

Roundtable on the pilot High Level Reporting Mechanism in Argentina

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Table of contents

1 Introduction	1
2 Positive aspects of the pilot HLRM	2
3 Recommendations	3
3.1 Unanimous recommendations	3
3.2 Additional recommendations	4
4 Conclusion	5

1 Introduction

The Basel Institute on Governance and the Centre for Anti-Corruption Studies (CEA) of the University of San Andrés, Argentina convened a private-sector roundtable in Buenos Aires on 4 October 2018. The purpose was to hear feedback and exchange on the recent implementation of the pilot High Level Reporting Mechanism (HLRM), in the tender carried out by the Argentine National Roads Authority within the framework of the Secure Roads and Routes Network Project using the new Public-Private Participation (PPP) legal framework adopted by the Argentine Republic.

The roundtable convened 14 participants:

- 3 presenters
- 5 company representatives, of which 3 were construction companies that participated in the pilot tender
- 6 lawyers or other professional services consultants who provide advice on integrity and compliance programmes, including to some additional bidders in the tender that included the pilot HLRM.

The roundtable began with three short presentations before opening up to an exchange of opinions between the participants.

Erica Pedruzzi (CEA) welcomed the participants and provided an overview of the origins of the Argentine pilot HLRM. Mirna Adjami (Basel Institute) presented the conceptual goals of the HLRM and comparative experiences of the HLRM's application, particularly in Colombia and Ukraine. Diego Martínez, former Head of the Ethics Unit of the National Roads Authority, described the drafting process and decisions that led to the HLRM process and clause that was included in the National Roads Authority tender documents.

Following these introductions, the participants exchanged their appreciations, critiques and recommendations under the Chatham House rule.

2 Positive aspects of the pilot HLRM

The roundtable participants acknowledged numerous positive elements in relation to the pilot HLRM implementation in Argentina:

- **Advances in the fight against corruption in Argentina.** During 2018, significant progress was made in the degree of commitment shown by the Argentine government in its fight against corruption, such as:
 - implementation of the HLRM in the bids for PPP projects convened by the National Roads Authority;
 - adoption of Law 27.401 on criminal liability of legal persons for acts of corruption;
 - increase in the number of criminal investigations in cases of corruption;
 - publication by the Anti-Corruption Office of the Integrity Guidelines for the design, implementation and evaluation of integrity programs of Law 27.401.

These advances are prompting the private sector to adapt to the new compliance landscape, improving their anti-corruption compliance procedures and generating the expectation that the government will continue to implement new anti-corruption measures effectively.

- **Contribution of the HLRM in rebuilding trust between the private and public sectors.** The participants stated several times that, from the point of view of business, Argentina is going through a serious situation resulting, among other things, from lack of transparency in the activities of the public sector. In relation to this point, it was noted that demonstrating high-level political will to act correctly (such as including the HLRM in public tenders) contributes greatly to generating legal certainty and greater trust between the public and private sectors.
- **Relevance of the creation of an alternative and high-level reporting channel in the framework of PPP project tenders:** The roundtable participants highlighted that, although they were aware of pre-existing complaints channels maintained by various government agencies, the use of such channels for reporting concerns related to corruption or unfair business practices has not been effective in the past. For this reason, the creation of a special channel for receiving reports and potentially dealing with complaints about irregular practices during bidding processes was considered a very positive development to promote

transparency in the processes, avoid unnecessary delays and avoid an increase in the costs to the bidders.

- **Creation of a new benchmark for transparency in bidding processes.** The implementation of the HLRM in the new bidding framework for PPP projects has generated a new benchmark for best practices regarding transparency in the bidding processes carried out in Argentina. In fact, most roundtable participants said they did not need to use the HLRM channel in the PPP tender with the National Roads Authority because the overall tender processes were perceived as transparent and bidders could submit queries regarding them (even though not all queries were addressed).
- **Strong composition of the Group of Experts.** The roundtable participants agreed on the importance of having an independent body to analyse reports of irregularities in the bidding process, consisting not only of lawyers but also of technical professionals. These are better equipped to evaluate the technical aspects of the reports that might be submitted under the HLRM, including the analysis of complaints about tender specifications being tailored to a specific bidder.

Notwithstanding the positive elements of the HLRM mentioned above, the roundtable participants also contributed suggestions and recommendations to allow the HLRM to develop further in its future implementations in Argentina.

3 Recommendations

3.1 Unanimous recommendations

- **Need to raise awareness of the existence of the HLRM.** It was noted that not all participants in the bids for PPP projects launched by the National Roads Authority were aware of the possibility of using the HLRM. It was suggested to improve the dissemination channels to ensure that the bidders know about both the existence of the HLRM and the appropriate procedures to channel their reports. This is important given the agreement that the awareness of the HLRM's existence increases transparency and the culture of integrity, both in the business community and among the public in general.

- **Greater information on the procedure for channelling reports under the HLRM.** Even when bidders knew of the existence of the HLRM, the information regarding how the HLRM procedure would work was considered insufficient. It was suggested that more information should have been provided to the bidders in at least the following aspects of the HLRM:
 - Who is responsible for receiving the reports and how the High Level Body and the Group of Experts are composed;
 - What are the concrete steps that are taken when a report is submitted to and processed by the HLRM, including the evidence that must be included along with the report;
 - How and when the results of the reports received under the HLRM are disclosed.

- **Expansion of the scope of the HLRM.** The limitations on the scope of the HLRM were questioned. In particular, the participants considered the issue of cartels among bidders as a relevant issue for the HLRM.

- **Disclosing the use of the HLRM channel after each tender.** Transparency and trust in the mechanism will be improved if information is made public after the tender on whether reports were made through the HLRM channel during the tender, and, if there were reports, what course of action followed in each instance. It was suggested that such disclosure be made through the website of the Anticorruption Office or the Ministry that had launched the tender.

- **Use of the HLRM in other government contracts and by other levels of government.** It was suggested that the HLRM be implemented in other government contracts, and not only in PPP projects or in large bids. This accompanied the recommendation to encourage further demonstration of political will to improve procurement with integrity, particularly in procurement by lower levels of government, given that corruption is present in Argentina at all levels. It was stated that this political will could also be accompanied by a system of protection for those who report irregularities, guaranteeing the lack of reprisals against a report of this nature.

3.2 Additional recommendations

Other recommendations raised by individual participants in the roundtable were:

- **Need to involve banks and business chambers.** It was proposed that the HLRM could also have the validation of banks that could finance PPP projects, thus facilitating the necessary funds to carry out the works. The important role that business chambers could play in relation to the promotion and dissemination of the existence of the HLRM among its members was also highlighted.
- **Signing of Integrity Pacts.** Taking the Colombian model as an example of success, the signing of Integrity Pacts between competitors in the same business sector was suggested as an effective tool to combat corruption through the adoption of common ethical standards. In this context, one of the mandatory elements to be included in such Integrity Pacts would be the use of the HLRM by those who adhere to the pact.

4 Conclusion

As of November 2018, the Argentine Anti-Corruption Office has announced that the HLRM is reactivated and will apply to a forthcoming major PPP tender for a high power transmission project overseen by the Ministry of Energy.

From the preliminary analysis that we have carried out, and taking into consideration the advantages perceived by the private sector in its use, we applaud and recommend continuity in its implementation. We also suggest increasing the dissemination of the HLRM's existence and the sharing of information about any reports submitted.

As the HLRM is applied to future tenders, we will continue to monitor its implementation and look forward to further consultations with the private sector with respect to the HLRM's contribution to clean business and fair procurement processes.