INTEGRITY PACTS IN THE EU:

SUITABILITY, SET UP AND IMPLEMENTATION

A PRACTICAL GUIDE TO CIVIC MONITORING OF PUBLIC CONTRACTING PROJECTS

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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Integrity pacts in the EU:
Suitability, set up and implementation
A practical guide to civic monitoring of public contracting projects

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FOREWORDS

Integrity and transparency are core values of the European Union. They apply directly to our work as an institution and to all the national, regional and local authorities involved in the implementation of European policies. We must ensure that citizens trust the way we deliver on these policies and projects.

This is especially important considering the magnitude of the economic crisis, the environmental challenges we face, and the unprecedented amounts of European funds mobilised for the recovery.

European citizens need to know that EU institutions always have their interests in mind when we invest in and procure public goods. In practice, we achieve this in various ways, including solid, thorough checks, efficient procurement systems and competent, honest buyers. We also need innovative approaches, such as involving civil society in monitoring our projects.

This concept is at the heart of integrity pacts. We teamed up with Transparency International to propose a new approach to monitoring cohesion policy funds. People need to witness how we work so they can trust our actions. The pilot project of European integrity pacts has contributed to this goal.

This practical guide draws on the experiences and lessons learnt from the projects in the pilot. With it, we aim to provide clear steps to follow for future projects. We hope that more partners will join us in developing European integrity pacts. Building on the achievements of the pilot project, we look forward to continuing to work in partnership with Member States, regional and local authorities, and civil society to strengthen and promote the core values of the European Union.

Elisa Ferreira,
European Commissioner for Cohesion and Reforms

Transparency and accountability in the use of public funds should never be taken for granted, especially in public contracting. Even where adequate laws, robust oversight bodies and professional authorities exist, we should not concede to opacity and unchecked discretion. Reinforcing safeguards is crucial to prevent corrupt individuals and firms from stealing public funds, which are so critical for the well-being of our communities and countries. Governments, businesses and citizens should work together and push for broader, robust mechanisms that protect public funds and investments and guarantee their best use.

The European Commission's Directorate-General for Regional and Urban Policy (DG REGIO) and Transparency International share this conviction and have set up a pilot to review how recipients of European Union (EU) funds could benefit from the integrity pact, a tool that enhances transparency and accountability in public contracting projects.

After six years, the collaboration of 32 public authorities that received EU funds and 15 civil society groups that monitored 18 public contracting projects yielded significant results. Their experience confirmed that openness and civic monitoring play an instrumental role in ensuring robust tenders, greater competition, equal treatment and sound procedural management. Of equal importance, the pilot provided learning and insight to turn the integrity pact into regular practice in the EU and contribute towards open and clean public contracting.

This guide is designed to share knowledge. The information presented here is more than a summary of the pilot. It provides advice and guidance on the practicalities of advocating, adopting and implementing integrity pacts. We hope it inspires you to join us on this journey to ensure that public contracting delivers the best results in the EU and beyond.

We thank the many people who were involved in this pilot for their contributions and hope to continue to work closely on protecting the public's resources in the future.

Delia Ferreira Rubio,
Chair of Transparency International

THE INTEGRITY PACTS EU PILOT

In 2015, Transparency International, the European Commission (through the Directorate-General for Regional and Urban Policy, DG REGIO) and 15 partner organisations in 11 Member States of the European Union (EU) began a pilot project to enhance the transparency and oversight of a set of public contracting procedures within 18 EU-funded investments using **integrity pacts**.

An Integrity Pact (IP) is a mechanism pioneered by Transparency International to ensure that authorities and bidders act within the constraints set out by law, address corruption risks and foster trust in a public contracting project. Through a public agreement, the parties commit to refrain from any corrupt behaviour, enhance transparency and accountability throughout the process, and integrate an independent mechanism led by civil society to monitor compliance with the applicable regulation and the agreement itself and inform the public about it.

Aside from embedding a civil society organisation as an independent monitor of these specific investments, the project had a broader goal. It aimed to assess the relevance of this tool for aligning public contracting procedures with the corresponding EU principles[1] and for deterring behaviour contrary to the law and the public interest.

As a pilot, it was expected to provide insights into how future uses of IPs could be better adapted to legal, institutional, and operational conditions observed across the EU. The findings and learnings would help clarify whether IPs could become a regular practice across the Member States and provide guidance on how to go ahead with them, bolstering transparency, accountability and integrity in the largest public contracting market in the world.

What are the EU principles of procurement?

The EU directives on public procurement are legal instruments adopted by all Member States that contain shared definitions and rules guiding the planning, award and execution of public contracts that are expected to be worth above certain values. The core principles mandated by these directives are:

- transparency
- equal treatment
- open competition
- sound procedural management

Source: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. Available at: https://ec.europa.eu/growth/single-market/public-procurement_en

In line with these objectives, most of the answers emerged after monitoring forty-six public contracting procedures[2] in a five-year period. The answers were drawn from reports produced by the partner organisations and logs kept to track milestones, recommendations and issues observed in the monitoring activities. They have been brought up and discussed in fora, sometimes

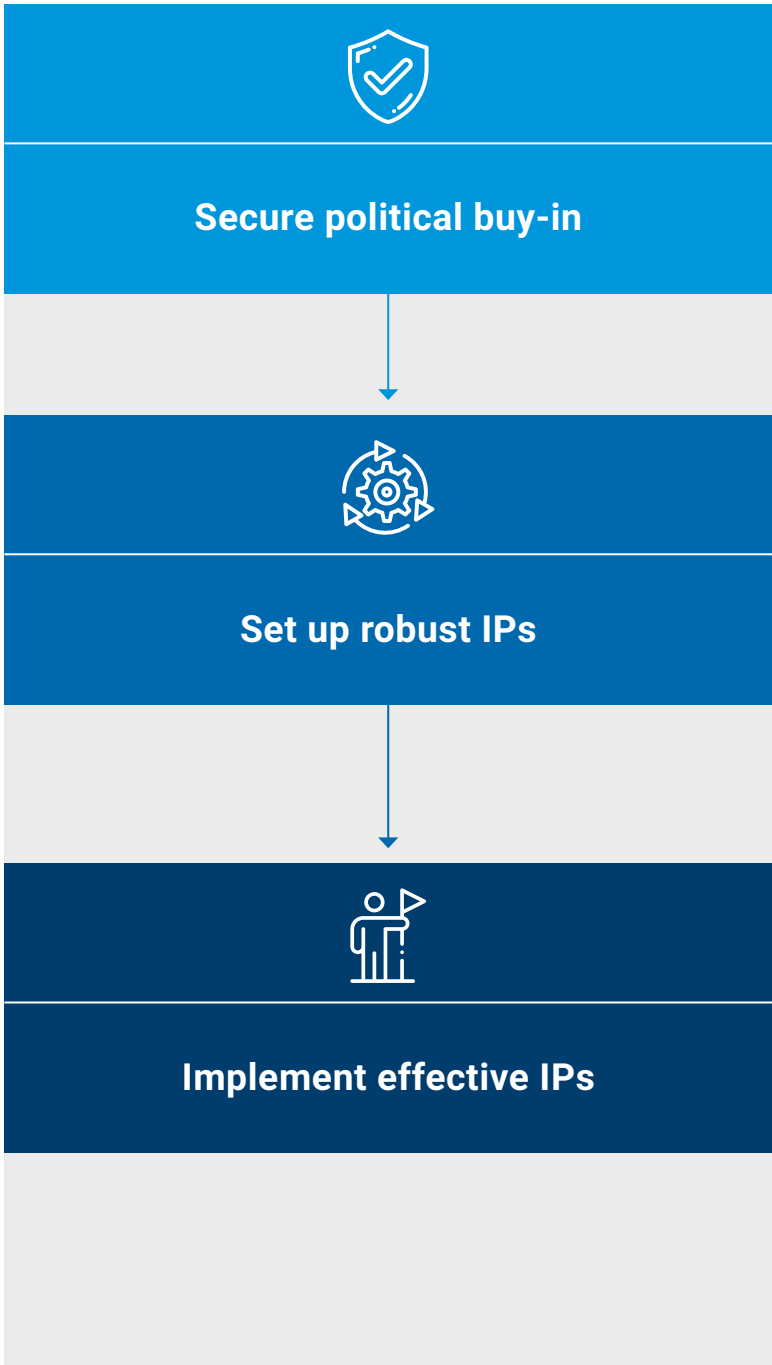
as part of the partners' dialogues with policy-makers to push for reforms in their countries, and at other times in thought-provoking conversations among the members and allies of this partnership.

However, due to the scope and complexity of the many factors to consider in an exploration of the project's central question about the future of the tool, the findings and learnings must be organised in different parts. Several steps are required to show how the IP can better integrate with the EU's toolkit to safeguard and improve public contracting, and how to make this happen. This is in line with the stages the tool goes through, and the actors involved in each of them. For these reasons, this publication has been divided into three interconnected guides.

The findings and learnings are organised in this structure to engage different types of readers and foster collaboration and synergies.

- **Guide 1** has been developed for those in civil society, government or the private sector who share concerns about public contracting in their countries and are interested in enhancing oversight and achieving better outcomes through civic monitoring activities like IPs.
- **Guide 2** is targeted at the authorities and non-profit organisations that have agreed to implement an IP, as it highlights key aspects for a successful collaboration.
- **Guide 3** is primarily for the civil society organisations that act as independent monitors in an IP and lead the oversight mechanism.

Together, these three guides – informed by the Integrity Pacts EU pilot – should provide relevant insights to understand the tool, encourage its adoption and support its recurring and systematic implementation throughout the EU by the actors involved in the process.



GUIDE 1:

Achieving broader recognition and adoption across the EU

Provides a baseline analysis of the importance and benefits of enhancing oversight in public contracting through independent and citizen-led monitoring. It lays down a series of recommendations, arguments and opportunities to build, present and communicate the case for wider adoption of IPs. It aims to inform advocates' strategies for gathering support from relevant stakeholders to implement IPs and associated measures.

GUIDE 2:

Designing fit-for-purpose integrity pacts

Intermediate step in which the scope, commitments and rules of the monitoring intervention are defined. The findings and learnings in this section will help civil society groups and authorities to set up a sound and binding IP. They provide guidance on fundamental decisions and cross-cutting issues. They include information on selecting the project and monitoring organisation, rules guiding the collaboration, the involvement of beneficiaries and citizens, and other topics that will impact the implementation of the IP.

GUIDE 3:

Ensuring effective monitoring

Focuses on the implementation of the IP and particularly the monitoring activities during the entire public contracting cycle. This section offers concrete advice for enhancing the soundness of the monitoring and further improving the quality of the oversight by the civil society monitor. Specific risks and challenges likely to be encountered by the monitoring organisation are highlighted along with examples and guidance to overcome them.

GUIDE 1

ACHIEVING BROADER RECOGNITION AND ADOPTION ACROSS THE EU

Public contracting is a major driving force in the EU's single market. Its founding laws and regulation established the largest public contracting market in the world that allows businesses from the EU's 27 Member States and other countries to offer a wide range of goods and services to thousands of governments and public entities. While the total number of contracts awarded every year is unclear, it is estimated that their value amounts to over 14% of the bloc's GDP.[3] Beyond the size of public contracting, it plays a relevant role in providing quality services for EU citizens and boosting economic activity and innovation. This role demands increased transparency, accountability, participation and integrity.

1.1
SHOULD THE EU SEIZE THE POTENTIAL OF CITIZEN-LED MONITORING?

The EU has developed one of the most comprehensive regulatory frameworks on public contracting worldwide. In line with the relevance and magnitude of public contracting, oversight has a predominant role and an intricate structure of authorities and mechanisms has been tasked with ensuring adequate use and protection of public contracts and the resources funding them.

Across Member States, internal comptrollers, supreme audit institutions, competition regulators and others exert control over the process of planning, awarding and executing public contracts, funded with EU or national resources. Yet, according to various analyses, public contracting remains one of the most frequent vehicles for fraud and corruption in the EU. As an example, a 2016 report commissioned by the European Parliament estimated that around €5 billion a year is lost through corrupt contracts.[4]

Further measures are often discussed and implemented to address the problem. For instance, at EU level, the European Public Prosecutor's Office (EPPO) started operations on 1 June 2021. In coordination with the European Anti-Fraud Office (OLAF), it will investigate and prosecute specific cases involving fraud and corruption that affect the EU's financial interests. The task is challenging considering that OLAF reported 3,431 fraudulent irregularities related to EU-funded expenditure, involving approximately €2.3 billion, between 2015 and 2019.[5]

While these institutional safeguards are fundamental, contracting and oversight authorities often face constraints and challenges that test their capacities to meet their objectives and safeguard the available resources from fraud and corruption. The size of public contracting in the EU and the wide range of risks it faces demand broadening the scope of independent actors who monitor and support these authorities. This action is crucial given the extraordinary number of future investments that rely on public contracting and the resources involved.

Among the alternatives, partnering with citizens and organised civil society groups offers one of the most promising opportunities to scale up oversight as needed.[6] Despite some recognition from authorities and decision-makers within the EU, there is no formal initiative or mechanism that embeds independent, citizen-led monitoring into public contracting.

The Integrity Pacts EU pilot was one of the most recent attempts to examine the role and effects of civil society in monitoring public contracts and to provide further evidence to make them – and other tools of a similar nature – a regular practice. However, further advocacy and dissemination are necessary. Creating more opportunities for citizen-led monitoring should be prioritised since it is a crucial step towards a more robust structure to prevent fraud and corruption in public contracting.

To convince decision-makers that are still hesitant to incorporate additional, external oversight, those who propose and support this kind of measure, whether in civil society or the business and government sectors, should coordinate and articulate the most

relevant facts, cases and analysis in a clear value proposition. When doing so, proponents and their allies should consider the following aspects.

- **A risk-based approach.** Independent monitoring should target markets or authorities that face recurring fraud and corruption schemes, anti-competitive behaviour and similar risks that threaten the value and integrity of a public contract. With the data available in the EU, provided by a multiplicity of sources, recurring issues and risks can be identified for national and subnational jurisdictions and sectors. Proponents are encouraged to familiarise themselves with datasets and reports produced by research centres and authorities – such as OLAF and similar entities – to gather evidence that supports the need and demand for independent monitoring, highlights the most pressing risks and provides incentives for adoption.

- **Emphasis on prevention and early detection.** Most recent measures, including the Rule of Law Conditionality, have focused on investigating and sanctioning authorities and the entities involved after cases emerge. Equal consideration must be given to measures that deter, detect and rectify behaviours leading to fraud or corruption, to avoid damaging and costly effects. Along with stressing the importance of IPs, advocates can pair the suitability of monitoring led by civil society and the IP with prevention.

- **Foster and align incentives among stakeholders**. In line with highlighting the issues and risks affecting public contracting, proponents should consider a combination of actions that emphasise the relevance and need for stakeholders to support additional oversight mechanisms. Direct dialogue and foundations for trust and collaboration should be sought with public authorities. In addition, affected communities and market operators should be engaged and convinced about the potential effects. This can add incentives for authorities to adopt and implement IPs.

- **Connect with policy reform platforms.** Proponents should aim for systematic adoption, rather than one-off implementation. To achieve this, they can turn to mechanisms or fora where government policies are discussed and revised. In the EU, the European Semester cycle, the Open Government Partnership (OGP)[7] and public consultations organised by EU institutions are relevant platforms for promoting recommendations and commitments that address public contracting and oversight policies.

Just as public procurement regulations and government commitments vary between countries, so will awareness-raising initiatives. The progress and effectiveness of advocacy activities should be measured against formal commitments and measures that embed citizen-led monitoring mechanisms in public contracting.

