

Towards Transparency in Public Procurement. The Legal Enforceability of Integrity Pacts in Bulgaria

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Policy Paper

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Author: Deya Slavova

Overviewⁱ

Public procurement is one of the government activities most vulnerable to corruption, because of the complexity of the process and the engagement between public officials, businesses and other stakeholders. To help governments enhance transparency in public contracting procedures, Transparency International has developed a tool for collective action called the Integrity Pact (IP).ⁱⁱ For the last 12 years, Bulgaria has been perceived as the country with second highest level of corruption in the European Union. This underlines how prevalent the issue is in the country and the need for the immediate prevention and counteraction of public corruption. Transparency International Bulgaria finds itself in a key moment to

influence the existing anti-corruption strategic framework, or possibly the national public procurement legislation, by advocating its campaign to promote the use of Integrity Pacts in public procurement and cooperating with all relevant stakeholders.

I. Integrity Pacts

In the EU, MS have agreed to the budget of €1.8 trillion for 2021-2027. Much of this funding will be spent through public procurement projects.ⁱⁱⁱ As an action to increase the administrative capacity to implement the EU funds covered by the partnership agreement between Bulgaria and the European Commission, the latter has included the framework condition to implement Integrity Pacts in the planning, awarding and execution of public procurement contracts of

high public interest. An Integrity Pact is a written agreement between the contracting authority and tenderers in the procedure for public procurement awarding establishing the rights and obligations for all parties to refrain from corrupt actions and comply with maximal transparency. The contract extends not only to the procuring authority, the bidders and their sub-contractors, but also to a third actor known as the monitor.^{iv}

II. Legal

Enforceability of Integrity Pacts: Comparing the Regulatory Frameworks of the European Union, Italy, Hungary and Bulgaria

While there is no binding EU-wide legislation mandating Integrity Pacts and their legal enforceability, the EU Directive on public procurement

encourage Member States to adopt further measures that ensure transparency and integrity throughout the whole procedure. The European Union promotes the use of Integrity Pacts to enhance transparency and integrity in public procurement. The European Commission provides guidelines and support for Member States to implement Integrity Pacts and emphasizes their role in safeguarding EU funds. The Court of Justice of the EU judged the exclusion of a company for not having signed the Integrity Pact in a tender procedure in line with fundamental principles and rules of the TFEU. The CJEU ruled that since an Integrity Pact is considered a tool to prevent corruption and the action against corruption is among the general objectives of European laws on public procurement, national legislation must contribute to the same scope.^v In a special report by the European Court of Auditors, Integrity Pacts were highlighted as an 'innovative fraud prevention measure'.^{vi}

The enforcement of Integrity Pacts in Italy is mandated by law and their legal basis is to be found in Article 1(17) of the Italian Law 190/2012 and

the National Anti-Corruption Plan of 2013 (validated through 2019). The use of Integrity Pacts is mandatory for certain high-value projects and sectors identified as high-risk. The enforcement mechanisms of IPs in Italy include sanctions such as contract denial, forfeiture of bid security and performance bonds, exclusion from future bids and reimbursement for damages. Certain violations of an Integrity Pact may also lead to criminal investigations.^{vii}

In Hungary, the Hungarian Procurement Act does not specifically mandate Integrity Pacts and they are enforced on a voluntary basis. Although their enforcement and adoption remains voluntary, the practice of Transparency International Hungary puts an emphasis on transparency by public disclosure and penalties. While there is no provision for exclusion from future tenders, public disclosure and sanctions serve as a preventive measure. Monitors report violations to the contracting authority, and potentially escalates to the procurement authority, police, or public prosecutor.^{viii}

In Bulgaria, Integrity Pacts are currently voluntary in their enforceability, with limited regulatory support and weak enforcement mechanisms. Therefore, the country finds itself in a position to adopt legislative reforms to mandate IPs for significant projects in the sector of public procurement.

III.

Recommendations

□ Advocate for Amendments to the Public Procurement Act to mandate the mandatory enforcement of Integrity Pacts for projects of high value and significant interest to the country

To ensure consistent application and enforcement of Integrity Pacts (IPs) in Bulgaria, it is essential that Transparency International Bulgaria advocates for the amendment of the Public Procurement Act. The proposed amendments should mandate the use of IPs for significant projects, particularly those financed by European Structural and Investment Funds (ESIF). The legislative reform will provide a clear legal basis for the implementation of Integrity Pacts,

and will thus enhance their enforceability and enhance transparency significantly in future public procurement projects.

