been obligatory. Only through the conduction of such procedure the Ministry of Health would at least receive information about the most advantageous offer (incl. price) for implementation of an investment project like the one of Vamed Engineering.

Such way of proceeding is in line with the POA and with the principles stipulated with Art. 9 thereof: guaranteeing publicity and transparency of the procedure; free and fair competition, ensuring equal opportunities for participation of all applicants; guaranteeing the necessary business confidentiality for the applicants and their offers.

Apart from that, the conduction of a procedure under the POA would at least help the employer obtain information about the most advantageous offer (incl. price) for implementation of the investment project.

The Minister of Health, the Minister of Finances and the Council of Ministers have breached the State Loan Act and the Ordinance on the terms and conditions with which the investment projects, funded through state loans and the projects applying for

funding with state guarantee, as well as the order of their reviewing should comply (adopted with a Decree of the Council of Ministers No. 28 of 7.02.2003, promulgated in the State Gazette, issue 15 of 14.02.2003) on the grounds of Art. 5, para 3 and Art. 22 thereof, because:

In March 2003 the Minister of Health has submitted to the Ministry of Finances a project, applying for funding through a state loan, which according to the Act and the Ordinance does not comply with the requirements for an investment project. As seen from a letter with outg. No. 02-01-150/10.09 2004 and letter with outg. No. 02-01-167/27.09 2004 of the Ministry of Health to the Temporary Commission and Annex No. 2 thereto only a formal preliminary project has been submitted containing no price information. This in fact is the Vamed Engineering Project, which the Ministry of Health has processed so, that it formally complies with the requirements of the Ordinance on the terms and conditions with which the investment projects, funded through state loans and the projects applying for funding with state guarantee, as well as the order of their reviewing should comply.

Another proof of the above statement is the fact that up till now it is not clear on which construction site the hospital will be built. Along with that, the Vamed Engineering Project does not comply with the requirements of the Bulgarian legislation in the field of construction. This is underlined in the Project expertise of 11.04.2004 made up by ADA OOD and assigned by the Ministry of Health under the order of the Public Orders Act.

With his report No. 03-00-386/02.06.2003 the Minister of Finances has submitted to the Structural Policy Council at the Council of Ministers of the Republic of Bulgaria the proposals for investment projects, applying for state loan funding and projects for the funding of which issuance of state guarantee is proposed for the year 2004. In that Report the Minister of Finances has made proposals no projects funded through state loans or projects for the funding of which issuance of state guarantee is proposed for the year 2004 to be approved and the Council of Ministers to define priority projects for which possibilities to be sought for funding by national sources.

With a letter No. 09-00-0492/16.07.2003 to the Prime Minister the Minister of Finances has sent a report and a draft-decision of the Council of Ministers for approval of a list of the projects, which are to be funded through state loans and through loans for

which issuance of state guarantee is proposed for the year 2004. In the enclosed list there is only one project: “Rehabilitation of blocks 1 – 4 of Maritza Iztok 2 TEPS EAD” and the child hospital project is not included.

That list was approved with decision of the Council of Ministers No. 513/18.07.2003.

Subsequently in the draft budget for the year 2004, besides the project: “Rehabilitation of blocks 1 – 4 of Maritza Iztok 2 TEPS EAD”, the hospital project was included as well. This shows that the hospital project has been included in the budget for the year 2004 without being approved by the Council of Ministers and by the Structural Policy Council at the Council of Ministers, which is required by the Ordinance.

In March 2003 and in July 2004, when the list of projects which are to be funded through state loans and through loans for which issuance of state guarantee is proposed for the year 2004 was submitted, reviewed and approved, the child hospital project was not approved by the National Assembly, as required by Art. 5, para I, item 2 of the State Loan Act.

With the abovementioned actions the executive power authorities have misled the National Assembly when adopting the budget for the year 2004 with respect to the actual character of the child hospital project.

The Minister of Health, the Minister of Finances and the Council of Ministers have breached the Constitution and the Act on International Contracts of the Republic of Bulgaria because:

Art. 84 item 9 of the Constitution requires the consent of the National Assembly for the conclusion of state loan contracts.

Such consent should be explicit. Such is as well the practice of the National Assembly. The National Assembly gives consent for conclusion of state loan contracts and mandate to the Council of Ministers to conclude such contracts with special decisions.

