

INTEGRITY PACT

Civil Control Mechanisms for Safeguarding EU

1st MONITORING REPORT



Integrity Pact

1st Monitoring Report

Transparency International

Transparency International (TI) is a worldwide movement that envisages and aims at the enhancement of transparency and the curtail of instances of corruption, through the cooperation with the public and private sector and the active participation of citizens.

It is constituted of more than 100 chapters in countries all over the world. Transparency International Secretariat (TI-S) is based in Berlin and Transparency International EU Liaison Office (TI-EU) is based in Brussels. It implements a wide range of activities, projects and tools for the enhancement of transparency and the fight against corruption.

Transparency International-Greece

Transparency International-Greece (TI-GR) was established in 1996 in Athens as an accredited chapter of Transparency International. Through the promotion of legal and institutional reforms, and the design and application of best practices and tools, it raises awareness for the risks of corruption in Greece and it mobilizes public bodies and businesses to contribute to strengthening transparency.

TI-GR has implemented a great number of projects (ex. “Speak Up - Engaging Citizens in fighting corruption in Europe - the Transparency Now Service, “Engaging the EU Presidency in the fight against corruption - Evaluation of the Greek Presidency”, “Transparent local government” “Staying on Side,” etc.) and has conducted important researches (i.e. “National Research on petty corruption in Greece”) and studies (i.e. Assessment of the National Integrity System, Core principles for the protection of whistleblowers).



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The Integrity Pact

The Integrity Pact (IP) is a tool developed by Transparency International in mid-1990s, which has been applied to more than 300 public procurement processes all over the world. It constitutes an agreement signed by actors participating in a public procurement process for a public work contract, a public supply contract or a public service contract (contracting authorities and bidders). This agreement binds the parties-who enter into the agreement voluntarily-to abstain from any direct or indirect act of bribery, “under the table” agreements and any other corrupt practices during the bidding process and the execution of the contract. It also encourages them to contribute to a more transparent bidding process, by allowing its monitoring from the civil society. For this reason, it provides for the participation of a third party, mainly a civil society organization, that operates as an Independent Monitor, observing the participating parties’ compliance to the commitments provided for by the IP.

Basic Objectives of the Integrity Pact

- ✓ **Prevention** of corruption in public contracts
- ✓ **Improvement** in the management of public funds
- ✓ **Creation** of conditions for healthy competition

The Parties Involved

Contracting Authorities

The central government or a public entity (e.g. Region, Municipality) that is responsible for the procurement and signature of a public contract, as well as for the supervision of its. When it decides to apply an Integrity Pact, it commits to ensure access to procedures and documents, regarding the pre tender, tender and execution phases of the public contract, for the Independent Monitor.

Independent Monitor

A private consultant or a civil society organization that monitors all the stages, from the awarding to the execution of a public contract. It highlights violations of the terms included in an “Integrity Pact” and submits proposals on their rehabilitation and future prevention. It also drafts Monitoring Reports regularly, which are made available to the public, enhancing in that way access to information and social accountability.

Bidders (economic operators)

Natural persons or legal entities that participate in the bidding process for the awarding of a specific public contract. Through the accession to an Integrity Pact voluntarily, the economic operators, which submit offers in a tender, commit to follow regulations and procedures according to entrepreneurial ethics and to not violate competition law provisions.

They also commit to ensure access of the Independent Monitor to documents and information connected to their participation in the bidding process and the execution of the contract that has been assigned to one of them (contractor).

Contractor

The economic operator that has been awarded a public contract. The contractor is obliged to execute the contract according to the standards that have been set by the contracting authority, the provisions set out in the contract and the law.

The Integrity Pact in Greece

The “Integrity Pact” was first presented in Greece in 2010, during meetings between Transparency International-Greece, Transparency International Secretariat and Ministries of Infrastructure and Commerce, as well as the organization “Invest in Greece” (now “Enterprise Greece”), aiming at its introduction in legislative initiatives. However, this endeavor did not lead to its effective application.