Portugal's most recent commitments to enhance monitoring of public funds

Against the backdrop of a reform to Portugal's Public Procurement Code, which increased the threshold that allows for direct awards, Transparency International Portugal revamped efforts to broaden oversight of government contracts. A sustained advocacy effort – carried out in parallel to the implementation of an IP – led the country's government to acknowledge in its most recent National Anti-Corruption Strategy[8] the need to reinforce the monitoring of public expenditure, including government contracts. TI Portugal's actions emphasised the risks that the legal changes brought concerning transparency, accountability and competition, particularly to upcoming investments funded with EU recovery funds. If these funds are considered on a per capita basis, Portugal is the third largest recipient, just behind Greece and Croatia. Through active communication with legislators, journalists and authorities and their formal participation in the strategy's consultation process, TI Portugal presented arguments and incentives to support the recommendation and recognition of IPs as a good practice. Additionally, they managed to embed a similar commitment in the second Open Government Partnership's national action plan,[9] which considers the implementation of IPs.

1.2 HOW TO PRESENT THE INTEGRITY PACT IN AN EU CONTEXT

The Integrity Pacts EU pilot aimed to determine how the tool integrates with specific legal and institutional conditions within the EU. An IP has various components that, in combination, foster transparency and accountability and discourage behaviour that is contrary to the public interest. The emphasis placed on each component is often adjusted according to where the pact implemented. This allows a margin of flexibility to secure political buy-in, meet the public's expectations and maximise the IP's effects.

The definition of an IP has been updated to convey a precise description of its scope and implications when it is adopted in the EU, considering the conditions observed across the public contracting projects that were monitored. In this context, an IP can be presented as follows.

> *An integrity pact is a mechanism that allows collaboration between a public entity (or a group of them) and civil society to ensure that authorities and bidders act within the constraints set out by law, address corruption risks and foster trust in a public contracting project. Through a public agreement, the parties involved commit to refrain from any corrupt behaviour, enhance transparency and accountability throughout the process, and integrate an independent mechanism led by civil society to monitor compliance with the applicable regulation and the agreement itself and inform the public about it.*

The main components and characteristics of an IP are described below.

- An IP is a framework that allows a set of actors of different natures to collaborate around a public contracting project. First and foremost, it implies the participation of the public entity responsible for the contracting procedure – whether it is a government agency or a state-owned enterprise – and civil society. Other entities, such as managing and oversight bodies or even interested bidders can join.

- Considering the extensive regulation across the EU on public contracting, anti-corruption, and other related issues – such as budget management, competition or money laundering – the purpose of the collaboration centres on upholding the applicable regulation, preventing corruption, maximising value for money and bolstering public trust.

- The parties will work together to address any risk or condition that could allow for behaviour contrary to what is mandated by law that is likely to affect value and public trust.

- The collaboration is formalised through a public agreement that binds the parties to a set of commitments. Depending on the legal arrangements, the agreement can be structured in different parts or

documents. Its content can also be tailored to the country's conditions, as long as it adheres to the essential components of the IP. These are:

- A pledge by the parties involved, in which they agree to act according to the law and prevent corruption during the process. When possible, bidders or the selected contractor should join this pledge.
- A set of measures to grant transparency and reinforce accountability throughout the process, including giving the civil society monitor access to all documentation.
- A funded oversight mechanism – coordinated by civil society and supported by relevant experts – that is responsible for monitoring the contracting process and the overall agreement, providing recommendations and regularly informing the public about their development.

All these components were compatible with the public contracting systems where IPs were implemented. During the pilot project, the partner organisations observed that, in general, the legal frameworks supported their adoption. Only on a few occasions certain provisions at national or local level limited the scope and quality of the monitoring mechanism. In most cases, these limitations were overcome with provisional arrangements or supplementary measures. Considering the multiple law harmonisation efforts in the EU to enhance the internal market, particularly those targeted at public sector procurement, we can presume that implementing an IP is possible across all Member States. Moreover, regulation and practices on government transparency and access to information have been widely adopted and actively promoted within the EU as a mechanism for public control.

1.3 WHAT IS THE INTEGRITY PACT'S VALUE PROPOSITION FOR THE EU?

The monitoring work of the 15 partner organisations involved in the Integrity Pacts EU pilot – covering 46 public contracting procedures – did more than just test the main objectives of the IP. The diverse experiences also helped us identify the underlying dynamics or attributes that make it an appealing and effective tool to boost integrity in public contracting in the EU.

Using this knowledge, a new, more precise value proposition for adoption of IPs in an EU context is now available.

- The IP is an instrument that prioritises corrective action over punitive measures. The presence and active collaboration of an independent third party – the civil society monitor – increases the possibility of detecting and addressing weaknesses, risks and flaws in a public contracting project. When an IP monitoring team is granted timely access to information and spaces for deliberation, it can provide recommendations to meet the contract's demands and objectives.

> *In the Integrity Pacts EU pilot, over 430 recommendations were registered by the monitoring organisations. They varied from procedural observations to financial estimates and legal challenges. Authorities reviewed them and acted accordingly when they were considered relevant and feasible. In some cases, authorities took preventive measures against potentially derailing circumstances or improved the quality of the procedure.*

- The IP reinforces institutional capacity. The role of the civil society monitor is not to replace the authority but to enhance its work in the stages of a public contracting project through concerted action. The monitoring organisation convenes and coordinates expertise to support its work, which in turn is transferred to the authorities in the form of analysis and advice.

- External observation and support are helpful to contain and manage pressure and constraints. The presence of an independent party, guided by the public interest, adds incentives for abiding by regulation and carrying out the contracting procedure according to technical and legal considerations rather than political ones. Independent monitors' public updates about the project, including their analysis and recommendations, further incentivise constructive behaviour and foster public trust.

In combination, these attributes can have a broad range of effects, depending on the characteristics of the contracting project and the related markets. When an IP is embedded in a strategic investment that garners public attention, and faces adverse market conditions or corruption risks, it will be more likely to have tangible benefits. The parties involved in the IP work together to agree on the expected effects and set up a mechanism to track performance.

In the case of the Integrity Pacts EU pilot, the project partners structured and centred their impact analysis around six categories, according to the project's priorities and objectives. The following table describes each category and provides an example of an impact case observed during the project.

Impact cases observed per category in the Integrity Pacts EU pilot

Promote better value for money	*Improving the outcome of the contracting procedure and safeguarding or maximising the contract's overall value for the public.*

During the revision of the tender draft documents, Transparency International Hungary spotted that the preliminary estimates of the value of a contract for designing a highway (€4.2 million) were inconsistent with similar projects. Once it had gathered information and evidence provided by a technical expert, the monitor suggested that the contracting authority (CA) should lower the contract's value to €2.8 million. After the presentation of the case, the CA provided further references and mentioned that there was an additional level of complexity and that more soil analysis studies would be required. Both parties revised the estimates again and agreed to lower the contract value to €3.7 million. In the end, the CA awarded the contract for €3.6 million.

Encourage participation, competition and fairness	*Enlarging the number of firms bidding for a contract, according to the observed market conditions, and securing that all participants receive the same treatment and information.*

A project to increase land registration throughout Romania, monitored by Transparency International Romania and the Institute for Public Policy, struggled to cover all the planned contracting lots and municipalities. Notably, there was a lack of interest in some of the lots, which received no bids at all. To address the situation, the monitors encouraged the CA to conduct a market consultation to discuss with potential bidders the incentives and barriers to their participation. The CA then met firms and gathered relevant information to adjust the tender and attract more participants. The effects were soon noticed and included a higher number of lots receiving bids in the following tenders and more contracts awarded to multiple firms.

Impact cases observed per category in the Integrity Pacts EU pilot

Enhance transparency and accountability	*Increasing public access to the contracting project's development in its various stages and widening the visibility of the actions taken by the individuals and firms involved in the process.*

During the implementation of a project for renovating a hospital's energy systems in Slovenia, there was a procedural issue with a payment requested by the contractor, who included the cost of materials and equipment that had been acquired but were not yet installed. The CA spotted the issue and, to prevent any disagreement with the company providing the service, requested the opinion of Transparency International Slovenia to confirm an adequate interpretation of the payment rules. The monitor revised the contract's provisions and agreed with the CA's position. The payment was officially postponed until the materials and equipment were installed, according to the established rules.

Foster project timeliness	*Contributing to the execution of the project according to time needs and the established schedule, avoiding delays and legal challenges, and promoting steady progress until completion.*

The CA in charge of renovating an archaeological site and its museum in Italy was considering a complex contracting strategy to procure the many services needed to guide and inform visitors, including signs and multimedia installations. This would have involved coordinating up to seven contracts with firms to ensure that these had the same visual identity and used the same or compatible materials or formats. This amount of work would increase the chances of delays and prolong the project implementation. Moreover, it increased the risk of negatively impacting the visitors' experience. To simplify the process, ActionAid Italy suggested merging the service contracts into one tender. The CA discussed the strategy with other authorities, which supported the proposal, and ended up following the monitor's recommendation.

Impact cases observed per category in the Integrity Pacts EU pilot

Increase access and participation of citizens	*Allowing beneficiaries and communities to inform and be informed about the contracting project and even contribute to tasks during its development.*

Transparency International Bulgaria designed and launched an online reporting tool to boost citizens' engagement in a project to construct a tunnel. This allowed citizens, especially from nearby communities, to share observations including reports about any related issue and to submit questions. The tool collected several reports on citizens' doubts about the project. Each time one was received, the monitor reached out to the CA, presented the citizen's concern, and gathered relevant information to provide an adequate answer that would later be published within the reporting platform.

Support institutional changes	*Encouraging and generating incentives for adopting rules or practices that improve the authorities' capacities in public contracting and other related areas and that remain after project completion and the IP.*

Transparency International Romania and the Institute for Public Policy commissioned a background check on companies awarded contracts for services to increase land registration. The results showed high risks of conflict of interest. Since this is a specialised market, government officials and professionals are more likely to have ties of varying nature to each other. For instance, some directors or staff had worked in local cadastres before moving to the private sector. Based on the findings, the monitors proposed a series of measures to prevent any undue influence during the implementation of contracts. They also provided training for cadastre offices to improve their understanding of the risks involved. This effort contributed to raising awareness and increasing local authorities' ability to handle these situations and comply with relevant national legislation.

1.4
CAN THE INTEGRITY PACT BE A DRIVER OF BROADER REFORM EFFORTS?

The IP is a tool to safeguard specific public investments, particularly those with a considerable value that face critical risks. However, there are further benefits embedded in IP design and functioning. Aside from its primary function, it can have more far-reaching effects when the parties acknowledge the need to improve public contracting practices, procedures or related regulation and consider the IP as part of such an effort.

First, the IP can inform reform initiatives when it is more than a one-off, limited experience and covers a set of public contracting procedures over time or within the same sector. Recurring implementation allows civil society monitors to spot and assess systemic issues that affect a specific market or a set of projects or authorities. More importantly, it allows monitors to gather evidence to build a case to address these issues. Some monitoring organisations in the Integrity Pacts EU pilot identified issues and engaged with lawmakers or regulators to develop and discuss potential solutions. Others incorporated additional activities into their monitoring to provide training and enhance the specific capacities of authorities and bidders, in areas such as prevention of conflicts of interest or whistleblowing.

Another path to broaden the scope of an IP is by linking it to policy issues that emerge during the public contracting procedure and anticipate the measures that will be relevant to address these issues. If the parties are already aware of them, through the IP agreement, they can propose and consider specific actions that are beneficial to the monitoring and the overall project. Moreover, the IP can provide a supportive space for testing and pushing forward innovative measures that enhance transparency, accountability and participation in public contracting. For instance, the following can be considered.

- **Open data.** Public contracting data should be made available in formats that allow its reuse and analysis to open new paths for engagement, oversight and improvement. Through an IP, specific datasets can be agreed on that will be disclosed as open data,[10] ideally following global publication standards. The IP can showcase their use and value to the monitoring of a public contracting project.

- **Disclosure of assets and interests.** The disclosure of assets and interests is a critical practice to prevent corruption in public contracting and government decision-making. When such information is systematically collected in a country, monitors are encouraged to incorporate it into the monitoring. When the information is reduced or limited to a declaration of absence of conflict of interest, the IP can propose proactive disclosure of more comprehensive information by the authorities.

- **Beneficial ownership.** As the EU moves closer to the systematic collection of beneficial ownership [11] data, it is vital to highlight its value for preventing a broad array of corruption risks within public contracting. When the data are available, IP monitors can encourage authorities to make use of them, to identify conflicts of interests and prevent undue influence. When they are not available, the IP agreement can be used to commit

authorities to collect such data or invite bidders to disclose this information voluntarily.

- **Whistleblowing.** In line with the IP's objectives, granting a safe mechanism of the highest standard for reporting corrupt behaviour is an additional commitment to consider. When there is no whistleblowing mechanism in place, the authorities and the civil society monitor are encouraged to collaborate to develop a policy and set up a channel to receive and investigate reports, at least during the lifespan of the public contracting procedure that is being monitored. If a policy already exists, a revision of its proper functioning can also be linked to the IP.

- **Lobbying and political financing.** To prevent corruption, it is essential to access information on meetings or any other activity carried out by companies, associations, organisations and individuals to influence the authorities in a public contracting procedure. When this information is available, the civil society monitor can review it to prevent a conflict of interest or identify potential undue influence. When it is not available, authorities can agree to collect and provide such information to the monitor, to reinforce impartiality and the fair treatment of all potential bidders. Moreover, lobbying data can be linked to political funding records to prevent a public contracting procedure from being used unlawfully to reward allies.

The IP can play an instrumental role among the broad range of initiatives that aim to improve public contracting systems within the EU and shield them from fraud and corruption. It can also showcase the effects of these initiatives when they are implemented in relevant public investments. As the previous examples show, this stems from the EU's ability to commit parties to adopt practical measures to uphold the law and enhance oversight.