Strengthen IPs Enforcement Mechanisms

Transparency International and Bulgaria recently started to engage in talks on the benefits of the implementation of Integrity Pacts with the National Public Procurement Authority (PPA) in Bulgaria. The CEO of Bulgaria's PPA expressed the authority's willingness to cooperate in the promotion of best practices and initiatives in the area of public procurement and the prevention of corruption and opaque management of public funds. Establishing a dedicated anti-corruption unit within the Public Procurement Authority can significantly improve the oversight and enforcement of Integrity Pacts. This unit should have the authority to investigate breaches of IPs and impose sanctions. Centralized oversight will ensure consistent and robust enforcement of IPs and will raise the engagement of multiple stakeholders in the process.

Promote Multi-Stakeholder Monitoring Committees to enhance stakeholder engagement

Forming multi-stakeholder monitoring committees involving government agencies, civil society organizations, the private sector, and independent monitors is crucial for the successful implementation and enforcement of IPs. Ensuring diverse perspectives and rigorous oversight will enhance transparency, credibility, and accountability in public procurement.

Launch campaigns to inform the public and all stakeholders about the benefits of IPs

These initiatives should target procurement officials, contractors, the general public, and all relevant actors to encourage compliance and increase support for Integrity Pacts. Increasing public support and raising awareness of the collective tool can impose a greater pressure on public officials and contractors to adhere to Integrity Pacts. Transparency serves as a deterrent to corrupt practices, as stakeholders know they are being monitored and can be held accountable. Public campaigns can furthermore drive higher

participation rates from civil society organisations and the private sector. Highlighting the success of Integrity Pacts will motivate all stakeholders to get involved.

□ Provide capacity building training programs for procurement officials

Transparency International Bulgaria should introduce capacity building initiatives, such as training programs, platforms and workshops to provide officials, independent monitors, and other stakeholders with the necessary skills and knowledge to effectively enforce, implement and oversee Integrity Pacts (IPs). By understanding the legal framework, proposed amendments and best practices, stakeholders can ensure more rigorous enforcement and compliance.

This policy paper was produced by Deya Slavova (LLB Candidate at the Hague University of Applied Sciences) as the professional product of an Applied Research Project. It is part of a broader research on the legal enforceability of Integrity Pacts in Bulgaria, and it is written with the aim to support the advocacy campaign of Transparency International Bulgaria. This paper reflects the view only of the author, and none of the abovementioned organisations and institutions.



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ⁱ Note: unless otherwise stated all information is sourced from:

ⁱⁱ Rafael García Aceves, ‘Safeguarding EU-funded investments with Integrity Pacts: A decision-maker’s guide to collaborative public contracting monitoring’ (Transparency International, 2021) https://integrity.transparency.bg/en/wp-content/uploads/sites/2/2021/06/2021_Safeguarding_EU_funded_investments_EN.pdf

ⁱⁱⁱ European Commission, ‘Integrity Pacts’ (European Commission, 2024) https://ec.europa.eu/regional_policy/policy/how/improving-investment/integrity-pacts_en

^{iv} Basel Institute on Governance, ‘Essential elements of an Integrity Pact’ (Basel Institute on Governance, 2024) <https://collective-action.com/explore/integrity-pacts/about/essential-elements/>

^v Vossloh Laeis GmbH v Stadtwerke München GmbH (Case C-124/17) [2018] ECR 855

^{vi} European Court of Auditors, ‘Special report no 06/2019: Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination’ (European Court of Auditors, 2019)

^{vii} Transparency International, ‘Impact Cases’ (Transparency International 2021) <https://images.transparencycdn.org/images/Integrity-Pacts-EU-impact-cases.pdf>

^{viii} Transparency International, ‘Integrity Pacts EU’s Impact Case 10: Hungary- M6 Highway’ (Transparency International 2024) (online at <https://images.transparencycdn.org/images/10-Impact-case-%E2%80%93-Highway-HU.pdf>) accessed 14 June 2024)