A different approach is pursued nowadays, as the European Commission decides to perform an efficiency test of “Integrity Pact” in a wide range of contracts and budgets, applying it as a pilot tool. Having the support and the participation of the civil society the EC aims to:

- Ensure the best and most responsible management of EU funds available for public contracts
- Integrate, after evaluating its efficiency, the Integrity Pact in the legislative framework of EU countries, rendering its application obligatory (as in the case of Italy).
- Encourage awareness raising and interest by the citizens in the awarding and execution of public contracts, which concern works, supplies and services impacting their everyday lives and their life quality.

In Greece, the Integrity Pact is implemented for the first time as a pilot project through the “INTEGRITY PACTS-Civil Control Mechanisms for Safeguarding EU funds, Phase 2” project, which is funded by the Directorate General for Regional and Urban Policy of the European Commission. The program sets forth the application of more than 17 Integrity Pacts in 11 states members of the EU.

Transparency International-Greece as an Independent Monitor

In the framework of the project, the role of the “Independent Monitor” is assumed by civil society organizations or individual experts, aiming at the impartial monitoring of the procedure of awarding and executing a public contract and reinforcing public accountability.

Transparency International-Greece is monitoring the tendering process and the execution of the contract for the public work “Construction of a flood protection pipeline network in areas within the Municipalities of Nikaia-Aghios Ioannis Rentis and Moschato-Tavros”, by applying the Integrity Pact -designed

and adapted to the particular project- in which Attica Region is the Contracting Authority.

As an agreement signed between Transparency International-Greece (Independent Monitor) and the parties to the tendering process (Contracting Authority, tenderers and contractor), the agreement contains specific obligations and rights for the involved parties, aiming at reinforcing transparency and promotion of citizens' access to information.

The Independent Monitor:

-Takes notes of the content of tender documents before its publication, monitors the awarding procedure, has access to the signed public contract and the documents related to its execution.

-Is entitled to monitor the execution of the work after the signature of the contract, and is also permitted to hold on site visits when necessary.

-Publicizes Monitoring Reports for the briefing of organizations and citizens aiming at reinforcing public accountability and participation.

-Informs the involved parties for any observed irregularities and follows up on their response.

-Submits proposals to the participants for the improvement of followed procedures suggesting, therefore, the adoption of more effective measures for the prevention of corruption.

The Experts

Transparency International-Greece, as a civil society organization, was assigned the role of "Independent Monitor" by the European Commission. Its mandate is the application of the Integrity Pact in a 1st priority anti-flood work, in which Attica Region acts as the Contracting Authority.

The project team is supported by Independent Experts:

Engineering Consultant

Stefania-Tereza Giannaki is a civil engineer, holding a Bachelor degree from the National Technical University of Athens with a specialization in hydraulic engineering and a Master's degree from ALBA in business management (MBA).

She has over 10 year- experience as an engineering consultant in hydraulic works studies. Her area of expertise lies in the design and conduct of studies in water supply, irrigation and drainage of rainwater and wastewater. She has also participated as a representative of Greece's Technical Chamber in public procurement committees for the conclusion of public contracts, works and studies. She speaks Greek, English and German.

Legal expert

Emmanouela Papadochatzakis is a lawyer, member of the Athens Bar Association, (entitled to plead before the Supreme Court), while she also holds an LLM from Katholieke Universiteit Leuven in Energy and Environment Law and is a member of the Union of Greek Public Law Lawyers. She is specialized in the field of public contracts, providing legal services as a consultant as well as before courts, both in the pre-contractual and the execution stage of public contracts. She has important court and advisory experience in administrative, civil and commercial law. She speaks Greek, English, German and Spanish.