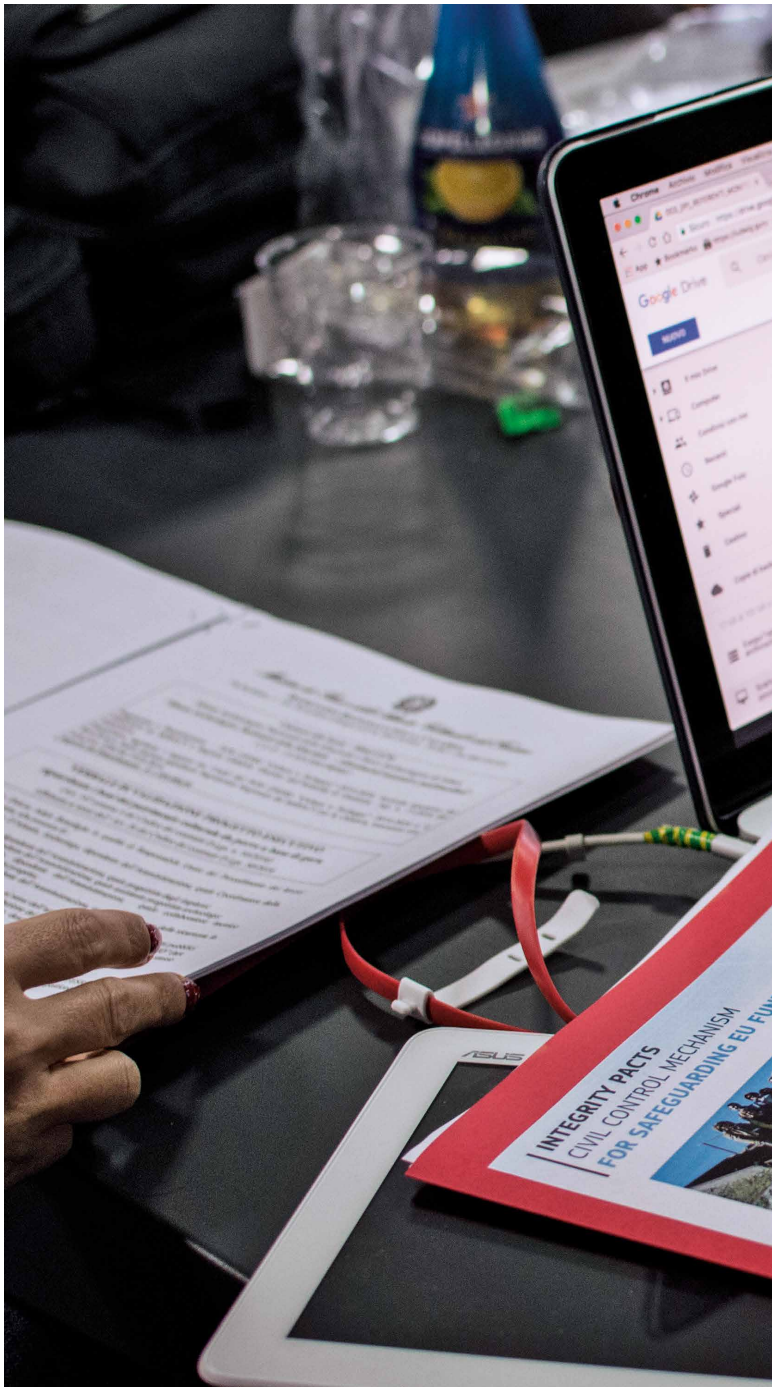


Photo by ActionAid Italia

GUIDE 2

DESIGNING FIT-FOR-PURPOSE INTEGRITY PACTS

Once authorities have acknowledged the value of IPs and decided to integrate them into their strategies or practices to safeguard public contracting projects, they must work closely with advocates and civil society for adequate adoption and implementation. Various aspects must be reviewed and discussed in preparation for deploying the tool and the resources. Based on the experience of the Integrity Pacts EU pilot and the reflection of its partner organisations, the following sections discuss essential aspects for implementing an IP that is adequately equipped to achieve its objectives.

2.1 PAIRING STRATEGIC PUBLIC INVESTMENTS AND INTEGRITY PACTS

The selection of a public contracting project that is subject to an IP is one of the most consequential decisions in the tool's effectiveness. However, the decision is not one-dimensional. A suitable match implies weighing multiple variables and a careful analysis that must be sensitive to the specific context and the surrounding risks and conditions. Proponents and authorities seeking to implement an IP are encouraged to establish direct dialogue and exchange relevant information that bolsters the discussion and the choice of project.

How to identify upcoming public contracting projects

Governments and institutions across the EU operate under established political and administrative cycles to agree on necessary investments and the corresponding allocation of public funds. Investments are shaped by the demand for public services, active policies and political factors such as electoral platforms and campaign promises. Tracking and listing them is the primary way to identify upcoming public investments involving public contracts. To a certain extent, following up these cycles is a continuous task for those proposing an IP.

Under ideal circumstances, when there is enough margin for preparation, various sources can inform the search. Government plans or strategies, budgetary information and other documents contain relevant insights – and even explicit references – on the entities and projects assigned public funds that will lead to contracting procedures. These are often prepared and disclosed by bodies in the executive branch, such as specific ministries or government units. Legislative bodies are involved since they negotiate and approve budgets and their rules for use and disbursement. Since each country or jurisdiction has its own set of rules and time frames, national and local actors who grasp the process and its underlying dynamics must lead the review and analysis.

At EU level, funding and budget allocations also follow set rules and procedures, determined by their corresponding financial instruments and provisions. For instance, following the Common Provisions Regulation, European structural and investment funds (ESIF) are agreed through national partnership agreements and subsequent operational programmes, which can be updated and adjusted during the programming period. The entities that negotiate and manage the available funds on behalf of the Member States also vary from country to country. They often depend on the instrument or policy area. Permanent representations or dedicated ministries or units for EU affairs can be a relevant source of information.

The visibility and openness of established procedures at national and EU level varies in each country. IP proponents must identify and select the most appropriate channels and measures to secure or grant timely access to relevant discussions and information on upcoming public investments to the involved actors. Ideally, they should work closely with all relevant authorities that are interested in setting up an IP. In some instances, authorities disclose information proactively

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or involve beneficiaries and citizens through consultations. When that is not the case, proponents should discuss how to exchange and discuss relevant information among all potential parties to the IP. The availability of any information such as structured data, ideally in an open format, is desired to accelerate its review and analysis.

Emergencies or disasters should not be overlooked when upcoming public contracting projects are identified. During these events, governments turn inevitably to the markets to procure goods or services that address pressing needs. The preparation, award and execution of such contracts often face increased risks of mismanagement, fraud and corruption. The establishment of an IP could help to mitigate such risks, though it is likely to be challenging too.

Aside from the immediate situation, crises lead to future public investments that are worth considering for monitoring. These seek to alleviate the consequences of the emergency or disaster on affected communities or prevent them from happening again.

Transparency International Latvia and COVID-19 public procurement monitoring

At the beginning of the COVID-19 pandemic in 2020, Latvia's Cabinet of Ministers instructed the Ministry of Defence (MoD) to lead a centralised strategy to purchase vital goods to address the health crisis, including personal protection equipment and sanitisers. For achieve this, it set up a working group with 14 participants from government agencies. Concerned about the challenges that this implied, the ministry reached out to Transparency International Latvia to explore how to collaborate in ensuring transparency, making efficient use of public funds and preventing any violation of their own emergency procurement protocol. After several conversations, both parties agreed that the best way to involve TI Latvia would be as an independent observer of the working group, which would grant access to all procurement information and allow TI Latvia to provide recommendations. From 21 April to 15 June 2020, TI Latvia monitored the discussions of the group and ten procurement procedures (six of them from their outset). During this time, the monitor attended relevant meetings and, in some instances, warned about potential risks. Once the state of emergency was over and the working group concluded its mission, TI Latvia prepared and published a public report of its findings. In general terms, TI Latvia "did not observe significant deviations from the procedure specified in the emergency protocol" and reported that most purchases "consistently complied with the developed tender criteria". However, it also noted that three procedures faced issues of non-compliance with the protocol. In addition to these and other findings, TI Latvia also provided a series of recommendations for future procedures. This information is available on the organisation's website.

Source: Delna – TI Latvia, On the Results of Covid-19-Related National Central Procurement Monitoring, (Delna – TI Latvia, 2020). Available at https://delna.lv/lv/2020/08/03/ar-covid-19-saistito-valsts-centralizeto-iepirkumu-uzraudzibas-zinojums/

How to assess relevance and opportunity

Intertwined with the identification of upcoming public contracting projects are questions about the relevance and opportunity of embedding an IP in them. While the IP tool is compatible with a wide range of projects and sectors, it is targeted at public investments exposed to risks that can compromise cost, quality and expected benefits, against the common interest. These risks include corruption, fraud, mismanagement and anti-competitive practices. Moreover, considering the resources necessary for their adequate implementation, IPs are prioritised for projects that hold a strategic value.

It is not easy to determine and assess the associated risks and value of public investments. Since public contracting projects vary widely across sectors and countries, it is hard to find a unique method or formula for this. Instead, these tasks should be approached as an open, collective discussion among the IP proponents and the project's stakeholders, bearing in mind the country's specificities. The group must define at least the information needs and the relevant variables that will drive the analysis.

IP proponents should aim to reduce as much as possible any information gap that prevents the group from fully understanding the project and its origins, the institutions involved, the beneficiaries or communities affected, and the related markets and their operators. Aside from accessing plans and preliminary tender documentation, access to additional information that is not available to the public can be sought. Research and interviews can be carried out with specific stakeholders or experts, or past contracting procedures of a similar nature can be reviewed.

The variables of analysis will be shaped by the circumstances surrounding the candidate projects. They include market conditions, previous contracts and even political cycles and events. The characteristics and shortcomings of the public contracting system[12] in question should also be considered. Specialised reports by civil society organisations, academics or even government institutions can inform the discussion and point out risks and shortcomings that are likely to be observed. For example, the EU Single Market Scoreboard contains a specific set of indicators on the public contracting systems of the 27 Member States that cover competition, transparency and value for money.

Across EU countries, it should be possible to find country-specific reports that provide further details about issues that are frequently observed in their public contracting procedures or policies. These are sometimes produced by oversight bodies, such as supreme audit institutions, parliamentary commissions or specialised organisations and research centres. Media reports, particularly those based on investigative journalism, can highlight critical challenges, behaviour or problems that are often observed in planning, awarding or executing public contracts.

A comparison of the available information and the candidate projects will provide the group with initial considerations and references to determine risks and value. The following points could apply.

- **Public interest.** Contracting projects related to providing basic public services or addressing pressing needs or those connected with campaign promises often gain attention from larger segments of society. As failure to procure the related goods or services can be detrimental to the intended beneficiaries or users, it is

easier to find incentives to prevent any act of corruption, complete the project according to expectations and reinforce overall performance transparency and accountability.

- **Complexity.** Projects with complex designs or in highly technical conditions can face increased risks on multiple fronts. They often imply intricate planning and bidding procedures, which offer more opportunities for undue influence or bid-rigging practices that could hurt competition and fairness. In addition, their implementation is likely to require increased coordination among contractors or authorities. This stage can benefit from additional monitoring to secure adequate, timely execution of the associated contracts.

- **Monetary value.** 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 other factors. There is neither a universally accepted nor an EU-wide threshold below which an IP would not be suitable. Magnitudes should be considered relative to authorities' own budgets or project portfolios. For reference, the average[13] 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.

- **Institutional capacities.** In some instances, public contracting projects can demand resources and skills that are not available to an authority at that time. When that is the case, or when these resources or skills are limited, the risks of taking detrimental decisions are higher. These can potentially undermine the value of the project or increase its cost, among other consequences.

- **Market conditions.** The characteristics and dynamics of markets related to a contracting project can alert about potential issues or challenges. For instance, market analysis could point to niche or specialised markets or illegal behaviour that limit competition. Moreover, the authorities' level of familiarity with the associated markets must be considered, since this will affect their capacity to design competitive bidding procedures that maximise public value.

- **Indications of corruption.** Precedents, attempts or suspicion of corrupt behaviour surrounding a public contracting project or authority (such as bribery, conflict of interests, undue influence or illegal political financing) should be assessed. Corrupt actors are likely to target further projects within the same authority or government sector. Moreover, it is important to review whether a project is linked to a market with operators who donate to campaigns or political parties. Several cases have shown that public contracts are often used as payback for such contributions.

These are just some explanatory variables to provide references and stimulate the proponents' analysis. Others are likely to emerge when the specific characteristics of a public contracting project are discussed. In the end, a combination of these variables will provide the proponents with enough arguments and evidence to discuss and confirm the relevance and opportunity of pairing the project with an integrity pact.

What are the monitoring implications, risks and alternatives?

In parallel to assessing the project's value and risks, civic monitors and public authorities should identify and consider monitoring needs and their implications. The project characteristics will affect how the civil society lead organises its work and structures the monitoring mechanism. Proponents should discuss and address these factors as early as possible, while they gather information about candidate public contracting projects.

The following factors influenced how monitoring was carried out during the implementation of the Integrity Pacts EU project.

- **Project stage** refers to the phase in the development of the contracting procedure in which the IP starts. Ideally, a project will be paired with an IP during the planning stage, when the contracting authority is gathering all relevant information to assess the identified needs and design a contracting project that will meet them. Projects in the pre-tendering stage can be considered since they still offer the opportunity to review the conditions that will define the award and execution of the associated contracts. Those in which the tender has already been published or those at a later stage are not suitable for an IP. In these cases, other alternatives for monitoring could be considered, such as an audit or public evaluation.

- **Estimated length** refers to the total time the contracting procedure is expected to take. Aside from its effect on cost, it could have implications for the commitment and support of the authorities and stakeholders. For instance, the head of a ministry or government unit could be leaving office just months after the project starts. In such cases, the implementers should consider how the IP should be set up and presented, to stress its independence and maintain the authority's support, regardless of the person who replaces the previous supporter.

- **Coverage** refers to the stages that will be monitored through the IP. In line with the previous point, it is inherently tied to the project's length. Although all IPs should consider the implementation phase, their minimum coverage should run from the planning or pre-tendering stages to the signature of the associated contracts. When a contract's execution poses logistical or financial challenges, implementation could be monitored using other methods.

- **Expertise** refers to the knowledge and skills that the independent monitor must secure to perform its role. In most cases, the civil society organisation leading the IP reinforces its monitoring team by bringing in additional technical experts in fields relevant to the contracting procedure. When the project is highly specialised or related to a niche market, finding available experts could take a significant amount of time. Also, the experts' estimated remuneration could be budgeted lower than the market price, which would reduce the probability of finding an expert who is available and has adequate credentials. Implementers are encouraged to reach out to research centres or universities in advance to identify potential experts and obtain relevant information about their experience and cost.

- **Location** refers to the physical space where the execution of the associated contracts will take place. It is a factor that is often observed in infrastructure projects, but it could also be relevant in the provision and delivery of goods and services. The distance will have implications in terms of time and cost for the monitor, even in the planning stage when the technical team might need to visit a site related to the contracting project.

- **Physical proximity** refers to the actual distance between the contracting authority and the monitoring organisation. In line with the previous point, their locations could affect the quality of the collaboration, especially when there are barriers to connectivity. Ideally, the monitoring organisation should be based in the same location or region as the contracting authority. Otherwise, coordination mechanisms, communication channels and schedules should be agreed in advance and revised constantly. Alternatively, a team or representative could temporarily be deployed at the authority's location if the distance is considerable, or the budget for regular travel should be considered.

These factors will have varying implications for the monitoring activities in terms of cost, time, human resources and other aspects. The civil society organisation that is expected to lead the monitoring mechanism will have to compare them against its own capacities and resources. Analysis of these factors will allow implementers to develop precise budgets that secure the financial resources needed to cover the cost of the monitoring. Moreover, it may highlight risks that could undermine the value of the IP – and even compromise its future implementation – if they are not adequately addressed. For example, if resources are not adequately budgeted, monitoring activities could be compromised and the project could end ahead of its completion.

2.2 SETTING UP THE INTEGRITY PACT AND ITS MONITORING MECHANISM

When project selection is discussed, it is vital to lay the foundations for robust monitoring. The integrity pact's main advantage is its capacity to embed an independent monitor who will observe the project's development and provide recommendations to improve or correct any issues that are noticed. The following sections address three fundamental aspects to review and that together establish the monitoring mechanism: the integrity pledge and the monitoring agreement, the selection of the civil society organisation leading it, and its funding.

How to formulate the integrity pledge and monitoring agreement

The IP materialises through a formal agreement between at least the contracting authority and the civil society organisation to monitor one or a set of public contracting procedures. Depending on the project and

the legal and institutional setting, other stakeholders can also join. Among them are other authorities with an oversight role, potential bidders or eventually the bidder that is awarded the contract. Implementers will have to discuss and convene the stakeholders that are relevant to set up a sound, credible IP.

The agreement can be tailored to the legal formalities and provisions of the corresponding jurisdiction and be structured in one or several documents. Regardless of the chosen arrangement, the agreement includes an integrity pledge and a monitoring agreement.

