

SAFEGUARDING EU-FUNDED INVESTMENTS WITH INTEGRITY PACTS

A DECISION-MAKER'S GUIDE
TO COLLABORATIVE
PUBLIC CONTRACTING
MONITORING



***INTEGRITY
PACTS EU***

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The *Integrity Pacts – Civil Control Mechanism for Safeguarding EU Funds* project has brought together government agencies, civil society and the private sector in 11 EU countries, to ensure that 18 major public contracts were designed and implemented to the highest possible standards of transparency and accountability.

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Safeguarding EU-funded investments with Integrity Pacts
A decision-maker's guide to collaborative public contracting monitoring

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TIME FOR RECOVERY – TIME FOR OPENNESS & PARTICIPATION

The COVID-19 pandemic has tested many governments' ability to respond to communities' needs swiftly and efficiently. Public agencies are facing greater scrutiny and increased expectations to deliver services and meaningful projects to expedite an equitable recovery from the crisis.

In the EU, member states have agreed an unprecedented budget of €1.8 trillion for the 2021-2027 period. Over the coming months and years, national governments will invest much of this funding through public contracting projects. The extraordinary influx of funds to be invested, along with the need to spend them quickly, significantly raises risks of fraud and corruption.

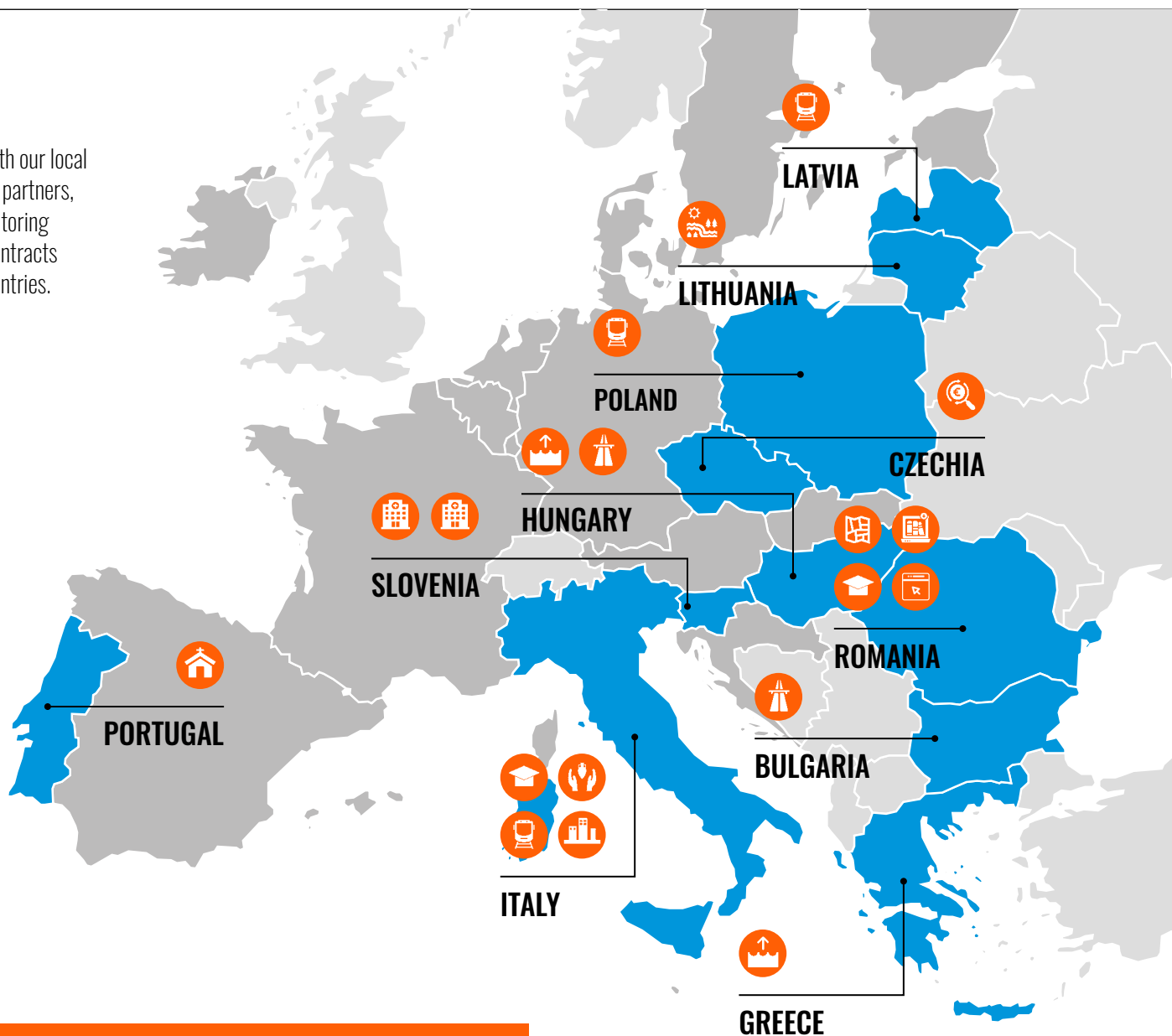
There is no better time to complement existing controls with open and participatory oversight measures. Integrity Pacts offer a timely opportunity to authorities across the EU to collaborate with civil society and create greater transparency and accountability in public contracting.