Learning and Innovation Coordinator

Ioannis Souflis is a Dr. Civil Engineer, business management advisor. He has participated in over 100 works in Greece and abroad in his capacity as a consultant and a project manager. He has experience in the sectors of public administration, public works and electronic governance. He has participated in important EU works and has worked as an expert with the UNEP (1990-1993). He has served as a member of the International Board of Directors of the Network for Environmental Technology Transfer (EU, 1990-1992), while he has cooperated with the Greek consultants' company INFOGROUP SA (consultant, 1986-1993), KPMG Consultants SA (consultant, deputy director, director 1997-2007) and OmniLink SA (Director 2007-2010). Since 2010, he has been working as an independent Consultant.

Project Timeline

10/2019	1 st Monitoring Report
03/2019	Signature of the public contract agreement
10 & 12/2018	1 st and 2 nd record of approval of awarding
07 & 09/2018	Publication of the notice of procurement and final deadline for submission of tenders to the National System for Online Public Contracts
04/2018	Signature of the “Integrity Pact” between Transparency International-Greece (Independent Monitor) and Attica Region (Contracting Authority)
03/2018	Inclusion of the work (code OPS 5023454) in the Operational Programme “Attica 2014-2020”
02/2016	Signature of a Memorandum of Cooperation between Transparency International-Greece and Attica Region
01/2016	Launch of the pilot project
05/2015	1 st Phase of the project- Presentation of Integrity Pact to managing authorities of Ministries, Regions and Municipalities

Aim of the 1st Monitoring Report

The 1st Monitoring Report on the “Construction of a flood protection pipeline network in areas within the Municipalities of Nikaia-Aghios Ioannis Rentis and Moschato-Tavros” public contract scopes to enhance transparency throughout the execution of the specific public work and its implementation. It is drafted by the Independent Monitor (Transparency International-Greece) in the framework of the pilot Integrity Pact that was signed on April 20, 2018 between Transparency International-Greece (Independent Monitor) and Attica Region (Contracting Authority),

The present report covers the period after the signature of the “Integrity Pact” (20 April 2018) and more specifically, the procedure of conducting the bidding process, which was completed with the signature of the awarded contract of the work (28 March 2019). It is based on data made available to the Independent Monitor, including both publicly available information as well as information shared by both the Contracting and Managing Authorities and the Contractor.

Based on a commonly agreed framework of cooperation among involved parties, Monitoring Reports are publicized on the dedicated website of the project (www.integritypact.gr) and the website of the Contracting Authority (www.patt.gov.gr) as well.

The Legal Framework

In August 2016, when Law no. 4412/2016 “Public Contracts of Work, Supply and Services” came into force (and integrated EU Directives 2014/24/EU and 2014/25/EU), as well as law 4413/2016 “Procurement and execution of concession contracts-harmonisation with Directive of 24 February 2014 of the European Commission and of the European Council (Official Journal L94/1/28.3.2014) for the procurement and execution of concessions -and other provisions”, a new legal framework was put in place for public procurement. One of the most fundamental regulations of the new legal framework is the obligatory use of the National System for Online Public Contracts for the procedures of awarding a public contract, including for public work contracts over 60.000 € (VAT excluded) starting October 2017.

The antiflood work

The public work concerns the construction of a stormwater network (total area of drainage basin approx. 1.800 acres) situated at the east bank of Kifissos river. The watershed boundaries are defined by the riverbank of Kifissos, Athens Metro Line 1 track, 25th March Street and Hagias Sophias Street (Tavros), Hamosternas Street (or Panagi Tsaldari Street), Smyrnhs Street, Tavrou Street and Konstantinoupoleos Avenue.

According to the prioritization study, the particular public work is among the ones marked as Priority A’ Flood Protection Works for the Region of Attica during the financial period PA 2014-2020.