The **integrity pledge** refers to a set of commitments to act according to the law, refrain from any corrupt behaviour, and enhance transparency and integrity through proactive measures. The commitments can be specific to each of the parties. The most relevant ones pertain to the contracting authority and the bidders that will submit a proposal.

The following issues are often addressed in the pledge.

- **Refrain from any form of bribery.** Public officials should not accept or demand any improper benefit, including gifts. Similarly, bidders will not offer or agree to pay any bribes.

- **Refrain from any other illegal or anti-competitive practice.** All participants agree not to participate in any scheme that is deemed illegal or that aims to restrict or suppress competition in their favour. This includes any individual acting on behalf of the signatory.

- **Observe relevant regulation.** The signatories agree to abide by applicable regulation in areas such as access to information, competition, anti-fraud, money laundering and environmental laws, among others. Proponents will have to identify the most relevant legal instruments when they draft the pledge.

- **Observe a code of conduct.** The contracting authority and the bidders will commit to establishing a code of conduct that guides the behaviour of any individual who acts on their behalf. In the case of bidders, it could also contemplate subcontractors.

- **Report any corrupt behaviour.** All parties commit to informing the relevant authorities about any breach of the law or corrupt practice carried out by an individual or entity linked to the public contracting project. This commitment can contemplate establishing a whistleblowing mechanism or policy, or revising existing ones.

- **Proactive disclosure of information.** Depending on the applicable regulation, the pledge can commit specific actors to make certain information available to the public or to the monitoring organisation. This should be justified in terms of accountability or integrity. For example, companies are invited to disclose their ownership structure and identify their beneficial owners as part of their bid submission.

- **Truthful exchange of information.** The signatories commit to always provide true, precise information when requested or as part of the contracting documentation, including the tender credentials, subcontractors and bids.

- **Prevention of conflicts of interests.** All parties – and particularly all the public

officials involved – commit to disclose any private interest that could be perceived to be in conflict with the public interest. Ideally, the pledge should consider specific interests to be declared, rather than just a self-declaration that indicates the absence of a conflict of interest.

- **Involve beneficiaries or affected communities.** Depending on its relevance, the pledge can contemplate engaging communities that are related to the project. The scope of this commitment is defined based on the characteristics of the project and the institutional setting. It could range from broadening access to information to formal participation mechanisms such as consultations or co-creation.

The **monitoring agreement** is designed to define specific conditions and measures that will guide the collaboration between the contracting authority and the civil society organisation leading the monitoring mechanism. The agreement is intended to operationalise certain commitments that are part of the integrity pledge. It should include the following aspects, among others.

- **Access to information and meetings** refers to provisions that secure full access for the monitoring organisation to relevant documents and data, and to all spaces where decisions are made and discussed, such as working meetings with other authorities. Provisions of this kind can establish specific information requests.

- **Confidential or sensitive information** refers to the measures that the monitor will observe to access information that is reserved and not available to the public, such as temporary non-disclosure clauses. These measures should be limited to information that can affect competition and fair treatment, including financial estimates, market studies and bids.

- **Communication channels** refers to the process and means for exchanging information and keeping both parties informed about any project updates. The provisions to be included will vary according to the nature of the project. However, specific points of contact could be established, as well as deadlines and mechanisms to report and address any shortcoming in the collaboration.

- **Public outreach** refers to the measures that the monitor will follow to inform the public and coordinate with the contracting authority for such purposes. The monitor is expected to keep citizens updated about the developments of the project, and to produce periodic reports that provide an independent account and assessment of the actions and decisions in each stage of the contracting procedure.

- **Corruption reports** refers to the measures the monitor will follow to receive and handle any corruption report or be informed about any case received through the formal whistleblowing channels.

- **Termination and withdrawal** refer to the circumstances and shortcomings that would allow the monitor to conclude its role ahead of time and leave the IP, and the process of informing and discussing the decision with the contracting authority and other IP signatories. The circumstances include denied access to critical information or meetings, no response to issues pointed out by the monitor or no reaction to corruption reports.

The monitoring agreement must be public and made available to any interested person.

During the Integrity Pacts EU project, most partner organisations published online the documents that integrate the IP. They can provide examples and guidance to future implementers in the EU. Moreover, Transparency International has produced templates and model agreements to help any authority or organisation that is interested in going forward with an IP. These are available and free of charge on Transparency International's website.[14]

How to identify and choose the monitoring lead

The civil society organisation that acts as a monitor in an IP plays a unique role. It is an external third party granted increased access to observe the behaviour of the authority that seeks to award a government contract and the private entities that aim to provide the required goods or services, and their interactions. As indicated in the previous section, the monitor will be allowed to review relevant documents and data and enter spaces – such as meetings, site visits and other events – where information and decisions about the project and the contract are presented, discussed and made.

The organisation acting as the monitor cannot be a politically affiliated organisation, a business or media actor, or any other for-profit entity. Other aspects relating to capacity and independence should be considered in its selection. For this purpose, its organisational structure, staff composition, operations, internal policies, funding and financial management must be analysed, among other factors.

Regarding capacity, the civil society organisation aiming to lead the monitoring mechanism must be proficient in the following areas.

- **Technical expertise** in public contracting is essential. The organisation should have a robust understanding of the applicable regulation and practical knowledge about issues and shortcomings in the procedures that are followed to plan, award and execute a contract. Additional expertise in related topics, such as public finance or citizens' engagement, are also beneficial.

- **Project management** skills are required due to the wide range of activities involved in the monitoring. Many of them will overlap or happen in parallel, demanding leadership and coordination to secure consistency across the stages. Moreover, since the monitoring activities will be funded, experience and skills in budgeting and financial management will be necessary.

- **Communications and stakeholder management** skills and expertise are also key. On a close and regular basis, the organisation will interact and collaborate with authorities and bidders, pointing out any issues and sharing recommendations. At certain moments, it will also engage with beneficiaries, the media and the public to inform them about the development of the contracting procedure and its findings.

In terms of independence, the implications of the role, the nature of the monitoring tasks and the need to foster trust in the IP and the monitoring organisation itself make it necessary to meet the criteria described below.

- The organisation has a clear public

governance structure, ideally with a clear separation between management and governing bodies (such as a board of directors).

- The names of the individuals participating in the organisation's governing bodies are publicly available. None of them should be public officials in active duty or seeking to be elected for a role in government.

- The governing bodies have specific, formalised rules for their members' appointment, rotation and re-election. The duration of the terms should be limited, particularly for top positions (for example chair or president).

- A set of policies outlining the expected behaviour of members, covering governing bodies and the executive team, is in place (a code of conduct or ethics), as well as channels or mechanisms to report any breach of these (whistleblowing and grievance policies).

- The organisation collects and regularly updates information on the interests of its members – especially those in its governing bodies – and discloses at least a public version of these. It should be possible to verify that none of its members have an interest related to the contracting project to be monitored.

- A specific policy to prevent, identify and manage potential conflicts of interest is established, indicating the person or body responsible for its application.

- Specific procedures for reporting, investigating and handling corruption and fraud cases within the organisation are established and well publicised.

- Reports outlining and describing the organisation's operations, programmes, projects, activities and results are regularly produced and published. They should demonstrate experience and consistency during the time the organisation is active.

- A high degree of transparency marks the organisation's financial management and operations. This includes having appropriate financial controls in place, publishing regular financial reports and using relevant accounting standards. Depending on the organisation's size and capacity, independent audits should be available.

- All funding sources and income are disclosed publicly, ideally indicating each donor's name, type of income (for example, institutional grant, project grant or service contract), and the amount. When donors request anonymity, the type and amount must be publicly available. Ideally, the organisation should have a diverse pool of donors and sources of income.

If present, these characteristics or practices should indicate a considerable degree of independence and provide a solid basis for objective, fair oversight during the monitoring of public contracting projects. Most of this information is likely to be found on the organisation's website, or in certain cases on request. When there are doubts about the suitability of the organisation, the opinion of a third party – such as another civil society group – can be requested.

How to fund the monitoring mechanism

The availability of financial resources to cover the costs of the monitoring activities grants the IP a unique strength. It mainly allows the civil society organisation leading the oversight mechanism to incorporate specialised expertise during specific moments or events in the public contracting procedure and to provide grounded recommendations.

Since the IP is intended to protect taxpayers' money, the most common recurring funding source is public resources. They should be provided ideally by a public entity managing or overseeing the behaviour of the contracting authority, such as an auditing body, central procurement body or finance ministry. For instance, in the new EU programming period, national and regional authorities can include integrity pacts in their plans or operational programmes and set aside funds for the monitoring mechanism.

In certain instances, it could be argued that receiving funds directly from an authority might undermine the monitor's role. While the concerns are relevant, the emphasis should be placed on the rules and conditions associated with the disbursement of the public funds allocated for the IP. Therefore, it is critical that the agreement is disclosed to the public in advance to show that it grants independence and allows for objective observation and collaboration.

Institutions financing public investments, such as multilateral banks or supranational bodies, can also cover the costs of the monitoring mechanism and enhance the protection of their own resources. This was the case in the Integrity Pacts EU project, in which the European Commission provided the necessary resources. In some instances, they can also encourage their fund recipients to consider the IP cost within their loans or grant budgets or offer to cover a certain percentage.

Another alternative is to turn to private foundations or donors. When this is considered, the main challenge will be to ensure that there are no links to companies or investments in the markets associated with the contracting project or specific political groups in the country. In this case, full transparency about the funding agreement should contribute to ensuring independence and impartiality.

Although it has not been tested, some of the Integrity Pacts EU partner organisations discussed the possibility of seeking crowdfunding in the future. For specific public contracts with tangible effects on people's daily life, citizens could be interested in donating an amount. If an organisation explores this path, it will be important to consider specific rules such as limiting the maximum amount of the donation, allowing only contributions from individuals, registering their names and only accepting electronic transfers. Additionally, organisations could seek a commitment from private foundations to match citizens' funds, to achieve the funding goal faster.

Depending on each jurisdiction, the funding agreement will take the most appropriate legal form. Irrespective of where the funds originate, they must be disclosed publicly to bring credibility to the integrity pact and secure the monitors' impartiality and independence to the public.

2.3 PREPARING THE MONITORING MECHANISM

As there is more clarity on the contracting project and the IP, including its scope and the available resources, the civil society organisation that will lead the monitoring mechanism must reflect on how to organise its upcoming work and transition smoothly into its monitoring role. At this stage, the monitor will have to consider how to implement its agreement with the relevant authorities, and anticipate specific information needs and measures to inform and involve citizens. Together, these aspects will shape the monitor's strategy and plans to fulfil its role.

Which information and data will be key?

Information and data are the most crucial inputs for a monitoring mechanism under an IP. It is against them that the independent monitor will compare and review the needs, plans, rationale and decisions linked to the contracting procedure. For this reason, it is essential to have a clear perspective on the pieces of information that will be produced and required, the point at which they will be necessary, and the formats that would allow their agile reuse and analysis.

The purpose or use given to the available information will vary according to the project. However, during an IP, the monitor could often:

- assess and identify corruption or mismanagement risks
- verify the rationale of the project's decisions against the stated goals and needs
- detect conflicts of interest and prevent favouritism and undue influence
- identify collusion schemes, anti-competitive behaviours or fraud attempts by bidders
- track progress, payments and adherence to the contract's provisions

When it plans the monitoring activities, the monitoring lead will have to map and review the status of public contracting data or information focusing on three core aspects.

1. Availability. This refers to the information's existence, verifying that it is produced or gathered by a specific entity. Legal provisions could indicate or mandate the authorities or systems that are responsible for holding this information.
2. Accessibility. This refers to the way information is obtained and its format. For instance, information could be publicly available free of charge, behind a paywall or through an access to information request. It could refer to its format being digital – ideally machine-readable and as open data – or available only physically.
3. Quality. This refers to the way data or information are compiled and structured, and their completeness, in line with the purpose and specifications. While this aspect is likely to be more subjective, the monitoring lead should anticipate its relevance and value for the upcoming tasks and analysis.

The value of open data for monitoring purposes

Open data refers to information that is made available for free and in formats that are machine-readable and can be reused for any purpose. When authorities make public contracting information available in these formats, they can further strengthen the potential of integrity pacts and make monitoring more agile and inclusive. For example, available open data allows faster analysis and the development of visualisations and tools that bring beneficiaries closer to the contracting project and authorities. Some integrity pacts have also fostered greater government transparency through complementary commitments to provide and disclose previously unavailable contracting data in open formats, following national or global standards such as the Open Contracting Data Standard (OCDS).

Based on experience from the Integrity Pacts EU project, the following table provides a reference list of data, documents and information that a monitor is likely to need during the process to undertake a thorough analysis and monitoring. The presumed availability of these sources is given. Monitors are encouraged to review this list and expand it. In parallel, they should anticipate potential challenges to timely access to information in the right formats and consider adequate measures such as the following.

- Prepare drafts of access to information requests that would need to be submitted at a specific time.
- Detect information gaps and consider supplementary data collection efforts or alternative sources.
- Detect shortcomings in data use or quality and identify expertise or resources for cleansing and improvement.

Potential information needs of an IP's monitoring mechanism

Stage	Information unit	Presumed availability	
		Public	Reserved
Planning	*Needs assessment*	•	
	Project plan	•	
	Feasibility study		•
	Market study		•
	Public hearing / consultation records	•	
	Budgetary data		•
Pre-tendering	*Procedure timeline*		•
	Preliminary technical specifications		•
	Preliminary evaluation criteria		•
	Financial estimates		•
	Draft contract		•
	Officials' declarations of interest		•
Tendering	*Tender notice*	•	
	Procurement method rationale		•
	Technical specifications	•	
	Evaluation criteria	•	
	Requests for clarification	•	
	Clarifications	•	
	Amendments to tender documentation	•	
	Debarments	•	

Potential information needs of an IP's monitoring mechanism

Stage	Information unit	Presumed availability	
		Public	Reserved
Awarding	*Bids*		•
	Identity and legal documents of bidders		•
	Assessment of bids		•
	Evaluation committee's minutes		•
	Contract award notice	•	
	Signed contract	•	
	Complaints and appeals		•
Implementation	*Progress reports*	•	
	Contract amendment proposals		•
	Contract amendments	•	
	Payments (financial progress)	•	
	Complaints and disputes		•

Some units of information could be considered reserved legally due to their content or negative effects if they are disclosed publicly earlier. Access to this reserved information must be ensured through the IP's monitoring agreement. Specific provisions can be added, indicating the information to be shared with the monitor, the approximate time or moment, its format and the conditions for granting its confidentiality. If there is reluctance to share information of this kind, non-disclosure clauses or agreements could be considered under certain conditions. These clauses should be temporary and limited to specific information. Moreover, the authorities should be encouraged to proactively publish as much contracting documentation as possible, always in line with the applicable regulation.

Aside from the quality of the information and data – reflected in the level of detail and accuracy – timeliness is an essential attribute linked to the effectiveness of the monitoring mechanism. The available information will be of little use if it is accessed by the monitor late in relation to the stage of the public contracting procedure in which it is relevant. Lacking certain documents or databases hinders the monitor's capacities. It can also affect perceptions of the tool's value and the public's trust in it. Preventive measures to address challenges of this nature are:

- Indicate in the monitoring agreement the expected time when access to critical information will be granted to the monitor.
- Include deadlines and procedural rules for the request and exchange of information. For example, requests should be answered no later than 24 hours.
- Establish specific points of contact with each authority or party to the agreement for the request and exchange of information.

If a party to the IP fails to provide any relevant information that they hold, the monitor should consider raising this issue directly with the parties. If, after discussion, the monitor still faces issues with full timely access to information, withdrawing from the IP is a valid option. However, this measure is only suggested once it has been confirmed that there is no ground for collaboration and complying with the IP's agreements.