INTEGRITY PACTS: TRIED & TESTED IN THE EU

The diversity of contracting projects makes it unlikely that a single solution exists for preventing and addressing mismanagement, fraud and corruption risks. These manifest themselves differently in each project or country. However, there is robust evidence that strategies based on openness, citizen engagement and external monitoring can reduce the likelihood of corruption and fraud in public contracting. They can also improve contracting outcomes and, ultimately, public trust. An Integrity Pact is a tool designed to achieve exactly these goals.

MAP 1:

Together with our local civil society partners, we are monitoring 18 public contracts in 11 EU countries.



WHAT IS AN INTEGRITY PACT?

An Integrity Pact is a mechanism for a public entity or a group of entities to collaborate with civil society to ensure that authorities and bidders act within the constraints set out by law, address corruption risks and foster public trust in a given contracting project. Through a public agreement, the parties involved commit to refrain from any corrupt behaviour and to enhance transparency and accountability throughout the process. An independent mechanism led by civil society to monitor compliance is therefore embedded in the agreement.



Photo by Guillaume Périgois on Unsplash

In collaboration with the European Commission, Integrity Pacts were embedded in 18 contracting projects across 11 EU countries from 2015 to 2021 (see Map 1).^{*} These diverse projects are being monitored by a group of independent monitoring organisations: ActionAid Italia, Amapola Progetti, Institutul pentru Politici Publice, Romanian Academic Society, Stefan Batory Foundation and

Transparency International chapters in Bulgaria, Czech Republic, Greece, Hungary, Italy, Latvia, Lithuania, Portugal, Romania and Slovenia. Their implementation shows that an Integrity Pact provides a flexible framework for authorities to engage with civil society, bidders and citizens. This pilot project yielded several key results:

^{*} For more information, please visit: www.transparency.org/en/projects/integritypacts (Transparency International) and https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/ (European Commission)

1. Improved contracting design and documentation, leading to better outcomes

- During the planning and tendering stages, monitors provided feedback to contracting authorities which allowed them to uphold public contracting rules and improve conditions to promote fairness and increase competition.
- Associated revisions of financial estimates, market investigations or technical criteria allowed the authorities to detect opportunities for cost savings or to maximise value for money, as well as to adjust project timelines.

2. Legally sound and robust contracting procedures

- Contracting experts in monitoring teams provided opinions and recommendations to uphold regulations and prevent breaches of law, reducing the chances of legal challenges.
- Monitoring teams helped ensure qualification and evaluation criteria were observed by contracting authorities, according to the established contracting documentation.