The purpose of the project is not only to alleviate flooding caused by stormwater in the area, but also to resolve key issues, such as the absence of a modern and sufficient stormwater network which would convey stormwater

during high frequency events safely to Kifissos River (which is the natural recipient). In particular, although in the past several stormwater projects have been built, they were fragmented serving parts of the whole drainage basin without, therefore, being part of an overall stormwater management plan. Moreover, some pipelines are too old and dubious in terms of their adequacy.

During works' planning an important obstacle concerning the pipeline routing surfaced, resulting from the presence of the ancient monument of the Athenian Long Walls along Piraeus Street. In addition, discharge positions were limited because of pre-existing aligned poles along the riverside that support the overhead highway. As a result, outfalls would only be possible through previously constructed discharge works, or new ones with limited interventions to very specific spots of the river bank.

The layout of the networks had to be adapted to these restrictions. The final choice for the two discharge points led to the project being separated into two main sub-basins. Also, in 2017, part of the technical designs had to be adjusted, due to existing sewer pipes in Thessalonikis Str. which create a space problem for the construction of part of the downstream subnet (rainwater collector S2). A study for the relocation of the sewage pipes was carried out after consultation with the design engineer and the Water Supply and Sewerage Company (EYDAP).

The ending point of the northern subnet (rainwater collector S2) is the entrance of the pipeline (D2000 mm) discharge point of the old sewage pipe in the Athens Fruit & Vegetable Market. The entrance of the discharge pipe is in a point next to Kifissos, close to the junction with Bizaniou Str., while the ending point of the southernmost subnet is placed at the river bank at Bizaniou Str.

For the manufacture of the collectors, pipelines with a diameter ranging from DN600 to DN2000 and rectangular sewers of the appropriate dimensions. The length of the sewage pipes network is around 7,1 km long and includes drainage inlets, maintenance, junction and drop manholes.

Independent Monitor: observations and suggestions

This report includes observations, findings and suggestions by the Independent Monitor (Transparency International-Greece) during the pre-tender and tender phase for the work "Construction of a flood protection pipeline network in areas within the Municipalities of Nikaia-Aghios Ioannis Rentis and Moschato-Tavros", with Attica Region in the role of the Contracting Authority. Specifically, the report covers the stages of tender documents

drafting by the Contracting Authority before their publication, the tendering process until the award and the signature of the contract between the successful bidder and the contracting authority.

For the drafting of this report, the Independent Monitor has taken into consideration first of all documents that were made available from the Contracting Authority and the latter's responses to questions and requests provided for clarifications.

During the pre-tender phase, on 20/4/2018 the Contracting Authority provided the Independent Monitor with the contract notice and the tender documentation, which were drafted according to the approved standard notice of open procurement process for the award of works exceeding the thresholds set in Law no. 4412/2016, the award criterion being the most economically advantageous offer. In response to the abovementioned submitted documents, on 3/5/2018 the Independent Monitor addressed in written the following to the Contracting Authority:

A) Observations regarding specific provisions in the notice, which related to eligibility of participants, requirements for economic and financial capacity and technical and professional capacity, and the required documentation for proving operational competence and suitability. In the Independent Monitor's opinion, the abovementioned provisions needed modification in order to comply with the new legal framework of public procurement (Law no. 4412/2016) and not to set additional requirements for the bidders, which were applicable according to the previous framework and could potentially curtail competition.

B) Suggestions for a more analytical formulation of particular provisions, which would render them more specific/clarified for the interested economic operators according to the Independent Monitor.

A significant part of the Independent Monitor's observations, mainly the substantial ones, which related to eligibility criteria and suitability of economic operators, were taken into account by the Contracting Authority, that modified the provisions of the notice. Regarding the ones that were not modified, the Contracting Authority replied by submitting its reasoned opinion.

Next, the contracting authority approved the final provisions of the notice and issued the call for offers through the National System for Online Public Contracts (NSOPC n. 75067), setting the deadline for the 5th of September 2019. The documents uploaded by the Contracting Authority on the e-procurement platform and on its own website, included the Integrity Pact and its voluntary accession form for the bidders.