How to bring citizens into the monitoring

Citizen engagement is a central, permanent attribute of an IP. Informing and involving citizens, particularly direct beneficiaries, is one of the most powerful incentives for abiding by the law and fostering collaboration among the parties. When it is systematically integrated into the monitoring process, it can contribute to boosting trust in the project and the authorities' work.

As more clarity and information becomes available about the public contracting project to be monitored, implementers – and particularly the monitoring lead – will have to foresee the role citizens will play and estimate the resources necessary for meaningful engagement. The levels of awareness, ownership and support of the project should inform the project's selection and provide initial insights on the activities citizens would be willing to participate in and the expected level of communication.

That said, to effectively plan for citizen engagement in the framework of the IP, implementers will have to reflect on a wide range of activities, contingent upon the project's characteristics and visibility. The baseline for any plan starts with accessible,

regular, inclusive communication. The monitor must consider means of informing citizens, without intermediaries, during the entire process. Some of the options are given below.

- A dedicated webpage or microsite where news and updates are published frequently. This should contain all relevant information about the public contracting project and the IP, including the relevant agreements and monitoring reports.

- Explanatory materials about the project, the public contracting procedure and the IP. These should follow principles of communication for non-specialised audiences. The use of multimedia formats, such as videos or infographics, is encouraged.

- Use of social media channels that are popular in the communities to post information about project developments and invite entities to engage in monitoring, when appropriate.

From this point, implementers can consider a wide range of strategies or activities to engage citizens, as long as their implications in terms of cost, knowledge and resources are adequately assessed. This last aspect is particularly relevant in relation to the implementers and especially to the target communities and individuals. Throughout the pilot, it was observed that citizens were more likely to participate when their contributions were perceived as clear and meaningful, and their involvement did not represent a burden, either in terms of skills, tools, money or time. In consequence, planning citizen engagement strategies in further depth requires considering multiple factors that can either boost or hinder participation. Some are given below.

- Immediacy of benefits. This refers to how close and soon the beneficiaries are expected to see the value of the public contracting project in their daily lives. Contracts linked to public services are likely to incentivise citizen participation. Conversely, it will be harder to involve citizens in monitoring activities for projects with indirect or delayed benefits for them.

- Project visibility. This refers to the levels of coverage and attention given to the project by the public. It can often be assessed by media presence or other indicators. When visibility is high, direct beneficiaries and citizens will be more likely to engage and devote more resources (such as time) to their participation.

- Technical complexity. This refers to the level of specialisation of the public contracting project. Those with far more complexity will pose barriers for meaningful engagement, since participating would imply possessing certain knowledge or skills.

- Public perceptions. They refer to the public's attitudes, opinions or sentiments about the project, ranging from support to opposition, and the reputation or trust in the authorities.

- Legal framework. In certain instances, public contracting regulation or related instruments mandate the involvement of beneficiaries or affected communities (for example, public consultations and hearings, among others). When these provisions are in place, citizens are more likely to engage, and authorities might even direct specific resources to activities of this kind.

According to the project and the context, these and other factors will have to be considered when the implementer identifies how and when to involve citizens in the monitoring. The implementer's goal should be to secure meaningful engagement that allows citizens to provide relevant input for the project monitoring, and to keep high incentives and low barriers when doing so. During the pilot, some of the following activities were carried out by the project's partners:

- dialogues between authorities and beneficiaries or affected communities to foster the exchange of relevant information or collect feedback or concerns
- establishment of secure and reliable platforms or mechanisms to channel concerns, complaints or reports about potential issues (such as bribery)
- training to enhance citizens' capacity to analyse tender documents and identify irregularities and red flags throughout the project
- onsite visits where the corresponding authorities and contractors present progress in the implementation of the project

To ensure that planned activities are carried out, they should also be foreseen as part of the commitments of the monitoring agreement. Moreover, they should be considered in estimates of the scope and budget of the IP. In some cases, they could require the monitoring team to incorporate specialised or dedicated staff to ensure their adequate implementation and follow-up.

An internal review of the pilot found that monitoring partners with dedicated staff for citizen engagement activities achieved better results in this area than those that shared the task among staff who had responsibility in other areas such as project coordination or monitoring activities. This aspect should be considered when the IP team is assembled. One or more external experts should be hired or the implementer should partner with another organisation that has relevant experience.

Finally, proximity and familiarity with the affected communities should be considered. Concerns about the legitimacy of the monitoring lead could emerge if this aspect is not adequately addressed. Therefore, communication should be established with relevant citizens' groups or leaders to explain the goals, scope and limitations of the IP as soon as possible.

How to set up a robust management and monitoring team

In line with the principles and objectives of an IP, its management should follow good practices and strive for transparency and professionalism. Aspects ranging from project and financial management to coordination and record keeping will have to be considered by the civil society group leading the monitoring mechanism. Therefore, the chosen organisation must have implemented similar or related projects in the past, have a core administrative structure and assess at least the following aspects of its capacities.

- Sourcing expertise and human resources. This refers to the capacity to identify and bring together the team that will carry out the monitoring mandate. Different kinds of knowledge and skills will be needed,

aside from those relevant to the technical aspects of the public contracting project.

- Project management. This refers to a set of practices and skills for coordinating the multiple tasks involved, in line with the schedule and plans, and managing the relationships with the individuals and entities that participate in the IP.

- Budgeting. This refers to a set of skills and expertise in managing the available resources and organising them to meet expectations, in an ordered and methodical way.

An adequate team must be assembled whose composition will vary depending on the magnitude and complexity of the public contracting project to be monitored. However, the expertise required to successfully implement an integrity pact is likely to include the following points as a minimum.

- Expertise in public contracting. Profiles of this kind should be knowledgeable about the policies, procedures and regulation that guide the contracting procedure. They help the monitoring lead navigate the IP's core institutional and legal aspects. The tasks they are involved in include examining the draft tender documentation, assessing the bids that are submitted, and overall observing the strict adherence of the procedure to the law.

- Technical expertise. Profiles of this kind are contingent on the public contracting project. They will review aspects about its design, specifications and cost, and analyse whether they are in line with the stated needs, scientific evidence and practices, and market conditions. They are critical to assess that the project is guided by public interest and technical criteria, rather than political or personal preferences.

- Policy and advocacy. This refers to staff focused on identifying shortcomings in the policies, regulation and practices followed by the authorities and companies in the public contracting procedure that is being monitored, in close collaboration with the technical experts. They will assess how in line the procedure is with the principles and objectives mandated by law and foresee paths for reform.

- Communications. This refers to staff focused on developing adequate materials to disseminate the findings and results of the monitoring process to different audiences, mainly the public, through various channels. They will also focus on managing relationships with media outlets and journalists, following the public contracting procedure, market or authority.

- High-level leadership. This refers to senior staff with relevant experience to manage the relationships of the monitoring organisation with the IP stakeholders, and particularly with the contracting authorities. Moreover, they are responsible for coordinating the team's work, tracking its findings, performance and impact, and making sure that the monitoring strategy meets the expected goals.

- Management. This refers to staff responsible for the daily operations of the IP, including the agenda, finance and human resources. They are tasked with ensuring that the tasks are undertaken in line with the IP's needs and according to the foreseen plans, or that the plans are adjusted to meet the needs.

Often, a civil society organisation will not have the full necessary expertise and skills available in-house. Whenever capacity gaps are identified, the monitoring organisation can reinforce the team by collaborating with external consultants, such as legal advisors or specific thematic experts, at certain moments or stages of the contracting procedure. Due to the uncertainty of the amount of work that will be required from them, these consultants should be hired through framework agreements that specify a range of minimum and maximum hours or days and the agreed rate. This could allow for quick reactions when there are changes or unforeseen developments in the monitored projects. A second possibility is to team with another civil society organisation that has supplementary skills or expertise.

When it comes to project management skills, it must be a priority to keep track and accurate records of the development of the public contracting project and the monitoring budget and activities. Aside from documenting any interaction or meeting with authorities and bidders, strong emphasis must be placed on analysis, findings and recommendations. During the pilot project, partner organisations kept logs, chronicles and databases to document issues, irregularities and recommendations shared with authorities. These records must be up to date throughout the life cycle of the integrity pact and should be updated at least at the end of each procurement stage, since they will inform the monitoring reports that will be available for the public.

Regarding budgeting, most costs of an IP (around 90% in the case the Integrity Pacts EU pilot project) are likely to be human resources. However, other items should be considered such as:

- travel, particularly when the project being monitored is linked to a physical space and visits to the implementation site are necessary
- logistics, linked to activities like running events and training
- communications, including but not limited to preparing, publishing and promoting reports, running campaigns or managing social media platforms

Unexpected developments or delays outside the control of the monitor can result in considerable fluctuations in activity and cost throughout the contracting period. The monitor should carefully consider how to manage these fluctuations, and plan activities that support monitoring that can be done independently of the time frame of the project.

In the Integrity Pacts EU project, it is estimated that the costs of implementing an integrity pact ranged from €70,000 to €250,000, excluding programmatic activities to communicate and support the overall impact of the pilot. 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. These costs cover the monitoring of all procurement stages, from pre-tendering to the implementation of services. The estimates are in line with what was observed with integrity pacts in other contexts and in the existing literature.

Photo by ActionAid Italia

GUIDE 3

ENSURING EFFECTIVE MONITORING

Once the foundations of an IP have been laid and all the conditions are in place, the independent civil society organisation participating in the IP will play a catalytic role through its monitoring work. If it works accurately and precisely, its observation, findings and recommendations will foster collaboration among the stakeholders to meet the IP's commitments. It could also improve the outcomes of the public contracting project that is being monitored and boost transparency and public trust. To help civil society groups meet their role, the following section provides guidance on key milestones and decision-making points to uphold good governance principles and keep the process free of undue influence throughout the public contracting cycle.

The public contracting cycle

Planning

The CA is tasked with gathering relevant information to design the public contracting procedure and meet the identified need.

Pre-tendering

The CA develops the specifications, criteria and relevant documentation that will guide the award of the contract and its implementation.

Tendering

The CA receives proposals from entities interested in being awarded the contract and providing the goods or services that are required.

Award

The CA reviews the proposals that are received, selects the entity that will provide the required goods and services and formalises the agreement.

Implementation

The contract is executed, and the required goods or services are delivered by the entity awarded the contract.

3.1 PLANNING

Introduction

In the procurement planning phase, the contracting authority (CA) assesses its needs, identifies the subject of the contract (the goods, works or services to be procured), analyses the market to understand whether it can deliver what is needed, carries out or commissions economic, social or environmental feasibility studies, and consults the expected beneficiaries or affected communities. In this phase, the overall task of the monitor is to verify that the process is comprehensive, transparent, open to public debate and free from undue influence.

Monitors first have to obtain access to and review background documentation on the project, including needs' assessments and feasibility studies, market analysis reports, and consultation processes with beneficiaries and affected communities. When they review these documents, monitors must verify that there is adequate justification for all the decisions made and no critical information gaps that could increase the risk of a faulty tender or contract. When such gaps are identified, monitors must discuss corrective actions or supplementary activities with the CA.

Monitors should be aware that this phase is often not well defined (for example, discussions on major infrastructure projects may take months or years) and several steps might overlap with pre-tendering activities. Monitors' involvement and cooperation with the CA therein might also depend on whether the IP agreement is already in place or not. Considering the significant risks of mistakes and undue influence at this stage,[15] monitors should adopt a flexible approach in their activities and not wait until the IP agreement is signed to begin their work.

Monitors must consider actions to deal with political pressure. Recommendations on corrective actions or complementary activities might cause delays or generate tensions with the CA, and monitors should be ready to advance sound technical arguments to back them up. Monitors must also take steps to mitigate conflict of interests and prevent undue influence by vetting the interest and asset declarations of the public officials and decision-makers involved in the procurement project.

At this stage of the process, monitors should get ready for the public announcement of the IP. This important step is expected to attract public interest and can involve some communication challenges. Monitors will have to identify target audiences among the media, civil society and other stakeholder groups and anticipate their need for background information about the IP. To facilitate this task, monitors should set up a dedicated webpage on the IP with detailed information about the project, news and updates, access to relevant documents, and channels or mechanisms for citizens to report irregularities.

Getting access to background documentation

As the first step in their activities, monitors must seek access to all the important background documentation about the contracting project to understand its rationale and ensure that it aligns with the public

interest. This documentation should include, as a minimum, information on the project's goals and objectives and their alignment with government policies and strategies, needs' assessment and definition of the subject matter of the contract (the specific goods, works or services to be procured), feasibility studies, market analysis and consultations with expected beneficiaries or affected communities.[16]

Monitors should prepare a checklist of documents and identify those that are already available in the public domain and those that need to be requested from the CA. To facilitate this process, they could send a questionnaire to the CA, asking them to provide an overview of all the steps taken to plan the procurement so far, along with related documentation and instructions on how to access it. This will allow monitors to verify the comprehensiveness of the process, identify potential complementary activities and assess the level of information disclosure around it.

In some situations – most likely when the IP agreement is not yet in place – the CA might refuse to share certain information with monitors because it deems that this breaches confidentiality rules. In such cases, monitors should thoroughly check the relevant legislation to clarify whether the CA has the right to withhold the information on such grounds and verify whether it is possible to obtain documents in redacted form.[17] In the former case, to reassure that the information will not be disclosed, they could seek to sign an ad-hoc non-disclosure agreement or suggest the use of encrypted information exchange and storage technologies.

Project profile, needs' assessments and feasibility studies

Documentation related to the project profile usually includes information on the project goals and objectives, needs' assessments, the subject matter of the contract, planned activities and the estimated budget.[18] Monitors should verify that this information is in line with government policies and investment plans, and with the overall budget allocated to the CA. Blatant discrepancies might be a red flag for corruption or conflicts of interest. If identified, the monitor should ask the CA to provide additional clarifications and, if necessary, justifications. It may even alert oversight authorities about its suspicions.

Monitors, ideally with the support of technical experts, should verify that the subject matter of the contract responds adequately to the identified needs. The monitor should understand that the need is not the goods, works or services to be procured (for example, a tramline), but rather the function that is missing to achieve a specific objective (for example, to improve mobility in a district).[19] As such, monitors should check whether the CA has duly assessed other options for addressing the need and ask for a clear justification when this has not been done.

In the case of infrastructure works or high-value public investments, monitors should review the quality of potential economic, social and environmental feasibility studies. They should examine the project's expected impacts, costs, benefits and risks.[20] As these studies are often commissioned by independent external experts or specialised consultancy firms, monitors will have to check that these actors do not have any links to the CA, that they

were selected ideally through an open, fair and transparent process, and that the final outputs are available to the public for scrutiny.

Market analysis

Among the planning documents, the market analysis is a vital piece of information to review. The CA carries it out to gain knowledge of available solutions to satisfy the identified needs, learn about the relevant market, and better define the subject matter and estimated contract value.[21] When the market analysis is not done properly (or not at all), it might lead to deficient or inadequate tendering documentation. In turn, this increases the risk that no economic operators will be interested in submitting bids or be able to fulfil the contract.

CAs primarily analyse the market by following one or more of these methods:

- a review of previous contracting procedures for similar goods, works or services
- market (desk-based) research to identify active economic operators and to understand the type and degree of competition in the relevant market and the pricing policies
- market consultation to collect data directly from potential bidders on a wide range of aspects such as cost, specifications, production capacity, time, alternatives and other relevant conditions[22]

Monitors should verify the overall comprehensiveness of the market analysis process and the quality of the documentation produced.[23] Market analyses carried out following only one of the above methods might indicate insufficient planning. If this is the case, monitors should seek to understand whether the CA has a valid justification for this (for example, limited internal capacity or recurrent procurement). If the CA's budget allows it and the costs are not disproportionate, the monitor should suggest complementary actions, such as additional research or support from external experts like independent business analysts or consultancy firms.