A particular example in this case is the Decision of the National Assembly of 25.02.2004 giving consent for conducting negotiations and conclusion of a guarantee agreement between the Government of the Republic of Bulgaria and the Japan Bank for International Cooperation on the Loan Contract for rehabilitation of blocks 1 – 4 of Maritza Iztok 2 TEPS EAD between the Japan Bank for International Cooperation and

Maritza Iztok 2 TEPS EAD (Promulgated in the State Gazette, issue 19 of 9.03.2004), i.e. for the other agreement, also included in Annex No. 7 to § 16 of the Transitional and Conclusive Stipulations of the Law for the State Budget of the Republic of Bulgaria for the year 2004, together with the funding of the reviewed investment project of the Ministry of Health.

No consent was given by the National Assembly under Art. 84, item 9 of the Constitution for concluding the agreement with Austria Creditanstalt Bank. No such consent was as well given for the conclusion of the Contract with Vamed Engineering, representing part of the Agreement.

The inclusion of the investment project in the Law for the State Budget for the year 2004, which was adopted by the National Assembly may not be assumed to be such consent.

In § 16 of the Transitional and Conclusive Stipulations of the Law for the State Budget of the Republic of Bulgaria for the year 2004 and § 16 para 1 of the Transitional and Conclusive Stipulations of the Law for the State Budget of the Republic of Bulgaria for the year 2005 it is written that within the frame of the budget year state investment loans are proposed for approval by the lawful procedure on the basis of a list of projects, approved by the Council of Ministers, in line with Annex No. 7. It is explicitly stressed in that stipulation of the Law that the state investment loans should be approved through the lawful procedure. Such approval is the consent of the National Assembly under Art. 84 item 9 of the Constitution, which as mentioned above should be concrete and explicit.

Besides what was already mentioned, Art. 12 para 1 of the State Loan Act explicitly stipulates that when state loan contracts are concerned, they should be signed under the order of the Act on International Contracts.

On its part the Act on International Contracts of the Republic of Bulgaria envisages that the draft agreement with Austria Creditanstalt Bank should have been submitted by the Minister of Health and the Minister of Finances to the Council of Ministers accompanied with a report for compliance of the agreement with the Constitution, the legislation and the international obligations of the Republic of Bulgaria, as well as with the European Union Law (Art. 4, para 1 of the Act) and with enclosed document for the consent of the National Assembly under Art. 84 item 9 of the Constitution (Art. 6, para 2 of the Act). These requirements of the Act and the

Constitution are not abided by. In a letter with outg. No. 04-00-12/10.02.2004 the Secretary General of the Ministry of Health, Assoc. Prof. Krasimir Gigov has sent to the Secretary General of the Council of Ministers Sevdalin Mavrov the joint report by the Minister of Health - Slavcho Bogoev and the Minister of Finances – Milen Velchev concerning the draft decision of the Council of Ministers for approval of the Project for Export Credit Line Agreement for the investment project "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a new Paediatric University Hospital".

The report for compliance of the Agreement with the Constitution, legislation and international liabilities of the Republic of Bulgaria and with the European Union Law, and consent of the National Assembly under Art. 84, item 9 of the Constitution, required under Art. 4, para 1 and Art. 6, para 2 of the Act on International Contracts are not enclosed with the letter, nor are listed as enclosures.

In spite of that, the Council of Ministers has approved with Written Statement No. 7 of 19.02 2004 the project for agreement as a basis for conducting negotiations and has authorized the Minister of Health and the Minister of Finances to conduct the negotiations and to sign said Agreement on behalf of the Republic of Bulgaria under the condition of subsequent ratification and has approved the Project of a Contract for Design, Construction and Equipment of a New Paediatric University Hospital between the Republic of Bulgaria and Vamed Engineering Company, Vienna, Austria, authorizing the Minister of Health to sign it on behalf of the Republic of Bulgaria under the condition of subsequent ratification.

The only thing which becomes evident from the shorthand report from the meeting of the Council of Ministers is that the project was only approved because the Prime Minister has said "we support". How and whether the other members of the Council of Ministers has voted remains unknown.

The Agreement and the Contract were concluded by the Minister of Health and by the Minister of Finances thus violating the mandate given to them by the Council of Ministers, since neither of the two documents envisages as a condition for their enactment their ratification under the order of Art. 85, para 1, items 4 and 5 of the Constitution.

The acted in exactly the opposite direction. Without having the consent of the National Assembly for the loan and without envisaging subsequent ratifications in line

with the mandate given to them, the ministers have declared on behalf of the Republic of Bulgaria in Clause 9.1 (i.x) of the Agreement, that all permissions by the Bulgarian authorities, necessary to make the Agreement and Contract legitimate are available.