3. Prevention of undue influence and attempts at corruption

- Monitors enhanced the contracting authorities' capacities to detect conflicts of interests, and proposed mechanisms to manage them and to prevent undue influence.

- In cases where signs of potential fraud and corruption were detected, monitors' collaboration with managing and anti-corruption authorities allowed them to review the case and adjust the contracting project to mitigate the risks.

4. Improved trust through bringing the contracting project closer to beneficiaries

- The monitoring mechanism provided communities with independent third-party observers, who regularly informed the public through dedicated websites, reports and community engagement work.
- Proactive outreach by the monitors helped translate complex technical decisions into accessible language, informing affected communities and beneficiaries. In some cases, citizens were directly involved in monitoring activities.

5. New opportunities for improving contracting policies and regulation

- Working closely with the authorities, monitors documented shortcomings in policy and regulation affecting public contracting. Through their reports, these issues were presented and explained to the public, making the case for reform. Being public, monitoring reports can also inform future legal discussions and provide guidance to policymakers and legislators for improving associated laws or directives.

WHAT AN INTEGRITY PACT ENTAILS

An Integrity Pact can be tailored to specific markets, sectors and legal frameworks. However, an agreement to set up an Integrity Pact must include five essential provisions:

1. A public commitment

- A declaration by the involved parties which commits them to upholding the law and refraining from acts of corruption at all times. Bidders are also encouraged to sign up and adhere to these commitments.

The authorities and civil society monitors may consider additional, context-specific provisions to help enhance transparency, openness and participation in given projects.

2. An independent monitoring mechanism

- A mechanism led by civil society to monitor compliance with the commitments and to issue recommendations for preventing corruption and enhancing transparency throughout the process – supported by technical experts, when necessary.

3. Operational rules

- Baseline rules and practicalities covering questions such as who leads the monitoring mechanism, how it is funded and how technical experts are selected.

4. Access to information

- Commitments and procedures to grant the monitoring team timely access to contracting data and information, or conditions to access sensitive or confidential data, where relevant.

5. Public outreach

- Guidelines and obligations for the civil society monitor to inform the public about the project development, including regular publication of monitoring reports.

OPEN DATA AND INTEGRITY PACTS

When authorities make information available as open data, they can further strengthen the potential of Integrity Pacts to prevent corruption. For example, available open data allows the development of visualisations and tools that bring beneficiaries closer to the contracting project and authorities. Some Integrity Pacts have fostered greater transparency through complementary actions to provide and disclose contracting data in open formats, or in line with national or global standards such as the Open Contracting Data Standard (OCDS).

GETTING STARTED WITH AN INTEGRITY PACT

Transparency International is encouraging decision-makers in all member states to take advantage of the Integrity Pact mechanism to safeguard strategic EU-funded investments under the new Multiannual Financial Framework 2021-2027 and recovery funds. Several key considerations can help public authorities make an informed decision about adopting an Integrity Pact:

1. Which contracting projects are suitable for an Integrity Pact?

The selection of projects should be guided by a context evaluation. We recommend that authorities engage with civil society, the European Commission and experts to assess which investments could be particularly exposed to mismanagement, fraud and corruption risks.

Our experience in the EU shows that Integrity Pacts can provide additional protection or value if a contracting project has one or more of the following features:

- **High public interest.** Contracting projects related to the provision of basic or critical services often generate interest and motivate engagement from direct beneficiaries, communities and the public. In such cases, Integrity Pacts can enhance transparency, participation and accountability, ultimately contributing to greater trust.
- **Complexity.** Projects with complex designs or in highly technical markets* often require intricate bidding rules and procedures. These may increase the risk of unfairness and reduced competition through restrictive criteria, bid-rigging, bribery and other forms of corruption.
- **Niche, unfamiliar or dysfunctional markets.** Projects in specialised markets or those with limited competition or troubling behaviour from companies are red flags. Integrity Pacts are suitable either where there is unfamiliarity with a new market or

there are concerns about anti-competitive or illegal behaviour, such as price-fixing or collusion.