Monitors must verify that market consultations follow the fundamental principles of transparency, equal treatment and non-discrimination. They should check that the CA has not excluded possible economic operators as identified in the market research, and that any information shared with a company as a result of the consultation is made available to other participating companies. If the CA fails to take these actions, monitors may suggest corrective action or even report such behaviour to the competition authority if it violates relevant regulations.

Engagement of beneficiaries and affected communities

In procurement planning, proper consideration of the views and concerns of expected beneficiaries and affected communities is crucial to avoid problems at later stages. It is not unusual for infrastructure projects or those providing services directly to citizens to be slowed down or interrupted due to protests by communities. Protests may be due to the project's negative impact on the environment or quality of life in certain locations. To address this issue, monitors should encourage the CA to reach out to citizens as early as possible in the process, in line with its mandate.

If IPs start when the planning phase is ongoing, monitors have an opportunity to improve the process by assessing the adequateness of potential initiatives planned by the CA, such as public consultations, multi-stakeholder meetings and hearings. They can provide advice to improve the planning or even actively participate in the organisation. Even with IPs that start when the planning phase is concluded, monitors should evaluate the quality of community involvement activities and, if these are deemed insufficient, warn about potential risks or recommend additional ones.

To foster citizen engagement in the planning process, monitors can encourage the CA to create (or improve, if it already exists) a dedicated project webpage featuring news, updates and announcements of upcoming opportunities for public consultations. Such a channel could also work as a unique access point for project-related documentation, tools for swiftly requesting additional information through provisions of the Right to Information regulation, and spaces for citizens to submit their comments and suggestions, voice their concerns and report irregularities.

Preventing undue influence and conflict of interest (part 1)

In some cases, officials involved in a procurement project, or those who have the power to influence it, have financial, economic or other personal interests that could compromise their impartiality or independence. Monitors must take steps to identify and address such situations and prevent undue influence in the process.

For this purpose, monitors should seek to obtain full access to the interest and asset declarations of all public officials linked to the procurement project and take note of all relevant information that could lead to the identification of conflicts of interest. They can, for example, look into ownership of shares in commercial companies by public officials and, in some cases, their family members. If conflicts of interest are identified, monitors should discuss measures for preventing undue influence with the head of the CA and, if needed, alert oversight authorities.

For an additional layer of security, monitors could encourage the CA to require anyone taking part in the selection, evaluation or award of the contract to sign a declaration of absence of conflict of interest. This should include a full definition of conflict of interest in line with the provisions of the EU Procurement Directive and EU Financial Regulation, a statement confirming that the official has no conflict of interest, and a statement that s/he will report a conflict of interest as soon as it occurs.[24] Although conflicts of interest may remain hidden, a signed declaration will make it easier to take disciplinary action if they emerge or are detected later.

Interest and asset declarations by government officials in the EU

Interest and asset declaration systems, which mandate national public officials to periodically submit information about their private interests, income, assets and liabilities, can play a central role in promoting transparency, accountability and integrity in the public sector. They also act as a fundamental link in the broader anti-corruption chain. In the context of an IP, they are an essential tool for monitors to identify and address any conflicts of interest of public officials involved in the procurement and prevent undue influence. There are three main types of declaration systems:

- systems focused on detecting conflict of interest, which typically require disclosing, amongst other things, positions held outside of office (for example, in commercial companies, civil society organisations and professional bodies), and sources of income
- systems focused on detecting illicit enrichment, which aim to monitor the wealth of public officials over time, and typically require disclosure of information on movable and immovable assets, income, stocks, securities and liabilities
- hybrid systems that combine elements of both of the types above [25]

Government policies, administrative capacities, and interest and asset declaration systems vary greatly across EU countries depending on the national context and corruption risks. Monitors must therefore get acquainted with relevant national regulations and learn which public officials must make declarations, the type and scope of information to be collected, public access to that information, the agency in charge of managing the system and so on.[26] If such regulations do not exist, the monitor could consider asking for ad-hoc declarations as a measure of last resort.

Communication and public engagement: announcing the integrity pact

Once everything is set for the signature of the IP, monitors should take steps to anticipate stakeholders' communication needs and establish appropriate channels (such as webpages, social media and newsletters) to address them, considering the available tools and resources. At this stage, one of the main communication-related decisions concerns the public announcement of the IP. This is an important step that will likely attract significant public interest and communication challenges, especially when the IP is applied to politically contentious projects.

Media, civil society organisations and other stakeholders must be informed about the IP well ahead of its formal announcement. This will mitigate risks of misunderstandings by the media in reporting on the subject and help find potential allies. To identify journalists writing about topics related to the procurement project and civil society organisations or associations with expertise in the relevant field, monitors could scan specialised magazines, business-oriented journals and mainstream news outlets. In addition, monitors could look for investigative journalism outlets that could provide support in unveiling potential corruption in the monitored procurement.

Monitors should compile a database with contact information to keep track of all relevant actors. After that, monitors should aim to establish a communication line with the identified stakeholders, for example, through targeted messaging, press releases, newsletters and meetings. Messages and communication material should be tailored to various stakeholders and provide as many clarifications as possible on the IP, its purpose, and the possibilities of engagement in the process.

To mitigate risks related to reliance on intermediaries in communication about the IP, by the time of its announcement, monitors must have set up a dedicated webpage or microsite with relevant information on the project. The page should feature, as a minimum, a description of the IP and explanation of its purposes, information on the project's objectives and activities, spaces for regular updates, and relevant documents. Ideally, user-friendly features such as interactive timelines, FAQ sections and communication/reporting channels would be included (see box below).

An additional option to ensure greater outreach and awareness among stakeholders on signature of the IP is to organise a public event with media coverage or a press conference. This way, monitors can reach out to multiple actors at the same time and increase the chances of the IP finding a place in the public debate. The organisation of such an event might involve communication challenges, such as ill-informed questions or claims, but these should not constitute a problem if the monitor has prepared clear comprehensive materials on the IP beforehand.

Integrity Pacts EU partners' dedicated websites or webpages

In the Integrity Pacts EU project, all 15 partners across 11 countries established online channels to communicate about the IP and their monitoring activities. Nine partners set up a dedicated website, two partners created a microsite within their website, and four partners activated a specific section on their website. The structure and style of the sites varied but they had some common features, including:

- a section on explaining what an IP is, including the signed IP agreements
- a description of the public contracting project and related procurement procedures
- channels for citizens to engage in the process
- a space for news and updates concerning the IP and the monitored project, including monitoring reports

Some partners' websites had useful additional features, such as interactive timelines showing the milestones of the IP and reporting channels for citizens to warn about irregularities or voice their concerns about the project.

See the endnotes for a full list of the web addresses.[27]

3.2 PRE-TENDERING

Introduction

In the pre-tendering stage, the CA prepares for the tender documentation and launch. It defines the contracting structure and the tender structure, selects the procurement method, develops a timeline to execute the entire process, makes financial estimates on the contract value, develops technical specifications and evaluation criteria, and prepares the draft contract to be signed with the winning bidder, among other tasks. This is a crucial phase that will shape how the rest of the procurement will take place.

In this phase, the monitor has three tasks:

- Verify that the content of tender documents is consistent, constitutes a coherent (and realistic) whole, and is in line with the planning phase results.
- Verify that the CA's methods for making decisions on the tender structure and procurement procedure, estimating the contract value and drafting other documents conform to relevant national legislation and EU procurement directives.
- Verify that technical specifications and other tender documents are not tailored to favour some bidders and are in line with the findings of the market analysis.

Monitors and independent technical experts can play a significant role in fostering high-quality tender documents. However, good timing of access to and review of the draft documentation is essential for this to happen. Monitors should ideally have access to the documents while the CA prepares them and have enough time to review them with experts, provide recommendations, and ensure that these are duly considered before the CA makes a final decision. The IP agreement should specify the timing to prevent disagreements.

Monitors must establish a good relationship with the CA and obtain its cooperation to be involved in discussions about procurement documents from the very beginning. To facilitate this, monitors should get acquainted with the CA's working procedures (for example, CA officers might need their superiors' approval before modifying documents, which might take time) and make sure that the timing of monitoring activities is as close as possible to the CA's internal timetable, to avoid potential conflicts.

In some cases, such as large-scale infrastructure works, tender documentation might be very extensive and difficult to verify. While recruiting the right experts is a precondition for monitors to do a good job, seeking the support of public bodies is also important. Procurement oversight authorities and competition regulators can provide additional guarantees on whether the preparation of tender documents and their content is in line with relevant regulatory provisions.

In parallel to these initial stages of the procurement, which in many cases can overlap with the planning phase, monitors must start preparing their monitoring reports. Through them, they communicate progress about the procurement project, call for corrective actions on observed irregularities and provide suggestions to overcome identified challenges. The upcoming sections on monitoring reports provide an overview of their key elements and recommendations concerning the timing of preparation and publication.

Contracting strategy

Setting up the contracting strategy generally implies defining the tender structure and selecting the procurement method. Both of these critical aspects have an effect on the procurement's competition and value for money. Monitors have to verify that decisions about the strategy are in line with market conditions and that CA's methodology and logical reasoning conform to guidelines and standards set out in national and EU regulation.

The CA must define the tender structure in line with the procurement's features and subject matter and decide whether to have just one contract or divide it into lots of lower value. Monitors have to verify such decisions by following the general principle that each contract or lot must constitute a functional whole.[28] Monitors must critically evaluate the impact of lots on the effectiveness and efficiency of the procurement project and its objectives.[29]

The selection of the procurement method should aim to maximise public value and achieve the project's goals, while fostering competition among prospective bidders. The EU Procurement Directive outlines five main procedures (open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue and direct award) and the criteria and specific situations according to which they should be selected.[30]

The choice of procurement method is not straightforward. In the process, the CA needs to weigh a wide range of factors, such as the administrative capacity, internal deadlines, competition in the relevant market, potential implications of operational tasks on the administrative burden, competition, risk of complaints and delays, and other aspects. Monitors should verify that the selected procedure makes sense with the observed market characteristics, and that the methodology employed by the CA is in line with national and EU guidelines.[31]

Timeline

Once it has decided on the contracting strategy, the CA must establish a timeline for the entire process, including deadlines for submitting tenders, the contract award and the execution of works or the delivery of supplies and services. Monitors should pay particular attention to this decision. Unrealistic or unduly manipulated timelines might lead to delays and errors in subsequent phases of the procurement. When this is part of a larger EU-funded project involving other contracts, it can have negative repercussions, leading to the loss of EU funds.

Monitors must check that the time frame for submitting bids complies with the minimum set out in national legislation and the EU Procurement Directive. Any exceptions must not be abused to improperly shorten the process. Unreasonably short tender preparation periods violate the principle of fair treatment and might limit the number and quality of tenders. They can also be associated with corruption, for example, when a timeline is manipulated to reduce the time frame but only one bidder is told in advance in exchange for a bribe or an undue benefit.

Monitors must check that the time frame set for the implementation of the contract reflects actual market conditions, considers expected production times for goods (including logistics, delivery and quality assessments) or execution times for works and services, which might also vary among economic operators. To further increase effectiveness and accountability, monitors should verify that the CA has

identified risks of delay and mitigation plans, taking into account – when possible – lessons learnt from similar procurement procedures.

To foster accountability and improve the chances of successful implementation, monitors should encourage the CA to devise a system for recording key responsibilities and decisions along the way, supplement the timeline with detailed milestones that help track progress, and make this information available to the public. This will provide incentives for the CA to develop a realistic timeline and stick to it, and will help monitors to fine-tune their monitoring record system.

Contract value: budget and financial estimates

The contract value refers to the maximum budget available for economic operators. It usually accounts for estimates of the total remuneration of contractors and their staff and other operational costs such as material, transport and logistics.[32] With the support of technical experts, such as financial analysts, actuaries or accounting professionals, monitors must verify whether the estimates are genuinely based on up-to-date market information and experience from similar contracts, including those in other EU countries when appropriate.

Monitors should be aware of the complexities that can be encountered in estimating the budget, such as potential volatility of prices or issues related to lack of labour force supply. To ensure that the CA has done its best in this process and has not exploited ambiguities to unduly manipulate the budget, monitors should ask for documentation that clearly outlines the source and methods used for the estimate and verify its comprehensiveness. The absence or flimsiness of such documentation increases the chances of overprice or failure and could be a red flag for corruption.

Monitors should be aware of the risks of a CA engaging in contract splitting, which refers to the practice of dividing contracts that should normally constitute a whole into several contracts of lower value to avoid the application of procurement rules and publication requirements. As indicated in the EU Procurement Directive, this practice is forbidden across the EU.[33] If monitors suspect that this is happening, they should ask the CA to provide clear justification for dividing the contract in a certain way. If the justification is not satisfactory, the monitors must inform the relevant oversight authority.

Technical specifications and evaluation criteria

Technical specifications and evaluation criteria provide detailed information about the scope and characteristics of the goods, works or services required from economic operators and the characteristics of the entities that will provide them. They are arguably the most critical elements of the procurement documents package, given that they have direct implications on the outcome of the procurement and therefore on the decision to allocate public resources. They are at high risk of manipulation and undue influence by unscrupulous actors.

When monitors review the technical specifications, their main task is to verify that they are not tailored to favour certain firms or entities and do not mention any specific brands without justification. They should rely on the support of relevant technical and business experts in this process. Monitors

should ensure that specifications are in line with the market research findings. When there is still uncertainty over technical details, they can recommend that CA carries out additional consultations with economic operators.

Monitors must check that the CA has come up with adequate, observable, measurable and objective evaluation criteria. This step in the procurement process is prone to error or manipulation for corruption purposes. The European Commission outlines three types of criteria corresponding to steps in the selection process and to different objectives.[34]

- **Exclusion grounds** are circumstances in which an economic operator must be excluded from the procurement procedure. Monitors must check that the grounds include past infringements of the law, corruption, conflict of interest and exertion of undue influence.

- **Selection criteria** determine the suitability of tenderers to carry out the contract. Monitors must verify that the criteria do not favour select firms and that the methodology is clear, transparent and publicly available in the documents.

- **Award criteria** determine which tenderer has developed the most advantageous proposal and should be awarded the contract. Monitors must verify that the criteria explicitly state the approach used (such as the lowest price, lowest cost and best price-quality ratio), and that the scoring system is described in the document.

In some cases, for example unprecedented procurements with technically complex subject matters, monitors should reach out to procurement oversight or competition authorities that can help to verify that the documentation format is in line with relevant regulations and does not breach competition rules. Before engaging these actors, monitors must carry out their own checks and have a clear justification for requesting formal reviews. Purposeless requests for intervention might waste time and money for the CA and oversight bodies and result in negative publicity for the monitor.

Draft contract

The draft contract is a detailed legal document that provides prospective contractors with information about the arrangements governing the implementation of the procurement. According to the European Commission, well-drafted contracts should include, as a minimum, provisions on applicable regulation, responsibilities of the parties, subject matter, price, delays, misconduct (including corruption), liability, dispute resolution mechanisms, revision clauses, intellectual property rights, contract duration and confidentiality obligations.[35]

Monitors should first verify the comprehensiveness of the contract. To avoid the potential omission of essential elements, monitors can check whether any standardised contract templates already exist (usually issued by the CA's legal department or by the national procurement body) and recommend that the CA use them. When monitors review the content and wording of the draft, they should pay particular attention to the following aspects.