One out of the 10 bidding economic operators acceded the Integrity Pact during the tender phase and was included in the White List in accordance with the Integrity Pact.

The discount rates of the offers submitted ranged from 32,05% to 58,98%. The contract was awarded to the economic operator who offered an average discount rate of 58,98%, therefore the lowest price for constructing the work and specifically to the “ILION ELLKAT ATE”. The contractor acceded the Integrity Pact in March 2019, by signing the accession form along with the public contract and was subsequently also included in the White List. The overall cost of the contract amounts to 5.270.678,42 euro, which is broken down in:

A) contract amount 4.202.499,74€; B) revision costs 48.047,37€ and c) VAT 1.020.131,31€

Subsequent to the signature of the contract, the contracting authority awarded the Independent Monitor access to the tender process documents in printed form, starting from the stage before publishing the notice up until the contract was signed. After studying the documents, the Independent Monitor noted that:

A) the contracting authority diligently publicized the notice and its summary (NSOPC, official Journal of the EU, Greek press, contracting authority’s website)

B) The Economic Commission’s decisions that approved the Selection Committee minutes were communicated to the bidders.

C) No references for a preliminary ruling were submitted at any stage of the process.

However, it was noted that until June 20, 2019 (the date the Contracting Authority replied to the Independent Monitor) the expropriation of private properties in Themidos, Averof and Bizaniou Streets in the Municipality of Nikaia-Aghios Ioannis Rentis was still pending. This has been deemed essential for the part of the work that relates to the construction of the pipelines in that area. The Independent Monitor required clarifications by the Contracting and Managing Authority, after considering that the particular point raised questions about the timely construction of the pipelines.

Furthermore, in relation to the abovementioned, the Independent Monitor has pinpointed the following after surveying the documents:

A) The contracting authority has repeatedly reminded the Municipality of Aghios Ioannis Rentis about the importance of this matter, starting in March

2017, and was informed by the Municipality that the relevant procedure is in the stage of conclusion.

B) The managing authority believes that there will be no consequence in the conclusion of the work-even if the completion of the expropriation is further delayed- because of i) the criticality of the work for the flood protection of the area ii) the commitment of the Municipality of Nikaia- Aghios Ioannis Rentis for the conclusion of the area's zoning plan ii) the cooperation of the Department of flood protection of the Attica Region with the competent authorities of the Municipality and iv) the existence of a sufficient construction front for the contractor, in the S2 Collector.

The resolution of this issue is of utmost importance, especially since a) the contract for the construction of the work was signed in March 2019 and b) the area in concern is close to the discharge point of one of the two Collectors- from which such work constructions usually start. For this reason, the Independent Monitor's observations on this issue will also be included in its next report.

Finally, the decision for modification of the Funding Act "Construction of a flood protection pipeline network in areas within the Municipalities of Nikaia- Aghios Ioannis Rentis and Moschato-Tavros", in the Operational Programme "Attica 2014-2020" was submitted to the Independent Monitor.

The decision had as a subject matter: a) the addition of the sub-work no.4 titled "Publicity" b) the modification of the budget for sub-work 1, in order to adjust to the budget of the contract (5.270.678,42€) and c) the prolongation of the Act until 31/12/2021 (total publicly eligible expenditure 5.805.038,42€). Even though the Independent Monitor only monitors sub-work 1 (construction of work), the Independent Monitor asked for clarifications regarding the "publicity" sub-work which was not described in detail in the modifying act. The Independent Monitor submitted to the contracting and managing authorities a suggestion for a more detailed description of the subject matter of the sub-work in the decision modifying the Act, which is available to the public through "Diavgeia" portal- the publication platform for public documents. This proposal was submitted having in mind that its adoption would amplify transparency and would assist the citizens in observing and comprehending the subject matter of the sub-work titled "transparency" and the actions that will be financed in its context.

Publicity

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