- **Indications of corruption.** Precedents for, attempts at or suspicion of corrupt behaviour surrounding a public authority (such as bribery, conflict of interests or undue influence) should be assessed. Corrupt actors may target further projects within the same authority or government sector.
- **Large sums involved.** In general, investments with higher costs are more likely to be targeted by corrupt actors. The possibility of misappropriating a large amount of funds increases the chances of bribery and cartel behaviour, among others. There is neither a universally accepted nor an EU-wide threshold below which an Integrity Pact would not be suitable, as magnitudes should be considered relative to authorities' own budgets or portfolios. For reference, the average** value of the 18 projects monitored as part of the Integrity Pacts EU project was €12.3 million, with values ranging from €130,000 to €250 million.

2. When should an Integrity Pact start?

An Integrity Pact is ideally embedded during the planning stage of a contracting project, or pre-tendering at the latest. Contracts already in tender and later stages are less suitable for an Integrity Pact, as it is not always possible to review and confirm that anti-fraud and integrity provisions had previously been met.

* See, for example, how Integrity Pacts in Greece, Hungary and Slovenia are contributing to climate-relevant projects: <http://anticorru.pt/2uQ> (Transparency International, 11 December 2020)

** Calculated median based on the budget estimations of each contracting project monitored.

3. How long does an Integrity Pact last?

Coverage and length of an Integrity Pact vary according to the characteristics and magnitude of projects. At minimum, an Integrity Pact should cover all stages from planning to contract award and, when possible and relevant, all stages of the contracting cycle, from planning to implementation. The decision should be discussed by the authorities and the monitor, and take into account project-specific risks.

4. How much does an Integrity Pact cost?

The costs of implementing an Integrity Pact vary depending on the implementation arrangements, the activities included in the process and the complexity of bidding procedures. However, experience has shown

that they remain a small percentage of total estimated project costs.

For example, the Integrity Pacts set up as part of the EU pilot project are estimated to have cost between €70,000 and €250,000.* Within this range, there are contracting projects with diverse lengths and complexities in different EU countries. The following two cases illustrate the cost of two different contracts, one for consultancy services and another for building renovations:

- In **Italy**, Transparency International Italy monitored a contracting project with an estimated value of €1.95 million to provide technical support for the European Social Fund framework to the regional government of Lombardy. The four-year monitoring process cost approximately €70,000, of which €27,000 were spent on technical experts.
- In **Slovenia**, Transparency International Slovenia (Društvo Integriteta) monitored a contracting project valued at €3.8 million

* This is not considered the highest possible cost of an Integrity Pact. The length, extension, and complexity of the monitored projects can increase the monitoring costs.

A RECOGNISED PRACTICE IN THE EUROPEAN UNION

In 2019, the Integrity Pacts EU project received the *European Ombudsman's Award for Good Administration 2019* in the category "Excellence in open administration".** The same year, in a special report by the *European Court of Auditors*, Integrity Pacts were highlighted as an "innovative fraud prevention measure".***

** European Ombudsman's Award for Good Administration 2019.

*** European Court of Auditors (2019) "Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination".

for the renovation of energy systems in two hospitals. The monitoring activities amounted to approximately €250,000 over five years, including €133,000 for experts.

5. How to estimate the cost of the monitoring mechanism?

To estimate the cost of an Integrity Pact, it is necessary to account, at the very least, for the characteristics and complexity of the contracting project, and the length of the monitoring mechanism. Assessment of these factors will help authorities estimate the resourcing needed for the successful delivery of the core activities of an Integrity Pact, including:

- design and selection of the monitoring team
- preparatory research and analysis
- revision of the full tender documentation, with support from technical experts
- participation in project meetings and events, field visits and tests, as necessary
- delivery of reports and public engagement activities, where relevant
- outreach and dissemination of findings.