- The contract should contain a precise description of the goods, services or works and specify which party assumes the responsibilities and risks.

- The contract should contain clear, precise and unequivocal clauses for reviewing its provisions, including the scope and nature of possible modifications and specific conditions under which they may be applied.

- The contract should cover many implementation variables and scenarios and define mechanisms to address unforeseen aspects or disputes. To ensure the viability of such mechanisms, monitors could recommend that the CA runs a simulation exercise.

- The contract duration – the period from the signature of the contract until the acceptance of the final product or deliverables – should be realistic and aligned with the project timeline.

Communication and public engagement: monitoring reports (part 1)

Writing and publishing monitoring reports is vital to the success of an IP project. They represent one of the monitors' main outputs and are essential to communicate the progress and completion of monitoring activities to the public. They also provide the means by which monitors can flag potential challenges, irregularities and bad practices in the procurement procedure, add incentives for corrective actions, and advocate for changes in government policies and practices to address these problems.

While the specific structure of monitoring reports can be tailored according to the project's needs and characteristics, they should all be based on objective analysis backed by solid evidence to support the claims that are made. They should include at least the following elements (see the monitoring report template in the annex to this report):

- a summary of the project developments in the corresponding stage

- key monitoring activities and associated observations, to be included at the beginning of each report so that it is easier for the reader to follow and understand

- a summary of recommendations provided to, and information requested from the CA, along with the monitors' opinion on their fulfilment

- any suspected or observed irregularity, including corrupt or collusive behaviour by the CA, bidders and other actors involved in the procurement, with a description of the context

Monitors should prepare the reports as they advance in their monitoring work, collecting opinions from the CA and bidders on potential irregularities or challenges. Letting the CA and bidders know how issues will be communicated if they are not addressed provides incentives for corrective actions. The frequency of publication is contingent upon the characteristics of the project and the scope of the monitoring activities. However, monitors are generally advised to publish detailed reports as soon as the relevant stage of the procurement is completed. Further details on report preparation and publication are provided in a following section.

3.3 TENDERING

Introduction

In the tendering stage, the CA publishes and disseminates the tender. Then interested bidders have a set amount of time to prepare and submit their proposal and ask the CA for clarifications. Monitors have to ascertain that the CA makes its best effort in advertising the tender and provides full and unrestricted access to the document package. Monitors must verify that any additional clarification is provided equally to all bidders, and review the adequacy, correct functioning and reliability of submission channels.

From a communication and public engagement point of view, the main task of monitors is to check that the tender launch is effective and dissemination adequate to boost the chances of satisfactory participation in the procurement. This involves supporting the CA in planning activities by sharing relevant contacts, encouraging the organisation of a public launch of the tender, setting up contingency plans in case participation is insufficient, and pushing for focused dissemination meetings with bidders and affected communities to address specific project-related concerns.

Tender publication and dissemination

Advertising the contract consists of making the procurement procedure public so that all interested economic operators can participate and submit proposals. Monitors should ensure that the CA complies with the procurement publication requirements set out by national legislation and EU directives and that it provides clear instructions to prevent bidders from making mistakes. Access to procurement documents must be unrestricted and the tender must be adequately disseminated among market participants.

Monitors should verify that all essential documents are duly prepared and published by the CA, including the contract notice – which includes the type of contract, the tender procedure, the instructions and the time frame for the submission of the tenders – and technical specifications, evaluation criteria and a draft contract.[36] Monitors should ensure that notices for contracts whose estimated value is above the EU Procurement Directive's thresholds are published in the Open Journal of the European Union[37] and that they contain all the relevant data fields.

Furthermore, monitors should check that the CA provides full unrestricted access to all relevant documents. As a regular practice in the EU and in some countries mandated by law, all documents are made available free of charge on the CA website or an e-procurement platform.[38] In line with the EU Single Market policy, at least the contract notice is expected to be in English to foster cross-border competition.[39] If the documentation cannot be published electronically, monitors should verify that the CA communicates the physical location, procedure and times for access.

Monitors must check that the CA makes genuine efforts to publicise the tender as much as possible, especially when the market analysis results have indicated that there is a low number of economic operators in the subject area. Monitors should set expectations about tender participation. If the expectations are not met, they should be ready to encourage the CA to undertake

complementary advertising activities such as a public launch of the procurement and publication of the tender in national newspapers and specialised magazines.

Clarifications and tender amendments

Once the tender has been announced, bidders may ask for clarification on the tender documentation. Monitors must seek to access all submitted clarification requests and verify that the CA provides answers to all bidders, not just those who made the request. If this is not done, monitors should call for corrective action or alert the competition authority. The Open Contracting Partnership recommends that all questions and answers are made public but without disclosing the names of those who asked the questions.[40]

In some cases, bidder comments or requests for clarifications might lead the CA to modify the tender documents. Monitors should verify that all changes are documented, justified, published and proactively disseminated. If the modifications imply an additional burden for bidders to adjust their proposals, the deadline for submission should be extended accordingly. When proposals for a deadline extension come from monitors, they should be backed by solid technical arguments to face potential resistance from the CA.

Bid submission

Before the bid submission period begins, monitors must verify that the CA has established channels, protocols or systems to receive proposals and documentation and that they work adequately. Monitors should check that the CA has put in place measures to secure the safety and confidentiality of the tenders received, such as secure physical storage or technical functionalities that prevent the opening of proposals before an established date in the case of e-submission.

Monitors should verify that the CA applies good practices in ensuring that all tenders are compliant with the instructions provided in the published contract notice, including the packaging, structure and number of copies. Risks of submission errors can be mitigated by providing clear, detailed instructions. For any cases that still occur, monitors should verify that the CA responds to non-compliant tenders with a timely rejection that includes an explanation and that it duly records all such decisions.

Communication and public engagement: public outreach for the announcement of the tender

Monitors must be well-prepared for public outreach on the launch of the tender, as this important step has direct consequences for tender participation and public scrutiny. Their work entails supporting the CA as it plans the publication, laying out plans for additional advertising activities if participation by bidders is not satisfactory, and alerting the media, affected communities and the public about the event.

Monitors must be ready to swiftly reach out to potential bidders, journalists and affected communities. At this stage, they should have created a contact list of relevant stakeholders

to inform about the monitored procurement, including business associations, national newspapers, specialised magazines and active civil society organisations. The list should be shared with the CA to foster comprehensive planning of procurement advertising, including contingency plans for unsatisfactory participation.

If relevant, to boost participation, monitors can encourage the CA to organise a public launch of the tender. This can help the CA better communicate the instructions and requirements for participation and address questions or concerns from the media and citizens. It creates an opportunity to provide further details on the IP's role and functioning. To foster wider dissemination, monitors could look out for relevant upcoming public events, such as business forums or procurement conferences, and recommend that the CA presents the project there.

The CA could organise supplementary meetings with potential bidders and affected communities. Compared to a public event, these offer more opportunities for deeper, frank discussions among actors about challenges affecting the project or technical details. Monitors can use such occasions to explain how the IP works in the tendering phase and provide instructions for reporting irregularities. Such engagement might be critical in large investment projects that are subject to intense public debate.

3.4 AWARDING

Introduction

In the awarding stage, the body chosen to carry out the evaluation (often known as the "evaluation committee") reviews and analyses the bids, selects the winner of the procurement (or declares the tender void in exceptional circumstances) and announces the award of the contract. After that, if there are no complaints or appeals, it proceeds to formalise the contract with the successful bidder and asks for additional evidence of compliance with the requirements and negotiating contract details before the signature. Monitors must ascertain that this process is objective and that modifications to the contract do not alter its essential components.

As this is the stage in which the contract is assigned to a specific economic operator, it is one of the most vulnerable to corruption, favouritism and undue influence risks. Monitors have to verify that the composition of the evaluation committee is in line with regulations. They must carry out a fair amount of investigative work to achieve this. They need to cross-check information on bidders with public datasets and information to ascertain they do not have any ties with the CA or the committee and they must vet the proposals to identify possible signs of collusion and anti-competitive behaviour.

For monitors to effectively fulfil their role, they need timely, unfettered access to the bid proposals. They should be fully involved in the work of the evaluation committee as independent observers. While specific provisions in the IP's agreement can guarantee this action, in some cases there

might be legal barriers preventing it. It is assumed that monitors will be aware of this when they set up the IP and will have alternative plans to monitor the process through other means.

Preventing undue influence and conflict of interest (part 2)

Once the bid proposals have been submitted, the monitors can focus on detecting any conflict of interest and preventing undue influence in the evaluation committee's assessment and award of the public contract. As a first step, monitors must verify that the committee's composition is adequate and in line with relevant national regulations. As these regulations sometimes allow for the participation of external actors such as technical experts and advisors, monitors have to check that their background, role or voting powers do not risk undermining the impartiality of the decisions that are made.

By this stage, monitors should have checked the interest and asset declarations of all public officials and actors involved in the procurement, including those sitting on the evaluation committee if this was formed earlier on, and any other person with decision-making powers over the project. Now, they should turn their attention to information on participating bidders and check relevant sources of information to identify any undisclosed links between them and public officials.

A first, basic source of information (if used by the CA in the monitored procedure) is the European Single Procurement Document – a self-declaration form submitted by bidders with information proving that they can participate in a procurement, including absence of conflict of interest.[41] More importantly, monitors should thoroughly check relevant public datasets, including:

- company and beneficial ownership registers, which can be used to review information on a bidding company's owners and directors, ownership structure, economic standing and potential red flags (see the box below)
- databases on political parties' finances and member lists, which can be used to look into political ties among bidding companies' officers, public officials and other actors involved in the award
- lobbying registers, which can be used to scrutinise potential attempts by bidders or lobbyists hired by them to influence decision-making by, for example, meeting with politicians and CA officials

Often, these datasets are not available, swiftly accessible or easy to explore. Monitors should check availability well in advance to avoid slowing down their work in the contract award stage. They should identify items of information for which they would need to file an official Right to Information request. Monitors could also consider working with investigative journalists, whose expertise can facilitate the verification process and increase the chances of detecting undisclosed links.

Beneficial ownership transparency in the EU and public contracting

Beneficial ownership information refers to identification of the natural persons who ultimately own or control a legal entity. It includes, as a minimum, name, date of birth, nationality, residence and ways in which ownership or control is exercised (including shares and voting rights). This information is essential to prevent corruption in public contracting. It can be used to verify potential stakes or ownership links by public officials (or their relatives) in companies in markets linked to the public contracting procedure. Bidding companies or beneficial owners based in tax havens could also be deemed suspicious.

EU Directive 2018/843 (also known as the 5th Anti-Money Laundering Directive)[42] mandated Member States to collect and make this information publicly available through dedicated registers by January 2020. However, the directive leaves to national policy-makers the definition of requirements for accessibility to this information and its format. A recent report by Transparency International shows that this has led to serious problems of accessibility and data quality in many Member States, such as paywalls, strict identification requirements and data in a format that cannot easily be used for analysis (for example scanned PDFs).[43]

Monitors should get acquainted with relevant regulations on beneficial ownership in their country, and plan countermeasures to overcome accessibility barriers, for example by using IP funds to purchase the information or recruiting data wranglers or analysts to handle complicated formats and check links among individuals and entities.

Identifying and addressing anti-competitive behaviour

Along with checks for conflicts of interests, monitors must take steps to identify any indications of potential anti-competitive behaviour in the form of collusive tendering or submission of suspicious information, such as excessive underestimation of costs and prices. Early in the process, monitors should look into past cases of similar procurement procedures or in relevant markets, taking note of the companies involved and the techniques used. Once they have access to bid proposals, they should independently vet them and check for red flags.

Collusive tendering occurs when bidders conspire to eliminate competition so that they can raise the prices of procured goods and services to increase their profits. It is an illegal practice that can be investigated and sanctioned under competition laws.[44] The OECD has outlined the characteristics and red flags of the main techniques of collusive bidding (complementary bidding, bid suppression, bid rotation and market allocation).[45] If monitors observe or suspect that these practices are taking place, they should immediately alert the evaluation committee and the competition authority.

Requesting a formal inquiry from the competition authority into suspected collusion is an effective way for monitors to contribute to a clean procurement procedure. However, given that such inquiries might imply putting the procedure on hold or generating conflicts with the CA, monitors' suspicions must be reasonable and backed by sufficient evidence to avoid wasting time and resources. To mitigate the risks of this happening, the monitoring team should seek opportunities to train on the detection of collusive behaviour before or while the IP is implemented and discuss potential signs as soon as they are spotted.

Another very common type of anti-competitive behaviour is lowering the bid price to get an advantage over competitors, with the hope of raising it again in the contract negotiation phase.[46] This risk is mitigated if the CA has included clear clauses on the scope of potential modifications. However, abnormally low tenders should always raise doubts. The monitoring organisation should check that the CA follows up on this and requires tenderers to clarify the reasons for low bids.

Bids assessment

During bid assessment, the monitors' main task is to proactively verify that the evaluation committee complies with what was specified in the tender documentation, in line with the rules and methods set out in national and EU regulations. These rules apply to the often three-step process of excluding unsuitable bidders, selecting qualified ones and awarding the contract to the best bidder according to the pre-established ranking methodology.

Monitors should first check whether the evaluation committee has overlooked any conditions for exclusion by proactively reviewing information or evidence on past corruptive behaviours or infringement of laws, among other factors. Then the monitors, with the help of public contracting specialists, must ensure that the scoring was objective and consistent among different evaluators and that it was carried out based only on the information contained in the tenders.

When allowed by relevant regulations, the evaluation committee might request clarifications from bidders about their

proposal. The risk of this happening often stems from unclear instructions and can be mitigated by monitors checking documentation in the pre-tendering stage. When the same mistake relates to all bids, monitors must verify that the CA follows the principle of fair treatment, equally requests corrections from all bidders and records their answers in writing.

Bid assessment might involve online and offline communication among the committee members to jointly analyse and discuss each proposal and reach joint decisions. Monitors must be involved in the entire process as early as possible and granted full access to the proceedings, for instance through read-only access to the e-procurement platforms used by officials. While the IP agreement should duly address this aspect, monitors must be ready to use alternative measures if legal barriers prevent them from participating in the evaluation process.

Award announcement, complaints and appeals

Once the evaluation committee has decided on the award of the contract, the CA must notify all tenderers about the outcome. It must provide detailed information about the award decision, including scoring and final ranking in line with the evaluation criteria. Monitors should verify that the CA provides adequate information to the bidders and the general public by disclosing documentation about the assessment results and providing losing bidders with justifications that are comprehensive enough for them to understand the results.

After the CA has communicated the results, a standstill period, which usually lasts ten working days, must pass before the contract is finalised with the winner.[47] This allows losing bidders that might not be satisfied with the results to submit complaints to contest the decision, call for a suspension of the tender or bring the CA to court to redress the outcome. In such cases, monitors must verify that the CA handles such complaints objectively and impartially and provides additional information when necessary. Monitors could also consider giving their opinion.

Contract preparation, signature and publication

Once the standstill period is over, or while it is ongoing, the CA prepares the contract with the successful bidder. In most cases, the bidder will be asked to provide additional documentation and evidence to ascertain that it complies with selection and award criteria and that all claims made in the proposal are genuine. Monitors should verify that the CA does not, willingly or unwillingly, overlook important evidence that might raise doubts about the quality of the proposal.

In this stage, it is not uncommon for the CA to negotiate and adjust certain contract details with the winning bidder, including procurement deliverables, the time frame for execution and other aspects. Monitors have to closely follow such negotiations and ensure that they do not lead to substantial changes in any essential component of the contract, such as price, subject matter, completion period or terms of payment, as this might require cancellation of the entire procedure. They must verify that there are no substantial changes to the rights and responsibilities of the parties.