In line with Clause 8.1. (VI) of the Agreement, the case when any Bulgarian permissions, consents, registrations or approvals (governmental or other), required for the validity, applicability or lawfulness of the Agreement or the loan due to some reason are not valid (or are missing) is as well considered to be failure to perform. As consent by the National Assembly and ratification are missing, the State is already failing to perform the agreement.

In line with Clause 8.2. (n), second paragraph of the Agreement, Austria Creditanstalt Bank may require indemnification for damages caused by such failure to perform. AS the Agreement is subjected to the Austrian Law it might turn out that it has come to force under such Law. In such case our eventual objection that under the Bulgarian Law in order to be enacted the Agreement should obligatorily be ratified by the National Assembly might not be accepted and the State might have to pay for the claimed damages.

The Agreement and the Contract do not safeguard the state interests in other direction as well. Clauses 5.3, 5.4 and 5.5 of the Contract read that if it does not come to force till 30.06.2004, its price shall start to increase with 0.4 % per month till the date of its enactment, but not more than 5 % of the contract price.

Minister Velchev insisted that the date 30.06.2004 has been entered in the Contract due to the expectations, that it would have been ratified long before that date.

He, as well as the Minister of Health did not submit to the Temporary Commission information for the negotiations held with Vamed Engineering and with Austria Creditanstalt Bank, nor for the persons, who led such negotiations. Due to that it is not clear who has included the date 30.06.2004 in the Contract and who has expressed the expectations, mentioned by the Minister for ratification till such date.

The clause in question, however, has till 30.10.2004 already increased the contract price with 1.6 %, which expressed in figures represent 755 200 Euros.

The Contract and the Agreement do not specify on whose account such increase would be.

This is not envisaged as well in the joint report of both ministers concerning the

draft decision of the Council of Ministers for approval of the Export Credit Line Agreement for the investment project "Restructuring of the SATH of Child Diseases EAD Sofia – Construction of a new Paediatric University Hospital", submitted on 10.02.2004 to the Council of Ministers, neither in the financial argumentation, enclosed with the report.

It is not envisaged as well in the report and the financial argumentation by Minister Bogoev, with whom the already signed contract has been submitted to the Council of Ministers for taking decision for submission of proposal for its ratification by the National Assembly (enclosed with a letter of the Ministry of Health with outg. No. 04-00-34/20.04 2004).

In the course of the coordination of the draft documents, related with the decision of *the Council of Ministers in connection with the ratification, the Ministry of Finance* sent to the Ministry of Health a letter with outg. No. 04-03-60/16.04.2004. With this letter the Ministry of Finance establishes with surprise that it is not specified on whose account the increase in the project price, envisaged with items 5.3 and 5.4 would be.

That seems strange provided that in February that very same Ministry, jointly with the Ministry of Health has submitted the draft contract in which the date 30.06.2004 exists.

To the question of the Temporary Commission on whose account the increase of the contract price would be Minister Velchev answered with a letter with outg. No. 01-00-244/20.10.2004 that such increase should be on the account of the approved budget of the Ministry of Health.

In other words, under the terms of item 5 4 of the Contract the Project price will increase with 2,135,000 Euros on the account of the Bulgarian state.

This by no means could be assumed to be protection of the state interests.

Apart from what was already mentioned, under the Agreement and the Contract the Contractor Vamed Engineering is exempted from paying VAT for all goods imported to Bulgaria, in connection with the implementation of the Project.

That places Vamed Engineering in an advantageous situation with respect to local companies – subcontractors, which infringes the rules of free competition.

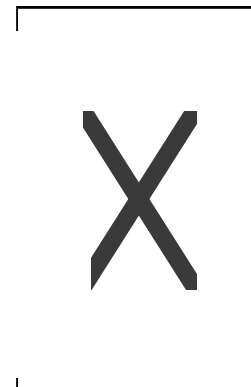
The abovementioned shows that the executive authorities have not protected well the state interests, but rather have served the scheme submitted by Austria

Creditanstalt Bank and Vamed Engineering.

That might cost to the Bulgarian tax-payers at the very least 42 700 000 Euros.

MEMBERS OF PARLIAMENT:

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HASAN ADEMOV *Recording dissent (Sgd. ill.)*
HYUSEIN CHAUSH *Recording dissent (Sgd. ill.)*
YANAKI STOILOV *(Sgd. ill.)*