As a rule of thumb, projects in highly-technical domains with intricate bidding or implementation processes, which are also monitored until the final stage (i.e. implementation) are likely to require more funds.

6. Who can lead the monitoring mechanism?

An Integrity Pact is led and implemented by a civil society organisation or a civil society

coalition, recognised for its impartiality and independence. Due to the nature of the collaboration and expected results, it is important that it also has proven expertise in anti-corruption, public contracting or related fields. Politically affiliated organisations, businesses, media organisations and other for-profit groups are not eligible.

Under the Integrity Pacts EU project, 15 independent civil society organisations led the monitoring mechanism in 11 countries. The civil society monitors were selected through an open call. Across the EU, there are 22 Transparency International national chapters,* as well as other civil society groups with proven expertise in anti-corruption, clean contracting and civic engagement.

7. How is the organisation leading the monitoring mechanism selected?

Where no civil society organisation has yet been identified, authorities aiming to implement an Integrity Pact should launch a call for expressions of interest. This can be done in cases where more than one organisation matches the capacities and experience needed to lead and coordinate the monitoring mechanism.

To ensure impartiality and independence in the process, the call should be issued in collaboration with an external entity, such as an oversight body or another civil society organisation not participating in independent monitoring. A call for expressions of interest should specify the characteristics and scope of the contracting project, its expected length and

* For more information, please visit: <https://www.transparency.org/en/countries/>

an estimated range of available funds, as well as eligibility and selection criteria.

Non-profit organisations should submit evidence of their credentials, demonstrating knowledge and experience of public contracting regulation and procedures. They should also be encouraged to present an overall plan regarding how they will structure the monitoring team and its activities, an estimated budget, and information on their capacities to engage with relevant stakeholders – particularly the public. Participants can be given the option to choose to work together or to submit an individual proposal to lead the monitoring mechanism.

It is important to disseminate the call through various channels and grant enough time for organisations to review it and submit the requested information. A mechanism to receive questions or clarification requests from interested organisations and to answer them publicly is also essential.

8.

How is the monitoring team selected?

The organisation leading the monitoring mechanism will convene a team of experts

from different fields, according to the project's nature and complexity. These tend to be individuals with a proven track record, such as academics or experienced professionals. Besides ensuring they have compelling credentials, the leading organisation implements integrity controls and prevents conflicts of interest, to guarantee the impartiality and independence of all members of the monitoring team, including the technical experts.

9.

How can it be funded?

Previous Integrity Pacts provide useful reference on sources of finance. Because of their nature, allocating **public funds** to protect taxpayers' money is the commonest source of funding. These are provided either by the contracting authority in question, or one managing or overseeing its work. In other cases, **contributions from external institutions or donors** have covered the monitoring costs. This was the case with the Integrity Pacts EU project, where the European Commission provided the necessary funding.

For the new EU programming period, authorities are encouraged to include Integrity Pacts in their plans or programmes, and set aside funds for the monitoring mechanism, as



part of the efforts to strengthen administrative capacity and support beneficiaries in implementing investments. The European Commission has signalled that it will continue to support civil society monitoring of use of cohesion policy funds, through financial support of targeted activities, exchanges of experience and learning tools.

Pooling resources from multiple funders is also an option. Irrespective of where funds originate, they must be disclosed publicly to bring credibility to the Integrity Pact and to indicate to the public the monitors' impartiality and independence.

10. Interested in using an Integrity Pact?

Transparency International's national chapters and partners can provide further details to help authorities plan and design an Integrity Pact for a public contracting project or programme, as well as to estimate the monitoring cost. Based in Berlin, the Transparency International Secretariat can also help identify and convene national and local organisations which can lead the monitoring mechanism.

Request a virtual meeting with our team:
integritypacts@transparency.org

Find out more about Integrity Pacts in the EU:
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