According to EU regulation, within 30 days from the signature of the contract by both parties, the CA has to publish a contract award notice

(CAN) on the national procurement portal – and in the Tenders Electronic Daily (TED) in cases of procurements governed by EU directives – so that all interested stakeholders and the general public are informed of the results of the procurement procedure. While this seems a relatively straightforward step, the European Commission reports of several cases in which CAs have failed to publish these documents, and monitors should make sure that this does not happen.[48]

Communication and public engagement: monitoring reports (part 2)

The publication and dissemination of monitoring reports is a delicate step in the monitor's work. It can have significant consequences for the impact of the IP in upholding good governance in the monitored project and fostering systemic change in the country's procurement system. As such, monitors should adequately prepare by discussing contentious findings with the CA and bidders in advance. They must ensure that the publication of the report attracts sufficient attention and mitigates the risk of reputational damage due to content.

When monitoring reports contain information about suspected or observed irregularities and corruption, the risk that their publication will be met with harsh criticism or legal challenge is higher. As mentioned earlier, to mitigate the risk of this happening, monitors should discuss these points with CA and bidders well before publication and seek to agree on their wording. If the divergence of opinions is unbridgeable, this should be recognised in the report and the interpretation of the facts left to the reader.

At times, monitoring reports might have to be published while investigations or inquiries concerning suspicious activities are ongoing. In such cases, any confidential information that monitors might have access to due to the IP must remain classified until the process is completed, in compliance with relevant laws in the country. To mitigate the risk of breaching the law, monitors are advised to consult with legal advisors or law enforcement authorities in charge of the process.

Concerning the format of publication, monitors can prepare two versions of the report:

- a technical version, which can include specialised terminology about the subject of the contract, procurement procedures and operational documentation for procurement practitioners and experts in the relevant field of the public contract

- a shorter, simplified version written in plain language for decision-makers, media, civil society and the general public

To maximise the impact, monitors should publish the report as soon as possible (within two weeks) after the relevant procurement stage is over. This increases the chances of a more focused public debate and might even prompt swift corrective actions by the CA or intervention by oversight authorities. In addition to disseminating the report through all available communication channels, monitors are advised to organise a public event to discuss the report's findings, recommendations and observations.

3.5 IMPLEMENTATION

Introduction

In the implementation phase, the CA plans the key milestones for contract execution. It agrees with the contractor on practical arrangements governing the process, monitors the delivery of the goods, work or service according to contractual provisions, and often discusses potential contract amendments to address issues that become evident only on implementation.

Monitors must adequately prepare to verify that the execution of the contract and its milestones is in line with the expected results. This entails carrying out a corruption risk assessment on the subject area, reviewing progress reports and undertaking physical checks to ascertain that they correspond to reality, monitoring payments and other financial flows related to the project, assessing the admissibility of potential amendments to the contract and making sure that they are made publicly available.

Trusted collaboration with the CA is essential in this stage. Monitors must plan and carry out their verification activities in concert with those already designed by the CA (such as quality assessments and financial audits) and check that they are adequate and carried out by independent actors. On conclusion of the contract, monitors will have to discuss achievements and lessons learned from the project and the implementation of the IP in discussions with the CA and through awareness-raising activities.

Milestones and contract execution planning

Once the contract has been signed, monitors should prepare to review its implementation. This entails checking the adequateness of the contract execution plan agreed by the CA and the contractor, developing a method to follow its milestones and setting up a system of record-keeping to track elements such as progress reports, interim reviews, issuing of invoices and payments, contract amendments, potential issues arising during contract implementation and actions taken by the parties to address them.

A precondition for adequate preparation and subsequent monitoring is the monitors' full involvement in post-signature discussions between the CA and the contractor about practical arrangements (such as the time frame for submission of reports and the method of payments). The monitor must also be involved in communication flows during contract execution, which may include e-mail exchanges and online and in-person meetings. This aspect should be addressed in the IP agreement through provisions specifying how the monitor will participate.

A trusted relationship with the CA is essential in this stage of procurement. It is in the interest of both parties to ensure that contract execution is not compromised by corruption or unethical activities and that affected communities' concerns are raised and addressed. To foster positive cooperation, monitors should plan their verification activities in coordination with those planned by the CA. They should look at the controls that are already in place and seek not to duplicate them if they are adequate.

Progress reports and contract execution verification

As contract implementation advances, monitors must verify that the execution of the work proceeds according to the plans established by the CA and that the concerns of beneficiaries and affected communities are adequately addressed. Progress reports are the basic documents that allow this. The IP agreement should contain provisions that grant monitors access to these reports in a timely manner – ideally at the same time as the CA – to allow for review and prompt recommendations on corrective actions.

Monitors should be prepared to physically verify contract execution. Working with specialists and anti-corruption experts, they should identify risk areas for corruption or fraud in relation to the subject matter and define methods to check for their occurrence. Monitors should consider that this is not meant to replace potential mechanisms for verification and quality assessment set up by the CA. Instead, it is designed to complement the CA's mechanisms, with a focus on corruption prevention, including verification of the mechanisms' adequateness and that the actors in charge of operating them are qualified and independent.

Due to their complexity, infrastructure projects are particularly susceptible to corruption and irregularities. Therefore, it is especially important to carry out onsite visits with anti-corruption experts and, when possible, with representatives of affected communities. Onsite visits must be agreed in advance and organised in coordination with the CA, considering the pre-established arrangements for onsite verification and quality assessment.

Monitors should agree with the CA on the necessity of random independent checks to prevent cover-up of irregularities by the contractor. Ideally, these issues should be addressed through specific clauses in the IP agreement.

Payments

During contract execution, the CA issues payments to the contractor based on specific evidence, such as progress reports and approval by quality assessment experts. Monitors must ascertain the regularity of these financial flows, verify their compliance with contract provisions, review the comprehensiveness of the information submitted and report suspicious activity. Timely access to financial information is a precondition for such activities, and it should be adequately provided for in the IP agreement.

Monitors will have to coordinate financial review activities with those planned by the CA, verify that they are adequate and seek to understand if and how they can be complemented. For example, if the CA already requires periodic audits for the project and the monitors have concluded that the audits will be carried out by an independent qualified actor, they may decide not to carry out an in-depth review of the overall financial information for the project, but rather focus on the financial flows that are most at risk of corruption.

Unscrupulous contractors might issue invoices for non-existent activities or low-quality deliverables. The risk can be mitigated by physically checking the deliverables or carrying out visits to the worksite (see the previous section).

Contract amendments

The need for contract amendments during implementation should be minimised with well-designed contracts and clear technical specifications. However, there might still be specific circumstances in which they are required. Monitors must verify that all such modifications are adequately justified, in line with relevant regulations, and that they do not alter the fundamentals of the contract.

Monitors must be informed well in advance about any discussions on contract modifications between the CA and the contractor. They must have guaranteed access – ideally through provisions in the IP agreement – so that they can review modifications independently with the support of technical experts. If such amendments are admissible, monitors should ensure that they are reported and published in the national procurement portal or other contract publication platforms.

Completion

Once the CA has formally accepted the final deliveries and has paid the related invoices, the public contract can be closed. When monitors review this final step, they should encourage the CA to draw conclusions and identify key takeaways, which should be recorded. To make this process more effective, monitors might encourage the CA to organise a closure meeting with all the interested parties to assess performance, communicate the results, reflect on mistakes and develop recommendations for future contracts.

Communication and public engagement: beyond the integrity pact

On conclusion of the integrity pact, monitors should undertake activities to encourage policy and institutional reform based on the reports, recommendations and findings collected during the process. To facilitate this, monitors should wrap up all the informational material produced during implementation of the IP and provide a summary of the entire project in a public report to be disseminated among government authorities, the private sector, affected communities, the media and the general public.

The public report and any communication initiatives about project results are instrumental in encouraging systemic reforms in the public contracting system of a country. Monitors should check whether the government has effectively acted on these findings and keep looking for opportunities for future IPs. Systematic civic monitoring of public procurement and citizen engagement to protect public resources, especially when it is supported by the government, is a desirable outcome for society.

ENDNOTES

1 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (Article 18).

2 Not all of them lead to the awarding of contracts, due to being paused, postponed or cancelled.

3 European Commission website, Policy, Public procurement, Context. Available at: https://ec.europa.eu/info/policies/public-procurement_en

4 European Parliamentary Research Service, RAND Europe, *The Cost of Non-Europe in the Area of Organised Crime and Corruption*, (RAND Europe, 2016). Available at: https://www.rand.org/pubs/research_reports/RR1483.html

5 European Anti-Fraud Office, *31st Annual Report on the protection of the European Union's financial interests – Fight against fraud – 2019*, (European Anti-Fraud Office, 2020). Available at: https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports_en

6 Sanchez A., "The Role of Procurement", in Allen R., Hemming R., and Potter B.H. (eds.), The International Handbook of Public Financial Management (Palgrave Macmillan, 2013).

7 Twenty-one out of twenty-seven EU Member States are members of the OGP.

8 Diário da República, *Resolução do Conselho de Ministros no. 37/2021*, (Diário da República, 6 April 2021). Available at: https://dre.pt/application/conteudo/160893669

9 Agência para a Modernização Administrativa, *II Plano de Ação Nacional de Administração Aberta, Plano de Ação 2021–2023*, (Agência para a Modernização Administrativa, 2021). Available at: www.opengovpartnership.org/wp-content/uploads/2021/09/Portugal_Action-Plan_2021-2023_PT.pdf

10 As defined by the International Open Data Charter (ODC), open data is digital data that is made available with the technical and legal characteristics necessary for it to be freely used, reused and redistributed by anyone, anytime, anywhere.

11 Beneficial owner is the person who ultimately owns or controls a company. More information here: https://eur-lex.europa.eu/legal-content/en/LSU/?uri=CELEX%3A32015L0849#keyterm_E0003. Data relating to beneficial ownership may include details to identify individual owners; a breakdown of shareholdings; the voting rights attached to different share classes, etc.

12 By public contracting system we refer to the set of rules, processes, practices, technologies and authorities that determine how public entities plan, award and execute contracts.

13 Calculated median based on the budget estimates of each contracting project that was monitored.

14 https://www.transparency.org/en/tool-integrity-pacts

15 Transparency International Anti-Corruption Helpdesk, "Public Procurement Planning and Corruption", (Transparency International Anti-Corruption Helpdesk, 2015).

16 See *Public procurement guidance for practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds* (European Commission, 2018) and *Mythbusting confidentiality in public procurement* (Open Contracting Partnership, 2019), for a more detailed overview of the documents pertaining to this phase.

17 See *Mythbusting confidentiality in public procurement* (Open Contracting Partnership, 2019) for a better understanding of the application of confidentiality rules to procurement documents and common misconceptions related to them.

18 Transparency International, *Model Monitoring Agreement and Integrity Pact for Infrastructure – An implementation guide for civil society organisations*, (Transparency International, 2018).

19 European Commission, *Public procurement guidance for practitioners on avoiding the most common errors in projects funded by the*

European Structural and Investment Funds, (European Commission, 2018).

20 Transparency International, *Model Monitoring Agreement and Integrity Pact for Infrastructure – An implementation guide for civil society organisations*, (Transparency International, 2018).

21 European Commission, *Public procurement guidance for practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds*, (European Commission, 2018).

22 Ibid.

23 The OECD has developed a comprehensive methodology for market analysis, including a standard template for a market analysis report. Monitors are advised to get acquainted with this resource to better understand the procedure and ensure that it is carried out in line with international standards.

24 European Commission, *Public procurement guidance for practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds*, (European Commission, 2018). Specifically, see Article 24 of the EU Procurement Directive (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024) and Article 61 of the EU Financial Regulation (https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021XC0409(01)&rid=4). For further details on the interpretation and application of the rules, see the EU Commission Notice Guidance on the avoidance and management of conflicts of interest under the Financial Regulation (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2021.121.01.0001.01.ENG).

25 Stolen Asset Recovery Initiative, *Getting the full picture on public officials – a how-to guide for effective financial disclosure*, (Stolen Asset Recovery Initiative, 2016).

26 The European Public Accountability Mechanisms (EuroPAM) website by the European Research Centre for Anti-Corruption and State-Building (ERCAS) provides a comprehensive overview of regulatory frameworks on public officials' interest and asset declarations across Europe – http://europam.eu/

27 TI Bulgaria – https://integrity.transparency.bg/en/; TI Greece – https://integritypact.gr/en/to-symfono-akeraiotitas/to-symfono-akeraiotitas-stin-ellada/; TI Italy, Amapola, Action Aid (Italy) – https://monitorappalti.it/; Delna (Latvia) – https://delna.lv/lv/intergritates_pakts_2016/; Stefan Batory Foundation (Poland) – https://paktuczciwosci.pl/; TI Portugal – https://pactodeintegridade.transparencia.pt/home/; TI Romania – www.pactedeintegritate.ro/ro; Romanian Academic Society – www.romaniacurata.ro/contracte-curate/en/; Institute for Public Policy (Romania) – www.ipp.ro/pactele-de-integritate/; TI Hungary – https://transparency.hu/en/kozszektor/kozbeszerzes/integritasi-megallapodas/; TI Lithuania – www.transparency.lt/saziningumo-susitarimai/; TI Slovenia – https://pakt.transparency.si/; TI Czech Republic – www.transparency.cz/projekty/pakty-integrity/

28 European Commission, *Public procurement guidance for practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds*, (European Commission, 2018).

29 The Action Aid Italia case study outlined on p. 7 of this report provides an excellent example of how a monitor can make a positive contribution to this aspect.

30 For example, competitive dialogue should be chosen when it is impossible to draft technical specifications beforehand, and direct award in situations of emergency. See

Public procurement guidance for practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds (European Commission, 2018) for a detailed overview of procurement procedures and details on which operational tasks they entail.

31 See *Public procurement guidance for practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds* (European Commission, 2018) for a detailed overview of decision-making trees associated with each procurement procedure, including all the criteria to be considered and logical steps to be taken.

32 European Commission, P*ublic procurement guidance for practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds*, (European Commission, 2018).

33 Ibid.

34 Ibid.

35 Ibid.

36 Ibid.

37 Official Journal of the European Union. Available at: www.ojeu.eu/#:~:text=OJEU%20stands%20for%20the%20Official,EU%20legislation%2C%20must%20be%20published

38 See www.europam.eu for details about the provisions that apply to each Member State.

39 European Commission, "Study on the measurement of cross-border penetration in the EU Public Procurement Market", (European Commission, 2021).

40 The main rationale for this is to avoid the identification of competitors who could be approached to form a cartel. However, the issue is controversial and will have to be evaluated on a case-by-case basis depending on the relevant market conditions, number of economic operators and observed collusion risks. For further details and guidance, see *Mythbusting confidentiality in public contracting*, (Open Contracting Partnership, 2018).

41 https://ec.europa.eu/growth/single-market/public-procurement/digital/espd_en

42 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L0843

43 Transparency International, *Access denied? Availability and accessibility of beneficial ownership data in the European Union*, (Transparency International, 2021).

44 OECD, *Guidelines for fighting bid rigging in public procurement*, (OECD, 2014).

45 Ibid.

46 Fazekas M. & Toth B., *Analytics for Integrity: Data-drive approaches for enhancing corruption and fraud risk assessments*, (OECD 2019).

47 European Commission, *Public procurement guidance for practitioners on avoiding the most common errors in projects funded by the European Structural and Investment Funds*, (European Commission, 2018).

48 Ibid.

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